

JAMES HAWKINS APLC

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Attorneys for Plaintiff WILLIAM MATNEY-TATE and Class Members

**UNITED STATES DISTRICT OF CALIFORNIA
NORTHERN DISTRICT OF CALIFORNIA**

KASPER LEUZINGER, MICHAEL
ALLEN JENSEN, WILLIAM
MATNEY-TATE, and RICARDO
AMEZCUA on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

GARDNER TRUCKING, INC., a
California corporation; GARDNER
TRUCKING CONVERSION, LLC, a
California Limited Liability Company;
CRST EXPEDITED, INC., an Iowa
Corporation; CRST THE
TRANSPORTATION SOLUTION,
INC., an entity of unknown formation;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 4:21-cv-04952-YGR

Consolidated with:
4:21-cv-07474-YGR
4:21-cv-07741-YGR
4:22-cv-06501-YGR

[Related on July 27, 2021 to *Castro v.
Gardner Trucking, Inc.*, N.D. Cal. Case No.
4:20-cv-05473-YGR]

**DECLARATION OF JAMES
HAWKINS IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: July 9, 2024
Time: 2:00 p.m.
Place: Courtroom 1 – 4th Floor

Action Filed: June 28, 2021

DECLARATION OF JAMES HAWKINS

I, James Hawkins, declare as follows:

1. I am an individual over the age of 18. I am a partner at the law firm of James Hawkins, APLC. I am one of the attorneys of record for Plaintiff WILLIAM MATNEY-TATE (hereinafter referred to as “Plaintiff” or “Class Representative”). I submit this declaration in support of the Memorandum Of Points And Authorities In Support Of Motion For Preliminary Approval Of Class Action Settlement. I have personal knowledge of the facts set forth below, and if called to testify regarding them, I could and would do so competently.

BACKGROUND

2. On September 24, 2021, Plaintiff William Matney-Tate filed a Putative Class Complaint against Defendant, entitled *William Matney-Tate v. Gardner Trucking, Inc. et al*, United States District of California, Northern District No. 3:21-cv-07474. Plaintiff William Matney-Tate alleged causes of action against Defendant for: (1) failure to pay wages including overtime, (2) failure to provide meal periods, (3) failure to provide rest periods, (4) failure to timely pay wages, (5) failure to provide accurate itemized wage statements, (6) failure to indemnify necessary business expenses, (7) unfair competition laws, Business & Professions Code Sections 17200 et seq., and (8) violation of the Fair Labor Standards Act.

3. On December 2, 2021, Plaintiff William Matney-Tate filed a separate action alleging claims under PAGA against Defendant, entitled *Matney-Tate v. Gardner Trucking, Inc. et al*, pending in California Superior Court for San Joaquin County under Case No. STK-CV-UOE-2021-11019. The Parties have agreed to stay Plaintiff’s PAGA action pending settlement approval proceedings in this action.

4. Plaintiff Matney-Tate’s class and PAGA actions are now consolidated under the action captioned *In re Gardner Trucking Wage and Hour Litigation*, which is pending in the U.S. District Court for the Northern District of California under Case No. 4:21-cv-04952-YGR. It includes the following consolidated actions,

1 previously captioned as (a) *Amezcu v. Gardner Trucking, Inc., et al.*, under Case
 2 No. 4:22-cv-06501-YGR in the U.S. District Court for the Northern District of
 3 California; (b) *Jensen v. CRST Expedited, Inc.*, under Case No. 4:21-cv-07741-YGR
 4 in the U.S. District Court for the Northern District of California; (c) *Leuzinger v.*
 5 *Gardner Trucking, Inc., et al.*, under Case No. 3:21-cv-04952-TSH in the U.S.
 6 District Court for the Northern District of California; and (d) *Matney Tate v.*
 7 *Gardner Trucking, Inc., et al.*, under Case No. 3:21-cv-07474 in the U.S. District
 8 Court for the Northern District of California.

9 **MEDIATION EFFORTS**

10 5. Arm's-length settlement negotiations have taken place between
 11 Counsel for the Settlement Classes and counsel for CRST. The Parties mediated this
 12 matter on two separate occasions. Following the Parties' second mediation, and with
 13 the assistance mediator, Hon. Amy D. Hogue (Ret.) on October 16, 2023, the Parties
 14 reached settlement. Thereafter the Parties executed an MOU and the subsequent
 15 long form settlement agreement that is now before this Court for preliminary
 16 approval.

17 **INVESTIGATION OF CLAIMS**

18 6. Plaintiff's Counsel conducted a thorough investigation into the factual
 19 and legal issues implicated by Plaintiffs' claims, and were able to objectively assess
 20 the settlement's reasonableness.

21 7. Plaintiff was intimately familiar with Defendant's labor policies and
 22 practices, both from prior litigation and during this litigation. Over the course of
 23 multiple interviews, Plaintiff was able to knowledgeably summarize thee policies
 24 and practices to Plaintiffs' Counsel that were the basis of the wage and hour claims.
 25 Plaintiff explained how the policies and practices were instituted and provided
 26 valuable insight into how they gave rise to the alleged Labor Code violations. Based
 27 on these interviews with Plaintiff and Plaintiff's Counsel's knowledge of
 28 Defendant's practices based upon prior extensive litigation against Defendant,

1 Plaintiff's Counsel determined that there were legally sufficient grounds for
2 pursuing the Actions against Defendant. In preparation for drafting the complaints,
3 Plaintiff's Counsel conducted their own independent preliminary investigations into
4 the factual bases for Plaintiff's claims, which entailed, *inter alia*, a careful
5 examination of Plaintiff's associated records.

6 8. During the course of litigation, the Parties exchanged extensive written
7 evidence. Plaintiff's counsel received and analyzed a considerable amount of
8 documents and data, such as employee demographic data, time and pay records,
9 Defendant's policies and procedures manuals which covered a broad range of topics
10 including, *inter alia*, employee time policies and procedures, attendance policies,
11 meal periods/rest periods, payroll statements, driver timesheets, reimbursements
12 policies, and sampled time and pay records for the Class Members. The document
13 and data exchanges allowed Plaintiff's Counsel to fully assess the nature and
14 magnitude of the claims being settled, as well as the impediments to recovery, and
15 ultimately enabled Plaintiff's Counsel so as to make an independent assessment of
16 the reasonableness of the settlement's terms.

17 9. In summary, Plaintiff's Counsel performed a thorough investigation
18 into the claims at issue, which included: (1) determining Plaintiff's suitability as
19 class representatives and private attorneys general through interviews, background
20 investigations, and analyses of their employment files and related records; (2)
21 evaluating all of Plaintiff's potential representative claims; (3) researching similar
22 wage and hour class actions as to the claims brought, the nature of the positions, and
23 the type of employer; (4) analyzing employees' time and wage records; (5)
24 reviewing Defendant's employment policies and practices; (6) researching
25 settlements in similar cases; (7) evaluating Plaintiff's claims and estimating
26 Defendant's liability for purposes of settlement; (8) drafting the mediation briefs;
27 and (9) participating in the mediations.

28 10. By engaging in such a thorough investigation and evaluation of

1 Plaintiff's claims, Plaintiff's Counsel can opine that the Settlement, for the
2 consideration and on the terms set forth in the Settlement Agreement, is fair,
3 reasonable, an adequate, and is in the best interests of Class Members in light of all
4 known facts and circumstances, including the risk of significant delay and
5 uncertainty associated with litigation, and various defenses asserted by Defendant.

6 11. Plaintiff's counsel balanced the terms of the proposed Settlement
7 against the risk of litigation and probable outcome at the class certification stage,
8 and if any Class were certified, at trial. Based on their own respective independent
9 investigations and evaluations, and after taking into account the sharply disputed
10 factual and legal issues involved in this matter, the risks attending further
11 prosecution of the case, and the monetary benefits received under the Settlement
12 despite the questionable nature of the claims, Plaintiff's counsel is of the opinion
13 that Settlement for the consideration and on the terms set forth in the Settlement
14 Agreement is fair, reasonable and adequate and is in the best interests of Plaintiffs
15 and the Class. Counsel for the Parties investigated the applicable law as applied to
16 the facts discovered regarding the claims of Plaintiffs, Defendants' defenses thereto
17 and the damages claimed by Plaintiffs on behalf of the Settlement Class.

18 12. In arriving at the settlement, Plaintiff's counsel considered the risks of
19 a potential adverse summary judgment ruling, uncertainty of class certification, the
20 difficulties of complex litigation, and the lengthy process of establishing specific
21 damages and various possible delays and reversals on appeal.

22 **CLASS COUNSEL EXPERIENCE**

23 13. I have a great deal of experience in wage and hour class action
24 litigation. I have obtained certification of several classes, I have been approved as
25 class counsel in many other wage/hour class actions, and I am currently litigating
26 numerous others. Although not an all inclusive list, over the years I have prosecuted
27 the following class action matters as lead and/or co-lead counsel, all of which
28 implicated similar law and facts to those associated with this action:

1 a. *Aguilar v. 7-Eleven, Inc., et. al.*, Orange County Superior Court- Case
 2 No.: 30-2009-00268714-CU-OE-CXC. Certified Wage and Hour Class
 3 action seeking premium wages for meal period and rest periods and
 4 resultant penalties. Class
 5 Notice pending.

6 b. *Carey, et. al. v. Arthur J. Gallagher, et. al.*, USDC, SOUTHERN
 7 DISTRICT- Case No.: 09-cv-0168. Wage and Hour Class action seeking
 8 past wages of overtime for mis-classification of insurance claims adjusters
 9 employed by Gallagher Bassett, a third party administrator (TPA) in the
 10 State of California. Certification granted. Plaintiffs' counsel co-lead
 11 counsel. Case settled, Final Approval granted, no objections and funds
 12 fully distributed.

13 c. *Dao v. 3M Company, et al.* USDC, CENTRAL DISTRICT, Case No.
 14 CV-08-04554. Wage and Hour Class Action case seeking past wages for
 15 "off the clock", overtime and meal and rest break violations for production
 16 workers in the State of California. Plaintiffs' Counsel appointed as Lead
 17 Counsel. Case settled, Final Approval granted, no objections and funds
 18 fully distributed.

19 d. *Ortiz v. Kmart*, USDC, CENTRAL DISTRICT, Case No. SACV 06-
 20 638 ODW. Wage and Hour Class Action case seeking past wages for
 21 meal and rest period violations for retail employees in the State of
 22 California. Plaintiffs' counsel appointed co-lead counsel. Case settled,
 23 Final Approval granted, no objections and funds fully distributed.

24 e. *Morgan v. Aramark Campus, LLC*, USDC, CENTRAL DISTRICT,
 25 Case No. SACV08-00412. Wage and Hour Class Action case seeking past
 26 wages for meal and rest period violations for retail employees in the State
 27 of California. Plaintiffs' Counsel appointed as Lead Counsel. Case
 28 settled, Final Approval granted, no objections and funds fully distributed.

1 f. *West v Iron Mountain Information Management, Inc, et. al.*; Los
2 Angeles County Superior Court, Case No. BC393709. Wage and Hour
3 Class Action seeking past wages for overtime, meal and rest break
4 violations for driver employees in the State of California. Settlement for
5 “binding arbitration.” Arbitration Award for Plaintiff Class. Arbitration
6 Award confirmed. Plaintiffs’ counsel, lead trial counsel and class counsel.
7 g. *Gonzalez v. Superior Industries Inter, Inc., et al.*, Los Angeles County
8 Superior Court, Case No. BC 357912. Wage and Hour Class Action
9 seeking past wages for overtime, meal and rest breaks violations for
10 production employees in the State of California. Plaintiffs’ counsel
11 appointed as lead counsel. Case settled, Final Approval granted, no
12 objections and funds fully distributed.

13 h. *Acosta v. Fleetwood Travel Trailers of California, Inc., et al.*, Riverside
14 County Superior Court, Case No. RIC 440630. Wage and Hour Class
15 Action seeking past wages for overtime, meal and rest break violations for
16 production employees in the State of California. Plaintiffs’ counsel
17 appointed as co-lead counsel. Case settled, Final Approval granted, no
18 objections and funds fully distributed.

19 i. *Walker v. Sharkeez, et al.*, Orange County Superior Court, Case No.
20 05CC00293. Wage and Hour Class Action seeking past wages for
21 unlawful deductions, meal and rest break violations for restaurant
22 employees in the State of California. Plaintiffs’ counsel appointed as lead
23 counsel. Case settled, Final Approval granted and funds fully distributed.

24 j. *Padron v. Universal Protection Service, et al*, Orange County Superior
25 Court, Case No. 05CC00013. Wage and Hour Class Action seeking past
26 wages for overtime, meal and rest break violations for security officers in
27 the State of California. Plaintiffs’ counsel appointed as co-lead counsel.
28 Case settled, Final Approval granted, no objections and funds fully

distributed.

k. *Martinez v. Securitas Security Services USA, et al.*, Santa Clara Superior Court, Case No. 105-CV047499, et al. J.C.C.P. No. 4460. Wage and Hour Class Action seeking past wages for meal and rest break violations for security officers employed by defendant in the State of California. Plaintiffs' counsel and co-counsel. Case settled, Final Approval granted and funds fully distributed.

l. *Velasquez-Lopez v. Hotel Cleaning Services, Inc. et al.*, Riverside Superior Court, Case No. RIC 420909. Wage and Hour Class Action seeking past wages for overtime, meal and rest break violations for housekeepers employed by defendant in the State of California. Plaintiffs' counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

m. *Ruiz, et al. v. Unisource Worldwide, Inc., et al.*, USDC, CENTRAL DISTRICT, Case No. CV09-05848. Wage and Hour Class Action seeking past wages for meal and rest period violations for non-exempt employees employed by defendant in the state of California. Case settled. Awaiting Preliminary Approval hearing. Plaintiff has petitioned the Court for Lead Counsel.

n. *Herrador v. Culligan International Company, et al.*, USDC, CENTRAL DISTRICT, Case No. SACV 08-680. Wage and Hour Class Action seeking past wages for field and branch employees of defendant in the State of California. Plaintiffs' counsel appointed as lead counsel. Case settled and awaiting Final Approval.

o. *Defries v. Domain Restaurants, et al.*, Orange County Superior Court, Case No. 05CC00128. Wage and Hour Class Action seeking past wages for restaurant employees of defendant in the State of California. Plaintiffs' counsel appointed as lead counsel. Case settled, Final Approval granted,

1 no objections and funds fully distributed.

2 p. *Denton v. BLB Enterprises, Inc., et al.*, Orange County Superior Court,
3 Case No. 07CC01292. Wage and Hour Class Action seeking unpaid
4 overtime, meal and rest break violations for security guards employed by
5 defendant in the State of California. Plaintiffs' counsel appointed as lead
6 counsel. Case settled, Final Approval granted, no objections and funds
7 fully distributed.

8 q. *Rios v. Sandberg Furniture Manufacturing Co., Inc, et al.*, Los Angeles
9 Superior Court, Case No. BC411477. Wage and Hour Class Action
10 seeking unpaid meal and rest break violations for production employees
11 employed by defendant in the State of California. Plaintiff counsel
12 appointed as lead counsel. Case settled, Final Approval granted, no
13 objections and funds fully distributed.

14 r. *McMurray v. Dave and Busters, Inc.*, et al., Orange County Superior
15 Court, Case No. 06CC00099. Wage and Hour Class Action seeking past
16 wages for meal and rest break violations for restaurant employees
17 employed by defendant in the State of California. Plaintiffs' counsel
18 appointed as co-lead counsel. Case settled, Final Approval granted, no
19 objections and funds fully distributed.

20 s. *Osuna v. DFG Restaurants, Inc.*, et al., Los Angeles Superior Court,
21 Case No. BC 330145. Wage and Hour Class Action seeking past wages of
22 overtime for mis-classification of managers employed by Defendant, DBA
23 Carl's Jrs. in the State of California. Plaintiffs' counsel appointed as co-
24 lead counsel. Case settled, Final Approval granted, no objections and
25 funds fully distributed.

26 t. *Burns v. Gymboree Operations, Inc., et al.*, San Francisco Superior
27 Court, Case No. CGC-07-461612. Wage and Hour Class Action seeking
28 past wages for meal and rest break violations for retail employees

1 employed by defendant in the State of California. Plaintiffs' counsel
2 appointed lead counsel. Case settled, Final Approval granted, no
3 objections and funds fully distributed.

4 u. *Willems v. Diedrich Coffee, Inc.*, et al., Orange County Superior Court,
5 Case No. 07CC00015. Wage and Hour Class Action seeking past wages
6 of overtime for mis-classification of managers employed by Defendant in
7 the State of California. Plaintiffs' counsel appointed lead counsel. Case
8 settled, Final Approval granted, no objections and funds fully distributed.

9 v. *Davila, et al. v. Beckman Coulter, Inc.*, et al., Orange County Superior
10 Court, Case No. 07CC01347. Wage and Hour Class Action seeking past
11 wages for overtime, meal and rest break violations for production workers
12 employed by defendant in the State of California. Plaintiffs' counsel
13 appointed lead counsel. Case settled; final approval granted; no
14 objections and funds fully distributed.

15 w. *Perez v. Naked Juice Company of Glendora, Inc.*, Los Angeles
16 Superior Court, Case No. BC387088. Wage and Hour Class Action
17 seeking past wages for overtime, meal and rest period violations for
18 production employees employed by defendant in the State of California.
19 Plaintiff counsel appointed as lead counsel. Case settled, Final Approval
20 granted, no objections and funds fully distributed.

21 x. *Burnell, et. al. vs Swift Transportation Company of Arizona, et. al.*,
22 USDC Central District of California, Case No. 5:10-cv-00809-VAP. Wage
23 and Hour Class Action seeking past wages for overtime, meal and rest
24 period violations for production employees employed by defendant in the
25 State of California. Plaintiff counsel appointed as lead counsel. Case
26 settled, Final Approval granted, upheld on appeal, and funds fully
27 distributed.

28

ATTORNEYS' FEES AND COSTS

14. The Settlement Agreement authorizes Class Counsel to seek from the Court attorneys' fees not to exceed 1/3 of the settlement and reasonable costs. Any amounts not awarded in fees will be added to the Net Settlement Amount—i.e., the Settlement is not dependent on the Court awarding any particular amount to Class Counsel in attorneys' fees, costs, or expenses. Here, the Parties' agreement to pay Class Counsel Fees of 33-1/3% of the Gross Settlement Amount is reasonable. Plaintiffs' counsel have borne the entire risk and cost of this litigation on a pure contingency fee basis. The legal issues raised drew significantly upon my firms and co-counsel's experience and the extensive review and analysis of documents and information by me and others at my firm and our co-counsel. In a complex action such as this, the proposed attorneys' fees are, at the very least, on the average side of the market rate for contingency fees.

15. A review of our firm's billing system reveals that to date, our firm invested approximately 271.8 hours litigating this matter through the date of this declaration. Based on those hours, my firm has incurred the following attorney lodestar hours of approximately \$298,862 in fees, broken down as follows: my rate of \$1,050 per hour x 101.2 hours = \$106,260; Gregory Mauro rate of \$850 per hour x 140.2 hours = \$119,170; Michael Calvo rate of \$600 X 99.8 hours = \$59,880; Melissa Whitson, paralegal- 61.6 hours X \$220 = \$13,552. All of the work and tasks performed by Class Counsel were reasonable and necessary to the prosecution of this case.

16. This requested fees are reasonable and appropriate based on the hours expended to achieve this result, the litigation risks and complexities of prosecuting these types of cases, the contingent nature of any fee, experience in handling cases of this type, the fees commonly awarded in these cases, and the vindication of the Class' rights. In similar wage and class action cases and

1 settlements, Courts have awarded attorneys' fees in percentages equal to or
2 greater than Class Counsel's fee request.

- 3 a. *Karapetyan v. ABM Indus.*, No. 2:15-cv-08313-GW-E, 2015 U.S.
4 Dist. LEXIS 24210 (C.D. Cal. Sept. 7, 2017) (awarding 33-1/3% in
5 \$5,000,000 wage and hour class action)
- 6 b. *Aguirre v. Genesis Logistics, Inc.*, No. 8:12-cv-00687-JVS-KES,
7 2014 U.S. Dist. LEXIS 184617 (C.D. Cal. Nov. 29, 2017) (awarding
8 33-1/3% in \$7,000,000 wage and hour class action);
- 9 c. *Grillo v. Key Energy Services, LLC*, No. 2:14-cv-000881-AB-
10 AGR, 2017 U.S. Dist. LEXIS 42682 (C.D. Cal. Oct. 13, 2017)
11 (awarding 33-1/3% in \$3,000,000 wage and hour class action);
- 12 d. *Shiferaw v. Sunrise Senior Living Management, Inc.*, No. 2:13-
13 cv-02171- JAK- PLA, 2016 U.S. Dist. LEXIS 187548 (C.D. Cal.
14 Jul. 17, 2017) (awarding 33-1/3% in \$2,180,000 wage and hour
15 class action); and
- 16 e. *Boyd v. Bank of America Corp.*, 2014 U.S. Dist. 162880 * (C.D.
17 Cal., Nov. 18, 2014) (awarding 33-1/3% in \$5,800,000 wage and hour
18 class action).

19 17. The hours expended were reasonable in light of the complexity of this
20 litigation. In undertaking these risks, and their responsibility to the Class, Class
21 Counsel had to assure they had sufficient resources to dedicate to the prosecution
22 of this Action. By accepting this case on a contingent basis, my firm was
23 precluded from taking on other matters.

24 18. My firm along with co counsel have been have borne the entire risks
25 and costs of this litigation on a pure contingency fee basis. The legal issues raised
26 in this case are complex, and drew significantly upon my experience and the
27 extensive review and analysis of documents and information by me and others at
28 my firm. In a complex action such as this, the proposed attorneys' fees are, at the

1 very least, on the low side of the market rate for contingency fees.

2 19. In a complex action such as this, Class Counsel's proposed attorneys'
3 fees are, at the very least, in keeping with the market rate for contingency
4 fees, reasonable

5 20. Class Counsel's skill and experience support their hourly rates
6 ranging from \$600, \$850 to \$1,050, which are in line with rates typically approved
7 in wage and hour class action litigation in California and specifically approved by
8 numerous state and federal courts in California.

9 21. My firm is continually monitoring prevailing market rates of defense
10 and plaintiff law firms and set the billing rates to follow those rates for attorneys
11 and staff of comparable skill, qualifications, and experience. Other wage and hour
12 attorneys working as Class Counsel before California courts charge
13 comparable if not higher rates.

14 22. Additionally, our firm has expended approximately \$12,300 in costs to
15 date. The costs were are directly related to the prosecution of this matter and
16 reasonable.

17 23. Despite the complexity of the case, Class Counsel has, through the
18 investment of substantial effort and the resources of our law firm, been able to
19 secure an outstanding settlement on behalf of the Class Members. Plaintiff would
20 have faced substantial legal and factual obstacles in demonstrating that class
21 certification was appropriate, and the difficulties inherent in managing and
22 marshalling evidence for class action claims are exponentially multiplied when
23 dealing with such a large number of employees. Plaintiffs will also be required to
24 establish a significant amount of witness testimony, pattern and practice evidence,
25 statistical evidence, sampling evidence, expert testimony, and other evidence in
26 order to evaluate and present arguments at both class certification and trial. The
27 further conduct of this litigation will likely span several additional years and require
28

1 the dedication of extensive resources to first establish complex class certification
2 and then to establish the merits of all class claims at trial
3 or through contested motion practice.

4 I declare under penalty of perjury that the foregoing is true and correct.

5 Executed on May 1, 2024 at Irvine, California.

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7 _____
8 James R. Hawkins
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EXHIBIT 1

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

April 19, 2024

Via LWDA Website

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail

GARDNER TRUCKING, INC., a California
corporation
c/o James H. Hanson,
Scopelitis, Garvin, Light, Hanson & Feary, PC.
10 West Market Street, Suite 1400,
Indianapolis, IN 46204
Receipt No. 9589 0710 5270 0748 0707 99

And
Shaun J. Voigt
Fisher & Phillips LLP
444 South Flower Street, Suite 1500
Los Angeles, CA 90071
Receipt No. 9589 0710 5270 0748 0707 05

GARDNER TRUCKING CONVERSION, LLC, a
California Limited Liability Company
c/o James H. Hanson,
Scopelitis, Garvin, Light, Hanson & Feary, PC.
10 West Market Street, Suite 1400,
Indianapolis, IN 46204
Receipt No. 9589 0710 5270 0748 0707 12

And
Shaun J. Voigt
Fisher & Phillips LLP
444 South Flower Street, Suite 1500
Los Angeles, CA 90071
Receipt No. 9589 0710 5270 0748 0707 29

CRST THE TRANSPORTATION SOLUTION, INC.,
c/o James H. Hanson,
Scopelitis, Garvin, Light, Hanson & Feary, PC.
10 West Market Street, Suite 1400,
Indianapolis, IN 46204
Receipt No. 9589 0710 5270 0748 0707 36

CRST EXPEDITED, INC., an Iowa Corporation
c/o James H. Hanson,
Scopelitis, Garvin, Light, Hanson & Feary, PC.
10 West Market Street, Suite 1400,
Indianapolis, IN 46204
Receipt No. 9589 0710 5270 0748 0707 43

**Re: AMENDED NOTICE PURSUANT TO LABOR CODE SECTIONS
2698, *et seq.***

To Whom It May Concern:

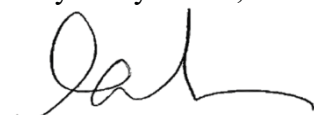
PLEASE TAKE NOTICE that plaintiff WILLIAM MATNEY-TATE individually and on behalf of all similarly situated representative aggrieved employees, gives NOTICE to commence and/or amend a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice by certified mail to the Labor and Workforce Development Agency, GARDNER TRUCKING, INC., a California corporation; GARDNER TRUCKING CONVERSION, LLC, a California Limited Liability Company; CRST EXPEDITED, INC., dba, CRST THE TRANSPORTATION SOLUTION, INC., an Iowa Corporation through their Agent for Service of Process.

Plaintiff hereby attaches a copy of the Proposed Third Amended Class and PAGA Representative Action Complaint to be filed in the United States District Court Northern District Of California, as though fully set forth herewith setting out the specific provisions of the Labor Code Plaintiff alleges have been violated, including the facts and theories. All labor provisions in the Proposed Third Amended PAGA Representative Action Complaint alleged to have been violated pertain to all entities and individuals named in the Complaints, even if not expressly specified.

Please advise within sixty (60) days of the post mark on this letter if the LWDA intends to investigate these claims.

Thank you, and if you have any questions, please do not hesitate to contact me.

Very Truly Yours,



Gregory Mauro

Enclosure: Proposed Third Amended Consolidated Class and PAGA Representative
Action Complaint

1 Shaun Setareh (SBN 204514)
shaun@setarehlaw.com
2 Jose Maria D. Patino, Jr. (SBN 270194)
jose@setarehlaw.com
3 SETAREH LAW GROUP
9665 Wilshire Blvd., Suite 430
4 Beverly Hills, California 90212
Telephone (310) 888-7771
5 Facsimile (310) 888-0109

6 *(Counsel continued on following page)*

7 Attorneys for Plaintiffs
KASPER LEUZINGER, MICHAEL ALLEN JENSEN, and RICARDO AMEZCUA

8 UNITED STATES DISTRICT COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA

11 KASPER LEUZINGER, MICHAEL ALLEN
12 JENSEN, WILLIAM MATNEY-TATE, and
13 RICARDO AMEZCUA on behalf of
themselves and all others similarly situated,

14 *Plaintiffs,*

15 v.

16 GARDNER TRUCKING, INC., a California
17 corporation; GARDNER TRUCKING
CONVERSION, LLC, a California Limited
18 Liability Company; CRST EXPEDITED,
INC., an Iowa Corporation; CRST THE
19 TRANSPORTATION SOLUTION, INC., an
entity of unknown formation; and DOES 1
20 through 50, inclusive,

21 *Defendants.*
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Case No.: 4:21-cv-04952-YGR

Consolidated with:
4:21-cv-07474-YGR
4:21-cv-07741-YGR
4:22-cv-06501-YGR

**THIRD AMENDED CONSOLIDATED
CLASS ACTION COMPLAINT**

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly Wages (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1197.1 and 1198);
4. Failure to Pay Vacation Wages (Lab Code § 227.3)
5. Failure to Indemnify (Lab. Code § 2802);
6. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
7. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
8. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*); and
9. Failure to Pay Employees for All Hours Worked (29 U.S.C. § 201, *et seq.*)
10. Civil Penalties (Lab. Code § 2698 *et seq.*)

JURY TRIAL DEMANDED

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9 individually and on behalf of all others similarly situated

1 Plaintiffs KASPER LEUZINGER, MICHAEL ALLEN JENSEN, WILLIAM MATNEY-
 2 TATE, and RICARDO AMEZCUA (collectively “Plaintiffs”), on behalf of themselves, all others
 3 similarly situated, and the general public, complains and alleges as follows:

4 **INTRODUCTION**

5 1. Plaintiffs bring this class action against Defendants GARDNER TRUCKING, INC., a
 6 California corporation; GARDNER TRUCKING CONVERSION, LLC, a California limited liability
 7 company; CRST EXPEDITED, INC., an Iowa corporation; CRST THE TRANSPORTATION
 8 SOLUTION, INC., an entity of unknown formation; and DOES 1 through 50, inclusive (collectively
 9 referred to as “Defendants”) for alleged violations of the California Labor Code, California Business
 10 and Professions Code, and the Fair Labor and Standards Act. As set forth below, Plaintiffs allege
 11 that Defendants have:

- 12 (1) failed to provide him and all other similarly situated individuals with meal
 13 periods;
- 14 (2) failed to provide them with rest periods;
- 15 (3) failed to pay them premium wages for missed meal and/or rest periods;
- 16 (4) failed to pay them premium wages for missed meal and/or rest periods at the
 17 regular rate of pay;
- 18 (5) failed to pay them at least minimum wage for all hours worked;
- 19 (6) failed to pay them overtime wages at the correct rate;
- 20 (7) failed to pay them double time wages at the correct rate;
- 21 (8) failed to pay them overtime and/or double time wages by failing to include all
 22 applicable remuneration in calculating the regular rate of pay;
- 23 (9) failed to pay wages without discount;
- 24 (10) fail to pay vested vacation wages;
- 25 (11) failed to reimburse them for all necessary business expenses;
- 26 (12) failed to provide them with accurate written wage statements; and
- 27 (13) failed to pay them all of their final wages following separation of employment.

28 ///

2. Based on these alleged violations, Plaintiffs now brings this class action to recover unpaid wages, restitution, and related relief on behalf of themselves, all others similarly situated.

3. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

4. Such actions and policies, as described above and further herein, were and continue to be in violation of the California Labor Code. Plaintiffs, on behalf of themselves and all class members, bring this action pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, Cal. Labor Code §§ 201-204, 223, 225.5, 226.2, 226, 226.7, 227.3, 500, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698-99, and 2802, IWC Wage Order No. 9, and claims under the Cal. Business & Professions Code §§ 17200-17204., seeking unpaid wages, unpaid premiums for missed meal and rest periods, penalties, liquidated damages, and reasonable attorneys’ fees and costs. Plaintiffs also seeks penalties under Labor Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

JURISDICTION AND VENUE

5. This Court has jurisdiction under 28 U.S.C. § 1331 over the claims arising under 29 U.S.C. § 201, the Federal Fair Labor Standards Act (“FLSA”). Furthermore, this Court has supplemental jurisdiction under 28 U.S.C. § 1367 over the remaining and related claims under the California Labor Code.

6. Venue is proper in this District under 28 U.S.C. section 1391(b)(2) and (c) because a substantial part of the events and omissions giving rise to the claims alleged in this complaint occurred in this District.

7. This Court has personal jurisdiction over this matter because Defendants conduct substantial business activity in this District, and because many of the unlawful acts described in this complaint occurred in this District and gave rise to the claims alleged.

///

PARTIES

8. Plaintiff KASPER LEUZINGER is, and at all relevant times mentioned herein was, an individual residing in the State of California. Plaintiff KASPER LEUZINGER is currently employed by Defendants.

9. Plaintiff MICHAEL ALLEN JENSEN is, and at all relevant times mentioned herein was, an individual residing in the State of California.

10. Plaintiff WILLIAM MATNEY-TATE is, and at all relevant times mentioned herein was, an individual residing in the State of California.

11. Plaintiff RICARDO AMEZCUA is, and at all relevant times mentioned herein was, an individual residing in the State of California.

12. Defendant GARDNER TRUCKING, INC. is, and at all relevant times mentioned herein, a California corporation, and doing business in the State of California.

13. Defendant GARDNER TRUCKING CONVERSION, LLC, is, and at all relevant times mentioned herein, a California corporation, and doing business in the State of California.

14. Defendant CRST EXPEDITED, INC. is, and at all relevant times mentioned herein, an Iowa corporation, and doing business in the State of California

15. Defendant CRST THE TRANSPORTATION SOLUTION, INC. is, and at all relevant times mentioned herein, a corporation of unknown formation, and doing business in the State of California.

16. Plaintiffs are ignorant of the true names, capacities, relationships, and extent of participation in the conduct alleged herein, of the defendants sued as DOES 1 through 50, inclusive, but are informed and believe and thereupon allege that the defendants are legally responsible for the wrongful conduct alleged herein and therefore sue these defendants by such fictitious names. Plaintiffs will amend the Complaint to allege the true names and capacities of the DOE defendants when ascertained.

17. Plaintiffs are informed and believe and thereupon allege that, at all relevant times mentioned herein, all defendants were the representatives, agents, employees, partners, directors, associates, joint venturers, principals or co-participants of some or all of the other defendants, and in

1 doing the things hereinafter alleged, were acting within the course and scope of such relationship and
 2 with the full knowledge, consent, and ratification of each of the other defendants.

3 18. Plaintiffs are informed and believe, and thereupon allege that, at all relevant times
 4 mentioned herein, some of the defendants pursued a common course of conduct, acted in concert and
 5 conspired with one another, and aided and abetted one another to accomplish the occurrences, acts
 6 and omissions alleged herein.

7 **CLASS ALLEGATIONS**

8 19. This action has been brought and may be maintained as a class action pursuant to the
 9 Federal Rules of Civil Procedure, Rule 23 because there is a well-defined community of interest
 10 among the persons who comprise the readily ascertainable classes defined below and because
 11 Plaintiffs are unaware of any difficulties likely to be encountered in managing this case as a class
 12 action.

13 20. **Relevant Classes:**

- 14 • **Gardner-Dedicated West Class.** The Gardner-Dedicated West Class is defined as follows:
 15 “All California resident truck driver employees who worked for CRST as part of what is now
 16 known as Dedicated West from April 6, 2016 through February 29, 2024.”
- 17 • **Expedited Class.** The Expedited Class is defined as follows: “All California resident truck
 18 driver employees who worked for CRST as part of what is now known as Expedited Solutions
 19 from August 10, 2017 through February 29, 2024.”

20 The Gardner-Dedicated West Class and the Expedited Class are referred to, collectively, as the
 21 “Class.”

22 21. **Reservation of Rights:** Plaintiffs reserve the right to amend or modify the class
 23 definitions with greater specificity, by further division into sub-classes and/or by limitation to
 24 particular issues.

25 22. **Numerosity:** The class members are so numerous that the individual joinder of each
 26 individual class member is impractical. While Plaintiffs do not currently know the exact number of
 27 class members, Plaintiffs are informed and believe that the actual number exceeds the minimum
 28 required for numerosity under Federal law.

1 23. **Commonality and Predominance:** Common questions of law and fact exist as to all
 2 class members and predominate over any questions which affect only individual class members.
 3 These questions include, but are not limited to:

- 4 A. Whether Defendants maintained a policy or practice of failing to provide
 5 employees with their meal periods;
- 6 B. Whether Defendants maintained a policy or practice of failing to provide
 7 employees with their rest periods;
- 8 C. Whether Defendants failed to pay premium wages to class members when they
 9 have not been provided with required meal and/or rest periods;
- 10 D. Whether Defendants failed to pay minimum and/or overtime wages to class
 11 members as a result of policies that fail to provide meal periods in accordance
 12 with California law;
- 13 E. Whether Defendants failed to pay minimum and/or overtime wages to class
 14 members for all time worked;
- 15 F. Whether Defendants failed to pay overtime wages to class members as a result
 16 of incorrectly calculating their regular rates of pay;
- 17 G. Whether Defendants failed to pay premium wages to class members based on
 18 their respective “regular rates of compensation” by not including commissions
 19 and/or other applicable remuneration in calculating the rates at which those
 20 wages are paid;
- 21 H. Whether Defendants failed to reimburse class members for all necessary
 22 business expenses incurred during the discharge of their duties;
- 23 I. Whether Defendants failed to provide class members with accurate written
 24 wage statements as a result of providing them with written wage statements
 25 with inaccurate entries for, among other things, amounts of gross and net
 26 wages, and total hours worked;
- 27 J. Whether Defendants failed to pay class members all wages without discount;
- 28 K. Whether Defendants used pay cards to pay class members;

- 1 L. Whether Defendants failed to pay class members for all vested vacation
2 wages;
- 3 M. Whether Defendants applied policies or practices that result in late and/or
4 incomplete final wage payments;
- 5 N. Whether Defendants are liable to class members for waiting time penalties
6 under Labor Code section 203; and
- 7 O. Whether class members are entitled to restitution of money or property that
8 Defendants may have acquired from them through unfair competition.
- 9 P. Whether Defendants violated the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et*
10 *seq.*, Business and Professions Code §§ 7200, *et seq.*, and Labor Code sections
11 201-204, 223, 225.5, 226.2, 226, 226.7, 227.3, 500, 510, 512, 558, 1174, 1174.5,
12 1194, 1194.2, 1197, 1197.1, 1198, 2698-99, and 2802 and applicable IWC Wage
13 Orders which violation constitutes a violation of fundamental public policy.

14 24. **Typicality:** Plaintiffs' claims are typical of the other class members' claims.
15 Plaintiffs are informed and believe and thereupon alleges that Defendants have a policy or practice of
16 failing to comply with the FLSA, California Labor Code, and California Business and Professions
17 Code as alleged herein.

18 25. **Adequacy of Class Representative:** Plaintiffs are adequate class representatives in
19 that they have no interests that are adverse to, or otherwise in conflict with, the interests of absent
20 class members. Plaintiffs are dedicated to vigorously prosecuting this action on behalf of class
21 members. Plaintiffs will fairly and adequately represent and protect the interests of class members.

22 26. **Adequacy of Class Counsel:** Plaintiffs' counsel are adequate class counsel in that
23 they have no known conflicts of interest with Plaintiffs or absent class members, are experienced in
24 wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on behalf
25 of Plaintiffs and absent class members.

26 27. **Superiority:** A class action is vastly superior to other available means for fair and
27 efficient adjudication of class members' claims and would be beneficial to the parties and the Court.
28 Class action treatment will allow a number of similarly situated persons to be simultaneously and

1 efficiently prosecute their common claims in a single forum without the unnecessary duplication of
2 effort and expense that numerous individual actions would entail. In addition, the monetary amounts
3 due to many individual class members are likely to be relatively small and would therefore make it
4 difficult, if not impossible, for individual class members to both seek and obtain relief. Moreover, a
5 class action will serve an important public interest by permitting class members to effectively pursue
6 the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent
7 or contradictory judgments inherent in individual litigation.

8 **PAGA REPRESENTATIVE DEFINITION**

9 28. Plaintiffs are seeking to represent PAGA aggrieved employees who are defined as
10 follows: “All California resident truck driver employees who worked for what is now known as
11 Dedicated West or Expedited Solutions during the period from December 3, 2018 through February
12 29, 2024.”

13 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

14 29. Plaintiffs LEUZINGER, JENSEN, MATNEY-TATE, and AMEZCUA were
15 employed by Defendants as hourly non-exempt employees during the applicable statutory periods.

16 30. Plaintiffs LEUZINGER, JENSEN, MATNEY-TATE, and AMEZCUA are no longer
17 employed by Defendants.

18 31. Defendants had a common policy and/or practice of denying Plaintiffs and class
19 members the opportunity to take meal periods, including second meal periods, in compliance with
20 California law. During their employment with Defendants, Plaintiffs and the putative class regularly
21 worked shifts of eight to twelve hours per day, without being afforded a meal break during the first
22 five hours, and/or a second meal break after ten hours, as required by California law.

23 32. Plaintiffs and the putative class members were not provided with meal periods of at
24 least thirty (30) minutes for each five (5) hour work period due to (1) Defendants’ policy of not
25 scheduling each meal period as part of each work shift; (2) chronically understaffing each work shift
26 with not enough workers; (3) imposing so much work on each employee such that it made it unlikely
27 that an employee would be able to take their breaks if they wanted to finish their work on time; (4)
28 interrupting employees with calls and texts during breaks; (5) requiring Plaintiffs and putative class

1 members to remain on call during their meal and rest periods; and (6) no formal written meal and
2 rest period policy that encouraged employees to take their meal and rest periods.

3 33. Additionally, and as discussed below, Plaintiffs and class members experienced
4 compensable, but unpaid, time having to wait for their time clock system to boot up, thus prohibiting
5 them from taking the timely meal periods and rest breaks to which they were entitled.

6 34. As a result of Defendants' policy, Plaintiffs and the putative class were regularly not
7 provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours
8 worked due to complying with Defendants' productivity requirements that required Plaintiffs and
9 the putative class to work through their meal periods in order to complete their assignments on time.

10 35. Plaintiffs and the putative class members were not provided with rest periods of at
11 least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1)
12 Defendants' policy of not scheduling each meal period as part of each work shift; (2) chronically
13 understaffing each work shift with not enough workers; (3) imposing so much work on each
14 employee such that it made it unlikely that an employee would be able to take their breaks if they
15 wanted to finish their work on time; (4) interrupting employees with calls and texts during breaks;
16 (5) requiring Plaintiffs and putative class members to remain on call during their meal and rest
17 periods; and (6) no formal written meal and rest period policy that encouraged employees to take
18 their meal and rest periods.

19 36. As a result of Defendants' policies, Plaintiffs and the putative class were regularly
20 not provided with uninterrupted rest periods of at least ten (10) minutes for each four (4) hours
21 worked due to complying with Defendants' productivity requirements that required Plaintiffs and
22 the putative class to work through their rest periods in order to complete their assignments on time.

23 37. Defendants had a common policy and practice of denying Plaintiffs and class
24 members minimum wages. Specifically, Plaintiffs and class members were required to work off-the-
25 clock for which they were not paid wages. Plaintiffs and class members were required to respond to
26 calls and text messages from Defendant before and after their shifts. Additionally, Plaintiffs and
27 class members were required to respond to calls and text messages during their unpaid meal periods
28 which they were systemically denied. Furthermore, Plaintiffs and class members were experienced

1 compensable, but unpaid, time in waiting for the time clock system to boot up. Plaintiffs and class
2 members were never paid wages for the off-the-clock work performed. Plaintiffs and class members
3 also were not compensated for all time worked because Defendants rounded their time worked down
4 more than they rounded up. Defendants' uneven rounding resulted in the non-payment of minimum
5 wages for all time worked, as well as the non-payment of overtime wages to Plaintiffs and class
6 members.

7 38. As Plaintiffs and class members were regularly, consistently, and frequently
8 scheduled to work, and actually worked, eight (8), ten (10), and sixteen (16) hours a day, for a
9 substantial portion of their shifts. The accrued and unpaid time discussed herein caused Plaintiffs
10 and class members to work in excess of eight (8), ten (10), and sixteen (16) hours a day, entitling
11 them to overtime and double-time wages which they were systemically denied.

12 39. Defendants had a common policy and practice of failing to pay Plaintiffs and class
13 members proper overtime and double-time wages. Plaintiffs and class members consistently worked
14 in excess of ten (10) and up to sixteen (16) hours a day. However, Plaintiffs and class members were
15 only paid overtime wages for hours worked in excess of forty (40) hours a week. Additionally, the
16 uncompensated hours discussed above caused Plaintiffs and class members to work in excess of
17 eight (8) hours day and/or forty (40) hours a week, entitling Plaintiffs and class members to overtime
18 and double-time wages which they were systemically denied.

19 40. Further, Plaintiffs and class members received non-discretionary and performance-
20 based bonuses in the same pay periods in which Plaintiffs and class members were regularly,
21 consistently, and frequently scheduled to work, and actually worked, in excess eight (8), ten (10), and
22 sixteen (16) hours a day. Additionally, Plaintiffs are informed and believe, and thereon allege that,
23 during the relevant time frame, Defendants also compensated Plaintiffs and the class members with
24 shift differentials in pay periods where class members worked in excess eight (8), ten (10), and sixteen
25 (16) hours a day. However, Defendants failed to upwardly adjust Plaintiffs' and class members
26 regular rates of pay by failing to incorporate the value of the bonuses and shift differentials when
27 calculating the overtime and double-time rates of pay. As such, Plaintiff and class members were not
28 properly for overtime and double-time hours worked, and the correct rates of pay.

1 41. Defendants further failed to incorporate all bonuses earned and other remunerations
2 into Plaintiffs' and class member's regular rates of pay when calculating meal and rest period
3 premiums.

4 42. Defendants failed to properly calculate Plaintiffs' and the class members' regular rate
5 of pay and failed to properly pay overtime and double-time wages because Defendants failed to
6 include all forms of compensation in the regular rate including bonuses, incentives, differentials,
7 commissions, and other compensation in the applicable overtime and double-time rates of pay.

8 43. As such, Plaintiffs and class members were required to work overtime and double-
9 time hours each pay period but were not paid their proper overtime and double-time wages for each
10 respective pay period. (*See Landers v. Quality Commun., Inc.*, 771 F.3d 638, 645 (9th Cir. 2014), *as*
11 *amended* (Jan. 26, 2015).)

12 44. Defendants also had a common policy and/or practice of failing to reimburse Plaintiffs
13 and class members for necessary business expenditures incurred in executing their duties under
14 Defendants' employ. Plaintiffs and the putative class members were required to utilize their own
15 personal phones to perform their job duties, specifically to communicate with their supervisors and
16 dispatchers throughout their shift. Plaintiffs and class members were also required to purchase strap
17 rollers, and other tools, as part of their work-related duties, for which they were never reimbursed.

18 45. Plaintiffs and the putative class members were not reimbursed for these business
19 expenses incurred in maintaining their equipment and cell phone use for business purposes, including
20 text messages and minutes.

21 46. Defendants failed to reimburse Plaintiffs and the putative class for such necessary
22 business expenses incurred by them.

23 47. Plaintiffs and the putative class accrued vacation wages during their employment with
24 Defendants.

25 48. Under California law, vacation wages are considered a form of wages under Labor
26 Code section 200. Vested vacation pay and other similar forms of paid time off earned based on labor
27 performed are considered wages that cannot be subject to forfeiture without compensation for
28 forfeited days at the applicable rates required by law.

49. At all relevant times, Defendants maintained policies that provide for the unlawful forfeiture of vested vacation pay in violation of Labor Code section 227.3 and *Suastez v. Plastic Dress-Up Co.*, (1982) 31 Cal. 3d 774.

50. Plaintiffs and the putative class are entitled to vacation accrued during their employment with Defendants. However, upon termination or separation of employment, Defendants failed to pay Plaintiffs and the putative class for all accrued vacation pay. As such, Plaintiffs and class members were both entitled to vested vacation wages and were denied vested vacation wages in violation of Labor Code § 227. (See *Whitehead v. Pacifica Senior Living Mgt. LLC*, 21-15035, 2022 WL 313844, at *3 (9th Cir. Feb. 2, 2022).

51. Plaintiffs and the putative class were not provided with accurate wage statements as mandated by law pursuant to Labor Code section 226.

52. Defendants failed to comply with Labor Code section 226(a)(1) as “gross wages earned” were not accurately reflected in that: all hours worked, including overtime, were not included.

53. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours worked by the employee” were not accurately reflected in that: all hours worked, including overtime, were not included.

54. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages earned” were not accurately reflected in that: all hours worked, including overtime, were not included.

55. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” were not accurately reflected in that: all hours worked, including overtime, were not included.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code §§ 223, 226.7, 512 and 1198)

56. Plaintiffs incorporate by reference the preceding paragraphs of the Complaint as if fully alleged herein.

57. At all relevant times, Plaintiffs and the class members have been non-exempt

employees of Defendants entitled to the full meal period protections of both the Labor Code and the applicable Industrial Welfare Commission Wage Order.

58. Labor Code section 512 and Section 11 of the applicable Industrial Welfare Commission Wage Order impose an affirmative obligation on employers to provide non-exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period of five hours, and to provide them with two uninterrupted, duty-free meal periods of at least thirty minutes for each work period of ten hours.

59. Labor Code section 226.7 and Section 11 of the applicable Industrial Welfare Commission Wage Order (“Wage Order”) both prohibit employers from requiring employees to work during required meal periods and require employers to pay non-exempt employees an hour of premium wages on each workday that the employee is not provided with the required meal period.

60. Compensation for missed meal periods constitutes wages within the meaning of Labor Code section 200.

61. Labor Code section 1198 makes it unlawful to employ a person under conditions that violate the applicable Wage Order.

62. Section 11 of the applicable Wage Order states:

No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

63. At all relevant times, Plaintiffs were not subject to a valid on-duty meal period agreement. Plaintiffs are informed and believe that, at all relevant times, class members were not subject to valid on-duty meal period agreements with Defendants.

64. Plaintiffs allege that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing Plaintiffs and class members with uninterrupted, duty-free meal periods for at least thirty (30) minutes for each five (5) hour work

1 period, as required by Labor Code section 512 and the applicable Wage Order.

2 65. Plaintiffs allege that, at all relevant times during the applicable limitations period,
3 Defendants maintained a policy or practice of failing to pay premium wages to class members when
4 they worked five (5) hours without clocking out for any meal period.

5 66. Plaintiffs allege that, at all relevant times during the applicable limitations period,
6 Defendants maintained a policy or practice of not providing Plaintiffs and class members with a
7 second meal period when they worked shifts of ten or more hours and failed to pay them premium
8 wages as required by Labor Code 512 and the applicable Wage Order.

9 67. Moreover, Defendants' written policies do not provide that employees must take their
10 first meal period before the end of the fifth hour of work, that they are entitled to a second meal period
11 if they work a shift of over ten hours, or that the second meal period must commence before the end
12 of the tenth hour of work, unless waived.

13 68. During their employment with Defendants, Plaintiffs and the class members regularly
14 worked shifts of eight to twelve hours per day, without being afforded a meal break during the first
15 five hours, and/or a second meal break after ten hours, as required by California law.

16 69. Plaintiffs and the class members were not provided with meal periods of at least thirty
17 (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each
18 meal period as part of each work shift; (2) chronically understaffing each work shift with not enough
19 workers; (3) imposing so much work on each employee such that it made it unlikely that an employee
20 would be able to take their breaks if they wanted to finish their work on time; (4) interrupting
21 employees with calls and texts during breaks; (5) requiring Plaintiffs and class members to remain
22 on call during their meal and rest periods; and (6) no formal written meal and rest period policy that
23 encouraged employees to take their meal and rest periods.

24 70. Additionally, and as discussed above, Plaintiffs and class members experienced
25 compensable, but unpaid, time having to wait for their time clock system to boot up, thus prohibiting
26 them from taking the timely meal periods and rest breaks to which they were entitled.

27 71. As a result of Defendants' policy, Plaintiffs and the class members were regularly not
28 provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours

1 worked due to complying with Defendants' productivity requirements that required Plaintiffs and
2 the class members to work through their meal periods in order to complete their assignments on time.

3 72. At all relevant times, Defendants failed to pay Plaintiffs and the class members
4 additional premium wages, and/or were not paid premium wages at the employees' regular rates of
5 pay when required meal periods were not provided.

6 73. Pursuant to Labor Code section 218.6 and 226.7, Plaintiffs, on behalf of themselves
7 and the class members, seek to recover unpaid premium wages, interest thereon, and costs of suit.

8 74. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
9 substantial benefit doctrine, and/or the common fund doctrine, Plaintiffs, on behalf of themselves and
10 the class members, seek to recover reasonable attorneys' fees.

11 **SECOND CAUSE OF ACTION**

12 **FAILURE TO PROVIDE REST PERIODS**

13 **(Lab. Code §§ 223, 226.7 and 1198)**

14 75. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged
15 herein.

16 76. At all relevant times, Plaintiffs and the class members have been non-exempt
17 employees of Defendants entitled to the full rest period protections of both the Labor Code and the
18 applicable Wage Order.

19 77. Section 12 of the applicable Wage Order imposes an affirmative obligation on
20 employers to permit and authorize employees to take required rest periods at a rate of no less than ten
21 minutes of net rest time for each four-hour work period, or major fraction thereof, that must be in the
22 middle of each work period insofar as practicable.

23 78. Labor Code section 226.7 and Section 12 of the applicable Wage Order both prohibit
24 employers from requiring employees to work during required rest periods and require employers to
25 pay non-exempt employees an hour of premium wages at the employees' regular rates of pay, on each
26 workday that the employee is not provided with the required rest period(s).

27 79. Compensation for missed rest periods constitutes wages within the meaning of Labor
28 Code section 200.

1 80. Labor Code section 1198 makes it unlawful to employ a person under conditions that
2 violate the Wage Order.

3 81. Plaintiffs alleges that, at all relevant times during the applicable limitations period,
4 Defendants maintained a policy or practice of not providing class members of the with net rest period
5 of at least ten minutes for each four-hour work period, or major fraction thereof, as required by the
6 applicable Wage Order.

7 82. Plaintiffs and the class members were not provided with rest periods of at least ten
8 (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants'
9 policy of not scheduling each meal period as part of each work shift; (2) chronically understaffing
10 each work shift with not enough workers; (3) imposing so much work on each employee such that it
11 made it unlikely that an employee would be able to take their breaks if they wanted to finish their
12 work on time; (4) interrupting employees with calls and texts during breaks; (5) requiring Plaintiffs
13 and the class members to remain on call during their meal and rest periods; and (6) no formal written
14 meal and rest period policy that encouraged employees to take their meal and rest periods.

15 83. As a result of Defendants' policies, Plaintiffs and the class members were regularly
16 not provided with uninterrupted rest periods of at least ten (10) minutes for each four (4) hours
17 worked due to complying with Defendants' productivity requirements that required Plaintiffs and
18 the class members to work through their rest periods in order to complete their assignments on time.

19 84. At all relevant times, Defendants failed to pay Plaintiffs and the class members
20 additional premium wages when required rest periods were not provided.

21 85. Pursuant to Labor Code section 204, 218.6 and 226.7, Plaintiffs, on behalf of
22 themselves and the class members, seek to recover unpaid premium wages, interest thereon, and costs
23 of suit.

24 86. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
25 substantial benefit doctrine, and/or the common fund doctrine, Plaintiffs, on behalf of themselves and
26 class members, seek to recover reasonable attorneys' fees.

27 ///

28 ///

THIRD CAUSE OF ACTION

FAILURE TO PAY HOURLY AND OVERTIME WAGES

(Lab. Code §§ 223, 510, 1194, 1197 and 1198)

87. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged herein.

88. At all relevant times, Plaintiffs and the class members are or have been non-exempt employees of Defendants entitled to the full protections of the Labor Code and the applicable Wage Order.

89. Section 2 of the applicable Wage Order defines “hours worked” as “the time during which an employee is subject to the control of the employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

90. Section 4 of the applicable Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consist of all hours that an employer has actual or constructive knowledge that employees are working.

91. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum or overtime wage required under the applicable Wage Order.

92. Labor Code section 1194.2 entitles non-exempt employees to recover liquidated damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition to the underlying unpaid minimum wages and interest thereon.

93. Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

94. Labor Code section 1197.1 provides that it is unlawful for any employer or any other person acting either individually or as an officer, agent, or employee of another person, to pay an employee, or cause an employee to be paid, less than the applicable minimum wage.

95. Labor Code section 1198 makes it unlawful for employers to employ employees under conditions that violate the applicable Wage Order.

1 96. Labor Code section 204 requires employers to pay non-exempt employees their earned
2 wages for the normal work period at least twice during each calendar month on days the employer
3 designates in advance and to pay non-exempt employees their earned wages for labor performed in
4 excess of the normal work period by no later than the next regular payday.

5 97. Labor Code section 223 makes it unlawful for employers to pay their employees lower
6 wages than required by contract or statute while purporting to pay them legal wages.

7 98. Labor Code section 510 and Section 3 of the applicable Wage Order require employees
8 to pay non-exempt employees overtime wages of no less than one and one-half times their respective
9 regular rates of pay for all hours worked in excess of eight hours in one workday, all hours worked in
10 excess of forty hours in one workweek, and/or for the first eight hours worked on the seventh
11 consecutive day of one workweek.

12 99. Labor Code section 510 and Section 3 of the applicable Wage Order also require
13 employers to pay non-exempt employees overtime wages of no less than two times their respective
14 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours
15 worked in excess of eight hours on a seventh consecutive workday during the workweek.

16 100. Plaintiffs are informed and believe that, at all relevant times, Defendants have applied
17 centrally devised policies and practices to him and the class members with respect to working
18 conditions and compensation arrangements.

19 101. At all relevant times, Defendants failed to pay hourly wages to Plaintiffs and the class
20 members for all time worked, including but not limited to, overtime hours at statutory and/or agreed
21 rates.

22 102. Section 9 of the applicable Wage Order states:

23 When uniforms are required by the employer to be worn by the employee as a condition
24 of employment, such uniforms shall be provided and maintained by the employer. The
term “uniform” includes wearing apparel and accessories of distinctive design or color.

25 103. If the employer does not choose to maintain employees’ uniforms itself where it is
26 required to do so, the Division of Labor Standards Enforcement (“DLSE”) takes the position that the
27 employer may pay each affected employee a weekly maintenance allowance of an hour’s pay at the
28 state minimum wage rate in lieu of maintaining the uniforms, assuming that an hour is a realistic

1 estimate of the time involved in maintaining the uniform.

2 104. At all relevant times during the applicable limitations period, and in violation of the
3 above-referenced sections of the Labor Code and the applicable Wage Order, Defendants failed to
4 compensate Plaintiffs with minimum and/or overtime wages for all hours they worked.

5 105. Plaintiffs are informed and believe that, at all relevant times, and in violation of the
6 above-referenced sections of the Labor Code and the applicable Wage Order, Defendants failed to
7 compensate the class members with minimum and/or overtime wages for all hours they worked as a
8 result of its failures to maintain employee uniforms and/or pay them a weekly maintenance allowance.

9 106. During the relevant time period, Defendants failed to pay Plaintiffs and the class
10 members all earned wages every pay period at the correct rates, including overtime rates, because
11 Defendants directed, permitted or otherwise encouraged Plaintiffs and the class members to perform
12 off-the-clock work.

13 107. Defendants had a common policy and practice of denying Plaintiffs and the class
14 members minimum wages. Specifically, Plaintiffs and the class members were required to work off-
15 the-clock for which they were not paid wages. Plaintiffs and the class members were required to
16 respond to calls and text messages from Defendants before and after their shifts. Additionally,
17 Plaintiffs and the class members were required to respond to calls and text messages during their
18 unpaid meal periods which they were systemically denied. Plaintiffs and the class members were
19 never paid wages for the off-the-clock work performed.

20 108. Additionally, Plaintiffs and the class members experienced compensable, but unpaid,
21 time having to wait for their time clock system to boot up, thus prohibiting them from taking the
22 timely meal periods and rest breaks to which they were entitled.

23 109. Further, Plaintiffs and the class members received bonuses in the same pay periods in
24 which Plaintiffs and the class members received overtime pay. However, Defendants failed to adjust
25 Plaintiffs' and the class members' regular rates of pay by failing to incorporate the value of the bonus
26 when calculating the overtime pay.

27 110. Plaintiffs and the class members also were not compensated for all time worked
28 because Defendants rounded their time worked down more than they rounded up. Defendants' uneven

1 rounding resulted in the non-payment of minimum wages for all time worked, as well as the non-
2 payment of overtime wages to Plaintiffs and the class members.

3 111. Defendants further failed to incorporate all bonuses earned and other remunerations
4 into Plaintiffs' and the class member's regular rates of pay when calculating meal and rest period
5 premiums.

6 112. Plaintiffs are informed and believe, and thereon allege that, during the relevant time
7 frame, Defendants also compensated Plaintiffs and the class members with shift differentials, but
8 failed to incorporate the shift differentials into the regular rate of pay for overtime calculation
9 purposes and therefore were provided inaccurate overtime pay.

10 113. Defendants failed to properly calculate Plaintiffs' and the class members' regular rate
11 of pay because Defendants failed to include all forms of compensation in the regular rate including
12 bonuses, incentives, differentials, commissions, and other compensation.

13 114. Defendants had a common policy and practice of failing to pay Plaintiffs and the class
14 members proper overtime and double-time wages. Plaintiffs and the class members consistently
15 worked in excess of ten (10) and up to sixteen (16) hours a day. However, Plaintiffs and the class
16 members were only paid overtime wages for hours worked in excess of forty (40) hours a week.
17 Additionally, the uncompensated hours discussed above caused Plaintiffs and the class members to
18 work in excess of eight (8) hours day and/or forty (40) hours a week, entitling Plaintiffs and the class
19 members to overtime and double-time wages which they were systemically denied.

20 115. Plaintiffs and the class members were regularly, consistently, and frequently
21 scheduled to work, and actually worked, eight (8), ten (10), and sixteen (16) hours a day, for a
22 substantial portion of their shifts. The accrued and unpaid time discussed herein caused Plaintiffs
23 and the class members to work in excess of eight (8), ten (10), and sixteen (16) hours a day, entitling
24 them to overtime and double-time wages which they were systemically denied.

25 116. As such, Plaintiffs and class members were required to work overtime and double-
26 time hours each pay period, but were not paid their proper overtime and double-time wages for each
27 respective pay period. (*See Landers v. Quality Commun., Inc.*, 771 F.3d 638, 645 (9th Cir. 2014), as
28 amended (Jan. 26, 2015).)

117. As a result of Defendants' unlawful conduct, Plaintiffs and the class members have suffered damages in an amount, subject to proof, to the extent they were not paid the full amount of wages earned during each pay period during the applicable limitations period, including overtime wages.

118. Pursuant to Labor Code sections 218.6, 223, 510, 1194 and 1194.2, Plaintiffs, on behalf of themselves and the class members, seeks to recover unpaid straight time and overtime wages, interest thereon and costs of suit.

119. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiffs, on behalf of themselves and the class members, seek to recover reasonable attorneys' fees.

FOURTH CAUSE OF ACTION

FAILURE TO PAY VACATION WAGES

(Lab. Code § 227.3)

120. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged herein.

121. California Labor Code section 227.3 provides:

Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.

122. At all relevant times during the applicable limitations period, Plaintiffs and class members accrued vacation time during their employment with Defendants.

123. As a result of their vacation policies and practices, Plaintiffs are informed and believe and thereon allege that Defendants failed to pay them and the class members for all accrued or vested vacation wages.

///

124. Plaintiffs and the class members are entitled to vacation accrued during their employment with Defendants. However, upon termination or separation of employment, Defendants failed to pay Plaintiffs and the class members for all accrued vacation pay. As such, Plaintiffs and the class members were both entitled to vested vacation wages, and were denied vested vacation wages in violation of Labor Code § 227. (*See Whitehead v. Pacifica Senior Living Mgt. LLC*, 21-15035, 2022 WL 313844, at *3 (9th Cir. Feb. 2, 2022)).

125. By reason of the above, Plaintiffs and the class members are entitled to restitution for all unpaid amounts due and owing to within four years (4) of the date of the filing of the Complaint until the date of entry of judgment.

126. Plaintiffs, on behalf of themselves and the class members, seek interest thereon pursuant to California Labor Code section 218.6, costs pursuant to California Labor Code section 218.6, and reasonable attorneys' fees pursuant to California Code of Civil Procedure section 1021.5.

FIFTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code § 2802)

127. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged herein.

128. Labor Code section 2802(a) states:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

129. At all relevant times during the applicable limitations period, Plaintiffs and the class members incurred necessary business-related expenses and costs, including but not limited to, personal cell phone bills, including call minutes and messaging rates, and the purchase price of gloves in order to execute their duties under Defendants' employ.

130. Plaintiffs are informed and believe, and thereupon allege that Defendants failed to indemnify Plaintiffs and the class members for all necessary expenses incurred in the discharge of their duties.

131. Pursuant to Labor Code section 452, an employer is authorized to prescribe the weight, color, quality, texture, style, form and make of uniforms required to be worn by their employees.

132. Section 9 of the applicable Wage Order states:

When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term “uniform” includes wearing apparel and accessories of distinctive design or color.

133. At all relevant times during the applicable limitations period, Defendants required Plaintiffs and the class members to pay for expenses and/or losses caused by Defendants' want of ordinary care.

134. Plaintiffs are informed and believe that, during the applicable limitations period, Defendants maintained a policy or practice of not reimbursing Plaintiffs and the class members for these necessary business expenses.

135. Accordingly, Plaintiffs and the class members are entitled to restitution for all unpaid amounts due and owing to within four years of the date of the filing of the Complaint and until the date of entry of judgment.

136. Plaintiffs, on behalf of themselves, and the class members, seek interest thereon and costs pursuant to Labor Code section 218.6, and reasonable attorneys' fees pursuant to Code of Civil Procedure section 1021.5.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

137. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged herein.

138. Labor Code section 226(a) states:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid,

(7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, 'copy' includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

139. The Division of Labor Standards Enforcement ("DLSE") has sought to harmonize the "detachable part of the check" provision and the "accurate itemized statement in writing" provision of Labor Code section 226(a) by allowing for electronic wage statements so long as each employee retains the right to elect to receive a written paper stub or record and that those who are provided with electronic wage statements retain the ability to easily access the information and convert the electronic statements into hard copies at no expense to the employee. (DLSE Opinion Letter July 6, 2006).

140. Plaintiffs are informed and believe that, at all relevant times during the applicable limitations period, Defendants have failed to provide the class members with written wage statements as described above.

141. Plaintiffs are informed and believe that Defendants' failure to provide him and the class members with accurate written wage statements were intentional in that Defendants have the ability to provide them with accurate wage statements but have intentionally provided them with written wage statements that Defendants have known do not comply with Labor Code section 226(a).

142. Plaintiffs and the class members have suffered injuries, in that Defendants have violated their legal rights to receive accurate wage statements and have misled them about their actual rates of pay and wages earned. In addition, inaccurate information on their wage statements have prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical computations to determine the amount of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the submission of

1 inaccurate information about wages and deductions to federal and state government agencies.

2 143. Pursuant to Labor Code section 226(e), Plaintiffs, on behalf of themselves and the
3 class members, seek the greater of actual damages or \$50.00 for the initial pay period in which a
4 violation of Labor Code section 226(a) occurred, and \$100.00 for each subsequent pay period in
5 which a violation of Labor Code section 226(a) occurred, not to exceed an aggregate penalty of
6 \$4,000.00 per class member, as well as awards of reasonable attorneys' fees and costs.

7 **SEVENTH CAUSE OF ACTION**

8 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

9 **(Lab. Code §§ 201-203)**

10 144. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged
11 herein.

12 145. At all relevant times, Plaintiffs and the class members have been entitled, upon the end
13 of their employment with Defendants, to timely payment of all wages earned and unpaid before
14 termination or resignation.

15 146. At all relevant times, pursuant to Labor Code section 201, employees who have been
16 discharged have been entitled to payment of all final wages immediately upon termination.

17 147. At all relevant times, pursuant to Labor Code section 202, employees who have
18 resigned after giving less than seventy-two (72) hours' notice of resignation have been entitled to
19 payment of all final wages within seventy-two (72) hours of giving notice of resignation.

20 148. During the applicable limitations period, Defendants failed to pay Plaintiffs all of their
21 final wages in accordance with the Labor Code by failing to timely pay him all of his final wages.

22 149. Plaintiffs are informed and believe that, at all relevant time during the applicable
23 limitations period, Defendants have failed to timely pay the class members all of their final wages in
24 accordance with the Labor Code.

25 150. Plaintiffs are informed and believe that, at all relevant times during the applicable
26 limitations period, Defendants have maintained a policy or practice of paying the class members their
27 final wages without regard to the requirements of Labor Code sections 201 or 202 by failing to timely
28 pay them all final wages.

1 160. Defendants have or may have acquired money by means of unfair competition.

2 161. Plaintiffs are informed and believe and thereupon allege that by committing the Labor
3 Code violations described in this Complaint, Defendants violated Labor Code sections 212, 215, 216,
4 225, 226.6, 227.3, 354, 408, 553, 1175, 1199, and 2802, which make it a misdemeanor to commit the
5 Labor Code violations alleged herein.

6 162. Defendants have committed criminal conduct through their policies and practices of,
7 *inter alia*, failing to comport with their affirmative obligations as an employer to provide non-exempt
8 employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period
9 of five or more hours, provide non-exempt employees with uninterrupted, duty-free rest periods of at
10 least ten minutes for each work period of four or more hours, by failing to pay non-exempt employees
11 for all hours worked, failing to pay wage without discount, failing to pay vested vacation wages, and
12 by failing to reimburse them for all expenses.

13 163. At all relevant times, Plaintiffs and the class members have been non-exempt
14 employees and entitled to the full protections of both the Labor Code and the applicable Wage Order.

15 164. Defendants' unlawful conduct as alleged in this Complaint amounts to and constitutes
16 unfair competition within the meaning of Business and Professions Code section 17200 *et seq.*
17 Business and Professions Code sections 17200 *et seq.* protects against unfair competition and allows
18 a person who has suffered an injury-in-fact and has lost money or property as a result of an unfair,
19 unlawful or fraudulent business practice to seek restitution on his own behalf and on behalf of
20 similarly situated persons in a class action proceeding.

21 165. As a result of Defendants' violations of the Labor Code during the applicable
22 limitations period, Plaintiffs and the class members have suffered an injury-in-fact and have lost
23 money or property in the form of earned wages. Specifically, Plaintiffs have lost money or property
24 as a result of Defendants' conduct.

25 166. Plaintiffs are informed and believe that other similarly situated persons have been
26 subject to the same unlawful policies or practices of Defendants.

27 167. Due to the unfair and unlawful business practices in violation of the Labor Code,
28 Defendants have gained a competitive advantage over other comparable companies doing business in

1 the State of California that comply with their legal obligations.

2 168. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive
3 for "any unlawful, unfair or fraudulent business act or practice," including if a practice or act violates
4 or is considered unlawful under any other state or federal law.

5 169. Pursuant to Business and Professions Code section 17203, Plaintiffs on behalf of
6 themselves and the class members, seek declaratory relief and restitution of all monies rightfully
7 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
8 and unfair business practices.

9 170. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
10 and/or the common fund doctrine, Plaintiffs and the class members are entitled to recover reasonable
11 attorneys' fees in connection with their unfair competition claims.

12 **NINTH CAUSE OF ACTION**

13 **FAILURE TO PAY EMPLOYEES FOR ALL HOURS WORKED**
14 **IN VIOLATION OF THE FEDERAL FAIR LABOR STANDARDS ACT**
15 **(29 U.S.C. § 201, *et seq.*)**

16 171. Plaintiffs incorporate the preceding paragraphs of the Complaint as though fully
17 alleged herein.

18 172. At all material times herein, Plaintiffs and all similarly situated class members who
19 submit "Consents to Become Party Plaintiffs" are or were employed by and engaged in providing
20 services necessary by Defendant, and have been entitled to the rights, protections, and benefits
21 provided under the FLSA, 29 U.S.C. §§ 201 *et seq.*

22 173. The FLSA requires, among other things, that employers pay employees the minimum
23 wage for all time worked plus overtime. 29 U.S.C. §§ 206, 207, 215.

24 174. At all material times, the time spent compensable time waiting for the time clock to
25 boot up, performed work related tasks, before and after their shifts, and performed work related duties
26 during unpaid meal periods. These uncompensated hours were necessarily and directly related to the
27 principal activities of the employee's duties, and thus constitutes compensable time under the FLSA
28 and is subject to the FLSA's overtime requirements. 29 C.F.R. § 785.38.

1 175. At all material times herein, Defendants have violated the FLSA by failing to pay
2 Plaintiffs for all hours worked and at the applicable rates of pay.

3 176. At all material times herein, Defendants have violated the FLSA by failing to pay class
4 members at one-and-one-half (1.5) times the regular rate of pay when working time causes an
5 employee's total hours worked to exceed forty (40) hours a week, and or eight (8), ten (10), twelve
6 (12), and sixteen (16) hours a day.

7 177. Defendants have also violated the FLSA by failing to keep required, accurate records
8 of all hours worked by class members in violation of 29 U.S.C. § 211(c).

9 178. Plaintiffs and all similarly situated employees are victims of a uniform and entity-wide
10 compensation policy. This uniform policy, in violation of the FLSA, has been applied to all
11 (employees) employed by Defendants.

12 179. As discussed above, Plaintiffs and the class members were regularly, consistently,
13 and frequently scheduled to work, and actually worked, eight (8), ten (10), and sixteen (16) hours a
14 day, for a substantial portion of their shifts. The accrued and unpaid time discussed herein caused
15 Plaintiffs and the class members to work in excess of eight (8), ten (10), and sixteen (16) hours a
16 day, entitling them to overtime and double-time wages which they were systemically denied.

17 180. Defendants had a common policy and practice of failing to pay Plaintiffs and the class
18 members proper overtime and double-time wages. Plaintiffs and class members consistently worked
19 in excess of ten (10) and up to sixteen (16) hours a day. However, Plaintiffs and the class members
20 were only paid overtime wages for hours worked in excess of forty (40) hours a week. Additionally,
21 the uncompensated hours discussed above caused Plaintiffs and class members to work in excess of
22 eight (8) hours day and/or forty (40) hours a week, entitling Plaintiffs and the class members to
23 overtime and double-time wages which they were systemically denied.

24 181. Additionally, Defendants failed to properly calculate Plaintiffs' and the class
25 members' regular rate of pay and failed to properly pay overtime and double-time wages because
26 Defendants failed to include all forms of compensation in the regular rate including bonuses,
27 incentives, differentials, commissions, and other compensation in the applicable overtime and double-
28 time rates of pay.

182. As such, Plaintiffs and the class members were required to work overtime and double-time hours each pay period, but were not paid their proper overtime and double-time wages for each respective pay period. (See *Landers v. Quality Commun., Inc.*, 771 F.3d 638, 645 (9th Cir. 2014), as amended (Jan. 26, 2015).)

183. Plaintiffs and all similarly situated individuals are entitled to damages equal to the mandated pay and overtime premium pay within the three (3) years preceding the filing of this Complaint, plus periods of equitable tolling, because Defendants acted willfully and knew or showed reckless disregard of whether their conduct was prohibited by the FLSA.

184. Defendants have acted neither in good faith nor with reasonable grounds to believe that their actions and omissions were not a violation of the FLSA. Plaintiffs and other similarly situated individuals are entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid compensation, including overtime pay, and/or prejudgment interest at the applicable rate. 29 U.S.C. § 216(b).

185. As a result of violations of the FLSA's minimum wage and overtime pay provisions, Defendants have unlawfully withheld compensation from Plaintiffs and all similarly situated individuals. Defendants are liable for unpaid compensation, together with an amount equal as liquidated damages, attorneys' fees and costs of this action. 29 U.S.C. § 216(b).

TENTH CAUSE OF ACTION

CIVIL PENALTIES

THE PRIVATE ATTORNEYS GENERAL ACT OF 2004

(Lab. Code § 2698 *et seq.*)

186. Plaintiff incorporates by reference and re-alleges each and every allegation contained above, as though fully set forth herein.

187. On September 24, 2021 and April 12, 2024, Plaintiff Matney-Tate complied with notice requirements pursuant to Labor Code section 2699.3. A copy of the letters sent to the LWDA are attached hereto as **Exhibit A**, indicating that the LWDA and Defendants were put on notice of the claims alleged here and that the notice requirement has been satisfied. Sixty-five days have passed and the LWDA has not indicated intent to investigate the claims. Therefore, Plaintiff may proceed

1 with this action in a representative capacity. The substance and violations set forth in this Complaint
2 of which the LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA
3 Representative Action Complaint to the LWDA.

4 188. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a). Plaintiff
5 brings this cause of action on behalf of all current and former California Non-Exempt Employees of
6 Defendants.

7 189. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for
8 which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint,
9 including without limitation Labor Code section 201-203, 510, 512, 558, 226, 226.3, 226.7, 1174,
10 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802, and 2698 *et seq.*, applicable IWC Wage Orders and
11 California Code of Regulations, Title 8, section 11000 *et. seq.*

12 190. At all times relevant, Plaintiff and all other aggrieved employees regularly performed
13 non-exempt work in excess of 50% of the time, and thus, were subject to the meal and rest break
14 requirements of the applicable IWC wage order and the Labor Code.

15 191. Defendants violated Labor Code section 200, 558, 1194, 1197, by failing to accurately
16 pay at least minimum wages due as a result of Defendants requiring Plaintiff and Aggrieved
17 Employees to perform work related tasks off the clock, both before they were on the clock and after
18 they were off the clock. Plaintiffs and class members also were not compensated for all time worked
19 because Defendants rounded their time worked down more than they rounded up. Defendants' uneven
20 rounding resulted in the non-payment of minimum wages for all time worked, as well as the non-
21 payment of overtime wages to Plaintiffs and class members.

22 192. Defendants violated Labor Code sections 510 and 1194 by failing to accurately pay
23 overtime wages owed as discussed above due to Defendants' failure to incorporate bonuses, shift
24 differentials and other forms of remuneration as described above into the regular rate of pay for
25 overtime calculation purposes. Therefore, Defendants violated section 510, and 1194 by not
26 compensating its Non-Exempt Employees for work performed in excess of eight hours (8) in a day
27 or forty hours in a work week (40). Section 510 of the Labor Code codifies the right to overtime
28 compensation at the rate of one and one-half times the regular rate of pay for all hours worked in

1 excess of eight (8) hours in a day or forty (40) hours in a work week and to overtime compensation
2 twice the regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of
3 eight (8) hours in a day on the seventh day of work in a particular work week.

4 193. Defendants failed to provide Plaintiffs and all other aggrieved employees
5 uninterrupted duty-free meal periods of not less than thirty (30) minutes. Defendants implemented
6 and enforced policies of on duty meal period practices which required employees to work during their
7 meal periods, to forego their meal periods, and/or to return to work from meal periods prior to thirty
8 (30) uninterrupted minutes. As a proximate result of the aforementioned violations, Plaintiffs and all
9 other aggrieved employees have been damaged in an amount according to proof at time of trial.

10 194. Plaintiffs, and on information and belief, all aggrieved employees, were systematically
11 not permitted or authorized to take ten-minute rest periods for every four hours worked or major
12 fraction thereof, which is a violation of the Labor Code and IWC wage order. Plaintiffs and on
13 information and belief, aggrieved employees, were not compensated with one hour of wages for every
14 day in which a rest period was missed or untimely as a result of Defendants' policies, practices, or
15 work demands. By failing to authorize and permit a ten-minute rest period for every four hours or
16 major fraction thereof worked per day by its Non-Exempt Employees, and by failing to provide
17 compensation for such non-provided or shortened rest periods, as alleged above, Defendants willfully
18 violated the provisions of Labor Code sections 226.7, 512 and the applicable IWC Wage Order.

19 195. Defendants also willfully violated Labor Code sections 201-203 by failing to provide
20 all owed wages at separation from employment. Labor Code sections 201 and 202 require Defendants
21 to pay their employees all wages due either at time of firing, or within seventy-two (72) hours of
22 voluntary separation, if not sooner. Section 203 of the Labor Code provides that if an employer
23 willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject
24 employee's wages until the back wages are paid in full or an action is commenced. The penalty cannot
25 exceed 30 days of wages.

26 196. Plaintiffs and all other aggrieved employees who were separated from employment
27 are entitled to compensation for all forms of wages earned, including but not limited to compensation
28 regular and overtime wages, and for non-provided meal and rest periods, but to date have not received

1 such compensation, therefore entitling them to penalties under PAGA for violations of Labor Code
2 sections 201-203.

3 197. On information and belief, Defendants willfully failed to pay all wages due and owing
4 upon separation from employment. These wages include regular and overtime wages, and meal and
5 rest period premiums.

6 198. On information and belief, Defendants failed to provide accurate itemized wage
7 statements which failed to include the rate of pay and total hours worked per pay period, failed to
8 account for all hours worked, including overtime, and lastly the accurate accounting of, the lawful
9 meal and rest period premiums due and owing to Plaintiffs and the aggrieved employees, pursuant to
10 Labor Code section 226(a).

11 199. Defendants have failed to provide Plaintiffs and Aggrieved Employees rates of pay
12 and the hours for which they worked for any given pay period.

13 200. Defendants have failed to accurately record all time worked.

14 201. Defendants have also failed to accurately record the meal and rest period premiums
15 owed and all wages owed per pay period.

16 202. Defendants also provided an incorrect name for the employer and did not accurately
17 reflect the rate for the shift differential. Also, on information and belief, Defendants changed the name
18 of their entity, but did not reflect this change on the wage statements.

19 203. Plaintiffs and Aggrieved Employees have been injured as they were unable to
20 determine whether they had been paid correctly for all hours worked per pay period, among other
21 things.

22 204. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a) of
23 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
24 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each
25 violation in a subsequent citation, for which the employer fails to provide the employee a wage
26 deduction statement or fails to keep the records required in subdivision (a) of Section 226.

27 205. On information and belief, Defendants failed to reimburse Plaintiffs and Aggrieved
28 Employees for business expenses incurred as described above. Labor Code section 2802 requires

Defendants to indemnify Plaintiffs and Aggrieved Employees for necessary expenditures incurred in direct consequences of the discharge of his or her duties. Despite these realities of the job, Defendants failed to provide reimbursements.

206. Labor Code section 2804 states in pertinent part: “Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof is null and void, and this article shall not deprive any employee or his or her personal representative of any right or remedy to which he is entitled under the laws of this State.

207. Additionally, Defendants have no accurate records relating to aggrieved employees’ work periods, meal periods, total daily hours worked, total hours worked per payroll period and applicable pay rates, in violation of Wage Order. Similarly, Defendants failed to maintain accurate records relating to hours worked daily in violation of Labor Code sections 1174(d), 1174.5.

208. As a result of Defendants' unlawful conduct, Plaintiffs and Aggrieved employees are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours worked.

209. Plaintiffs and the Representative Aggrieved Employees are entitled to recover Penalties and attorneys’ fees and costs sunder Labor Code section 2698, *et. seq.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for relief and judgment against Defendants for the following relief:

- A. An order that the action be certified as a class action;
- B. An order that Plaintiffs be appointed class representatives;
- C. An order that counsel for Plaintiffs be appointed class counsel;
- D. Unpaid wages;
- E. Actual damages;
- F. Liquidated Damages;
- G. Unpaid vacation wages;
- H. Unreimbursed expenses;
- I. Restitution;
- J. Declaratory relief;

- K. Pre-judgment interest;
- L. Statutory penalties;
- M. Costs of suit;
- N. Penalties according to proof, pursuant to Labor Code §§ 2698 et seq.
- O. Reasonable attorneys' fees; and
- P. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves, all others similarly situated, and the general public, hereby demand a jury trial on all issues so triable.

Dated: April 19, 2024

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JAMES HAWKINS
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Attorneys for Plaintiffs