

AEGIS LAW FIRM, PC
KASHIF HAQUE, State Bar No. 218672
SAMUEL A. WONG, State Bar No. 217104
JESSICA L. CAMPBELL, State Bar No. 280626
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251
jcampbell@aegislawfirm.com



Attorneys for Plaintiff James Michael Bowman, individually,
and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA

JAMES MICHAEL BOWMAN,
individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

Case No. CIVMSC21-02096

*Assigned for all Purposes to:
Hon. Edward G. Weil; Dept. 39*

**[Amended as a matter of right, pursuant to
Labor Code section 2699.3(a)(2)(C)]**

A3 SMART HOME, LP; SECURITY
ALARM FINANCING ENTERPRISES
CALIFORNIA, LLC; SECURITY
ALARM FINANCING ENTERPRISES,
INC.; and DOES 1 through 20, inclusive,

Defendants.

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Failure to Provide Accurate Itemized Wage Statements;
6. Failure to Pay All Wages Due Upon Separation of Employment;
7. Failure to Reimburse Necessary Business Expenses;
8. Violation of Business and Professions Code §§ 17200, *et seq.*; and
9. Enforcement of Labor Code § 2698 *et seq.* ("PAGA")

BY FAX
FIRST LEGAL
200 ALBION ST STE 201
OAKLAND, CA 94607
415-626-3411

FIRST AMENDED CLASS ACTION COMPLAINT



1 Plaintiff James Michael Bowman, individually, and on behalf of others similarly
2 situated, alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff James Michael Bowman (“Plaintiff”) brings this putative class and
5 representative action pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code. §
6 2698 *et seq.*, against defendants A3 Smart Home, LP; Security Alarm Financing Enterprises
7 California, LLC; Security Alarm Financing Enterprises, Inc.; and DOES 1 through 20,
8 inclusive (collectively, “Defendants”), on behalf of himself individually and on behalf of
9 California citizens who are and were employed by Defendants as non-exempt employees
10 throughout California.

11 2. Defendants are in the business of providing home security systems and alarm
12 monitoring.

13 3. Through this action, Plaintiff alleges that Defendants have engaged in a
14 systematic pattern of wage and hour violations under the California Labor Code and Industrial
15 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
16 unfair competition.

17 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
18 increased their profits by violating state wage and hour laws by, among other things:

- 19 (a) Failing to pay overtime wages at the proper rates;
- 20 (b) Failing to pay all wages (including minimum wages and overtime
21 wages);
- 22 (c) Failing to provide lawful meal periods or compensation in lieu thereof;
- 23 (d) Failing to authorize or permit lawful rest breaks or provide compensation
24 in lieu thereof;
- 25 (e) Failing to provide accurate itemized wage statements;
- 26 (f) Failing to pay all wages due upon separation of employment; and
- 27 (g) Failing to reimburse all business expenses incurred by the employee in
28 direct consequence of the discharge of his or her duties.

5. Plaintiff seeks monetary relief against Defendants on behalf of himself and all others similarly situated in California to recover, among other things, unpaid wages and benefits, interest, attorneys' fees, costs and expenses, and penalties pursuant to Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 511, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, 2698, *et seq.*, and Code of California Civil Procedure § 1021.5.

JURISDICTION AND VENUE

6. This is a class action pursuant to California Code of Civil Procedure § 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

7. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

8. This Court has jurisdiction over all Defendants because, upon information and belief, they are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

9. Venue is proper in this Court because, upon information and belief, Defendants reside, transact business, or have offices in this county, and the acts and omissions alleged herein took place in this county.

THE PARTIES

10. Plaintiff is a citizen of California. Plaintiff was employed by Defendants during the Class Period in California.

11. Plaintiff is informed and believes, and thereon alleges that at all times hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as employers, whose employees were and are engaged throughout this county and the

1 State of California.

2 12. Plaintiff is unaware of the true names or capacities of the defendants sued herein
3 under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this
4 Complaint and serve such fictitiously named defendants once their names and capacities
5 become known.

6 13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20
7 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants
8 at all relevant times.

9 14. Plaintiff is informed and believes, and thereon alleges, that each defendant acted
10 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
11 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
12 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as
13 the employer and/or joint employer of Plaintiff and the class members.

14 15. Plaintiff is informed and believes, and thereon alleges, that each and all of the
15 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
16 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
17 the other's behalf. The acts of any and all Defendants were in accordance with, and represent,
18 the official policy of Defendants.

19 16. At all relevant times, Defendants, and each of them, acted within the scope of
20 such agency or employment, or ratified each and every act or omission complained of herein.
21 At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
22 each and all the other Defendants in proximately causing the damages herein alleged.

23 17. Plaintiff is informed and believes, and thereon alleges, that each of said
24 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
25 omissions, occurrences, and transactions alleged herein.

26 **CLASS ACTION ALLEGATIONS**

27 18. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of
28 himself and all others similarly situated who were affected by Defendants' Labor Code,

Business and Professions Code §§ 17200, *et. seq.*, and IWC Wage Order violations.

19. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

20. Plaintiff's proposed class consists of and is defined as follows:

Class

All California citizens currently or formerly employed by Defendants as non-exempt employees in the State of California at any time between April 9, 2017¹ and the date of class certification ("Class").

21. Plaintiff also seeks to certify the following subclass of employees:

Waiting Time Subclass

All Class Members who separated their employment with Defendants at any time between April 9, 2018 and the date of class certification ("Subclass" or "Waiting Time Subclass").

22. Plaintiff reserves the right to establish other or additional subclasses, or modify or re-define the Class, or any class or subclass definition as appropriate based on investigation, discovery, and specific theories of liability.

23. Members of the Class and the Subclass described above will be collectively referred to as "Class Members."

24. There are common questions of law and fact as to the Class Members that predominate over any questions affecting only individual members including, but not limited to, the following:

(a) Whether Defendants paid Plaintiff and Class Members overtime compensation at the proper rates;

(b) Whether Defendants failed to implement a valid alternative workweek schedule and thus failed to pay Plaintiff and Class Members proper

¹ The statute of limitations for this matter was tolled between April 6, 2020 and October 1, 2020 pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

1 overtime compensation or failed to pay properly under a valid alternative
2 workweek schedule;

3 (c) Whether Defendants paid Plaintiff and Class Members all wages
4 (including minimum and overtime wages) for all hours worked by
5 Plaintiff and Class Members;

6 (d) Whether Defendants required Plaintiff and Class Members to work over
7 8 hours per day, over twelve (12) hours per day, and/or over forty (40)
8 hours per week and failed to pay them overtime compensation at the
9 proper rate;

10 (e) Whether Defendants deprived Plaintiff and Class Members of timely
11 meal periods or required Plaintiff and Class Members to work through
12 meal periods without compensation;

13 (f) Whether Defendants deprived Plaintiff and Class Members of rest breaks
14 or required Plaintiff and Class Members to work through rest breaks
15 without compensation;

16 (g) Whether Defendants failed to provide Plaintiff and Class Members
17 accurate itemized wage statements;

18 (h) Whether Defendants failed to timely pay Plaintiff and the Subclass all
19 wages due upon termination or within seventy-two (72) hours of
20 resignation;

21 (i) Whether Defendants required Plaintiff and class members to incur
22 expenses for work and then failed to adequately reimburse Plaintiff and
23 Class Members for such expenses;

24 (j) Whether Defendants' conduct was willful or reckless; and

25 (k) Whether Defendants engaged in unfair business practices in violation of
26 Business and Professions Code §§ 17200, *et seq.*

27 25. There is a well-defined community of interest in this litigation and the proposed
28 Class and Subclass are readily ascertainable:

1 (a) Numerosity: The Class Members are so numerous that joinder of all
2 members is impractical. Although the members of the entire Class and Subclass are unknown
3 to Plaintiff at this time, on information and belief, the class is estimated to be greater than one
4 100 individuals. The identities of the Class Members are readily ascertainable by inspection of
5 Defendants' employment and payroll records.

6 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
7 claims (or defenses, if any) of the Class Members because Defendants' failure to comply with
8 the provisions of California's wage and hour laws entitled each Class Member to similar pay,
9 benefits, and other relief. The injuries sustained by Plaintiff are also typical of the injuries
10 sustained by the Class Members, because they arise out of and are caused by Defendants'
11 common course of conduct as alleged herein.

12 (c) Adequacy: Plaintiff will fairly and adequately represent and protect the
13 interests of all Class Members because it is in his best interest to prosecute the claims alleged
14 herein to obtain full compensation and penalties due to him and the Class Members. Plaintiff's
15 attorneys, as proposed class counsel, are competent and experienced in litigating large
16 employment class actions and versed in the rules governing class action discovery,
17 certification, and settlement. Plaintiff has incurred and, throughout the duration of this action,
18 will continue to incur attorneys' fees and costs that have been and will be necessarily expended
19 for the prosecution of this action for the substantial benefit of the Class Members.

20 (d) Superiority: The nature of this action makes use of class action
21 adjudication superior to other methods. A class action will achieve economies of time, effort,
22 and expense as compared with separate lawsuits and will avoid inconsistent outcomes because
23 the same issues can be adjudicated in the same manner for the entire Class and Subclass at the
24 same time. If appropriate, this Court can, and is empowered to, fashion methods to efficiently
25 manage this case as a class action.

26 (e) Public Policy Considerations: Employers in the State of California
27 violate employment and labor laws every day. Current employees are often afraid to assert their
28 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing

actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while affording them privacy protections.

GENERAL ALLEGATIONS

26. At all relevant times mentioned herein, Defendants employed Plaintiff and other California citizens as non-exempt employees at Defendants' California business location(s).

27. Defendants continue to employ non-exempt employees within California.

28. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who were knowledgeable about California's wage and hour laws, employment and personnel practices, and the requirements of California law.

29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and Class Members were entitled to receive wages for all time worked (including minimum and overtime wages) and that they were not receiving all wages earned for work that was required to be performed due to off-the-clock work and interrupted meal periods, among other practices. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class Members were not paid all wages (including minimum and overtime wages) for all hours worked at the proper rates of pay.

30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and Class Members were entitled to receive overtime wages and that they were not receiving all wages earned for work under Defendants' Alternative Workweek Schedule. Plaintiff believes Defendant either failed to implement a proper alternative workweek or failed to properly pay overtime under a valid Alternative Workweek Schedule and thus owe Plaintiff and Class Members unpaid overtime.

31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and Class Members were entitled to receive all required meal periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular

1 rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the
2 Labor Code and IWC Wage Orders, Plaintiff and Class Members did not receive all meal
3 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
4 rate of pay when they did not receive a timely, uninterrupted meal period.

5 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and Class Members were entitled to receive all rest breaks or
7 payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of pay
8 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff
9 and Class Members did not receive all rest breaks or payment of one (1) additional hour of pay
10 at Plaintiff's and Class Members' regular rate of pay when a rest break was missed.

11 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and class members were entitled to reimbursement for
13 necessary expenditures incurred in connection with the performance and execution of their job
14 duties. In violation of the California Labor Code, Plaintiff and class members did not receive
15 adequate reimbursement for necessary business expenses, including, but not limited to,
16 reimbursement for cell phone and home internet use.

17 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that the Class Members were entitled to receive itemized wage statements
19 that accurately showed the gross and net wages earned, total hours worked, all applicable
20 hourly rates in effect, and the number of hours worked at each hourly rate in accordance with
21 California law. In violation of the Labor Code, the Class Members were not provided with
22 accurate itemized wage statements.

23 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that the Waiting Time Subclass members were entitled to timely payment
25 of wages due upon separation of employment. In violation of the Labor Code, the Waiting
26 Time Subclass did not receive payment of all wages within permissible time periods.

27 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known they had a duty to compensate Plaintiff and Class Members, and

1 Defendants had the financial ability to pay such compensation but willfully, knowingly, and
2 intentionally failed to do so in order to increase Defendants' profits.

3 37. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief
4 against Defendants on behalf of himself and all Class Members to recover, among other things,
5 unpaid wages (including minimum and overtime wages), meal period premium payments, rest
6 period premium payments, interest, attorneys' fees, penalties, costs, and expenses.

7 **FIRST CAUSE OF ACTION**

8 **FAILURE TO PAY MINIMUM WAGES**

9 (Violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197; Violation of IWC Wage Order §§3-4)

10 38. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
11 though fully set forth herein.

12 39. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
13 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
14 wage than the minimum so fixed is unlawful.

15 40. During the relevant time period, Defendants paid Plaintiff and Class Members
16 less than the minimum wage when they failed to pay proper compensation for all hours worked.
17 To the extent these hours do not qualify for the payment of overtime, Plaintiff and Class
18 Members were not being paid at least the minimum wage for their work.

19 41. During the relevant time period, Defendants regularly failed to pay at least the
20 minimum wage to Plaintiff and Class Members for all hours worked pursuant to Labor Code
21 §§ 1194 and 1197, as alleged herein.

22 42. Defendants' failure to pay Plaintiff and Class Members the required minimum
23 wage violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and Class
24 Members are entitled to recover the unpaid balance of their minimum wage compensation as
25 well as interest, costs, and attorneys' fees.

26 43. Pursuant to Labor Code § 1194.2, Plaintiff and Class Members are entitled to
27 recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued
28 interest thereon.

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME WAGES**

3 (Violation of Labor Code §§ 510, 511, 1194, and 1198; Violation of IWC Wage Order § 3)

4 44. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
5 though fully set forth herein.

6 45. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
7 unlawful to employ persons without compensating them at a rate of pay either one and one-half
8 (1½) or two (2) times the person's regular rate of pay, depending on the number of hours
9 worked by the person on a daily or weekly basis.

10 46. Specifically, the applicable IWC Wage Orders provide that Defendants are and
11 were required to pay overtime compensation to Plaintiff and Class Members at the rate of one
12 and one-half times (1½) their regular rate of pay when working and for all hours worked in
13 excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first
14 eight (8) hours of work on the seventh day of work in a workweek.

15 47. The applicable IWC Wage Orders further provide that Defendants are and were
16 required to pay overtime compensation to Plaintiff and Class Members at a rate of two times
17 their regular rate of pay when working and for all hours worked in excess of twelve (12) hours
18 in a day or in excess of eight (8) hours on the seventh day of work in a workweek.

19 48. California Labor Code § 510 codifies the right to overtime compensation at one
20 and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in
21 a day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
22 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
23 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
24 seventh day of work in a workweek.

25 49. Labor Code § 510 and the applicable IWC Wage Orders provide that
26 employment of more than six days in a workweek is only permissible if the employer pays
27 proper overtime compensation as set forth herein.

28 50. Plaintiff and Class Members were non-exempt employees entitled to the

1 protections of California Labor Code §§ 510 and 1194.

2 51. During the relevant time period, Defendants failed to pay Plaintiff and Class
3 Members overtime wages for all overtime hours worked when Plaintiff and Class Members
4 worked in excess of eight (8) hours in a day and/or forty (40) hours in a week or for a seventh
5 day of work in a workweek, or when Plaintiff and Class Members worked in excess of twelve
6 (12) hours in a day and/or in excess of eight (8) hours on the seventh day of work in a work
7 week. To the extent these hours qualify for the payment of overtime, Plaintiff and Class
8 Members worked shifts of eight (8) hours or more without being paid proper overtime wages.

9 52. During the relevant time period, Defendants failed to pay Plaintiff and Class
10 Members all wages owed when Defendants failed to properly implement an alternative
11 workweek election or failed to properly pay overtime wages under a valid alternative
12 workweek election.

13 53. In violation of state law, Defendants knowingly and willfully refused to perform
14 their obligations and compensate Plaintiff and Class Members for all wages earned and all
15 hours worked, as alleged herein.

16 54. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of
17 overtime and double time compensation, as required by California law, violates the provisions
18 of Labor Code §§ 510 and 1198, and is therefore unlawful.

19 55. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to
20 recover their unpaid overtime and double time compensation as well as interest, costs, and
21 attorneys' fees.

22 **THIRD CAUSE OF ACTION**

23 **FAILURE TO PROVIDE MEAL PERIODS**

24 (Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

25 56. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
26 though fully set forth herein

27 57. Labor Code § 226.7 provides that no employer shall require an employee to work
28 during any meal period mandated by the IWC Wage Orders.

1 58. Section 11 of the applicable IWC Wage Order states, “[n]o employer shall
2 employ any person for a work period of more than five (5) hours without a meal period of not
3 less than 30 minutes, except that when a work period of not more than six (6) hours will
4 complete the day’s work the meal period may be waived by mutual consent of the employer and
5 the employee.”

6 59. Labor Code § 512(a) provides that an employer may not require, cause, or permit
7 an employee to work for a period of more than five (5) hours per day without providing the
8 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if
9 the total work period per day of the employee is not more than six (6) hours, the meal period
10 may be waived by mutual consent of both the employer and the employee.

11 60. Labor Code § 512(a) also provides that an employer may not employ an
12 employee for a work period of more than ten (10) hours per day without providing the employee
13 with a second meal period of not less than thirty (30) minutes, except that if the total hours
14 worked is no more than twelve (12) hours, the second meal period may be waived by mutual
15 consent of the employer and the employee only if the first meal period was not waived.

16 61. During the relevant time period, Plaintiff and Class Members did not receive
17 compliant meal periods for working more than five (5) and/or ten (10) hours per day because
18 their meal periods were missed, late, short, and/or they were not permitted to take meal periods.

19 62. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
20 an employer to pay an employee one (1) additional hour of pay at the employee’s regular rate of
21 compensation for each work day that a compliant meal period is not provided.

22 63. At all relevant times, Defendants failed to pay Plaintiff and Class Members meal
23 period premiums for missed, late, and/or short meal periods pursuant to Labor Code § 226.7(b)
24 and section 11 of the applicable IWC Wage Order.

25 64. As a result of Defendants’ failure to pay Plaintiff and Class Members an
26 additional hour of pay for each day a compliant meal period was not provided, Plaintiff and
27 Class Members suffered and continue to suffer a loss of wages and compensation.

28 **FOURTH CAUSE OF ACTION**

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1 though fully set forth herein.

2 73. Labor Code § 226(a) requires Defendants to provide each employee with an
3 accurate wage statement in writing showing nine pieces of information, including, the
4 following: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of
5 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate
6 basis, (4) all deductions, provided that all deductions made on written orders of the employee
7 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the
8 period for which the employee is paid, (7) the name of the employee and the last four digits of
9 his or her social security number or an employee identification number other than a social
10 security number, (8) the name and address of the legal entity that is the employer, and (9) all
11 applicable hourly rates in effect during the pay period and the corresponding number of hours
12 worked at each hourly rate by the employee.

13 74. During the relevant time period, Defendants have knowingly and intentionally
14 failed to comply with Labor Code § 226(a) on wage statements that were provided to the Class
15 Members. The deficiencies include, among other things, the failure to correctly state the gross
16 and net wages earned, total hours worked, all applicable hourly rates in effect, and the number
17 of hours worked at each hourly rate by the Class Members.

18 75. As a result of Defendants' knowing and intentional failure to comply with Labor
19 Code § 226(a), the Class Members suffered injury and damage to their statutorily-protected
20 rights. Specifically, the Class Members are deemed to suffer an injury pursuant to Labor Code
21 § 226(e) where, as here, Defendants intentionally violated Labor Code § 226(a). The Class
22 Members were denied both their legal right to receive, and their protected interest in receiving,
23 accurate itemized wage statements under Labor Code § 226(a). Plaintiff has had to file this
24 lawsuit in order to analyze the extent of the underpayment, thereby causing Plaintiff to incur
25 expenses and lost time. Plaintiff would not have had to engage in these efforts and incur these
26 costs had Defendants provided the accurate hours worked, wages earned, and rates of pay. This
27 has also delayed Plaintiff's ability to demand and recover the underpayment of wages from
28 Defendants.

76. The Class Members are entitled to recover from Defendants the greater of all actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty dollars (\$50.00) 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 in an amount not exceeding four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

77. Defendants' violations of California Labor Code § 226(a) prevented the Class Members from knowing, understanding, and disputing the wages paid to them and resulted in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and intentional failure to comply with California Labor Code § 226(a), the Class Members have suffered an injury, in the exact amount of damages and/or penalties to be shown according to proof at trial.

78. The Class Members are also entitled to injunctive relief under California Labor Code § 226(h), compelling Defendants to comply with California Labor Code § 226. Accordingly, the Class Members seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

SIXTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT

(Violation of Labor Code §§ 201, 202, and 203)

79. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

80. Labor Code §§ 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 that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of an intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

81. During the relevant time period, Defendants willfully failed to pay the Waiting Time Subclass all their earned wages upon termination, including, but not limited to, proper

1 minimum wage and overtime compensation, meal period premiums, and rest period premiums
2 either at the time of discharge or within seventy-two (72) hours of their leaving Defendants'
3 employ.

4 82. Defendants' failure to pay the Waiting Time Subclass all their earned wages at
5 the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is
6 in violation of Labor Code §§ 201 and 202.

7 83. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
8 immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202,
9 then the wages of the employee shall continue as a penalty from the due date at the same rate
10 until paid or until an action is commenced; but the wages shall not continue for more than thirty
11 (30) days.

12 84. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover
13 from Defendants the statutory penalty, which is defined as the Waiting Time Subclass
14 members' regular daily wages at their regular hourly rate of pay for each day they were not
15 paid, up to a maximum of thirty (30) days.

16 SEVENTH CAUSE OF ACTION

17 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

18 (Violation of Labor Code §§ 2800, 2802)

19 85. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
20 though fully set forth herein.

21 86. Labor Code § 2800 states that an employer shall in all cases indemnify his
22 employee for losses.

23 87. Labor Code § 2802 requires employers to indemnify their employees for all
24 necessary expenditures or losses incurred by employees in direct consequence of the discharge of
25 their duties.

26 88. Section 9 of the applicable IWC Wage Order states that when tools or equipment
27 are required by the employer or are necessary to the performance of a job, such tools and
28 equipment shall be provided and maintained by the employer.

89. During the relevant time period, Defendants required Plaintiff and class members to incur cell phone, home internet, and other expenses without properly compensating them for such expenses.

90. In violation of Labor Code §§ 2800 and 2802, Defendants failed to indemnify Plaintiff and class members for these expenses.

91. In committing the violations as herein alleged, Defendants have intentionally and willfully failed to fully reimburse Plaintiff and class members for necessary business-related costs and expenses. As a direct result, Plaintiff and class members have suffered and continue to suffer substantial losses relating to the use and enjoyment of such compensation, wages, expenses, and attorney's fees.

EIGHTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.

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

92. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

93. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice . . .”

94. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be predicated on a violation of any state or federal law. In the instant case, Defendants' policies and practices violated state law, causing Plaintiff and Class Members to suffer and continue to suffer injuries-in-fact.

95. Defendants' policies and practices violated state law in at least the following respects:

- (a) Failing to pay all wages earned (including minimum wage and overtime wages) to Plaintiff and Class Members in violation of Labor Code §§ 204, 510, 511, 1182.12, 1194, 1194.2, 1197, and 1198;
- (b) Failing to provide compliant meal periods without paying Plaintiff and

1 Class Members premium wages for every day said meal periods were not
2 provided in violation of Labor Code §§ 226.7 and 512;

3 (c) Failing to authorize or permit compliant rest breaks without paying
4 Plaintiff and Class Members premium wages for every day said rest
5 breaks were not authorized or permitted in violation of Labor Code §
6 226.7;

7 (d) Failing to provide the Class Members with accurate itemized wage
8 statements in violation of Labor Code § 226;

9 (e) Failing to timely pay all earned wages to the members of the Waiting
10 Time Subclass upon separation of employment in violation of Labor
11 Code §§ 201, 202, and 203; and

12 (f) Failing to reimburse business expenses in violation of Labor Code §§
13 2800 and 2802.

14 96. As alleged herein, Defendants systematically engaged in unlawful conduct in
15 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages
16 (minimum and overtime wages), failing to provide meal periods and rest periods or
17 compensation in lieu thereof, failing to furnish accurate wage statements, failing to pay all
18 wages due and owing upon separation of employment in a timely manner, and failing to
19 reimburse business expenses, all in order to decrease their costs of doing business and increase
20 their profits.

21 97. At all relevant times herein, Defendants held themselves out to Plaintiff and
22 Class Members as being knowledgeable concerning the labor and employment laws of
23 California.

24 98. At the time Plaintiff and Class Members were hired, Defendants knowingly,
25 intentionally, and wrongfully misrepresented to each of them their conformance with the
26 California Labor Code and IWC Wage Orders, including proper payments required by law.

27 99. At all times relevant herein, Plaintiff and Class Members relied on and believed
28 Defendants' representations concerning their conformance with California's wage and hour

1 laws all to their detriment.

2 100. At all times relevant herein, Defendants intentionally avoided paying Plaintiff
3 and Class Members wages and monies, thereby creating for Defendants an artificially lower
4 cost of doing business in order to undercut their competitors and establish and/or gain a greater
5 foothold in the marketplace.

6 101. As a result of Defendants' intentional, willful, purposeful, and wrongful
7 misrepresentation of their conformance with the California Labor Code and IWC Wage Orders,
8 Plaintiff and Class Members suffered a loss of wages and monies, all in an amount to be shown
9 according to proof at trial.

10 102. By violating the foregoing statutes and regulations as herein alleged,
11 Defendants' acts constitute unfair and unlawful business practices under California Business
12 and Professions Code §§ 17200, *et seq.*

13 103. As a result of the unfair and unlawful business practices of Defendants, as
14 alleged herein, Plaintiff and Class Members are entitled to injunctive relief, disgorgement, and
15 restitution in an amount to be shown according to proof at trial.

16 104. Plaintiff seeks to enforce important rights affecting the public interest within the
17 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged
18 herein, has been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members,
19 and the general public. Based on Defendants' conduct as alleged herein, Plaintiff and Class
20 Members are entitled to an award of attorneys' fees pursuant to California Code of Civil
21 Procedure § 1021.5.

22 **NINTH CAUSE OF ACTION**

23 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

24 105. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs as
25 though fully set forth herein.

26 106. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
27 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
28 ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees for

1 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by
2 an aggrieved employee on behalf of himself or herself and other current or former employees
3 pursuant to the procedures specified in Labor Code § 2699.3.

4 107. For all provisions of the Labor Code except those for which a civil penalty is
5 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
6 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
7 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
8 period in which Defendants violated these provisions of the Labor Code.

9 108. Defendants' conduct violates numerous Wage Order and Labor Code sections,
10 including, but not limited to, the following:

- 11 a. violation of Labor Code §§ 201, 202, 203, 204, 210, 510, 511, 1182.12,
12 1194, 1197, and 1198 for failure to timely pay all earned wages (including
13 minimum wage and overtime wages) owed to Plaintiff and other aggrieved
14 employees during employment and upon separation of employment as
15 herein alleged;
- 16 b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal
17 periods to Plaintiff and other aggrieved employees and failure to pay
18 premium wages for missed meal periods as herein alleged;
- 19 c. violation of Labor Code § 226.7 for failure to permit rest breaks to
20 Plaintiff and other aggrieved employees and failure to pay premium wages
21 for missed rest periods as herein alleged;
- 22 d. violation of Labor Code § 226 for failure to provide accurate itemized
23 wage statements to Plaintiff and other aggrieved employees as herein
24 alleged;
- 25 e. violation of Labor Code §§ 2800 and 2802 for failure to reimburse
26 Plaintiff and other aggrieved employees for necessary business expenses
27 as herein alleged; and
28

1 f. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain
2 accurate and complete records showing, among other things, the hours
3 worked daily by and the wages paid to aggrieved employees.

4 109. Plaintiff is an “aggrieved employee” because he was employed by the alleged
5 violator and had one or more of the violations committed against him, and therefore is properly
6 suited to represent the interests of all other aggrieved employees.

7 110. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as
8 to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all
9 other aggrieved employees under PAGA.

10 111. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
11 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
12 cited above.

13 112. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred
14 herein.

15 **PRAYER FOR RELIEF**

16 Plaintiff, on his own behalf and on behalf of all others similarly situated, prays for relief
17 and judgment against Defendants, jointly and severally, as follows:

18 1. For certification under California Code of Civil Procedure § 382 of the proposed
19 Class, Waiting Time Subclass, and any other appropriate subclasses;

20 2. For appointment of James Michael Bowman as the class representative;

21 3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;

22 4. For compensatory damages in an amount according to proof at trial;

23 5. For an award of damages in the amount of unpaid compensation including, but
24 not limited to, unpaid wages, benefits, and penalties;

25 6. For economic and/or special damages in an amount according to proof at trial;

26 7. For liquidated damages pursuant to Labor Code § 1194.2;

27 8. For statutory penalties to the extent permitted by law, including those pursuant
28 to the Labor Code and IWC Wage Orders;

1 9. For injunctive relief as provided by the California Labor Code and California
2 Business and Professions Code §§ 17200, *et seq.*;

3 10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

4 11. For an order requiring Defendants to restore and disgorge all funds to each
5 employee acquired by means of any act or practice declared by this Court to be unlawful,
6 unfair, or fraudulent and, therefore, constituting unfair competition under Business and
7 Professions Code §§ 17200, *et seq.*;

8 12. For pre-judgment interest;

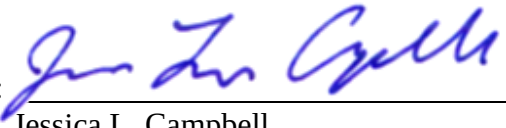
9 13. For civil penalties;

10 14. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted
11 by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§
12 226(e), 1194, 2802(c), and 2698 *et seq.*; and

13 15. For such other relief as the Court deems just and proper.

14
15 Dated: December 15, 2021

AEGIS LAW FIRM, PC

16
17 By: 

Jessica L. Campbell

Attorneys for Plaintiff James Michael Bowman