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Superior Court of California,
County of Alameda

12/09/2021 at 03:55:02 PM

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GREGORY SEILER, individually and on
behalf of other persons similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

GREGORY SEILER, an individual, on behalf
of himself and on behalf of other persons
similarly situated,

Plaintiff,

vs.

SMOAKLAND DISTRIBUTION LLC, a
California corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: **21CV003855**

CLASS ACTION COMPLAINT:

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

REPRESENTATIVE ACTION:

11. Penalties under the Labor Code Private Attorneys General Act, as Representative Action

DEMAND FOR JURY TRIAL

1 Plaintiff GREGORY SEILER (“PLAINTIFF”), an individual, demanding a jury trial, on
2 behalf of himself and other persons similarly situated and aggrieved, hereby alleges as follows:

3 **INTRODUCTION**

4 1. PLAINTIFF brings this action on behalf of himself and all other similarly-situated
5 current and former non-exempt employees of Defendants, SMOAKLAND DISTRIBUTION LLC
6 (“SMOAKLAND”), and DOES 1 through 50 inclusive (collectively, “DEFENDANTS”) in the
7 State of California during the relevant statutory period to recover damages and penalties arising
8 from DEFENDANTS’ failure to provide employees meal and rest periods (or compensation
9 therefore) as required under California law, failure to provide minimum and overtimes wages for
10 all hours worked, failure to timely pay wages during employment, failure to pay wages due upon
11 separation, failure to maintain required records, failure to provide accurate itemized wage
12 statements, failure to indemnify employees for necessary expenditures and/or losses incurred the
13 discharge of their duties, and unauthorized deductions from wages. PLAINTIFF also seeks
14 penalties, interest, attorneys’ fees, costs and expenses, and equitable, restitutionary and injunctive
15 relief.

16 **JURISDICTION AND VENUE**

17 2. The Superior Court of the State of California has jurisdiction in this matter because
18 PLAINTIFF is a citizen and resident of the State of California and DEFENDANT is a citizen and
19 resident of, and/or regularly conducts business in California. Further, no federal question is at issue
20 because the claims are based solely on California law.

21 3. Venue is proper in this judicial district and the County of Alameda, California
22 because DEFENDANT maintains offices and facilities and transacts business in the County of
23 Alameda, and DEFENDANT’s illegal policies and practices which are the subject of this action
24 were applied, at least in part, to PLAINTIFF and other persons similarly situated in the County of
25 Alameda.

26 **PLAINTIFF**

27 4. PLAINTIFF worked as a non-exempt delivery driver for Smoakland, a marijuana
28 dispensary in Oakland, California, between May 2021 and August 2021.

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

6. PLAINTIFF brings this action on behalf of himself and the following similarly situated class of individuals (“CLASS MEMBERS”): all current and former non-exempt employees of DEFENDANT in the State of California at any time within the period beginning four (4) years prior to the filing of this action and ending at the time this action settles or proceeds to final judgment (the “CLASS PERIOD”). PLAINTIFF reserves the right to name additional class representatives.

DEFENDANT

7. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT SMOAKLAND is, and at all times relevant hereto was, a California limited liability company. PLAINTIFF is further informed and believes, and thereon alleges, that SMOAKLAND is authorized to and does conduct business in the State of California. Specifically, SMOAKLAND maintains offices and facilities and conducts business in, and engages in illegal payroll practices or policies in the County of Alameda, State of California.

8. The true names and capacities of DOES 1 through 50, inclusive, are unknown to PLAINTIFF at this time, and PLAINTIFF therefore sues such DOE Defendants under fictitious names. PLAINTIFF is informed and believes, and thereon alleges, that each Defendant designated as a DOE is in some manner highly responsible for the occurrences alleged herein, and that PLAINTIFF and other CLASS MEMBERS' injuries and damages, as alleged herein, were

1 proximately caused by the conduct of such DOE Defendants. PLAINTIFF will seek leave of the
2 court to amend this Complaint to allege their true names and capacities of such DOE Defendants
3 when ascertained.

4 9. At all relevant times herein, DEFENDANT was the joint employer of PLAINTIFF
5 and other CLASS MEMBERS. PLAINTIFF is informed and believes, and thereon alleges, that at
6 all times material to this Complaint DEFENDANT was the alter egos, divisions, affiliates,
7 integrated enterprises, joint employers, subsidiaries, parents, principals, related entities, co-
8 conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible,
9 of each other. Each Defendant was completely dominated by his, her or its co-Defendant, and
10 each was the alter ego of the other.

11 10. At all relevant times herein, PLAINTIFF and CLASS MEMBERS were employed
12 by DEFENDANT under employment agreements that were partly written, partly oral, and partly
13 implied. In perpetrating the acts and omissions alleged herein, DEFENDANT, and each of them,
14 acted pursuant to, and in furtherance of, their policies and practices of not paying PLAINTIFF
15 and other CLASS MEMBERS all wages earned and due, through methods and schemes which
16 include, but are not limited to, failing to pay overtime premiums; failing to provide rest and meal
17 periods; failing to properly maintain records; failing to provide accurate itemized statements for
18 each pay period; failing to properly compensate PLAINTIFF and CLASS MEMBERS for
19 necessary expenditures; making unauthorized deductions from wages; and requiring, permitting
20 or suffering the employees to work off the clock, in violation of the California Labor Code and
21 the applicable Welfare Commission ("IWC") Orders.

22 11. PLAINTIFF is informed and believes, and thereon alleges, that each and every one
23 of the acts and omissions alleged herein were performed by, and/or attributable to, all
24 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control
25 of, each of the other DEFENDANTS, and that said acts and failures to act were within the course
26 and scope of said agency, employment and/or direction and control.

27 12. Pursuant to California Labor Code § 558.1, DEFENDANTS and any person acting
28 on behalf of any of the DEFENDANTS, are liable for violating, or causing to violate, any

1 provision regulating minimum wages or hours and days of work in any order of the Industrial
2 Welfare Commission, or Labor Code §§ 203, 226, 226.7, 1193.6, 1994, or 2802.

3 13. As a direct and proximate result of the unlawful actions of DEFENDANTS,
4 PLAINTIFF and CLASS MEMBERS have suffered, and continue to suffer, from loss of earnings
5 in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction of this
6 Court.

7 **FACTUAL ALLEGATIONS**

8 14. Throughout PLAINTIFF's employment, PLAINTIFF and other similarly situated
9 and aggrieved employees were denied off-duty, uninterrupted meal and rest breaks. PLAINTIFF
10 and other similarly situated aggrieved employees were given short meal breaks, provided meal
11 breaks late (after the fifth hour of work for the first meal period and/or after the tenth hour of
12 work for the second meal period), had their meal breaks interrupted, and/or were denied their
13 meal breaks entirely.

14 15. Similarly, DEFENDANTS consistently failed to authorize and permit PLAINTIFF
15 and other similarly situated and aggrieved employees off-duty rest breaks, including failing to
16 authorize and permit PLAINTIFF and other similarly situated aggrieved employees to take rest
17 breaks in the middle of each work period insofar as practicable.

18 16. DEFENDANTS did not compensate PLAINTIFF and other similarly situated and
19 aggrieved employees for their missed meal and rest breaks.

20 17. Further, PLAINTIFF and other similarly situated and aggrieved employees often
21 worked either more than 8 hours per day and/or more than 40 hours per week, but
22 DEFENDANTS did not compensate them for their overtime work, or compensated PLAINTIFF
23 and Class Members at the incorrect overtime rate

24 18. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
25 frequently provided non-compliant, inaccurate wage statements and failed to properly maintain
26 records for PLAINTIFF and other similarly situated and aggrieved employees as a result of these
27 unlawful practices. Moreover, DEFENDANTS did not timely pay PLAINTIFF and other
28 similarly situated and aggrieved employees for all hours worked when it failed to pay for the

1 missed meal and rest break periods, overtime wages, and/or for forcing PLAINTIFF and other
2 similarly situated and aggrieved employees to work off-the-clock without pay.

3 19. Additionally, PLAINTIFF and other similarly situated and aggrieved employees
4 were forced to pay out of pocket for business expenses such as cell phones, and other
5 employment-related expenses. DEFENDANTS did not indemnify PLAINTIFF and other
6 similarly situated and aggrieved employees for these expenses.

7 20. DEFENDANTS also made unauthorized deductions from PLAINTIFF and
8 CLASS MEMBERS' wages, unlawfully requiring PLAINTIFF and CLASS MEMBERS to
9 reimburse DEFENDANTS for alleged cash shortages.

10 21. Further, DEFENDANTS failed to furnish accurate wage statements, as
11 DEFENDANTS not only failed to include all hours worked, but failed identify DEFENDANTS'
12 proper legal name.

13 **CLASS ACTION ALLEGATIONS**

14 22. This action is appropriately suited for a Class Action because:

15 a. The potential class is a significant number. Joinder of all current and
16 former employees individually would be impractical.

17 b. This action involves common questions of law and fact to the potential
18 class because the action focuses on DEFENDANTS' systematic course of illegal payroll practices
19 and policies, which was applied to all non-exempt employees in violation of the Labor Code, the
20 applicable IWC Wage Order, and the Business and Professions Code, which prohibits unfair
21 business practices arising from such violations.

22 c. PLAINTIFF's claims are typical of the class because DEFENDANTS
23 subjected all non-exempt employees to identical violations of the Labor Code, the applicable
24 IWC wage order, and the Business and Professions Code.

25 d. PLAINTIFF will fairly and adequately protect the interest of all CLASS
26 MEMBERS because it is in his best interest to prosecute the claims alleged herein to obtain full
27 compensation due to them for all services rendered and hours worked.

1 e. A class action is superior to other available methods for fairly and
2 efficiently adjudicating the controversy.

3 **FIRST CAUSE OF ACTION**

4 **Failure to Provide Required Meal Periods**

5 **[Cal. Labor Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 7-2001, § 11]**

6 **(Against all DEFENDANTS)**

7 23. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
8 factual allegations in the foregoing paragraphs.

9 24. During the CLASS PERIOD, as part of DEFENDANTS' illegal policies and
10 practices to deprive their current and former non-exempt employees all wages earned and due,
11 DEFENDANTS required, suffered or permitted PLAINTIFF and CLASS MEMBERS to take less
12 than the 30-minute meal period, or to work through them, and have failed to otherwise provide
13 the required meal periods to PLAINTIFF and CLASS MEMBERS pursuant to Labor Code §§
14 226.7 and 512 and IWC Order No. 7-2001, § 11.

15 25. DEFENDANTS further violated Labor Code §§ 226.7 and 512 and IWC Wage
16 Order No. 7-2001, §11 by failing to compensate PLAINTIFF and CLASS MEMBERS who were
17 not provided with a meal period, in accordance with the applicable IWC Wage Order, one
18 additional hour of compensation at each employee's regular rate of pay for each workday that a
19 meal period was not provided.

20 26. DEFENDANTS further violated California Labor Code §§ 226.7, 510, 1194,
21 1197, and IWC Wage Order No. 7-2001 by failing to compensate PLAINTIFF and CLASS
22 MEMBERS for all hours worked during their meal periods.

23 27. As a proximate result of the aforementioned violations, PLAINTIFF and CLASS
24 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages
25 earned and due, interest, penalties, expenses, and costs of suit.

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1 **SECOND CAUSE OF ACTION**

2 **Failure to Provide Required Rest Periods**

3 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 7-2001, § 12]**

4 **(Against all DEFENDANTS)**

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

7 29. At all times relevant herein, as part of DEFENDANTS' illegal policies and
8 practices to deprive their current and former non-exempt employees all wages earned and due,
9 DEFENDANTS failed to provide rest periods to PLAINTIFF and CLASS MEMBERS as
10 required under Labor Code § 226.7 and 512, and IWC Wage Order No. 7-2001, § 12.

11 30. DEFENDANTS further violated Labor Code § 226.7 and IWC Wage Order No. 7-
12 2001, § 12 by failing to pay PLAINTIFF and CLASS MEMBERS who were not provided with a
13 rest period, in accordance with the applicable IWC Wage Order, one additional hour of
14 compensation at each employee's regular rate of pay for each workday that a rest period was not
15 provided.

16 31. As a proximate result of the aforementioned violations, PLAINTIFF and CLASS
17 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages
18 earned and due, interest, penalties, expenses, and costs of suit.

19 **THIRD CAUSE OF ACTION**

20 **Failure to Pay Overtime Wages**

21 **[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 7-2001, § 3]**

22 **(Against all DEFENDANTS)**

23 32. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
24 factual allegations in the foregoing paragraphs.

25 33. Pursuant to Labor Code §§ 510 and 1194 and IWC Wage Order No. 7-2001, § 3,
26 DEFENDANTS are required to compensate PLAINTIFF and CLASS MEMBERS for all
27 overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours
28 worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first

1 eight (8) hours on the seventh consecutive workday, with double time for all hours worked in
2 excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours
3 on the seventh consecutive day of work in any workweek.

4 34. PLAINTIFF and CLASS MEMBERS are current and former non-exempt
5 employees entitled to the protections of California Labor Code §§ 510 and 1194 and IWC Wage
6 Order No. 7-2001. During the CLASS PERIOD, DEFENDANTS failed to compensate
7 PLAINTIFF and CLASS MEMBERS for all overtime hours worked as required under the
8 foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to
9 pay PLAINTIFF and CLASS MEMBERS the regular rate; failing to pay overtime at one and one-
10 half (1 ½) or double the regular rate of pay as provided by Labor Code §§ 510, 1194, and IWC
11 Wage Order No. 7-2001, § 3; requiring, suffering or permitting PLAINTIFF and CLASS
12 MEMBERS to work off the clock; requiring, permitting or suffering PLAINTIFF and CLASS
13 MEMBERS to work through meal breaks; illegally and inaccurately recording time in which
14 PLAINTIFF and CLASS MEMBERS worked; failing to properly maintain PLAINTIFF's and
15 CLASS MEMBERS' records; failing to provide accurate itemized wage statements to
16 PLAINTIFF for each pay period; and other methods to be discovered.

17 35. In violation of California law, DEFENDANTS have knowingly and willfully
18 refused to perform their obligations to compensate PLAINTIFF and CLASS MEMBERS for all
19 wages earned and all hours worked. As a proximate result, PLAINTIFF and CLASS MEMBERS
20 have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such
21 wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel
22 DEFENDANTS to fully perform their obligations under state law, all to their respective damages
23 in amounts according to proof at time of trial, and within the jurisdiction of this Court.

24 36. DEFENDANTS' conduct described herein violates California Labor Code §§ 510,
25 1194, 1198 and IWC Wage Order No. 7-2001, § 3. Therefore, pursuant to California Labor Code
26 §§ 200, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor Code
27 and IWC Wage Orders, PLAINTIFF and CLASS MEMBERS are entitled to recover the unpaid
28 balance of wages owed to them by DEFENDANTS, plus interest, penalties, attorneys' fees,

1 expenses, and costs of suit.

2 **FOURTH CAUSE OF ACTION**

3 **Failure to Pay Minimum Wages**

4 **[Cal Labor Code §§ 1194, 1197; IWC Wage Order No. 7-2001, § 4]**

5 **(Against all DEFENDANTS)**

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

8 38. Pursuant to California Labor Code §§ 1194 and 1197 and IWC Wage Order No. 7-
9 2001, § 4, payment to an employee of less than the applicable minimum wage for all hours
10 worked in a payroll period is unlawful.

11 39. During the CLASS PERIOD and in violation of California Labor Code §§ 1194
12 and 1197 and IWC Wage Order No. 7-2001, § 4, DEFENDANTS failed to pay PLAINTIFF and
13 CLASS MEMBERS the applicable minimum wages for all hours worked in a payroll period by,
14 among other things: requiring, suffering or permitting PLAINTIFF and CLASS MEMBERS to
15 work off the clock; requiring, suffering or permitting PLAINTIFF and CLASS MEMBERS to
16 work through meal and rest breaks; illegally and inaccurately recording time in which
17 PLAINTIFF and CLASS MEMBERS worked; failing to properly maintain PLAINTIFF's and
18 CLASS MEMBERS' records; failing to provide accurate itemized wage statements to
19 PLAINTIFF and CLASS MEMBERS for each pay period; and other methods to be discovered.

20 40. DEFENDANTS' conduct described herein violates California Labor Code §§
21 1194, 1197, and IWC Wage Order No. 7-2001, § 4. As a proximate result of the aforementioned
22 violations, PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to
23 proof at trial. Therefore, pursuant to California Labor Code §§ 200, 226, 558, 1194, 1197.1, and
24 other applicable provisions under the Labor Code and IWC Wage Orders, PLAINTIFF and
25 CLASS MEMBERS are entitled to recover the unpaid balance of wages owed to them by
26 DEFENDANTS, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

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1 **FIFTH CAUSE OF ACTION**

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

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

4 **(Against all DEFENDANTS)**

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

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

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

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

19 45. During the CLASS PERIOD, DEFENDANTS have willfully failed to pay accrued
20 wages and other compensation to PLAINTIFF and CLASS MEMBERS in accordance with
21 California Labor Code §§ 201 and 202.

22 46. As a result, PLAINTIFF and CLASS MEMBERS are entitled to all available
23 statutory penalties, including the waiting time penalties provided in California Labor Code § 203,
24 together with interest thereon, as well as other available remedies.

25 47. As a proximate result of DEFENDANTS' unlawful actions and omissions,
26 PLAINTIFF and CLASS MEMBERS have been deprived of compensation in an amount
27 according to proof at the time of trial, but in excess of the jurisdiction of this Court, and are
28 entitled to recovery of such amounts, plus interest thereon, and attorneys' fees and costs, pursuant

1 to California Labor Code §§ 1194 and 2699.

2 **SIXTH CAUSE OF ACTION**

3 **Failure to Maintain Required Records**

4 **[Cal. Labor Code §§ 226(a), 1174(d); IWC Wage Order No. 7-2001, § 7]**

5 **(Against all DEFENDANTS)**

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

8 49. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies
9 and practices to deprive PLAINTIFF and CLASS MEMBERS of all wages earned and due,
10 DEFENDANTS knowingly and intentionally failed to maintain records as required under Labor
11 Code §§ 226(a) and 1174(d) and IWC Wage Order No. 7-2001, § 7, including but not limited to
12 the following records: total daily hours worked by each employee; applicable rates of pay; all
13 deductions; meal periods; time records showing when each employee begins and ends each work
14 period; and accurate itemized statements.

15 50. As a proximate result of DEFENDANTS' unlawful actions and omissions,
16 PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at
17 trial, and are entitled to all wages earned and due, plus interest thereon. Additionally,
18 PLAINTIFF and CLASS MEMBERS are entitled to all available statutory penalties, including
19 but not limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5,
20 and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to those
21 provided in California Labor Code § 226(e), as well as other available remedies.

22 **SEVENTH CAUSE OF ACTION**

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

24 **[Cal. Labor Code § 226(a), 1174; IWC Wage Order No. 7-2001, § 7]**

25 **(Against all DEFENDANTS)**

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

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1 52. During the CLASS PERIOD, DEFENDANTS routinely failed and continue to fail
2 to provide PLAINTIFF and CLASS MEMBERS with timely and accurate itemized wage
3 statements in writing showing each employee's gross wages earned, total hours worked, the
4 number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
5 rate basis, all deductions made, net wages earned, the inclusive dates of the period for which the
6 employee is paid, the name of the employee and only the last four digits of his or her social
7 security number or employee identification number, the name and address of the legal entity or
8 entities employing PLAINTIFF and CLASS MEMBERS, and all applicable hourly rates in effect
9 during each pay period and the corresponding number of hours worked at each hourly rate, in
10 violation of California Labor Code § 226(a) and IWC Wage Order No. 7-2001, § 7.

11 53. During the CLASS PERIOD, DEFENDANTS routinely failed and continue to fail
12 to identify the correct name and address of the legal entity that is PLAINTIFF and CLASS
13 MEMBERS' employer, in violation of California Labor Code § 226(a)(8).

14 54. During the CLASS PERIOD, DEFENDANTS knowingly and intentionally failed
15 to provide PLAINTIFF and CLASS MEMBERS with timely and accurate itemized wage
16 statements in accordance with Labor Code § 226(a).

17 55. As a proximate result of DEFENDANTS' unlawful actions and omissions,
18 PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at
19 trial, and seek all wages earned and due, plus interest thereon. Additionally, PLAINTIFF and
20 CLASS MEMBERS are entitled to all available statutory penalties, including but not limited to
21 civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of
22 costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in
23 California Labor Code § 226(e), as well as other available remedies.

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1 **EIGHTH CAUSE OF ACTION**

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

3 **Incurred in Discharge of Duties**

4 **[Cal. Labor Code § 2802]**

5 **(Against all DEFENDANTS)**

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

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

11 58. During the CLASS PERIOD, DEFENDANTS knowingly and willfully failed to
12 indemnify PLAINTIFF and CLASS MEMBERS for all business expenses and/or losses incurred
13 in direct consequence of the discharge of their duties while working under the direction of
14 DEFENDANTS, including but not limited to expenses for cell phone usage, and other
15 employment-related expenses, in violation of California Labor Code § 2802.

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

23 **NINTH CAUSE OF ACTION**

24 **Unauthorized Deductions from Wages**

25 **[Cal. Labor Code § 224; IWC Wage Order No. 7-2001, § 8]**

26 **(Against all DEFENDANTS)**

27 60. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
28 factual allegations in the following paragraphs.

61. During the CLASS PERIOD, DEFENDANTS routinely made unauthorized deductions from PLAINTIFF and CLASS MEMBERS' wages by collecting reimbursements for cash shortages, breakages, or loss of equipment; without showing that the shortage, breakage, or loss was caused by a dishonest or willful act, or by the gross negligence of the employee, in violation of California Labor Code § 224 and IWC Wage Order No. 7-2001, § 8.

62. As a proximate result of DEFENDANTS' unlawful acts and omissions, PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at trial, and are entitled to all wages earned and due, plus interest thereon. PLAINTIFF and CLASS MEMBERS are entitled to reimbursement of the deducted wages, including interest pursuant to California Labor Code § 224, as well as all available statutory penalties and an award of costs, expenses, and reasonable attorneys' fees, as well as other available remedies.

TENTH CAUSE OF ACTION

Unfair and Unlawful Business Practices

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

(Against all DEFENDANTS)

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

64. Each and every one of DEFENDANTS' acts and omissions in violation of the California Labor Code and/or the applicable IWC Wage Order as alleged herein, including but not limited to: DEFENDANTS' failure and refusal to provide required meal periods; DEFENDANTS' failure and refusal to provide required rest periods; DEFENDANTS' failure and refusal to pay overtime compensation; DEFENDANTS' failure and refusal to pay minimum wages; DEFENDANTS' failure and refusal to pay all wages due to discharged or quitting employees; DEFENDANTS' failure and refusal to furnish accurate itemized wage statements; DEFENDANTS' failure and refusal to maintain required records; DEFENDANTS' failure and refusal to indemnify PLAINTIFF and CLASS MEMBERS for necessary expenditures and/or losses incurring in discharging their duties; and DEFENDANTS' unauthorized deductions from PLAINTIFF and CLASS MEMBERS' wages constitutes an unfair and unlawful business practice

1 under California Business and Professions Code § 17200 *et seq.*

2 65. DEFENDANTS' violations of California wage and hour laws constitute a business
3 practice because DEFENDANTS' aforementioned acts and omissions were done repeatedly over
4 a significant period of time, and in a systematic manner, to the detriment of PLAINTIFF and
5 CLASS MEMBERS.

6 66. DEFENDANTS have avoided payment of wages, overtime wages, meal periods,
7 rest periods, and other benefits as required by the California Labor Code, the California Code of
8 Regulations, and the applicable IWC Wage Order. Further, DEFENDANTS have failed to
9 record, report, and pay the correct sums of assessment to the state authorities under the California
10 Labor Code and other applicable regulations.

11 67. As a result of DEFENDANTS' unfair and unlawful business practices,
12 DEFENDANTS have reaped unfair and illegal profits during the CLASS PERIOD at the expense
13 of PLAINTIFF, CLASS MEMBERS, and members of the public. DEFENDANTS should be
14 made to disgorge their ill-gotten gains and to restore them to PLAINTIFF and CLASS
15 MEMBERS.

16 68. DEFENDANTS' unfair and unlawful business practices entitle PLAINTIFF and
17 CLASS MEMBERS to seek preliminary and permanent injunctive relief, including but not
18 limited to orders that DEFENDANTS account for, disgorge, and restore to PLAINTIFF and
19 CLASS MEMBERS the wages and other compensation unlawfully withheld from them.
20 PLAINTIFF and CLASS MEMBERS are entitled to restitution of all monies to be disgorged
21 from DEFENDANTS in an amount according to proof at the time of trial, but in excess of the
22 jurisdiction of this Court.

23 **ELEVENTH CAUSE OF ACTION**

24 **Representative Action for Civil Penalties**

25 **[Cal. Labor Code §§ 2698–2699.5]**

26 **(Against all DEFENDANTS)**

27 69. PLAINTIFF incorporates herein by specific reference as though fully set forth the
28 allegations in all preceding paragraphs, with the exception of the allegations in paragraph 20 and

1 the subparagraphs thereto.

2 70. PLAINTIFF is an “aggrieved employee” within the meaning of California Labor
3 Code § 2699(c), and a proper representative to bring a civil action on behalf of himself and other
4 current and former employees of DEFENDANTS pursuant to the procedures specified in
5 California Labor Code § 2699.3, because PLAINTIFF and CLASS MEMBERS were employed
6 by DEFENDANTS and the alleged violations of the California Labor Code were committed
7 against PLAINTIFF and CLASS MEMBERS.

8 71. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”),
9 Labor Code §§ 2698–2699.5, PLAINTIFF and CLASS MEMBERS seek to recover civil
10 penalties, including but not limited to penalties under California Labor Code §§ 2699, 210,
11 226.3, 558, 1174.5, 1197.1, and IWC Wage Order No. 1-2001, § 20, from DEFENDANTS in a
12 representative action for the violations set forth above, including but not limited to violations of
13 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and
14 2802. PLAINTIFF and CLASS MEMBERS are also entitled to an award of reasonable attorneys’
15 fees and costs pursuant to California Labor Code § 2699(g)(1).

16 72. Pursuant to California Labor Code §§ 2699.3, PLAINTIFF gave written notice on
17 September 24, 2021 by online filing to the California Labor and Workforce Development Agency
18 (“LWDA”) and by certified mail to DEFENDANTS of the specific provisions of the California
19 Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories
20 to support the alleged violations. More than sixty-five (65) days have passed and the LWDA has
21 not provided notice to PLAINTIFF that it intends to investigate the alleged violations.

22 73. Therefore, PLAINTIFF has complied with all of the requirements set forth in
23 California Labor Code § 2699.3 to commence a representative action under PAGA.

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1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, PLAINTIFF, individually and on behalf of all other persons similarly
3 situated, respectfully prays for relief against DEFENDANTS as follows:

- 4 1. For compensatory damages in an amount to be ascertained at trial;
- 5 2. For restitution of all monies due to PLAINTIFF and CLASS MEMBERS, as well
6 as disgorged profits from DEFENDANTS' unfair and unlawful business practices;
- 7 3. For meal and rest period compensation pursuant to California Labor Code § 226.7
8 and IWC Wage Order No. 7-2001;
- 9 4. For liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
- 10 5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from
11 violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and
12 from engaging in the unlawful business practices complained of herein;
- 13 6. For waiting time penalties pursuant to California Labor Code § 203;
- 14 7. For statutory and civil penalties according to proof, including but not limited to all
15 penalties authorized by the California Labor Code §§ 226(e) and §§ 2698–2699.5;
- 16 8. For interest on the unpaid wages at 10% per annum pursuant to California Labor
17 Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable
18 provision providing for pre-judgment interest;
- 19 9. For reasonable attorneys' fees and costs pursuant to California Labor Code
20 §§ 1194, 2699, 2802, California Civil Code § 1021.5, and any other applicable provisions
21 providing for attorneys' fees and costs;
- 22 10. For declaratory relief;
- 23 11. For an order requiring and certifying the First, Second, Third, Fourth, Fifth, Sixth,
24 Seventh, Eighth, and Ninth Causes of Action as a class action;
- 25 12. For an order appointing PLAINTIFF as class representative, and PLAINTIFF's
26 counsel as class counsel; and

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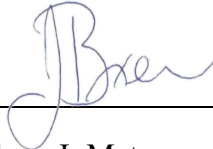
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1 13. For such further relief that the Court may deem just and proper.

2
3 DATED: December 9, 2021

Respectfully submitted,

4 **MATERN LAW GROUP, PC**

5
6 By: 

7 Matthew J. Matern
8 Joshua D. Boxer
9 Attorneys for Plaintiff
10 GREGORY SEILER, individually and on
11 behalf of other persons similarly situated
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1 **DEMAND FOR JURY TRIAL**

2 PLAINTIFF hereby demands a jury trial with respect to all issues triable of right by jury.

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4
5 DATED: December 9, 2021

Respectfully submitted,

6 **MATERN LAW GROUP, PC**

7 By:

8 

9 _____
10 Matthew J. Matern
11 Joshua D. Boxer
12 Attorneys for Plaintiff
13 GREGORY SEILER, individually and on
14 behalf of others similarly situated
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