

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

DEC - 6 2021

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN BERNARDINO

10
11 RICHARD HARPER, individually, on a
12 representative basis, and on behalf of all
others similarly situated;

13 Plaintiff,

14 vs.

15 HAMNER TOWING, INC., a California
16 Corporation; and DOES 1 through 20,
17 inclusive;

18 Defendants.

Case No.: CIVSB 2127523
[Assigned to Hon. Judge David Cohn, Dept
S26, for all purposes]

**FIRST AMENDED CLASS AND
REPRESENTATIVE COMPLAINT**

CLASS ACTION CLAIMS

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Meal Periods;
- (4) Failure to Provide Rest Breaks;
- (5) Failure to Reimburse Bus. Expenses;
- (6) Failure to Timely Pay Final Wages;
- (7) Failure to Provide Accurate Itemized Wage Statements;
- (8) Unfair and Unlawful Competition;

PAGA CLAIMS

- (9) Failure to Pay Minimum Wages;
- (10) Failure to Pay Overtime Wages;
- (11) Failure to Provide Meal Periods;
- (12) Failure to Provide Rest Breaks;
- (13) Failure to Reimburse Bus. Expenses;
- (14) Failure to Timely Pay Wages;
- (15) Failure to Timely Pay Final Wages; and
- (16) Failure to Provide Accurate Itemized Wage Statements

Complaint Filed: October 4, 2021

By Fax

1 Plaintiff Richard Harper (“Plaintiff”) on behalf of himself, on a representative basis, and
2 on behalf of others similarly situated, complains and alleges as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against his former employer(s), Defendants Hamner
5 Towing, Inc. and DOES 1 through 20, inclusive, (collectively, “Defendants”) on behalf of all
6 current and former nonexempt employees employed by Defendants in California (the “Class” or
7 “Represented Employees”), for Labor Code violations stemming from Defendants’ failure to pay
8 all wages owed, including minimum, regular, and overtime wages, failure to provide meal
9 periods, failure to provide rest breaks, failure to reimburse business expenses, failure to timely
10 pay wages upon separation of employment, and failure to provide accurate itemized wage
11 statements.

12 2. Plaintiff was employed by Defendants from approximately December 2019
13 through April 2021.

14 3. Plaintiff alleges on information and belief that the Represented Employees were
15 subjected to the same policies, working conditions, and corresponding wage and hour violations
16 to which Plaintiff was subjected during employment.

17 4. Plaintiff and the Represented Employees were not provided all minimum, regular,
18 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
19 worked. As one such example, Defendants frequently failed to pay proper minimum, regular,
20 and overtime wages to Plaintiff and the Represented Employees due to the practice of
21 automatically deducting 30 minutes from each shift, regardless of whether a meal period
22 occurred.

23 5. Also, at all relevant times, Plaintiff and the Represented Employees were paid on
24 an hourly basis but were entitled to and received additional nondiscretionary compensation.
25 However, during workweeks where the Represented Employees worked overtime hours and
26 earned additional nondiscretionary compensation, Defendants failed to include that
27 compensation in the calculations for the regular rate of pay and instead paid overtime at only 1.5
28 times the base rate of pay – violating the well-established rule that overtime must always be paid

1 at time and one-half the regular rate of pay.

2 6. Plaintiff and the Represented Employees were also denied 30-minute off-duty
3 meal periods, as mandated by California law. As a result of Defendants' policies and practices,
4 the Represented Employees were subjected to meal period violations when they were: (1) unable
5 to take a meal period due to workload, (2) forced to take an on-duty meal period while under the
6 control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal
7 period after the 5th hour of work, and (5) not provided mandated second and third meal period
8 for shifts in excess of 10 and 15 hours, respectively.

9 7. Defendants also failed to provide Plaintiff and the Represented Employees with
10 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
11 mandated by California law. Defendants did not schedule rest breaks and the Represented
12 Employees were often not authorized and/or permitted to take mandated rest breaks due to being
13 overwhelmed by their hectic workload. Furthermore, on occasions when Plaintiff and the
14 Represented Employees worked longer shifts, Defendants failed to authorize and/or permit
15 mandated third or fourth rest breaks.

16 8. Moreover, at all relevant times, Defendants required Plaintiff and the Represented
17 Employees to incur necessary business-related expenses and costs without reimbursement. For
18 example, Plaintiff was required to incur substantial expenses without reimbursement during
19 employment, including: (1) paying for gasoline for customers (*i.e.*, for "gas calls"), and (2)
20 acquiring and maintaining a smart phone and related monthly data plan to communicate with the
21 Company via phone, text message, and e-mail.

22 9. Plaintiff also alleges that he and the Represented Employees were not paid all
23 wages due and owing each pay period (Labor Code § 204) and upon separation of employment
24 within the time required by Labor Code §§ 201 – 203. Plaintiff further alleges that Defendants
25 engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Represented
26 Employees at the time their employment ended with Defendants, including, but not limited to
27 minimum, regular, and overtime wages, wage premiums, vacation wages, among others.

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1 10. Plaintiff further alleges that Defendants failed to provide accurate itemized wage
2 statements that fully complied with the requirements of Labor Code § 226(a).

3 11. Plaintiff alleges that Defendants' violations of the wage and hour components of
4 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their
5 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
6 its competitors.

7 12. At all material times, Defendants and DOES 1 through 20 were and/or are the
8 Represented Employees' employers or persons acting on behalf of the Represented Employees'
9 employer, within the meaning of California Labor Code § 558, who violated or caused to be
10 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
11 hours and days of work in an IWC Wage Order and, as such, are subject to penalties for each
12 underpaid employee as set forth in Labor Code § 558 and under California law.

13 13. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
14 monetary relief against Defendants and each of them, on behalf of himself and the Represented
15 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
16 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
17 210, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802,
18 among possibly other sections inadvertently omitted. Plaintiff also reserves the right to name
19 additional representatives throughout the State of California.

20 **II. JURISDICTION**

21 14. This Court has jurisdiction over the claims for relief of Plaintiff and the
22 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

23 **III. VENUE**

24 15. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
25 Procedure § 395(a). Defendants transact business in San Bernardino County and the unlawful
26 acts alleged herein have a direct effect on Plaintiff and the Represented Employees in San
27 Bernardino County. Furthermore, Defendants employed or employ Plaintiff and Represented
28 Employees in San Bernardino County.

1 **IV. PARTIES**

2 **Plaintiff**

3 16. Plaintiff and Class Representative Richard Harper was employed by Defendants
4 from approximately December 2019 through April 2021 and performed work for Defendants in
5 San Bernardino County.

6 **Defendants**

7 17. Plaintiff is informed and believes and thereon alleges that Defendant Hamner
8 Towing, Inc. is a California Corporation authorized to and doing business in San Bernardino
9 County, California. Plaintiff is also informed and believes that Defendant Hamner Towing, Inc.
10 is and/or was the legal employer of Plaintiff and the Represented Employees during the
11 applicable statutory periods.

12 18. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
13 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
14 inclusive, but on information and belief alleges that those Defendants are legally responsible for
15 the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of
16 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
17 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
18 Defendants when ascertained.

19 19. Plaintiff is informed and believes and thereon alleges that he and the Represented
20 Employees worked under the joint direction and control of Defendants and that Defendants, and
21 each of them, acted in all respects pertinent to this action as the agent of the other Defendants,
22 carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of
23 each Defendant are legally attributable to the other Defendants. On information and belief, a
24 unity of interest and ownership between each Defendant exists such that all Defendants acted as
25 a single employer of Plaintiff and other Represented Employees.

26 20. Furthermore, Plaintiff is informed and believes and thereon alleges that
27 Defendants, and each of them, are an integrated enterprise and should be treated as a single
28 employer because these entities share an interrelation of operations, with common human

resources and personnel policies and shared common offices and facilities. Additionally, Defendants also have a shared website, common management, a centralized control of labor operations, and common ownership or financial control.

21. Plaintiff is informed and believes and thereon alleges that, in conducting themselves in the manner described herein, Defendants, and each of them, were acting in active concert with one another such that the acts of each were and are fully attributable to the others in all material respects. Plaintiff is further informed and believes that at all relevant times Defendants and each of them are now, and at all material times herein mentioned were, the agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of their remaining co-Defendants.

22. Plaintiff is further informed and believes that at all relevant times, Defendants have been inadequately capitalized to conduct business, have failed to follow appropriate corporate formalities, and have simply been a shell and instrumentality through which Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly, the corporate veil should be pierced, and any liability attached to Defendants should be imposed jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the separate existence of these corporate entities would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice.

V. CLASS ACTION ALLEGATIONS

23. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

24. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action, pursuant to Code of Civil Procedure § 382.

25. The relevant time period for this class action is defined as the period beginning four years prior to the filing of this action until class certification (the “Relevant Time Period”).

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1 26. The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to
2 represent is defined as follows:

3 All current and former nonexempt employees employed by
4 Defendants in California during the Relevant Time Period.

5 27. Plaintiff also seeks to represent the following subclasses:

6 **Meal Break Subclass**

7 All Represented Employees who worked a shift in excess of
8 5 hours during the Relevant Time Period.

9 **Rest Break Subclass**

10 All Represented Employees who worked a shift of at least
11 3.5 hours during the Relevant Time Period.

12 **Unreimbursed Expense Subclass**

13 All Represented Employees who were required to incur
14 expenses to discharge their duties for Defendants without
15 reimbursement during the Relevant Time Period.

16 **Waiting Time Penalties Subclass**

17 All Represented Employees who separated from their
18 employment with Defendants during the period three years
19 before the filing of this action and ending when final
20 judgment is entered.

21 **Wage Statement Penalties Subclass**

22 All Represented Employees during the period one year
23 before the filing of this action and ending when final
24 judgment is entered.

25 28. Plaintiff reserves the right to amend or modify the class description with greater
26 specificity or further division into subclasses or limitation to particular issues as appropriate.

27 29. Plaintiff, as Class Representative, is a member of the class and subclasses that he
28 seeks to represent.

1 30. This action has been brought and may properly be maintained as a class action
2 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
3 litigation and the proposed class is easily ascertainable from Defendants' records.

4 31. **Numerosity:** The potential members of the Class as defined are so numerous that
5 a joinder of all Represented Employees is impracticable. Although the exact number is currently
6 unknown to Plaintiff, this information is easily ascertainable from Defendants' records.

7 32. **Commonality:** There are questions of law and fact common to the class which
8 predominate over any questions affecting only individual members of the class, including
9 without limitation:

10 i. Whether Defendants violated the California Labor Code and applicable
11 IWC Wage Order by failing to pay wages to Plaintiff and the Represented Employees for all
12 hours worked;

13 ii. Whether Defendants violated the California Labor Code and applicable
14 IWC Wage Order by failing to pay proper overtime wages to Plaintiff and the Represented
15 Employees for hours above 8 and/or 12 per day and/or 40 per week;

16 iii. Whether Defendants violated the California Labor Code and applicable
17 IWC Wage Order by failing to provide compliant meal periods to Plaintiff and the Meal Break
18 Subclass and whether Defendants failed to compensate Plaintiff and the Meal Break Subclass
19 with one additional hour of wages at the regular rate of pay for each instance when a compliant
20 meal period was not provided;

21 iv. Whether Defendants violated the California Labor Code and applicable
22 IWC Wage Order by failing to provide compliant rest breaks to Plaintiff and the Rest Break
23 Subclass and whether Defendants failed to compensate Plaintiff and the Rest Break Subclass
24 with one additional hour of wages at the regular rate of pay for each instance when a paid rest
25 break was not provided;

26 v. Whether Defendants violated the California Labor Code and applicable
27 IWC Wage Order by failing to reimburse Plaintiff and the Unreimbursed Expense Subclass for
28 business expenses incurred while discharging their duties or in obedience to the directions of

1 their employer;

2 vi. Whether Defendants violated the California Labor Code by failing to
3 timely pay all wages due upon separation of employment between Defendants and Plaintiff and
4 the Waiting Time Penalties Subclass, whether such separation was voluntary or involuntary;

5 vii. Whether Defendants violated the California Labor Code by failing to
6 provide Plaintiff and the Wage Statement Penalties Subclass with complete, accurate, itemized
7 wage statements;

8 viii. Whether Defendants violated California Business & Professions Code §§
9 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest
10 breaks, failure to provide mandated meal periods, failure to reimburse business expenses, and
11 failure to timely pay final wages; and

12 ix. Whether Plaintiff and Represented Employees are entitled to equitable
13 relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

14 33. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the
15 claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants'
16 ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all
17 wages owed, failure to provide mandated meal periods, failure to provide mandated paid rest
18 breaks, failure to timely pay wages upon separation of employment, and failure to provide
19 accurate itemized wage statements.

20 34. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly
21 and adequately represent and protect the interests of the Class. Plaintiff's interests are not in
22 conflict with those of the Class. Class Representative's counsel are competent and experienced in
23 litigating large employment class actions and other complex litigation matters, including cases
24 like this case.

25 35. **Superiority of Class Action.** Class certification is appropriate because a class
26 action is superior to other available means for the fair and efficient adjudication of this
27 controversy. Individual joinder of all Represented Employees is not practicable, and questions of
28 law and fact common to the Class predominate over any questions affecting only individual

1 members of the Class. Each Represented Employee has been damaged and is entitled to
2 recovery by reason of Defendants' illegal policies and practices set forth above. Class action
3 treatment will allow those similarly situated persons to litigate their claims in the manner that is
4 most efficient and economical for the parties and the judicial system.

5 **FIRST CAUSE OF ACTION**

6 **FAILURE TO PAY MINIMUM WAGES**

7 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

8 *Plaintiff and the Represented Employees Against All Defendants*

9 36. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
10 as if fully alleged herein.

11 37. Plaintiff and the Represented Employees were not exempt from the requirement
12 to be paid at least the applicable California minimum wage throughout the statutory period for
13 each hour worked.

14 38. Plaintiff and the Represented Employees were not provided proper minimum and
15 regular wages due to Defendants' failure to accurately record and compensate for all hours
16 worked. As a result of this policy and practice, Plaintiff and the Represented Employees were
17 required to perform off-the-clock work that Defendants either knew or should have known they
18 were performing.

19 39. As one such example, Defendants frequently failed to pay proper minimum and
20 regular wages to Plaintiff and the Represented Employees due to the practice of automatically
21 deducting 30 minutes from each shift, regardless of whether a meal period occurred.

22 40. Consequently, Defendants violated California Labor Code laws and minimum
23 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
24 Cal. Code Regs., tit. 8, section 11090, subs. 1 and 4(B).

25 41. Plaintiff is informed and believes and thereon alleges that Defendants
26 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Represented
27 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

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1 42. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
2 Represented Employees were entitled to be paid wages throughout the statutory period for each
3 hour worked, including proper minimum and regular wages, yet Defendants chose not to pay
4 them in accordance thereto.

5 43. At all material times, Defendants DOES 1 through 20 were and/or are the
6 employer of Plaintiff and the Represented Employees or were persons acting on behalf of said
7 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be
8 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
9 Labor Code regulating hours and days of work respectively.

10 44. During employment of Plaintiff and the Represented Employees, Defendants
11 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

12 45. As a result of the Defendants' wrongful conduct, Plaintiff and the Represented
13 Employees have been damaged in amounts to be proven at trial.

14 46. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of
15 all unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs of
16 suit, pursuant to Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be proven
17 at trial.

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO PAY OVERTIME WAGES**

20 (Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

21 *Plaintiff and the Represented Employees Against All Defendants*

22 47. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
23 as if fully alleged herein.

24 48. Plaintiff and the Represented Employees were employees of Defendants who did
25 not receive proper protections and benefits of the laws governing payment of overtime wages.

26 49. Labor Code § 204 requires that the employer timely pay all overtime wages to its
27 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
28 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in

1 any one workweek shall be compensated at the rate of no less than one and one-half times the
2 regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12)
3 in one workday shall be compensated at twice the regular rate of pay for an employee.

4 50. At all relevant times, Plaintiff and the Represented Employees were required by
5 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
6 Defendants' failure to accurately record and compensate for all hours worked Plaintiff and the
7 Represented Employees did not receive proper overtime compensation.

8 51. As one such example, Defendants frequently failed to pay proper overtime wages
9 to Plaintiff and the Represented Employees due to the practice of automatically deducting 30
10 minutes from each shift, regardless of whether a meal period occurred. Thus, Defendants failed
11 to pay proper overtime wages every time it applied its auto-deduct practice.

12 52. Also, at all relevant times, Plaintiff and the Represented Employees were paid on
13 an hourly basis but were entitled to and received additional nondiscretionary compensation.
14 However, during workweeks where the Represented Employees worked overtime hours and
15 earned additional nondiscretionary compensation, Defendants failed to include that
16 compensation in the calculations for the regular rate of pay and instead paid overtime at only 1.5
17 times the base rate of pay – violating the well-established rule that overtime must always be paid
18 at time and one-half the regular rate of pay.

19 53. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
20 Order § 3(A) every pay period with respect to Plaintiff and the Represented Employees because
21 Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per
22 week without proper overtime compensation.

23 54. Plaintiff is informed and believes and thereon alleges that Defendants
24 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the
25 Represented Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

26 55. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
27 Represented Employees were entitled to be paid proper overtime wages throughout the statutory
28 period, yet Defendants chose not to pay them in accordance thereto.

1 56. At all material times, Defendants DOES 1 through 20 were and/or are the
2 employer of Plaintiff and the Represented Employees or were persons acting on behalf of said
3 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be
4 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
5 Labor Code regulating hours and days of work respectively.

6 57. During the employment of Plaintiff and the Represented Employees, Defendants
7 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

8 58. As a result of Defendants' wrongful conduct, Plaintiff and the Represented
9 Employees have been damaged in amounts to be proven at trial.

10 59. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of
11 all unpaid overtime wages, penalties, interest, attorneys' fees, and costs of suit against
12 Defendants in an amount to be proven at trial.

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO PROVIDE MEAL PERIODS**

15 (Labor Code §§ 226.7 and 512; IWC Wage Order § 11, 12)

16 *Plaintiff and the Meal Break Subclass Against All Defendants*

17 60. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
18 as if fully alleged herein.

19 61. Plaintiff and the Meal Break Subclass are and/or were employees of Defendants
20 who did not receive proper protections and benefits of the laws governing mandatory meal
21 periods.

22 62. Labor Code § 226.7 requires employers, including Defendants, to provide
23 employees with meal periods as mandated by the Industrial Welfare Commission.

24 63. Labor Code § 512(a), in part, provides that employers, including Defendants, may
25 not employ an employee for a work period of more than five hours per day without providing an
26 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
27 except that if the total work period per day of the employee is no more than six hours, the meal
28 period may be waived by mutual consent of both the employer and the employee. Employers

1 may not employ an employee for a work period more than 10 hours per day without providing
2 the employee with a second meal period of not less than 30 minutes.

3 64. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
4 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
5 pay for each meal period that is missed.

6 65. At all relevant times herein, Plaintiff and the Meal Break Subclass were denied
7 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
8 practices, Plaintiff and the Represented Employees were subjected to meal period violations
9 when they were: (1) unable to take a meal period due to workload, (2) forced to take an on-duty
10 meal period while under the control of the Company, (3) forced to take a shortened meal period,
11 (4) forced to take a meal period after the 5th hour of work, and (5) not provided mandated
12 second or third meal periods for shifts in excess of 10 and 15 hours, respectively.

13 66. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
14 Order every pay period because Plaintiff and the Meal Break Subclass were not provided with all
15 mandatory meal periods and Defendants failed to pay Plaintiff and the Meal Break Subclass one
16 additional hour of compensation at the regular rate of pay in lieu thereof.

17 67. At all relevant times herein, Defendants failed to provide Plaintiff and the Meal
18 Break Subclass all mandated meal periods and failed to pay wage premiums in lieu of mandated
19 meal or rest periods, thereby receiving an economic benefit.

20 68. On information and belief, Plaintiff and the Meal Break Subclass did not
21 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
22 obtained from Plaintiff and the Meal Break Subclass were not willfully obtained, were not
23 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
24 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Meal Break Subclass
25 to take meal periods in accordance with California law.

26 69. By their failure to provide Plaintiff and the Meal Break Subclass with meal
27 periods as required by California law, and failing to pay one hour of additional wages in lieu of
28 each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and

1 IWC Wage Order § 11. Accordingly, Defendants are liable for one hour of additional wages at
2 the employee's regular rate of compensation for each work day that a meal period was not
3 lawfully provided in an amount to be proven at time of trial.

4 70. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
5 and IWC Wage Order § 11, Defendants, and each of them, are liable to Plaintiff and the Meal
6 Break Subclass for unpaid wage premiums, penalties, costs, and interest.

7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE REST BREAKS**

9 (Labor Code §§ 226.7 and 512; IWC Wage Order § 12)

10 *Plaintiff and the Rest Break Subclass Against All Defendants*

11 71. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
12 as if fully alleged herein.

13 72. Plaintiff and the Rest Break Subclass are and/or were employees of Defendants
14 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

15 73. Labor Code § 226.7 requires employers, including Defendants, to provide rest
16 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

17 74. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
18 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
19 each work period. Employees shall receive a 10-minute rest period every four hours or major
20 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
21 hours worked, for which there shall be no deduction from wages.

22 75. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
23 Order, Defendants shall pay Plaintiff and the Represented Employees one additional hour of pay
24 at his regular rate of compensation for each day that the rest period is not provided.

25 76. At all relevant times, Defendants also failed to provide Plaintiff and the Rest
26 Break Subclass with 10 minutes of net rest break time for every 4 hours worked, or major
27 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and the
28 Rest Break Subclass were often not authorized and/or permitted to take mandated rest breaks due

1 to being overwhelmed by their hectic workload. Furthermore, on occasions when Plaintiff and
2 the Rest Break Subclass worked lengthy shifts, Defendants failed to authorize and/or permit
3 mandated third or fourth rest breaks.

4 77. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
5 Order every pay period because Plaintiff and the Rest Break Subclass were not provided with all
6 mandatory rest periods and Defendants failed to pay Plaintiff and the Represented Employees
7 one additional hour of compensation in lieu thereof.

8 78. At all relevant times herein, Defendants failed to provide Plaintiff and the Rest
9 Break Subclass all mandated rest breaks and failed to pay wage premiums in lieu of mandated
10 rest periods, thereby receiving an economic benefit.

11 79. By their failure to provide Plaintiff and the Rest Break Subclass with rest breaks
12 as required by California law, and failing to pay one hour of additional wages in lieu of each rest
13 break not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage
14 Order § 12. Accordingly, Defendants are liable for one hour of additional wages at the
15 employee's regular rate of compensation for each workday that a paid rest break was not
16 lawfully provided in an amount to be proven at time of trial.

17 80. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
18 and IWC Wage Order § 12, Defendants, and each of them, are liable to Plaintiff and the Rest
19 Break Subclass for unpaid wage premiums, penalties, costs, and interest.

20 **FIFTH CAUSE OF ACTION**

21 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

22 (Labor Code § 2802)

23 *Plaintiff and the Unreimbursed Expense Subclass Against All Defendants*

24 81. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
25 as if fully alleged herein.

26 82. Plaintiff and the Unreimbursed Expense Subclass are and/or were employees of
27 Defendants who did not receive proper protections and benefits of the laws governing
28 reimbursement of business expenses.

1 83. Labor Code § 2802(a) requires that the employer indemnify its employees for
2 expenses and losses incurred while discharging their duties or in obedience to the directions of
3 their employer.

4 84. At all relevant times herein mentioned, as a condition of employment, Defendants
5 required Plaintiff and the Unreimbursed Expense Subclass to incur necessary business-related
6 expenses and costs without reimbursement, including, but not limited to: (1) paying for gasoline
7 for customers (*i.e.*, for “gas calls”), and (2) acquiring and maintaining a smart phone and related
8 monthly data plan to communicate with the Company via phone, text message, and e-mail.

9 85. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
10 failed to reimburse Plaintiff and the Unreimbursed Expense Subclass for expenses incurred as a
11 direct consequence of employment with Defendants and/or under the direction of Defendants.

12 86. At all relevant times herein, Defendants failed to reimburse the Unreimbursed
13 Expense Subclass, including Plaintiff, for expenses incurred while discharging duties to
14 Defendants, thereby receiving an economic benefit.

15 87. As a direct result of Defendants’ violation of Labor Code § 2802 and IWC Wage
16 Order § 9(B), Plaintiff and the Unreimbursed Expense Subclass have suffered, and continue to
17 suffer, substantial losses related to such incurred expenses, expenses, and attorney’s fees in
18 seeking to compel Defendants to fully perform their obligations under the law, all in an amount
19 to be proved at time of trial.

20 88. Labor Code § 2802(b) states that “[a]ll awards made by a Court for
21 reimbursement of necessary expenditures” shall carry interest, at the same rate as judgments in
22 civil actions, and said interest will accrue from the date on which the employee incurred the
23 necessary expenditure or loss including, but not limited to, reasonable costs and attorney’s fees
24 incurred by the employee enforcing the rights granted pursuant to Labor Code § 2802. The exact
25 amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

26 89. Furthermore, Labor Code § 2802(c) states that “[f]or the purposes of this section,
27 the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not
28 limited to, attorney’s fees incurred by the employee in enforcing the rights granted by this

1 section.” Therefore, Plaintiff and the Unreimbursed Expense Subclass seek to recover the
2 unreimbursed expenses, interest on the unreimbursed expenses, and the costs and attorney’s fees
3 necessarily incurred in pursuing same. The exact amount of reimbursements, interest, costs, and
4 attorney’s fees will be in an amount to be proved at the time of trial.

5 **SIXTH CAUSE OF ACTION**

6 **FAILURE TO TIMELY PAY FINAL WAGES**

7 (Labor Code §§ 201 – 203)

8 *Plaintiff and the Waiting Time Penalties Subclass against All Defendants*

9 90. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
10 as if fully alleged herein.

11 91. Plaintiff and the Waiting Time Penalties Subclass are and/or were employees of
12 Defendants who did not receive proper protections and benefits of the laws governing the timing
13 and payment of wages.

14 92. Labor Code § 201 requires that the employer immediately pay any wages, without
15 abatement or reduction, to any employee who is discharged.

16 93. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
17 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
18 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

19 94. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
20 penalty from the due date thereof at the same rate until paid or until an action therefore is
21 commenced, but the wages shall not continue for more than thirty (30) days.

22 95. At all relevant times, Defendants employed a policy and practice whereby
23 Plaintiff and the Waiting Time Penalties Subclass were not paid all wages due and owing upon
24 separation of employment within the time required by Labor Code §§ 201 and 202.

25 96. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
26 wages due and owing to Plaintiff and the Waiting Time Penalties Subclass upon separation of
27 employment, including, but not limited to, minimum, regular, overtime, and vacation wages, as
28 well as meal and rest period premiums.

1 97. Plaintiff alleges that, at all times material to this action, Defendants had a planned
2 pattern and practice of failing to timely pay Plaintiff and the Waiting Time Penalties Subclass all
3 wages due and owing upon separation of employment as required by Labor Code §§ 201 and
4 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Waiting
5 Time Penalties Subclass the above-described waiting time penalty, all in an amount to be shown
6 according to proof at trial and within the jurisdiction of this Court.

7 **SEVENTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

9 (Labor Code § 226)

10 *Plaintiff and the Wage Statement Penalties Subclass against All Defendants*

11 98. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
12 as if fully alleged herein.

13 99. Plaintiff and the Wage Statement Penalties Subclass are and/or were employees of
14 Defendants who did not receive proper protections and benefits of the laws governing the
15 provision of accurate itemized wage statements.

16 100. Labor Code § 226(a) requires an employer to provide its employees with itemized
17 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
18 inclusive dates of the pay period, the employee's name and the last four digits of his or her
19 Social Security number (or employee identification number), the name and address of the legal
20 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
21 corresponding number of hours worked at each hourly rate by the employee.

22 101. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
23 and the Wage Statement Penalties Subclass due to violations including: failure to accurately state
24 total hours worked (the wage statements failed to accurately reflect total compensable hours [due
25 to, among other issues, the illegal auto-deduct policy]); failure to accurately state gross wages
26 earned; failure to accurately state all deductions; failure to accurately state net wages earned;
27 failure to state the applicable hourly rates (including the accurate overtime rate of pay); and
28 failure to accurately state the corresponding number of hours worked at each hourly rate.

1 102. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
2 to Plaintiff and the Wage Statement Penalties Subclass because Defendants failed to provide a
3 wage statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
4 requirements of Labor Code § 226(a).

5 103. Defendants' failure to provide the required writing deprived Plaintiff and the
6 Wage Statement Penalties Subclass of the ability to know, understand, and question the
7 calculation and rate of pay and hours used to calculate the wages paid by Defendants. Therefore,
8 Plaintiff and the Wage Statement Penalties Subclass had no way to dispute the resulting
9 miscalculation of wages, all of which resulted in an unjustified economic enrichment to said
10 Defendants. As a direct result, Plaintiff and the Wage Statement Penalties Subclass have suffered
11 and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost
12 interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully
13 perform its obligation under state law, all to their respective damages in amounts according to
14 proof at trial.

15 104. As a result of Defendants' knowing and intentional failure to comply with Labor
16 Code § 226(a), Plaintiff and the Wage Statement Penalties Subclass have suffered an injury in
17 that each was prevented from knowing, understanding and disputing the wage payments paid to
18 them. Furthermore, Plaintiff and the Wage Statement Penalties Subclass have each suffered an
19 injury in that the failure to show all wages earned on the itemized wage statements resulted in
20 Plaintiff and the Represented Employees being denied all necessary deductions, payments, and
21 withholdings owed by the employer, including, but not limited to, the failure to make all
22 necessary contributions for unemployment benefits, social security benefits, proper payment of
23 taxes and withholdings, and other mandated state and federal benefits.

24 105. Plaintiff has also been injured as a result of having to bring this action to attempt
25 to obtain correct wage information following Defendants' refusal to comply with many of the
26 mandates of California's Labor Code and related laws and regulations.

27 106. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
28 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and

one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus attorney's fees and costs, to Plaintiff and the Wage Statement Penalties Subclass who were injured by Defendants' failure to comply with Labor Code § 226(a). The exact amount of the applicable penalty is all in an amount to be shown according to proof at trial.

EIGHTH CAUSE OF ACTION

UNFAIR AND UNLAWFUL COMPETITION

(Business and Professions Code § 17200 *et seq.*)

Plaintiff and the Represented Employees against All Defendants

107. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

108. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair competition, which includes any "unlawful, unfair or fraudulent business act or practice." The Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact, due to the unfair and unlawful business practices of Defendants as alleged herein.

109. Defendants, and each of them, are "persons" as defined under Business & Professions Code § 17021.

110. As alleged herein, Defendants engaged in conduct that violated California's wage and hour laws, including failure to pay minimum, regular, and overtime wages, failure to provide mandated meal periods and rest breaks, failure to reimburse business expenses, and failure to timely pay wages upon separation of employment, all to decrease their costs and increase profits.

111. At all times relevant herein, Defendants did not pay Plaintiff and the Represented Employees wages and monies and other financial obligations to which they were entitled.

112. As a result of Defendants' failure to comply with the Labor Code and IWC Orders, Represented Employees, including Plaintiff, suffered a loss of wages and monies, all in an amount to be shown according to proof at trial. Defendants' ongoing violations of the foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

113. Defendants' violations of the California Labor Code and IWC Wage Orders and its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business

1 practices because it was done in a systematic manner over a period of time to the detriment of the
2 Plaintiff and all others similarly-situated.

3 114. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
4 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
5 Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code
6 of Civil Procedure § 1021.5.

7 115. A violation of California Business & Professions Code § 17200, et seq. may be
8 predicated on the violation of any state or federal law. All of the acts described herein as
9 violations of, among other things, the California Labor Code and IWC Wage Orders, are
10 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,
11 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
12 practices in violation of California Business and Professions Code §§ 17200, et seq.

13 116. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
14 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
15 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
16 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
17 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
18 harm unless Defendants, and each of them, are restrained from continuing to engage in said
19 unfair, unlawful and/or fraudulent business practices.

20 117. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
21 and does, seek such relief as may be necessary to disgorge the profits which Defendants have
22 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the
23 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
24 Represented Employees are not obligated to establish individual knowledge of the unfair
25 practices of Defendants in order to recover restitution.

26 118. Plaintiff, individually, and on behalf of the Represented Employees, is further
27 entitled to and do seek a declaration that the above described business practices are unfair,
28 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from

engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in the future.

119. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and Represented Employees are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and Represented Employees; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

VI. LABOR CODE PRIVATE ATTORNEYS GENERAL ACT CAUSES OF ACTION
(Cal. Lab. Code. §§ 2698 – 2699.5)

120. Plaintiff is an “aggrieved employee” under the PAGA as he was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil action filed on behalf of himself and all other similarly situated current and former aggrieved employees in California against whom one or more of the alleged violations was committed (hereinafter the “Aggrieved Employees”).

121. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by PAGA through a representative action pursuant to the PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor does she, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

122. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. More than sixty-five (65) days have elapsed since the date Plaintiff provided the written notice of the claims alleged herein without the LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiff has fully satisfied the administrative prerequisites to suit under the PAGA.

1 **NINTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES**

3 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 123. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 124. Plaintiff and the Aggrieved Employees were not exempt from the requirement to
8 be paid at least the applicable California minimum wage throughout the statutory period for each
9 hour worked.

10 125. Plaintiff and the Aggrieved Employees were not provided proper minimum and
11 regular wages due to Defendants' failure to accurately record and compensate for all hours
12 worked.

13 126. As one such example, Defendants frequently failed to pay proper minimum and
14 regular wages to Plaintiff and the Aggrieved Employees due to the practice of automatically
15 deducting 30 minutes from each shift, regardless of whether a meal period occurred.

16 127. As a result of this policy and practice, Plaintiff and the Aggrieved Employees
17 were required to perform off-the-clock work that Defendants either knew or should have known
18 they were performing.

19 128. Consequently, Defendants violated California Labor Code laws and minimum
20 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
21 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

22 129. Plaintiff is informed and believes and thereon alleges that Defendants
23 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved
24 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

25 130. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
26 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
27 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

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PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES

Plaintiff and the Aggrieved Employees against All Defendants

136. Also, at all relevant times, Plaintiff and the Aggrieved Employees were paid on an hourly basis but were entitled to and did receive additional nondiscretionary compensation. However, during workweeks where the Aggrieved Employees worked overtime hours and earned additional nondiscretionary compensation, Defendants failed to include that

1 compensation in the calculations for the regular rate of pay and instead paid overtime at only 1.5
2 times the base rate of pay – violating the well-established rule that overtime must always be paid
3 at time and one-half the regular rate of pay.

4 137. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
5 Order § 3(A) every pay period with respect to Plaintiff and the Aggrieved Employees because
6 Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per
7 week without proper overtime compensation.

8 138. Plaintiff is informed and believes and thereon alleges that Defendants
9 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the
10 Aggrieved Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

11 139. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
12 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
13 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

14 **ELEVENTH CAUSE OF ACTION**

15 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS**

16 (Labor Code § 226.7 and 512; IWC Wage Order § 11, 12)

17 *Plaintiff and the Aggrieved Employees against All Defendants*

18 140. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
19 as if fully alleged herein.

20 141. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
21 who did not receive proper protections and benefits of the laws governing mandatory meal
22 periods.

23 142. Labor Code § 226.7 requires employers, including Defendants, to provide
24 employees with meal periods as mandated by the Industrial Welfare Commission.

25 143. Labor Code § 512(a), in part, provides that employers, including Defendants, may
26 not employ an employee for a work period of more than five hours per day without providing an
27 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
28 except that if the total work period per day of the employee is no more than six hours, the meal

1 period may be waived by mutual consent of both the employer and the employee. Employers
2 may not employ an employee for a work period more than 10 hours per day without providing
3 the employee with a second meal period of not less than 30 minutes.

4 144. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
5 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
6 pay for each meal period that is missed.

7 145. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied
8 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
9 practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when
10 they were: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal
11 period while under the control of the Company, (3) forced to take a shortened meal period, (4)
12 forced to take a meal period after the 5th hour of work, and (5) not provided mandated second or
13 third meal periods for shifts in excess of 10 and 15 hours, respectively.

14 146. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
15 Order every pay period because Plaintiff and the Aggrieved Employees were not provided with
16 all mandatory meal periods and Defendants failed to pay Plaintiff and the Aggrieved Employees
17 one additional hour of compensation at the regular rate of pay in lieu thereof.

18 147. On information and belief, Plaintiff and the Aggrieved Employees did not
19 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
20 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not
21 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
22 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved
23 Employees to take meal periods in accordance with California law.

24 148. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
25 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
26 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

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1 **TWELFTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS**

3 (Labor Code § 226.7 and 512; IWC Wage Order § 12)

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 149. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 150. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
8 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

9 151. Labor Code § 226.7 requires employers, including Defendants, to provide rest
10 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

11 152. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
12 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
13 each work period. Employees shall receive a 10-minute rest period every four hours or major
14 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
15 hours worked, for which there shall be no deduction from wages.

16 153. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
17 Order, Defendants shall pay Plaintiff and the Represented Employees one additional hour of pay
18 at his regular rate of compensation for each day that the rest period is not provided.

19 154. At all relevant times, Defendants also failed to provide Plaintiff and the
20 Aggrieved Employees with 10 minutes of net rest break time for every 4 hours worked, or major
21 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and the
22 Aggrieved Employees were often not authorized and/or permitted to take mandated rest breaks
23 due to the lack of adequate staffing and coverage and being overwhelmed by their hectic
24 workload. Furthermore, on occasions when Plaintiff and the Aggrieved Employees worked
25 lengthy shifts, Defendants failed to authorize and/or permit mandated third and fourth rest
26 breaks.

27 155. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
28 Order every pay period because Plaintiff and the Aggrieved Employees were not provided with

1 all mandatory rest periods and Defendants failed to pay Plaintiff and the Aggrieved Employees
2 one additional hour of compensation in lieu thereof.

3 156. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
4 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
5 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

6 **THIRTEENTH CAUSE OF ACTION**

7 **PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES**

8 (Labor Code § 2802)

9 *Plaintiff and the Unreimbursed Expense Subclass Against All Defendants*

10 157. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
11 as if fully alleged herein.

12 158. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
13 who did not receive proper protections and benefits of the laws governing reimbursement of
14 business expenses.

15 159. Labor Code § 2802(a) requires that the employer indemnify its employees for
16 expenses and losses incurred while discharging their duties or in obedience to the directions of
17 their employer.

18 160. At all relevant times herein mentioned, as a condition of employment, Defendants
19 required Plaintiff and the Aggrieved Employees to incur necessary business-related expenses and
20 costs without reimbursement, including, but not limited to: (1) paying for gasoline for customers
21 (*i.e.*, for "gas calls"), and (2) acquiring and maintaining a smart phone and related monthly data
22 plan to communicate with the Company via phone, text message, and e-mail.

23 161. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
24 failed to reimburse Plaintiff and the Aggrieved Employees for expenses incurred as a direct
25 consequence of employment with Defendants and/or under the direction of Defendants.

26 162. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
27 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
28 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

1 **FOURTEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD**

3 (Labor Code § 204)

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 163. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 164. Plaintiff and the Aggrieved Employees are and/or were “nonexempt” employees
8 of Defendants who did not receive proper protections and benefits of the laws regarding the
9 timing of payment of wages each period.

10 165. Labor Code § 204(a) states that all wages earned by a person are due and payable
11 twice during each calendar month, and further states that wages earned during the first through
12 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
13 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
14 the following month.

15 166. Furthermore, Labor Code § 204(d) states “[t]he requirements of this section shall
16 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
17 the wages are paid not more than seven calendar days following the close of the payroll period.”

18 167. At all relevant times herein, Defendants did not provide Plaintiff and the
19 Aggrieved Employees with all wages due and owing each period within the time required by
20 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Aggrieved
21 Employees with all wages due and owing each pay period, including, but not limited to,
22 minimum, regular, and overtime wages, as well as meal and rest period premiums, within the
23 time specified by Labor Code § 204.

24 168. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
25 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
26 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

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1 **FIFTEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES**

3 (Labor Code §§ 201 – 203 and 256)

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 169. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 170. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees
8 of Defendants who did not receive proper protections and benefits of the laws governing the
9 timing and payment of final wages.

10 171. Labor Code § 201 requires that the employer immediately pay any wages, without
11 abatement or reduction, to any employee who is discharged.

12 172. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
13 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
14 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

15 173. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
16 penalty from the due date thereof at the same rate until paid or until an action therefore is
17 commenced, but the wages shall not continue for more than thirty (30) days.

18 174. At all relevant times here, Defendants did not provide Plaintiff and the Aggrieved
19 Employees with all wages due and owing upon separation of employment, including, but not
20 limited to, minimum, regular, and overtime wages, as well as meal and rest period premiums,
21 within the time specified by Labor Code §§ 201 – 203.

22 175. Plaintiff alleges that, at all times material to this action, Defendants had a planned
23 pattern and practice of failing to timely pay to Plaintiff and the Aggrieved Employees all wages
24 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.

25 176. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
26 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
27 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

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1 **SIXTEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR**

3 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

4 (Labor Code § 226)

5 *Plaintiff and the Aggrieved Employees against All Defendants*

6 177. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
7 as if fully alleged herein.

8 178. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
9 who did not receive proper protections and benefits of the laws governing the provision of
10 accurate itemized wage statements.

11 179. Labor Code § 226(a) requires an employer to provide its employees with itemized
12 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
13 inclusive dates of the pay period, the employee's name and the last four digits of his or her
14 Social Security number (or employee identification number), the name and address of the legal
15 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate by the employee.

17 180. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
18 and the Aggrieved Employees because due to violations including: failure to accurately state
19 total hours worked (the wage statements failed to accurately reflect total compensable hours [due
20 to, among other issues, the illegal auto-deduct policy]); failure to accurately state gross wages
21 earned; failure to accurately state all deductions; failure to accurately state net wages earned;
22 failure to state the applicable hourly rates (including the accurate overtime rate of pay); and
23 failure to accurately state the corresponding number of hours worked at each hourly rate.

24 181. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
25 to Plaintiff and the Aggrieved Employees because Defendants failed to provide a wage statement
26 to Plaintiff and the Aggrieved Employees that complied with the requirements of Labor Code §
27 226(a).

28 ///

1 182. As a result of the Defendants' violations of Labor Code § 226(a), Plaintiff seeks
2 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
3 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.
4 See *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 675 ("Section
5 226.3 provides the civil penalty for failure to comply" with Labor Code § 226).

6 **VII. PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff, on behalf of himself, on a representative basis, and all others
8 similarly situated, prays for judgment and relief against Defendants, jointly and severally, as
9 follows:

10 1. As to the Ninth through Sixteenth Causes of Action, the assessment of all
11 applicable and available remedies under the PAGA;

12 2. For reasonable attorneys' fees and costs as permitted under the PAGA;

13 3. That the First through Eighth Causes of Action be certified as a class action;

14 4. That Plaintiff be appointed as Class Representative;

15 5. That counsel for Plaintiff be appointed Class Counsel;

16 6. For all applicable statutory penalties recoverable under the First through Seventh
17 Causes of Action to the extent permitted by law, including those pursuant to Labor Code and
18 Orders of the Industrial Welfare Commission;

19 7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by
20 law, including those pursuant to the Labor Code;

21 8. For injunctive relief and/or restitution as provided by the Labor Code and
22 Business and Professions Code § 17200, *et seq.*;

23 9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
24 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 510, 512, 558, 1194, 1197, 1198,
25 1199, and 2802, among other sections inadvertently omitted;

26 10. For an award of damages in the amount of unpaid compensation including, but
27 not limited to, unpaid wages, benefits, and penalties according to proof, including interest
28 thereon;

- 1 11. For pre- and post-judgment interest; and
2 12. For such other relief as the Court deems just and proper.

3 **DEMAND FOR JURY TRIAL**

4 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, hereby
5 demands a jury trial as to the First through Eighth Causes of Action pled herein.

6
7 Dated: December 6, 2021

LAUBY, MANKIN & LAUBY LLP

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9 BY:



10 Brian J. Mankin, Esq.
11 Peter J. Carlson, Esq.
12 Attorneys for Plaintiff
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