

BROCK & GONZALES, LLP

6701 CENTER DRIVE WEST, STE. 610

LOS ANGELES, CA 90045

Tel: (310) 294-9595

Fax: (310) 961-3673

D. AARON BROCK, STATE BAR NO. 241919

DANIELLE L. GRUPPCHANG, STATE BAR NO. 313881

Attorneys for Plaintiffs

Tina Lundin and Derek Brumbaugh

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE COUNTY

Tina Lundin, individually, and on behalf of
other members of the general public
similarly situated; Derek Brumbaugh,
individually, and on behalf of other
members of the general public similarly
situated, and on behalf of other aggrieved
employees pursuant to the California Private
Attorneys General Act;

Plaintiffs,

vs.

Anaheim Transportation Network DBA
Anaheim Resort Transportation, a California
corporation; and DOES 1-50, inclusive,

Defendants.

Case No.: 30-2021-01204870-CU-OE-
CXC

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES
AND ENFORCEMENT UNDER
THE PRIVATE ATTORNEYS
GENERAL ACT**

- (1) FAILURE TO PAY PROPERLY
OVERTIME WAGES;**
- (2) FAILURE TO PAY MINIMUM
WAGES;**
- (3) FAILURE TO PROVIDE
COMPLIANT MEAL PERIODS
AND PREMIUMS IN LIEU
THEREOF;**
- (4) FAILURE TO PROVIDE
COMPLIANT REST PERIODS
AND PREMIUMS IN LIEU
THEREOF;**
- (5) FAILURE TO TIMELY PAY
WAGES DURING
EMPLOYMENT;**
- (6) FAILURE TO TIMELY PAY
WAGES UPON TERMINATION;**
- (7) FAILURE TO PROVIDE
COMPLIANT WAGE
STATEMENTS;**
- (8) FAILURE TO MAINTAIN
REQUISITE PAYROLL
RECORDS;**
- (9) FAILURE TO REIMBURSE
NECESSARY BUSINESS
EXPENSES;**

(10) VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS
CODE § 17200, ET SEQ.; AND
(11) VIOLATION OF CALIFORNIA
LABOR CODE § 2698, ET SEQ.
(CALIFORNIA PRIVATE
ATTORNEYS GENERAL ACT
OF 2004)

DEMAND FOR JURY TRIAL

Plaintiff TINA LUNDIN (“Plaintiff Lundin”), individually, and on behalf of other members of the general public similarly situated and Plaintiff DEREK BRUMBAUGH (“Plaintiff Brumbaugh,” together with Plaintiff Lundin referred to as “Plaintiffs”), individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employee pursuant to the California Private Attorneys General Act, hereby bring this Complaint, demanding a trial by jury, against the above-named Defendants and states and alleges as follows:

THE PARTIES

1. At all times mentioned herein, Plaintiff Lundin was an individual and a resident of the State of California.

2. At all times mentioned herein, Plaintiff Brumbaugh was an individual and a resident of the State of California.

3. At all times mentioned herein, Defendant ANAHEIM TRANSPORTATION NETWORK DBA ANAHEIM RESORT TRANSPORTATION (“Defendant”) was, upon information and belief, a California corporation, doing business in the State of California, County of Orange, at 2626 East Katella Avenue, Anaheim, California 92806. At the time the causes of action arose, Defendant and DOES 1 through 50 were Plaintiffs’ employers (collectively referred to as “Defendants”).

4. The true names and capacities, whether individual, corporate, associate or otherwise of DOES 1 through 50 are unknown to Plaintiffs who therefore sue these defendants under

1 fictitious names. Plaintiffs are informed and believe that each of the Doe defendants are legally
2 responsible in some manner for the events referred to in this Complaint, and are/were the agents,
3 partners, joint venturers, joint employers, representatives, servants, employees, successors-in-
4 interest, co-conspirators and/or assigns, each of the other, and at all times relevant hereto were
5 acting within the course and scope of their authority as such agents, partners, joint venturers, joint
6 employers, representatives, servants, employees, successors, co-conspirators and/or assigns, and
7 all acts or omissions alleged herein were duly committed with the ratification, knowledge,
8 permission, encouragement, authorization and/or consent of each defendant designated as a DOE
9 herein. Plaintiffs will in the future seek leave of this court to show the true names and capacities
10 of these Doe defendants when it has been ascertained.

11 5. Plaintiffs further allege that Defendants directly or indirectly controlled or affected
12 the working conditions, wages, working hours, and conditions of employment of Plaintiffs and
13 the other class members so as to make each of said Defendants employers liable under the
14 statutory provisions set forth herein.

15 JURISDICTION AND VENUE

16 6. This class action is brought pursuant to the California Code of Civil Procedure section
17 382. The monetary damages and restitution Plaintiffs seek exceed the minimal jurisdiction limits
18 of the Superior Court and will be established according to proof at trial.

19 7. Pursuant to the California Constitution, Article VI, Section 10, which grants the
20 superior court “original jurisdiction in all other causes” except those given by statute to other
21 courts, this Court has jurisdiction over this class action. The statutes under which this class action
22 is brought do not specify any other basis for jurisdiction.

23 8. This Court has jurisdiction over Defendant because, upon information and belief,
24 Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise
25 intentionally avails itself of the California market so as to render the exercise of jurisdiction over
26 it by California courts consistent with traditional notions of fair play and substantial justice.

27 9. Venue is proper in this Court because, upon information and belief, Defendant
28 maintains offices, has agents, employs individuals, and/or transacts business in the State of

1 California, County of Orange. The majority of acts and omissions alleged herein relating to
2 Plaintiffs and the other class members took place in the State of California, including the County
3 of Orange. At all relevant times, Defendant maintained its headquarters within the State of
4 California, County of Orange.

5 **GENERAL ALLEGATIONS**

6 10. At all times mentioned herein, Defendants employed Plaintiffs and other class
7 members as hourly-paid or non-exempt employees within the State of California, including the
8 County of Orange.

9 11. Defendants, jointly and severally, employed Plaintiff Lundin as an hourly-paid, non-
10 exempt employee from approximately May 3, 2016 to March 19, 2020 in the State of California,
11 County of Orange.

12 12. Defendants, jointly and severally, employed Plaintiff Brumbaugh as an hourly-paid,
13 non-exempt employee from approximately March 2, 2015 to May 6, 2022 in the State of
14 California, County of Orange.

15 13. Defendants paid wages and benefits to Plaintiffs and the other class members, had the
16 authority to hire and terminate them, set the rules and conditions governing their employment,
17 and supervised their daily employment activities. Defendants exercised sufficient authority over
18 the terms and conditions of Plaintiffs' and the other class members' employment for them to be
19 their joint employers.

20 14. Plaintiffs are informed and believe, and based thereon allege, that Defendants engaged
21 in a pattern and practice of wage abuse of, *inter alia*, failing to pay against their hourly-paid or
22 non-exempt employees within the State of California all regular and/or overtime wages earned
23 and premiums owed due to missed meal periods and rest breaks in violation of California law.

24 15. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
25 or should have known that Plaintiffs and the other class members were required to work over
26 eight (8) hours in a day, forty (40) hours in a week, and/or six (6) days in a workweek and were
27 entitled to receive certain wages for overtime compensation.

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1 16. During the relevant time period, Defendants failed to pay properly pay all overtime
2 wages to Plaintiffs and the other class members for all overtime hours worked.

3 17. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
4 or should have known that Plaintiffs and the other class members were entitled to receive at least
5 minimum wages as compensation for all hours worked and that they were not receiving at least
6 minimum wages for all hours they worked.

7 18. During the relevant time period, Defendants failed to pay Plaintiffs and the other class
8 members at least minimum wages for all hours worked.

9 19. Plaintiffs are informed and believe, and based thereon allege, that Defendants failed
10 to provide Plaintiffs and the other class members with compliant meal and rest periods during the
11 relevant time period as required under the Industrial Welfare Commission Wage Orders and thus
12 they are entitled to any and all applicable premium payments.

13 20. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
14 or should have known that Plaintiffs and the other class members were entitled to receive
15 compliant meal and rest periods or a premium payment in the amount of one additional hour of
16 pay at Plaintiffs' and the other class member's regular rate of pay when a meal or rest period was
17 missed, short, late, or interrupted, and they did not receive all required meal and rest periods or
18 premium payments in lieu thereof.

19 21. During the relevant time period, Defendants failed to provide all compliant, timely,
20 and uninterrupted meal and rest periods or premiums in lieu thereof, to Plaintiffs and the other
21 class members.

22 22. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
23 or should have known that Plaintiffs and the other class members were entitled to receive all
24 wages owed to them upon discharge or resignation, including overtime and minimum wages and
25 meal and rest period premiums, and they did not, in fact, receive all such wages owed to them at
26 the time of their discharge or resignation.

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23. During the relevant time period, Defendants failed to pay Plaintiffs and the other class members all wages within any time permissible under California law, including, *inter alia*, California Labor Code section 204.

24. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or should have known that Plaintiffs and the other class members were entitled to timely receive all wages owed to them during their employment. Plaintiffs and the other class members did not receive payment of all wages, including overtime and minimum wages and meal and rest period premiums, within any time permissible under California Labor Code section 204.

25. During the relevant time period, Defendants failed to pay Plaintiffs and the other class members all wages owed to them upon discharge or resignation.

26. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or should have known that Plaintiffs and the other class members were entitled to receive complete and accurate wage statements in accordance with California law, but, in fact, they did not receive complete and accurate wage statements from Defendants. The deficiencies included, *inter alia*, the failure to include the total number of hours worked by Plaintiffs and the other class members.

27. During the relevant time period, Defendants failed to provide compliant wage statements to Plaintiffs and the other class members.

28. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or should have known that Defendants were required to keep complete and accurate payroll records for Plaintiffs and the other class members in accordance with California law, but failed to maintain complete and accurate payroll records.

29. During the relevant time period, Defendants failed to keep complete and/or accurate payroll records for Plaintiffs and the other class members.

30. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or should have known that Plaintiffs and the other class members were entitled to reimbursement for necessary business-related expenses in accordance with California law, but knowingly failed to do so. Such unreimbursed business-related expenses include but are not limited to, the costs

1 associated with use of personal cell phones for work-related calls and messages and the costs of
2 clothing, such as work boots, necessary to comply with Defendants' dress code.

3 31. During the relevant time period, Defendants failed to reimburse Plaintiffs and the
4 other class members for all necessary business-related expenses and costs.

5 32. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
6 or should have known that they had a duty to properly compensate Plaintiffs and the other class
7 members pursuant to California law, and that Defendants had the financial ability to pay such
8 compensation, but for their own financial gain, willfully, knowingly, and intentionally failed to
9 do so, and falsely represented to Plaintiffs and the other class members that they were not properly
10 denied wages.

11 33. During the relevant time period, Defendants failed to properly compensate Plaintiffs
12 and the other class members pursuant to California law in order to increase Defendants' profits.

13 34. California Labor Code section 218 states that nothing in Article 1 of the Labor Code
14 shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty due to him
15 [or her] under this article."

16 **CLASS ACTION ALLEGATIONS**

17 35. Plaintiffs bring this action on their own behalf and on behalf of all other members of
18 the general public similarly situated, and, thus, seek class certification under California Code of
19 Civil Procedure section 382.

20 36. The proposed class is defined as follows:

21 All current and former hourly-paid and/or non-exempt employees who worked for
22 any of the Defendants within the State of California at any time during the period
23 from June 4, 2017 to final judgment, that live in California.

24 37. Plaintiffs reserve the right to establish subclasses as appropriate.

25 38. This action is certifiable as a class action because the class is ascertainable, as
26 explained above, and there is a well-defined community of interest in the litigation.

27 a. Numerosity: The class members are so numerous that joinder of all class members
28 is impracticable. The exact membership of the class is unknown to Plaintiffs at

1 this time; however, the class is estimated to be at least fifty (50) individuals and
2 they are readily ascertainable through Defendants' employment records.

3 b. Typicality: Plaintiffs' claims are typical of the class's claims because they stem
4 from Defendants' uniform policies, practices, and procedures which apply to all
5 class members as explained herein. Plaintiffs have a well-defined community of
6 interest with the class and will fairly and adequately protect their interests.

7 c. Adequacy: Plaintiffs will fairly and adequately protect the class's interests because
8 Plaintiffs have no interests in opposition to the other class members. Plaintiffs'
9 attorneys are experienced in employment law and are educated in the rules
10 governing class action litigation.

11 d. Superiority: A class action is superior to other methods for the fair and efficient
12 resolution of this litigation because due to the number of individuals in the class,
13 the individual joinder of all class members is impractical.

14 e. Public Policy Considerations: Certification of this lawsuit as a class action will
15 advance public policy objectives. Employers in California regularly violate
16 employment and labor laws without repercussion. Employees often fail to assert
17 their rights out of fear of direct or indirect retaliation and due to feeling that
18 individually, they lack power and strength. However, class actions provide the
19 class members who are not named in the complaint anonymity that allows for the
20 vindication of their rights and allow individuals to join together to pursue their
21 rights.

22 39. There are common questions of law and fact as to the class members that predominate
23 over questions affecting only individual members. The following common questions of law or
24 fact, among others, exist as to each class member:

25 a. Whether Defendants required Plaintiffs and the other class members to work over
26 eight (8) hours per day, over forty (40) hours per week, and/or over six (6) days in
27 a week and failed to properly pay the legally required overtime compensation to
28 Plaintiffs and the other class members in violation of California Labor Code;

- b. Whether Defendants failed to pay minimum wages to Plaintiffs and the other class members for all hours worked in violation of California Labor Code;
- c. Whether Defendants deprived Plaintiffs and the other class members of compliant meal and/or rest periods or required Plaintiffs and the other class members to endure non-compliant (i.e., short, late, interrupted, and/or missed altogether) meal and/or rest periods without compensation in violation of California Labor Code;
- d. Whether Defendants failed to timely pay all wages due to Plaintiffs and the other class members during their employment in violation of California Labor Code;
- e. Whether Defendants failed to timely pay all wages due to Plaintiffs and the other class members upon their discharge or resignation in violation of California Labor Code;
- f. Whether Defendants provided compliant wage statements to class members as required by the California Labor Code;
- g. Whether Defendants kept complete and accurate payroll records as required by the California Labor Code;
- h. Whether Defendants failed to reimburse Plaintiffs and the other class members for necessary business-related expenses and costs as required by the California Labor Code;
- i. Whether Defendants' conduct was willful and/or reckless;
- j. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200, *et seq.*;
- k. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and
- l. Whether Plaintiffs and the other class members are entitled to compensatory damages pursuant to the California Labor Code.

PAGA ALLEGATIONS

40. At all relevant times herein set forth, PAGA was applicable to Plaintiff Brumbaugh's employment by Defendants.

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

6 42. Pursuant to PAGA, a civil action under PAGA may be brought by an “aggrieved
7 employee,” who is any person that was employed by the alleged violator and against whom one
8 or more of the alleged violations was committed.

9 43. Plaintiff Brumbaugh was employed by Defendants and the alleged violations were
10 committed against him during his employment with Defendants and he is, therefore, an aggrieved
11 employee. Plaintiff Brumbaugh and the other employees are “aggrieved employees” as defined
12 by California Labor Code section 2699(c) in that they are current or former employees of
13 Defendants, and one or more of the alleged violations were committed against them.

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

17 45. The aggrieved employee shall give written notice by certified mail (hereinafter
18 “Employee's Notice”) to the LWDA and the employer of the specific provisions of the California
19 Labor Code alleged to have been violated, including the facts and theories to support the alleged
20 violations.

21 46. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and
22 the aggrieved employer by certified mail that it does not intend to investigate the alleged violation
23 within sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of
24 the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days
25 of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil
26 action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any
27 other penalties to which the employee may be entitled.

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47. On or around January 6, 2023, Plaintiffs provided an amended notice by online submission and certified mail respectively to the LWDA and to Defendants which named Plaintiff Brumbaugh as a PAGA representative. Therefore, the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 218, 226(a), 226.3, 226.7, 510, 512(a), 1174(d), 1194, 1194.2, 1197, 1197.1, 1198, 2800 and 2802 have been satisfied.

FIRST CAUSE OF ACTION

48. Plaintiffs restate and incorporate by this reference as if fully set forth herein paragraphs 1 through 47 of this Complaint.

49. California Labor Code section 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order provide that depending on the number of hours worked by the person on a daily or weekly basis, it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay.

50. The applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiffs and the other class members overtime compensation at a rate of one-and-one-half times their regular rate of pay for all hours worked in excess of eight (8) hours in a day, more than forty (40) hours in a workweek, and/or more than six (6) days in a workweek at the rate of one-and-one-half.

51. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiffs and the other class members overtime compensation at a rate of two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day and eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

52. California Labor Code section 510 codifies the right to overtime compensation at one-and-one-half times the regular rate for hours worked in excess of eight (8) hours in a day, forty (40) hours in a week, and/or for the first eight (8) hours worked on the seventh (7th) day of work,

1 and to overtime compensation at twice the regular rate for hours worked in excess of twelve (12)
2 hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work.

3 53. During the relevant time period, Plaintiffs and the other class members were required
4 to work in excess of eight (8) hours in a day, in excess of forty (40) hours in a week, and/or in
5 excess of six (6) days in a workweek.

6 54. During the relevant time period, Defendants intentionally and willfully failed to
7 properly pay overtime wages owed to Plaintiffs and the other class members.

8 55. Defendants' failure to properly pay Plaintiffs and the other class members all overtime
9 earned, as required by California laws, violates the provisions of California Labor Code sections
10 510 and 1198, and is therefore unlawful.

11 56. Pursuant to California Labor Code section 1194, Plaintiffs and the other class
12 members are entitled to recover unpaid overtime compensation, as well as interest, litigation costs,
13 and attorneys' fees.

14 **SECOND CAUSE OF ACTION**
15 **FAILURE TO PAY MINIMUM WAGES**
16 **(Against ALL Defendants)**

17 57. Plaintiffs restate and incorporate by this reference as if fully set forth herein
18 paragraphs 1 through 56 of this Complaint.

19 58. At all times mentioned herein, California Labor Code sections 1194, 1197, and 1197.1
20 provide the minimum wage to be paid to employees, and that the payment of a lesser wage than
21 the minimum wage mentioned therein is unlawful.

22 59. During the relevant time period, Defendants failed to pay minimum wage to Plaintiffs
23 and the other class members as required, pursuant to California Labor Code sections 1194, 1197,
24 and 1197.1.

25 60. Defendants' failure to pay Plaintiffs and the other class members the minimum wage
26 violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to California Labor
27 Code, Plaintiffs and the other class members are entitled to recover the amount of minimum wage
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1 compensation due to them as well as interest, litigation costs, and attorney's fees, and liquidated
2 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

3 61. Pursuant to California Labor Code section 1197.1, Plaintiffs and the other class
4 members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each
5 employee minimum wages, and \$250.00 for each subsequent failure to pay each employee
6 minimum wages.

7 62. Pursuant to California Labor Code section 1194.2, Plaintiffs and the other class
8 members are entitled to recover liquidated damages in an amount equal to the wages unlawfully
9 unpaid and interest thereon.

10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO PROVIDE COMPLIANT MEAL PERIODS**

12 **AND PREMIUMS IN LIEU THEREOF**

13 **(Against ALL Defendants)**

14 63. Plaintiffs restate and incorporate by this reference as if fully set forth herein
15 paragraphs 1 through 62 of this Complaint.

16 64. At all relevant times, the IWC Order and California Labor Code sections 226.7 and
17 512(a) were applicable to Plaintiffs' and the other class members' employment by Defendants.

18 65. At all relevant times, California Labor Code section 226.7 provides that no employer
19 shall require an employee to work during any meal or rest period mandated by an applicable order
20 of the California IWC.

21 66. At all relevant times, the applicable IWC Wage Order and California Labor Code
22 section 512(a) provide that an employer may not require, cause or permit an employee to work
23 for more than five (5) hours per day without providing the employee with an uninterrupted meal
24 period of at least thirty (30) minutes. Notwithstanding the foregoing, if the total work period is
25 not longer than six (6) hours, then the meal period may be waived by mutual consent of both the
26 employer and employee.

27 67. At all relevant times, the applicable IWC Wage Order and California Labor Code
28 section 512(a) further provide that an employer may not require, cause or permit an employee to

work for more than ten (10) hours per day without providing the employee with a second uninterrupted meal period of at least thirty (30) minutes. Notwithstanding the foregoing, if the total hours worked is not longer than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee, but only if the first meal period was not waived.

68. At all relevant times, Plaintiffs and the other class members who worked for a time period six (6) hours or less, and who did not validly waive their legally-mandated meal periods, were required to work for periods longer than five (5) hours without a compliant meal period of at least thirty (30) minutes.

69. At all relevant times, Plaintiffs and the other class members who worked for a period of time longer than six (6) hours were required to work for periods longer than five (5) hours without a compliant meal period of at least thirty (30) minutes.

70. During the relevant time period, Defendants intentionally and willfully required Plaintiffs and the other class members to work during meal periods and experience late and/or interrupted meal periods and failed to compensate them with a meal period premium pursuant to California Labor Code section 226.7.

71. Defendants' conduct violates applicable IWC Wage Order and California Labor Code sections 226.7 and 512(a).

72. Pursuant to applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiffs and the other class members are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each workday that they experienced a non-compliant meal period.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE COMPLIANT REST PERIODS

AND PREMIUMS IN LIEU THEREOF

(Against ALL Defendants)

73. Plaintiffs restate and incorporate by this reference as if fully set forth herein paragraphs 1 through 72 of this Complaint.

1 74. At all relevant times, Plaintiffs' and the other class members' employment by
2 Defendants was governed by the applicable IWC Wage Order and California Labor Code section
3 226.7.

4 75. At all relevant times, California Labor Code section 226.7 provides that no employer
5 shall require an employee to work during any rest period mandated by an applicable order of the
6 California IWC.

7 76. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer
8 shall authorize and permit all employees to take rest periods, which insofar as practicable shall
9 be in the middle of each work period" and that the "rest period time shall be based on the total
10 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
11 thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

12 77. During the relevant time period, Defendants required Plaintiffs and other class
13 members to work four (4) or more hours without authorizing or permitting them to take a ten (10)
14 minute rest period for each four (4) hour period they worked.

15 78. During the relevant time period, Defendants willfully required Plaintiffs and the other
16 class members to work during rest periods, miss their rest periods, and/or take late rest periods
17 and failed to pay Plaintiffs and the other class members with a rest period premium for non-
18 compliant rest periods.

19 79. During the relevant time period, Defendants failed to pay Plaintiffs and the other class
20 members every rest period premium due pursuant to California Labor Code section 226.7

21 80. Defendants' conduct violates applicable IWC Wage Orders and California Labor
22 Code section 226.7.

23 81. Pursuant to the applicable IWC Wage Orders and California Labor Code section
24 226.7(c), Plaintiffs and the other class members are entitled to recover from Defendants one
25 additional hour of pay at the employees' regular hourly rate of compensation for each non-
26 compliant rest period was not provided.

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FIFTH CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT

(Against ALL Defendants)

82. Plaintiffs restate and incorporate by this reference as if fully set forth herein paragraphs 1 through 81 of this Complaint.

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

84. At all relevant times, California Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

85. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiffs and the other class members all wages due to them, within any time period permissible under California Labor Code section 204.

86. Plaintiffs and the other class members are entitled to recover all remedies available for violations of California Labor Code section 204.

SIXTH CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES UPON TERMINATION

(Against ALL Defendants)

87. Plaintiffs restate and incorporate by this reference as if fully set forth herein paragraphs 1 through 86 of this Complaint.

88. At all relevant times, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment with less than seventy-two (72) hours' notice, his or her wages shall become due and payable no later than seventy-two

(72) hours thereafter, and if the employee has given seventy-two (72) hours' notice, in which case the employee is entitled to his or her wages at the time of quitting.

89. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiffs and the other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of being termed.

90. Defendants' failure to pay Plaintiffs and the other class members who were no longer employed by Defendants' their earned and unpaid wages within seventy-two (72) hours of being termed, is in violation of California Labor Code sections 201 and 202.

91. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall accrue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but for no longer than thirty (30) days.

92. Pursuant to California Labor Code section 203, Plaintiffs and the other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to the thirty (30) day maximum.

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE COMPLIANT WAGE STATEMENTS

(Against ALL Defendants)

93. Plaintiffs restate and incorporate by this reference as if fully set forth herein paragraphs 1 through 92 of this Complaint.

94. At all material times set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing containing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable

hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages must be recorded in ink or other indelible form, properly dated, showing the month, day, and year.

95. Defendants have intentionally and willfully failed to provide Plaintiffs and the other class members with complete and accurate wage statements. The deficiencies include, but are not limited to: Defendants' failure to include the total number of hours worked by Plaintiffs and the other class members and incorrect information regarding the legal entity that employees Plaintiffs and the other class members.

96. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiffs and the other class members have suffered irreparable injury and damage because they were denied their legal right to receive and their interest in receiving accurate and itemized wage statements pursuant to California Labor Code section 226(a).

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

98. Plaintiffs and the other class members are also entitled to injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(h).

EIGHTH CAUSE OF ACTION

FAILURE TO MAINTAIN REQUISITE PAYROLL RECORDS

(Against ALL Defendants)

99. Plaintiffs restate and incorporate by this reference as if fully set forth herein paragraphs 1 through 98 of this Complaint.

100. Pursuant to California Labor Code section 1174(d), an employer must keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the

1 respective plants or establishments. These records must be kept in accordance with the
2 application California Labor Code and must be kept on file for no less than two years.

3 101. Defendants have intentionally and willfully failed to keep accurate and complete
4 payroll records showing the daily hours worked and the wages paid, to Plaintiffs and the other
5 class members.

6 102. As a result of Defendants' violation of California Labor Code section 1174(d),
7 Plaintiffs and the other class members have suffered injury and damage to their statutorily-
8 protected rights because they were denied both their legal right and protected interest, in having
9 available, accurate and complete payroll records pursuant to California Labor Code section
10 1174(d).

11 **NINTH CAUSE OF ACTION**

12 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

13 **(Against ALL Defendants)**

14 103. Plaintiffs restate and incorporate by this reference as if fully set forth herein
15 paragraphs 1 through 102 of this Complaint.

16 104. Pursuant to California Labor Code sections 2800 and 2802, an employer must
17 reimburse its employee for all necessary business expenses incurred by the employee in direct
18 consequence of the discharge of his or her job duties or obedience to the employer's directions.

19 105. Plaintiffs and the other class members incurred necessary business-related
20 expenses and costs that were not fully reimbursed by Defendants as required by the California
21 Labor Code.

22 106. Defendants have intentionally and willfully failed to reimburse Plaintiffs and the
23 other class members for all necessary business-related expenses and costs in violation of the
24 California Labor Code.

25 107. Plaintiffs and the other class members are entitled to recover from Defendants their
26 business-related expenses and costs incurred during their employment but not reimbursed, plus
27 interest.

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TENTH CAUSE OF ACTION
VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS CODE § 17200, ET SEQ.
(Against ALL Defendants)

108. Plaintiffs restate and incorporate by this reference as if fully set forth herein paragraphs 1 through 107 of this Complaint.

109. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiffs, other class members, to the general public, and Defendants' competitors. Accordingly, Plaintiffs seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

110. Defendants' activities as alleged herein are violations of California law and constitute unlawful business acts and practices in violation of California Business & Professions Code section 17200, *et seq.*

111. A violation of California Business & Professions Code section 17200, *et seq.* may be predicated on the violation of any state or federal law. Defendants' policies and practices of requiring Plaintiffs and the other class members, to work overtime without properly compensating them violate California Labor Code sections 510 and 1198. Defendants' policies and practices of failing to pay minimum wages violate California Labor Code sections 1194, 1197, and 1197.1. Defendants' policies and practices of requiring Plaintiffs and the other class members, to endure non-compliant meal and rest periods without paying them proper compensation violate California Labor Code sections 226.7 and 512(a). Moreover, Defendants' policies and practices of failing to timely pay wages to Plaintiffs and the other class members violate California Labor Code sections 201, 202 and 204. Defendants also violated California Labor Code sections 226(a), 1174(d), 2800 and 2802.

112. As a result of violating California law, Defendants unlawfully gained an unfair advantage over other businesses.

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113. Plaintiffs and the other class members have been personally injured by Defendants' unlawful business acts and practices as alleged herein, including but not limited to the loss of money and/or property.

114. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiffs and the other class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years preceding the filing of this Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable laws; and an award of litigation costs.

ELEVENTH CAUSE OF ACTION

VIOLATION OF CALIFORNIA LABOR CODE § 2698, ET SEQ.

(Against ALL Defendants)

115. Plaintiff Brumbaugh restates and incorporates by this reference as if fully set forth herein paragraphs 1 through 114 of this Complaint.

116. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

117. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

118. Plaintiff Brumbaugh and the other hourly-paid or non-exempt employees are "aggrieved employees" as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

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Failure to Pay Overtime

119. Defendants' failure to pay overtime in violation of the Wage Orders and California Labor Code sections 510 and 1198, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 510 and 1198.

Failure to Pay Minimum Wage

120. Defendants' failure to pay minimum wage in violation of the Wage Orders and California Labor Code sections 1194, 1197, 1197.1, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 1194, 1197, 1197.1.

Failing to Provide Meal Periods

121. Defendants' failure to provide legally required meal periods in violation of the Wage Orders and California Labor Code sections 226.7 and 512(a), as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 226.7 and 512(a).

Failure to Provide Rest Periods

122. Defendants' failure to provide legally required rest periods in violation of the Wage Orders and California Labor Code section 226.7, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226.7.

Failure to Timely Pay Wages Upon Termination

123. Defendants' failure to timely pay wages upon termination in violation of California Labor Code sections 201 and 202, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 201 and 202.

Failure to Timely Pay Wages During Employment

124. Defendants' failure to timely pay wages during employment in violation of California Labor Code section 204, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 204.

Failure to Provide Compliant Wage Statements

125. Defendants' failure to provide compliant wage statements in violation of California Labor Code section 226(a), as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226(a).

Failure to Keep Complete or Accurate Payroll Records

126. Defendants' failure to keep complete or accurate payroll records in violation of California Labor Code section 1174(d), as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 1174(d).

Failure to Reimburse Necessary Business Expenses

127. Defendants' failure to reimburse all necessary business-related expenses and costs in violation of California Labor Code sections 2800 and 2802, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 2800 and 2802.

128. Pursuant to California Labor Code section 2699, Plaintiff Brumbaugh, individually, and on behalf of all aggrieved employees, requests and is entitled to recover from Defendants and each of them, business expenses, unpaid wages, and/or untimely wages according to proof, interest, attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all penalties against Defendants, and each of them, including but not limited to:

- a. Penalties under California Labor Code section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under California Code of Regulations Title 8 section 11010, et seq. in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and
- d. Any and all additional penalties and sums as provided by the California Labor Code and/or other statutes.

130. Further, Plaintiff Brumbaugh is entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

Wherefore, Plaintiffs individually, and on behalf of other members of the general public similarly situated, pray for relief and judgment against Defendants, jointly and severally, as follows:

1. That this action be certified as a class action;
2. That Plaintiffs be appointed as the representative of the Class;
3. That counsel for Plaintiffs be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the full names and most current/last known contact information (mailing address, e-mail address, and telephone number) of all class members.

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to properly pay all overtime wages due to Plaintiffs and the other class members;
6. For general unpaid wages at appropriate overtime wage rates and such general and special damages as may be appropriate;
7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

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1 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
2 Labor Code section 1194; and

3 9. For such other and further relief as the Court may deem just and proper.

4 **AS TO THE SECOND CAUSE OF ACTION**

5 10. That the Court declare, adjudge and decree that Defendants violated California Labor
6 Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to
7 Plaintiffs and the other class members;

8 11. For general unpaid wages and such general and special damages as may be
9 appropriate;

10 12. For statutory wage penalties pursuant to California Labor Code section 1197.1 for
11 Plaintiffs and the other class members in the amount as may be established according
12 to proof at trial;

13 13. For pre-judgment interest on any unpaid compensation from the date such amounts
14 were due;

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

17 15. For liquidated damages pursuant to California Labor Code section 1194.2; and

18 16. For such other and further relief as the Court may deem just and proper.

19 **AS TO THE THIRD CAUSE OF ACTION**

20 17. That the Court declare, adjudge and decree that Defendants violated California Labor
21 Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing
22 to provide compliant meal periods (including second meal periods) to Plaintiffs and
23 the other class members;

24 18. That the Court make an award to Plaintiffs and the other class members of one (1)
25 hour of pay at each employee's regular rate of compensation for each workday that a
26 non-compliant meal period was endured;

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

28 20. For premium wages pursuant to California Labor Code section 226.7(c);

- 1 21.For pre-judgment interest on any unpaid wages from the date such amounts were due;
2 22.For reasonable attorneys' fees and costs of suit incurred herein; and
3 23.For such other and further relief as the Court may deem just and proper.

4 **AS TO THE FOURTH CAUSE OF ACTION**

- 5 24.That the Court declare, adjudge and decree that Defendants violated California Labor
6 Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide
7 compliant rest periods to Plaintiffs and the other class members;
8 25.That the Court make an award to Plaintiffs and the other class members of one (1)
9 hour of pay at each employee's regular rate of compensation for each workday that a
10 non-compliant rest period was endured;
11 26.For all actual, consequential, and incidental losses and damages, according to proof;
12 27.For premium wages pursuant to California Labor Code section 226.7(c);
13 28.For pre-judgment interest on any unpaid wages from the date such amounts were due;
14 and
15 29.For such other and further relief as the Court may deem just and proper.

16 **AS TO THE FIFTH CAUSE OF ACTION**

- 17 30.That the Court declare, adjudge and decree that Defendants violated California Labor
18 Code section 204 by willfully failing to pay all compensation owed at the time
19 required by California Labor Code section 204 to Plaintiffs and the other class
20 members;
21 31.For all actual, consequential, and incidental losses and damages, according to proof;
22 32.For pre-judgment interest on any unpaid compensation from the date such amounts
23 were due; and
24 33.For such other and further relief as the Court may deem just and proper.

25 **AS TO THE SIXTH CAUSE OF ACTION**

- 26 34.That the Court declare, adjudge and decree that Defendants violated California Labor
27 Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at
28

1 the time of termination of the employment of Plaintiffs and the other class members
2 no longer employed by Defendants;

3 35.For all actual, consequential, and incidental losses and damages, according to proof;

4 36.For statutory wage penalties pursuant to California Labor Code section 203 for
5 Plaintiffs and the other class members who have left Defendants' employment;

6 37.For pre-judgment interest on any unpaid compensation from the date such amounts
7 were due; and

8 38.For such other and further relief as the Court may deem just and proper.

9 **AS TO THE SEVENTH CAUSE OF ACTION**

10 39.That the Court declare, adjudge and decree that Defendants violated the record
11 keeping provisions of California Labor Code section 226(a) and applicable IWC
12 Wage Orders as to Plaintiffs and the other class members, and willfully failed to
13 provide them with accurate itemized wage statements;

14 40.For actual, consequential and incidental losses and damages, according to proof;

15 41.For statutory penalties pursuant to California Labor Code section 226(e);

16 42.For injunctive relief to ensure compliance with this section, pursuant to California
17 Labor Code section 226(h); and

18 43.For such other and further relief as the Court may deem just and proper.

19 **AS TO THE EIGHTH CAUSE OF ACTION**

20 44.That the Court declare, adjudge and decree that Defendants violated California Labor
21 Code section 1174(d) by willfully failing to keep accurate and complete payroll
22 records for Plaintiffs and the other class members as required by California Labor
23 Code section 1174(d);

24 45.For actual, consequential and incidental losses and damages, according to proof;

25 46.For statutory penalties pursuant to California Labor Code section 1174.5; and

26 47.For such other and further relief as the Court may deem just and proper.

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AS TO THE NINETH CAUSE OF ACTION

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiffs and the other class members for all necessary business-related expenses as required by California Labor Code sections 2800 and 2802;

49. For actual, consequential and incidental losses and damages, according to proof;

50. For the imposition of civil penalties and/or statutory penalties;

51. For reasonable attorneys' fees and costs of suit incurred herein; and

52. For such other and further relief as the Court may deem just and proper.

AS TO THE TENTH CAUSE OF ACTION

53. The Court decree, adjudge and decree that Defendants violated California Business and Professions Code sections 17200, *et seq.* by failing to provide Plaintiffs and the other class members all overtime compensation due to them, failing to pay at least minimum wages to Plaintiffs and the other class members for all hours worked, failing to provide compliant meal and rest periods to Plaintiffs and the other class members, failing to timely pay Plaintiffs' and the other class members' wages as required by California Labor Code section 201, 202 and 204 and by violating California Labor Code sections 226(a), 1174(d), 2800 and 2802.

54. For restitution of unpaid wages to Plaintiffs and all the other class members and all pre-judgment interest from the day such amounts were due and payable;

55. For the appointment of a receiver to receive, manage and distribute any and all funds acquired from Defendants and determined to have been wrongfully attained as a result of violation of California Business and Professions Code sections 17200, *et seq.*;

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

57. For injunctive relief to ensure compliance with this section, pursuant to California Business and Professions Code sections 17200, *et seq.*; and

1 **AS TO THE ELEVENTH CAUSE OF ACTION**

2 58. For civil penalties and wages pursuant to California Labor Code sections 2699(a), (f),
3 and (g) plus costs and attorneys' fees for violation of California Labor Code sections
4 201, 202, 203, 204, 218, 226(a), 226.3, 226.7, 510, 512, 1174(d), 1194, 1194.2, 1197,
5 1197.1, 1198, 2800, and 2802; and

6 59. For such other and further relief as the Court may deem just and proper.

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff Lundin, individually, and on behalf of other members of the general public
9 similarly situated, and Plaintiff Brumbaugh, individually, and on behalf of other members of the
10 general public similarly situated and on behalf of the other aggrieved employees pursuant to the
11 California Private Attorneys General Act hereby demand a trial by jury

12
13 DATED: March 27, 2024

BROCK & GONZALES, LLP

14
15
16 By:


 DANIELLE L. GRUPPCHANG
 Attorneys for Plaintiff