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the Putative Class, and all Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

22CV398574

ALONZO PINEDA, individually, on behalf of
those similarly situated, and all Aggrieved
Employees

Case No.:

CLASS AND REPRESENTATIVE ACTION

Plaintiff,

vs.

RECON360, LLC, a California limited
liability company;
ROSARIO WONG, an individual; and
DOES 1 through 100, inclusive,

Defendants.

COMPLAINT FOR:

1. Failure to Pay Minimum Wages (Labor Code §§ 1194, 1197, 1197.1, IWC Wage Order 16);
2. Failure to Pay Overtime Wages (Labor Code §§ 510, 1194, 1198, IWC Wage Order 16);
3. Failure to Provide Meal Periods (Labor Code § 226.7, IWC Wage Order 16);
4. Failure to Authorize and Permit Rest Periods (Labor Code § 226.7, IWC Wage Order 16);
5. Failure to Reimburse Business Expenses (Labor Code §§ 2802, 2804; IWC Wage Order 16);
6. Failure to Pay Final Wages Due Upon Separation (Labor Code §§ 201, 202, and 203);
7. Failure to Provide Accurate Itemized Wage Statements (Labor Code § 226(a), IWC Wage Order 16);
8. Unfair Competition (Business & Professions Code §§ 17200, et seq.); and

9. Civil Penalties Pursuant to PAGA (Labor Code § 2698, et seq.)

DEMAND FOR JURY TRIAL

Plaintiff ALONZO PINEDA (“Plaintiff”) on behalf of himself, and on behalf of those similarly situated current and former employees, files this Complaint against RECON360, LLC, a California limited liability company; ROSARIO WONG, an individual; and DOES 1 through 100, inclusive ("Defendants"). Plaintiff alleges and avers as follows:

JURISDICTION AND VENUE

1. This class action Complaint is brought pursuant to California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

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

3. This Court has jurisdiction over all Defendants because each Defendant is either a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

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

PARTIES

5. At all times herein relevant, Plaintiff ALONZO PINEDA (“Plaintiff”) was a resident of the State of California, in the County of Contra Costa.

6. Defendant RECON360, LLC (hereafter “RECON360”) is a limited liability

1 company and existing under the laws of the State of California, and transacts business
2 throughout the State of California, including in the County of Santa Clara.

3 7. Plaintiff is informed and believes that at all times herein mentioned Defendant
4 ROSARIO WONG (hereafter “WONG”) was an individual who resided in San Jose County,
5 California.

6 8. Plaintiff is informed and believes, and based thereon alleges, that WONG, an
7 individual, was at all times relevant, an owner, director, officer, and/or managing agent of
8 Recon360 and while acting in this capacity caused said corporation to violate provisions of the
9 Labor Code including but not limited to sections 203, 226.7, 1194 and 2802 and provisions of
10 IWC Wage Order 16 regulating minimum wages or hours and days of work, with respect to
11 Plaintiff, the other class members, and all other aggrieved employees. Thus, pursuant to Labor
12 Code § 558.1, WONG is jointly and severally liable for the violations alleged herein.

13 9. At all relevant times, Defendants RECON360 and WONG were the “employers”
14 of Plaintiff within the meaning of all applicable state laws and statutes.

15 10. At all times herein relevant, Defendants RECON360, WONG, and DOES 1
16 through 100, and each of them, were the joint employers, alter egos, agents, partners, joint
17 venturers, representatives, servants, employees, successors-in-interest, co-conspirators and
18 assigns, each of the other, and at all times relevant hereto were acting within the course and
19 scope of their authority as such joint employers, alter egos, agents, partners, joint venturers,
20 representatives, servants, employees, successors, co-conspirators and assigns, and that all acts or
21 omissions alleged herein were duly committed with the ratification, knowledge, permission,
22 encouragement, authorization and consent of each Defendant designated herein.

23 11. The true names and capacities, whether corporate, associate, individual or
24 otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sues said
25 Defendants by such fictitious names. Plaintiff is informed and believes, and based on that
26 information and belief alleges, that each of the Defendants designated as a Doe is legally
27 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
28 the injuries and damages to Plaintiff alleged this Complaint. Plaintiff will seek leave of court to

1 amend this Complaint to show the true names and capacities when the same have been
2 ascertained.

3 12. Defendants RECON360, WONG, and DOES 1 through 100 will hereinafter
4 collectively be referred to as “Defendants.”

5 **FACTUAL ALLEGATIONS**

6 13. Defendants employed Plaintiff as a non-exempt, hourly-paid employee from
7 approximately January 2021, through approximately September 2021, throughout the State of
8 California, including in the County of Santa Clara.

9 14. Defendants had the authority to hire and terminate Plaintiff, the other class
10 members, and all aggrieved employees; to set work rules and conditions governing Plaintiff, the
11 other class members, and all aggrieved employees; and to supervise their daily employment
12 activities.

13 15. Defendants directly hired and paid wages and benefits to Plaintiff, the other class
14 members, and all aggrieved employees.

15 16. Plaintiff is informed and believes, and based thereon alleges that, at all material
16 times set forth herein, Defendants engaged in a uniform policy and systematic scheme of wage
17 abuse against their hourly paid employees.

18 17. Plaintiff is informed and believes, and based thereon alleges, that at all material
19 times set forth herein, Defendants knew or should have known that they had a duty to
20 compensate Plaintiff, the other class members, and all aggrieved employees pursuant to
21 California law.

22 18. Plaintiff is informed and believes, and based thereon alleges, that at all material
23 times set forth herein, Defendants knew or should have known that Plaintiff, the other class
24 members, and all aggrieved employees were entitled to receive at least minimum wage for all
25 hours worked and Defendants failed to comply with the applicable provisions of the Labor Code
26 and Industrial Welfare Commission (“IWC”) Wage Order 16 requiring Defendants to
27 compensate Plaintiff, the other class members, and all aggrieved employees at least minimum
28 wage for all hours worked. Among other things, Defendant had in place an unlawful scheme to

1 avoid payment of all wages owed to Plaintiff, the other class members, and other aggrieved
2 employees. Defendant failed to record all hours worked and failed to pay overtime, including but
3 not limited to off the clock post-shift cleaning up time and pre-shift preparatory travel time
4 picking up and transporting tools and equipment. Defendants implemented a timekeeping system
5 that would not permit Plaintiff, the other class members, and other aggrieved employees to clock
6 into their timekeeping system more than 5 minutes in advance of their scheduled start time
7 despite being required to start work earlier. Further, Plaintiff, the other class members, and other
8 aggrieved employees were required to clock out of their timekeeping system at 4:30pm, but
9 required to continue working off the clock until the job site was clean.

10 19. Defendants implemented a policy and practice of instructing and/or pressuring
11 hourly employees not to record overtime hours on their timecards and deleting overtime hours
12 from employees' timecards when they did record overtime. Moreover, Defendants automatically
13 deducted 30 minutes from every shift worked by Plaintiff, the other class members, and other
14 aggrieved employees, despite the fact that Plaintiff, the other class members, and other aggrieved
15 employees were frequently not provided timely meal periods of at least 30 minutes in length, if
16 they were provided at all. On days in which Plaintiff, the other class members, and other
17 aggrieved employees worked more than 8 hours and were not provided a bona fide meal period,
18 Defendants' illegal deduction of 30 minutes deprived them of overtime pay due and owing.

19 20. Defendants also implemented a rounding policy that is not neutral and, over time,
20 results in the systematic underpayment of wages to Plaintiff, the other class members, and all
21 aggrieved employees.

22 21. Plaintiff is informed and believes, and based thereon alleges, that at all material
23 times set forth herein, Defendants knew or should have known that Plaintiff, the other class
24 members, and all aggrieved employees were working overtime hours that Defendants failed to
25 compensate as required by the applicable provisions of the Labor Code and IWC Wage Order 16.

26 22. Plaintiff is informed and believes, and based thereon alleges, that at all material
27 times set forth herein, Defendants failed to comply with the applicable provisions of the Labor
28 Code and IWC Wage Order 16 requiring Defendants to provide non-exempt employees with

1 legally compliant meal periods. Among other things, Defendants failed to provide non-exempt
2 employees with at least a 30-minute duty-free meal period before the end of their fifth (5th) hour
3 of work when working more than six (6) hours in a workday, and a second 30-minute duty-free
4 meal period before the end of their tenth (10th) hour of work when working more than ten (10)
5 hours in a workday. First meal periods were not recorded, and were frequently provided late,
6 shorter than 30 minutes, interrupted by work, or denied altogether. Further, second meal periods
7 were not provided at all, and third rest periods were not authorized and permitted, even when
8 employees worked more than 10 hours in a shift.

9 23. Plaintiff and the other class members are entitled to receive payment of one
10 additional hour of pay at Plaintiff's and the other class members' regular rate of pay for each day
11 that Defendants failed to provide a legally compliant meal period.

12 24. Plaintiff is informed and believes, and based thereon alleges, that at all material
13 times set forth herein, Defendants failed to comply with the applicable provisions of the Labor
14 Code and IWC Wage Order 16 requiring Defendants to authorize and permit non-exempt
15 employees to take legally compliant rest periods. Among other things, first and second rest
16 periods were frequently shorter than 10 minutes, interrupted by work, or denied altogether and
17 third rest periods were not authorized and permitted, even when employees worked more than 10
18 hours in a shift.

19 25. Plaintiff and the other class members are entitled to receive payment of one
20 additional hour of pay at Plaintiff's and the other class members' regular rate of pay for each day
21 that Defendants failed to authorize and permit a legally compliant rest period.

22 26. Plaintiff is informed and believes, and based thereon alleges, that at all material
23 times set forth herein, Defendants knew or should have known that Plaintiff, the other class
24 members, and all aggrieved employees were entitled to reimbursement or indemnification of
25 necessary business expenses they incurred in the discharge of their work-related duties and that
26 Defendants regularly and consistently failed to reimburse or indemnify Plaintiff, the other class
27 members, and all aggrieved employees for such business expenses, as required under California
28 Labor Code section 2802.

1 27. Plaintiff is informed and believes, and based thereon alleges, that at all material
2 times set forth herein, Defendants knew or should have known that Plaintiff, the other class
3 members, and all aggrieved employees were entitled to receive all wages due to them, within the
4 applicable pay periods required under California Labor Code section 204 and that Defendants
5 regularly and consistently failed to pay Plaintiff, the other class members, and all aggrieved
6 employees all wages due to them within the applicable pay periods required under California
7 Labor Code section 204.

8 28. Plaintiff is informed and believes, and based thereon alleges, that at all material
9 times set forth herein, Defendants knew or should have known that Plaintiff, the other class
10 members, and all aggrieved employees were entitled to receive all wages owed to them upon
11 discharge or resignation and that Defendants regularly, consistently, and willfully failed to pay
12 Plaintiff, the other class members, and all aggrieved employees all wages owed to them upon
13 discharge or resignation.

14 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
15 knew or should have known that Plaintiff, the other class members, and all aggrieved employees
16 were entitled to receive complete and accurate wage statements in accordance with California
17 law.

18 30. At all material times set forth herein, Defendants regularly and consistently failed
19 to provide complete and accurate wage statements to Plaintiff, the other class members, and all
20 aggrieved employees. Among other things, Defendants failed to pay or report all hours worked
21 and/or all overtime hours.

22 31. Defendants have common policies and practices that apply to all non-exempt,
23 hourly employees working in the State of California. These common policies and practices result
24 in the legal violations described herein, making such claims susceptible to common proof and
25 adjudication.

26 32. For example, Defendants have utilized the following policies and practices for
27 their employees throughout the State of California during the relevant time periods:

28 a. Prohibiting non-exempt employees from reporting all hours worked,

1 including overtime hours;

- 2 b. Automatically deducting compensable hours worked from non-exempt
3 employees' time, for lunch periods that were not provided;
- 4 c. Implementing a "rounding" system that is not neutral and that
5 systematically underpays non-exempt employees for time worked;
- 6 d. Failing to reimburse necessary business expenses;
- 7 e. Failing to pay non-exempt employees for overtime hours during the time
8 period required for the payment of overtime;
- 9 f. Failing to accurately report on wage statements, all hours worked, the
10 overtime hours worked, the inclusive dates during which such regular and
11 overtime hours were worked, and meal and rest period premiums due; and
- 12 g. Failing to accurately record the times in which non-exempt employees
13 began and ended periods of work, including meal periods;
- 14 h. Failing to authorize and permit non-exempt employees to take rest
15 periods.
- 16 i. Failing to timely pay non-exempt employees all wages upon separation
17 from their employment.

18 **CLASS ACTION ALLEGATIONS**

19 33. Plaintiff brings this action on her own behalf and on behalf of all other current
20 and former employees of Defendants similarly situated, and thus, seeks class certification under
21 Code of Civil Procedure section 382.

22 34. The proposed class is defined as follows:

23 **All current and former hourly-paid or non-exempt employees**
24 **employed by Defendants within the State of California at any time**
25 **during the period from July 31, 2021, until final judgment.**

26 35. Plaintiff reserves the right to establish subclasses as appropriate.

27 36. The class is ascertainable and there is a well-defined community of interest in the
28 litigation:

- 1 a. The class members are so numerous that joinder of all class members is
2 impracticable. The membership of the entire class is unknown to Plaintiff
3 at this time; however, the class is estimated to be approximately 200
4 individuals and the identity of such membership is readily ascertainable by
5 inspection of Defendants' employment records.
- 6 b. Plaintiff's claims are typical of all other class members' as demonstrated
7 herein. Plaintiff will fairly and adequately protect the interests of the other
8 class members with whom they have a well-defined community of
9 interest.
- 10 c. Plaintiff will fairly and adequately protect the interests of each class
11 member, with whom they have a well-defined community of interest and
12 typicality of claims, as demonstrated herein. Plaintiff has no interest that is
13 antagonistic to the other class members. Plaintiff's attorneys, the proposed
14 Class Counsel, highly experienced attorneys in wage and hour,
15 representative, and class action litigation and are versed in the rules
16 governing class action discovery, certification, settlement, and trial.
17 Plaintiff has incurred, and during the pendency of this action will continue
18 to incur, costs and attorney's fees, that have been, are, and will be
19 necessarily expended for the prosecution of this action for the substantial
20 benefit of each class member.
- 21 d. A class action is superior to other available methods for the fair and
22 efficient adjudication of this litigation because individual joinder of all
23 class members is impractical.
- 24 e. Certification of this lawsuit as a class action will advance public policy
25 objectives. Employers of this great state violate employment and labor
26 laws every day. Current employees are often afraid to assert their rights
27 out of fear of direct or indirect retaliation. However, class actions provide
28 the class members who are not named in the complaint anonymity that

allows for the vindication of their rights.

37. There are common questions of law and fact as to the class members that predominate over questions affecting only individual members. The following common questions of law or fact, among others, exists as to the members of the class:

- a. Whether Plaintiff and the other class members did not receive wages for all time worked;
- b. Whether Defendants knew or should have known that Plaintiff and the other class members worked over eight (8) hours per day or forty (40) hours per week, but were not properly paid for those overtime hours;
- c. Whether Defendants' rounding policy and practice systematically underpaid non-exempt employees for time worked;
- d. Whether Defendants deprived Plaintiff and class members of legally compliant meal periods;
- e. Whether Defendants failed to indemnify or reimburse Plaintiff and class members for necessary business expenses incurred;
- f. Whether Defendants failed to timely pay wages due to Plaintiff and the other class members within the required pay periods during their employment;
- g. Whether Defendants failed to pay all wages due to Plaintiff and the other class members within the required time upon their discharge or resignation;
- h. Whether Defendants failed to provide Plaintiff and the other class members accurate wage statements;
- i. Whether Defendants' conduct was willful;
- j. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code sections 17200 et seq.;
- k. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and

1. Whether Plaintiff and the class are entitled to compensatory damages pursuant to the California Labor Code and UCL.

PRIVATE ATTORNEYS GENERAL ACT 2004 “PAGA” ALLEGATIONS

38. At all times herein set forth, the California Labor Code Private Attorneys General Act of 2004, Labor Code §2698, et seq. (hereinafter “PAGA”) was applicable to Plaintiff and all aggrieved employees throughout their employment with Defendants.

39. At all times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (hereinafter “LWDA”) for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

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

41. Plaintiff was employed by Defendants and the alleged violations were committed against him and other aggrieved employees during their time of employment. Plaintiff and the other aggrieved employees worked for Defendants in California as non-exempt or hourly employees during the relevant time period. Thus, Plaintiff is an “aggrieved employee” as defined by California Labor Code section 2699, subdivision (c).

42. On November 24, 2021, pursuant to Labor Code § 2699.3, Plaintiff filed notice with California’s Labor and Workforce Development Agency (“LWDA”) and posted by certified mail to Defendants notice of the specific provisions of the Labor Code that have been violated, including the facts and theories to support the violations.

43. The LWDA has failed to notify Plaintiff of its intent to investigate these penalty claims within sixty-five (65) days.

44. Thus, Plaintiff has exhausted administrative remedies under PAGA's Labor Code § 2699.3(a)(2)(A) and may pursue civil PAGA penalties in a representative capacity for

Defendants' violations of the California Labor Code and Wage Order 16.

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Violation of California Labor Code §§ 1194, 1197, 1197.1, and IWC Wage Order 16)

(Against All Defendants and DOES 1 through 100)

45. Plaintiff, all members of the putative class, and all aggrieved employees re-allege and incorporate into this cause of action each of the preceding paragraphs.

46. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide that minimum wages must be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

47. During the relevant time period, Defendants intentionally and willfully failed to pay minimum wage to Plaintiff all members of the putative class, and all aggrieved employees as required, pursuant to California Labor Code sections 1194, 1197, and 1197.1.

48. Defendants' failure to pay Plaintiff, all members of the putative class, and all aggrieved employees the minimum wage as required violates California Labor Code sections 1194, 1197, and 1197.1 and IWC Wage Order 16. Pursuant to California Labor Code sections 1194, 1197, and 1197.1 Plaintiff and all members of the putative class are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

49. Pursuant to California Labor Code section 1197.1, Plaintiff and all members of the putative class are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each employee minimum wages.

50. Pursuant to California Labor Code section 1194.2, Plaintiff and all members of the putative class are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

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1 1/2) times such employee's regular rate of pay for all hours worked over eight (8) hours in any
2 workday and for the first eight (8) hours on the seventh (7th) day of work and double the
3 employee's regular rate of pay for all hours worked over eight (8) on the seventh (7th) day of
4 work in the workweek.

5 57. During the relevant time period, Plaintiff, all members of the putative class, and
6 other aggrieved employees worked in excess of eight (8) hours in a day and/or forty (40) hours in
7 a work week but did not receive overtime pay for all hours worked because Defendants
8 automatically deducted time for meal periods that were not provided, instructed and/or pressured
9 employees not to record all overtime hours worked, and implemented an unlawful rounding
10 policy, and illegal timekeeping practice which did not permit Plaintiffs to record all hours
11 worked.

12 58. During the relevant time period, Defendants intentionally and willfully failed to
13 pay overtime wages owed to Plaintiff, all members of the putative class, and all aggrieved
14 employees.

15 59. Defendants' failure to pay Plaintiff, all members of the putative class, and all
16 aggrieved employees overtime compensation, as required by California laws, violates the
17 provisions of California Labor Code section 1198, and is therefore unlawful.

18 60. Pursuant to California Labor Code section 1194, subdivision (a), notwithstanding
19 any agreement to work for a lesser wage, any employee receiving less than the legal minimum
20 wage or the legal overtime compensation applicable to the employee is entitled to recover in a
21 civil action the unpaid balance of the full amount of this minimum wage or overtime
22 compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

23 61. Pursuant to California Labor Code section 1194, Plaintiff and all members of the
24 putative class are entitled to recover unpaid overtime compensation, as well as interest, costs,
25 and attorneys' fees.

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1 all aggrieved employees who were scheduled to work for a period of time in excess of six (6)
2 hours were required to work for periods longer than five (5) hours without a legally compliant
3 first meal period of not less than thirty (30) minutes, and without a second meal period of not
4 less than thirty (30) minutes when working more than ten (10) hours.

5 69. During the relevant time period, Defendants intentionally and willfully failed to
6 provide Plaintiff, all members of the putative class, and all aggrieved employees with meal
7 periods within the legally required timeframes, if at all, and failed to compensate Plaintiff, all
8 members of the putative class, and all aggrieved employees with meal period premiums for
9 missed or untimely meal periods.

10 70. As Defendants' employees frequently worked off the clock before and after their
11 scheduled shifts, meal periods were not provided according to the law. Defendants willfully
12 failed to accurately record all Plaintiff's, all members of the putative class, and all aggrieved
13 employees' work hours, which often exceeded ten (10) hours per day. Defendants failed to
14 accurately record starting or ending times of employees' meal periods and deducted 30 minutes
15 from employees' time irrespective of whether a meal period was provided. Defendants failed to
16 provide Plaintiff, all members of the putative class, and all aggrieved employees a second meal
17 period when they worked more than ten (10) hours per day.

18 71. Defendants' conduct violates IWC Wage Order 16 and California Labor Code
19 section 226.7.

20 72. During the relevant time period, Defendants failed to pay Plaintiff, all members of
21 the putative class, and all aggrieved employees meal period premiums due pursuant to California
22 Labor Code section 226.7.

23 73. Pursuant to IWC Wage Order 16 and California Labor Code section 226.7
24 subdivision (b), Plaintiff and all members of the putative class are entitled to recover from
25 Defendants one additional hour of pay at the employee's regular rate of compensation for each
26 workday that a legally compliant meal period was not provided.

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

3 **(Violation of California Labor Code § 226.7 and IWC Wage Order 16)**

4 **(Against All Defendants and DOES 1 through 100)**

5 74. Plaintiff, all members of the putative class, and all aggrieved employees re-allege
6 and incorporate into this cause of action each of the preceding paragraphs.

7 75. Pursuant to Labor Code § 226.7, and California Industrial Welfare Commission
8 Wage Order 16, Plaintiff, all members of the putative class, and all aggrieved employees were,
9 each workday, entitled to one off-duty rest period (no less than 10 minutes in duration) for every
10 4 hour worked, or major fraction thereof.

11 76. Defendants, and each of them, contrary to law, did not provide Plaintiff, all
12 members of the putative class, and all aggrieved employees the off-duty rest periods to which
13 they were entitled.

14 77. Defendants' conduct violates IWC Wage Order 16 and California Labor Code
15 section 226.7.

16 78. During the relevant time period, Defendants failed to pay Plaintiff, all members of
17 the putative class, and all aggrieved employees rest period premiums due pursuant to California
18 Labor Code section 226.7.

19 79. Pursuant to IWC Wage Order 16 and California Labor Code section 226.7
20 subdivision (b), Plaintiff and all members of the putative class are entitled to recover from
21 Defendants one additional hour of pay at the employee's regular rate of compensation for each
22 workday that a legally compliant rest period was not authorized or permitted.

23 **FIFTH CAUSE OF ACTION**

24 **FAILURE TO INDEMNIFY OR REIMBURSE BUSINESS EXPENSES**

25 **(Violation of California Labor Code §§ 2802, 2804 and IWC Wage Order 16)**

26 **(Against All Defendants and DOES 1 through 100)**

27 80. Plaintiff, all members of the putative class, and all aggrieved employees re-allege
28 and incorporate into this cause of action each of the preceding paragraphs.

81. Pursuant to Labor Code § 2802(a), Plaintiff, all members of the putative class, and all aggrieved employees were entitled to indemnification or reimbursement for “all necessary expenditures or losses incurred in direct consequence of the discharge of his or her duties.”

82. Defendants systematically required Plaintiff, all members of the putative class, and all aggrieved employees to incur necessary business expenses on Defendants' behalf, including but not limited to installing and using a timekeeping application on their personal cellphones in order to record their work hours, and utilizing their personal vehicles for work related purposes.

83. Defendants systematically failed to indemnify or reimburse Plaintiff, all members of the putative class, and all aggrieved employees for these expenses incurred on Defendants' behalf.

84. Defendants' conduct violates IWC Wage Order 16 and California Labor Code section 2802.

85. Plaintiff has suffered damages in amounts to be proven at trial and is entitled to all appropriate remedies provided by the California Labor Code and the Industrial Welfare Commission (“IWC”) Wage Orders, including unpaid wages, liquidated damages, and civil penalties.

86. In addition, pursuant to Labor Code § 2802 (c), Defendants are liable to Plaintiff for reasonable attorney's fees and costs, which are hereby demanded, in an amount to be proven at trial.

SIXTH CAUSE OF ACTION

FAILURE TO PAY FINAL WAGES DUE UPON SEPARATION

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

(Against All Defendants and DOES 1 through 100)

87. Plaintiff, all members of the putative class, and all aggrieved employees re-allege and incorporate into this cause of action each of the preceding paragraphs.

88. Pursuant to California Labor Code sections 201 and 202, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and

1 payable immediately, and if an employee quits his or her employment, his or her wages shall
2 become due and payable not later than seventy-two (72) hours thereafter, unless the employee
3 has given seventy-two (72) hours' notice of his or her intention to quit, in which case the
4 employee is entitled to his or her wages at the time of quitting.

5 89. During the relevant time period, Defendants intentionally and willfully failed to
6 pay Plaintiff, all members of the putative class, and all aggrieved employees their wages, earned
7 and unpaid, upon termination or within seventy-two (72) hours of them leaving Defendants'
8 employ.

9 90. These earned and unpaid wages to Plaintiff, all members of the putative class, and
10 all aggrieved employees included, without limitation, unpaid minimum wages and overtime pay.

11 91. Defendants' failure to pay Plaintiff, all members of the putative class, and all
12 aggrieved employees their wages, earned and unpaid, either upon their termination or within
13 seventy-two (72) hours of them leaving Defendants' employ, is in violation of California Labor
14 Code sections 201 and 202.

15 92. Pursuant to California Labor Code section 203, if an employer willfully fails to
16 pay, without abatement or reduction, in accordance with sections 201 and 202, any wages of an
17 employee who is discharged or who quits, the wages of the employee shall continue as a penalty
18 from the due date thereof at the same rate until paid or until an action is commenced; but the
19 wages shall not continue for more than thirty (30) days.

20 93. Plaintiff and all members of the putative class are entitled to recover the statutory
21 penalty for each day they were not paid, at their regular hourly rate of pay, up to thirty (30) days
22 maximum pursuant to California Labor Code section 203.

23 **SEVENTH CAUSE OF ACTION**

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

25 **(Violation of California Labor Code § 226(a) and IWC Wage Order 16)**

26 **(Against All Defendants and DOES 1 through 100)**

27 94. Plaintiff, all members of the putative class, and all aggrieved employees re-allege
28 and incorporate into this cause of action each of the preceding paragraphs.

1 95. Pursuant to California Labor Code section 226, subdivision (a), every employer
2 shall furnish each of his or her employees an accurate itemized statement in writing showing: (1)
3 gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units
4 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
5 deductions, provided that all deductions made on written orders of the employee may be
6 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
7 which the employee is paid, (7) the name of the employee and his or her social security number,
8 (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly
9 rates in effect during the pay period and the corresponding number of hours worked at each
10 hourly rate by the employee. The deductions made from payments of wages shall be recorded in
11 ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the
12 statement or a record of the deductions shall be kept on file by the employer for at least three
13 years at the place of employment or at a central location within the State of California.

14 96. Defendants intentionally and willfully failed to provide Plaintiff, all members of
15 the putative class, and all aggrieved employees with complete and accurate wage statements. The
16 deficiencies included one or more of the following: the failure to include the correct total number
17 of hours worked by Plaintiff, all members of the putative class, and all aggrieved employees and
18 the failure to include the correct hourly rate for said hours worked.

19 97. As a result of Defendants' violation of California Labor Code section 226,
20 subdivision (a), Plaintiff, all members of the putative class, and all aggrieved employees
21 experience actual injury because it: (1) resulted in the nonpayment of wages; (2) deprived
22 Plaintiff, all members of the putative class, and all aggrieved employees of the information
23 necessary to identify discrepancies in Defendants' reported data; (3) created confusion over
24 whether they received all wages owed to them; (4) created difficulty and expense involved in
25 reconstructing pay records; (5) forced Plaintiff, all members of the putative class, and all
26 aggrieved employees to make mathematical computations to analyze whether the wages paid in
27 fact properly compensated them, and (6) forced Plaintiff, all members of the putative class, and
28 all aggrieved employees to incur legal fees and costs in order to determine whether they had been

1 fully and timely paid for all hours worked.

2 98. Pursuant to California Labor Code section 226(e)(1), Plaintiff and the other class
3 members are entitled to recover penalties, costs, and attorney's fees.

4 **EIGHTH CAUSE OF ACTION**

5 **UNFAIR COMPETITION**

6 **(Violation of California Business & Professions Code §§ 17200 et seq.)**

7 **(Against All Defendants and DOES 1 through 100)**

8 99. Plaintiff, all members of the putative class, and all aggrieved employees re-allege
9 and incorporate into this cause of action each of the preceding paragraphs.

10 100. Defendants, and each of them, are "persons" as defined by Business and
11 Professions Code § 17201.

12 101. Defendants' conduct, as alleged in this Complaint, has been, and continues to be,
13 unfair, unlawful, and harmful to Plaintiff, all members of the putative class, all aggrieved
14 employees, and Defendants' competitors. Accordingly, Plaintiff, all members of the putative
15 class, and all aggrieved employees seek to enforce important rights affecting the public interest
16 within the meaning of Code of Civil Procedure section 1021.5.

17 102. A violation of California Business & Professions Code sections 17200, et seq.
18 may be predicated on the violation of any state or federal law.

19 103. Defendants' activities as alleged herein are violations of California law, and
20 constitute unlawful business acts and practices in violation of California Business & Professions
21 Code sections 17200, et seq.

22 104. Defendants have previously or continue to engage in unlawful, unfair, and/or
23 fraudulent business practices in violation of California Business and Professions Code § 17200,
24 et seq., by, *inter alia*:

- 25 a. Failing to pay legally required minimum wages to Plaintiff, all members
26 of the putative class, and all aggrieved employees;
- 27 b. Prohibiting Plaintiff, all members of the putative class, and all aggrieved
28 employees from reporting all overtime hours worked;

- c. Failing to pay legally required overtime premiums to Plaintiff, all members of the putative class, and all aggrieved employees;
- d. Automatically deducting time from Plaintiff, all members of the putative class, and all aggrieved employees' timecards for meal periods that were not provided;
- e. Utilizing a "rounding" policy and practice that systematically underpaid Plaintiff, all members of the putative class, and all aggrieved employees;
- f. Failing to provide legally compliant meal periods to Plaintiff, all members of the putative class, and all aggrieved employees;
- g. Failing to accurately record the times in which Plaintiff, all members of the putative class, and all aggrieved employees began and ended periods of work, including meal periods;
- h. Failing to authorize and permit rest periods to Plaintiff, all members of the putative class, and all aggrieved employees;
- i. Failing to indemnify or reimburse necessary business expenses incurred by Plaintiff, all members of the putative class, and all aggrieved employees; and
- j. Failing to accurately report on Plaintiff, all members of the putative class, and all aggrieved employees' wage statements all hours worked, including regular and overtime hours;

105. Defendants, and each of them, have profited from these unlawful, unfair, and fraudulent business practices at the expense of Plaintiff, all members of the putative class, all aggrieved employees, and at the expense of law-abiding businesses and the public.

106. As a direct and proximate result of Defendants' unfair and unlawful business practices as alleged herein, Plaintiff and all members of the putative class have sustained injury and damages, in amounts to be proven at trial.

107. Defendants, and each of them, should therefore be ordered to immediately cease from engaging in the unlawful, unfair, and fraudulent conduct alleged herein, and restore as

1 restitution to Plaintiff and all members of the putative class those amounts accrued during the
2 relevant claim period, and not otherwise awarded in connection with the previous causes of
3 action.

4 108. Plaintiff and all members of the putative class seek restitution of wages from all
5 Defendants in an amount to be proven at trial, and an injunction prohibiting Defendants from
6 engaging in the unlawful, unfair, and fraudulent conduct alleged herein.

7 109. In addition, Defendants are liable to Plaintiff and all members of the putative class
8 for reasonable attorney's fees and costs, which are respectfully requested, in an amount to be
9 proven according to law.

10 **NINTH CAUSE OF ACTION**

11 **CIVIL PENALTIES PURSUANT TO**

12 **PRIVATE ATTORNEYS GENERAL ACT 2004 ("PAGA")**

13 **(Violation of California Labor Code §§ 2698, et seq.)**

14 **(Against All Defendants and DOES 1 through 100)**

15 110. Plaintiff, all members of the putative class, and all aggrieved employees re-allege
16 and incorporate into this cause of action each of the preceding paragraphs.

17 111. The Private Attorneys General Act 2004 (California Labor Code §§ 2698, et seq.)
18 ("PAGA") expressly establishes that any provision of the California Labor Code which provides
19 for a civil penalty to be assessed and collected by the LWDA, or any of its departments,
20 divisions, commissions, boards, agencies or employees for a violation of the California Labor
21 Code, may be recovered through a civil action brought by an aggrieved employee on behalf of
22 himself or herself, and other current or former employees.

23 112. Plaintiff and the other non-exempt or hourly employees are "aggrieved
24 employees" as defined by California Labor Code section 2699, subdivision (c) in that they are all
25 current or former employees of Defendants, and one or more of the alleged violations were
26 committed against them.

27 113. Pursuant to California Labor Code section 2699, Plaintiff, in a representative
28 capacity on behalf of all aggrieved employees, requests and is entitled to recover from

1 Defendants and each of them, civil penalties according to proof, interest, attorneys' fees and
2 costs.

3 114. Pursuant to California Labor Code section 2699, subdivision (i), civil penalties
4 recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to
5 the Labor and Workforce Development Agency for the enforcement of labor laws and education
6 of employers and employees about their rights and responsibilities and twenty-five percent
7 (25%) to the aggrieved employees.

8 115. As described in greater detail *supra*, at all times relevant to this action,
9 Defendants devised, formulated, implemented, and enforced, the following policies and
10 procedures in violation of California Law, including but not limited to the provisions of the
11 California Labor Code and Industrial Welfare Commission ("IWC") Wage Order 16, which give
12 rise to PAGA civil penalties under Cal. Lab. Code § 2698, *et seq.*:

13 **Civil Penalties for Failure to Pay Minimum Wages**

14 116. Through their policies and practices, Defendants failed to pay Plaintiff, members
15 of the putative class, and all aggrieved employees at least the applicable minimum wage for all
16 hours, in violation of Labor Code §§ 1194, 1197, 1191.1, and 1199.

17 **Civil Penalties for Failure to Pay Overtime**

18 117. While employed by Defendants, Plaintiff, members of the putative class, and all
19 aggrieved employees were required, suffered and permitted to work overtime hours.

20 118. Through their policies and practices, including their policy and practice of
21 prohibiting employees from recording overtime hours, deducting time for meal periods that were
22 not provided, and utilizing an unlawful system of rounding, Defendants failed to pay premium
23 wages for all overtime hours, in violation of Labor Code §§ 510; 1194, and IWC Wage Order 16.

24 **Civil Penalties for Failure to Provide Meal Periods**

25 119. Through their policies and practices, Defendants failed to provide legally
26 compliant meal periods in violation of the Wage Order 16 and California Labor Code section
27 226.7 and California Labor Code section 512.

28 120. Defendants implements an illegal policy of automatically deducting a 30-minute

1 meal period per day, irrespective of whether or when such meal periods were provided, or for
2 what duration. As such, any first meal periods automatically recorded by Defendants were
3 inaccurate. Defendants also failed to record second meal periods when Plaintiff, members of the
4 putative class, and all aggrieved employees worked more than 10 hours per day.

5 **Civil Penalties for Failure to Authorize and Permit Rest Periods**

6 121. Through their policies and practices, Defendants failed to authorize and permit
7 legally compliant rest periods in violation of the Wage Order 16 and California Labor Code
8 section 226.7

9 122. During the relevant time period, Defendants implemented an illegal practice of
10 failing to inform and provide Plaintiff, members of the putative class, and all aggrieved
11 employees with legally compliant rest periods.

12 **Civil Penalties for Failure to Indemnify or Reimburse Business Expenses**

13 123. Through their policies and practices, Defendants failed to indemnify or reimburse
14 Plaintiff, members of the putative class, and all aggrieved employees for necessary business
15 expenses incurred in violation of the Wage Order 16 and California Labor Code section 2802.

16 124. Defendants required Plaintiff, members of the putative class, and all aggrieved
17 employees to install an application on their personal cellphones in order to record their work
18 hours, and utilize their personal vehicles for work-related duties.

19 **Civil Penalties for Failure to Timely Pay Wages Upon Separation**

20 125. Through their policies and practices, Defendants failed to timely pay Plaintiff,
21 members of the putative class, and all aggrieved employees all wages due upon separation from
22 their employment in violation of California Labor Code sections 201, 202, and 203.

23 126. Further, even though Defendants failed to timely pay employees all wages due
24 upon separation, Defendants also failed to pay Plaintiff, members of the putative class, and all
25 aggrieved employees continuing wages under Labor Code section 203.

26 **Civil Penalties for Failure to Timely Pay Wages During Employment**

27 127. Through their policies and practices, Defendants intentionally and willfully failed
28 to pay Plaintiff, members of the putative class, and all aggrieved employees, all wages due to

1 them within the specific pay periods required under California Labor Code section 204.

2 128. For example, in violation of Labor Code section 204(b)(1), Defendants did not
3 pay all overtime wages owed “no later than the payday for the next regular payroll period.”

4 **Civil Penalties for Failure to Provide Compliant Wage Statements**

5 129. Through their policies and practices, Defendants failed to provide Plaintiff,
6 members of the putative class, and all aggrieved employees compliant wage statements in
7 violation of California Labor Code section 226, subdivision (a).

8 **Civil Penalties for Failure to Keep Complete and Accurate Payroll Records**

9 130. Through their policies and practices, Defendants failed to keep complete and
10 accurate payroll records in violation of California Labor Code section 1174(d). Among other
11 violations, Defendants failed to record all time worked by Plaintiff, members of the putative
12 class, and all aggrieved employees and failed to record the meal periods of Plaintiff, members of
13 the putative class, and all aggrieved employees.

14 **Civil Penalties for Violations of IWC Wage Order 16**

15 131. Labor Code section 1199(c) makes it a misdemeanor, punishable by monetary
16 fine, for employers that, among other things, violate the provisions of the IWC Wage Orders. As
17 described herein, Defendant violated the Wage Order 16 in many respects, including without
18 limitation, failure to pay all required daily and weekly overtime hours, failure to pay minimum
19 wages, failure to accurately record all work periods, including the beginning and end of meal
20 periods, and failure to provide duty-free meal and rest periods, failure to reimburse business
21 expenses. See IWC Wage Order 4-2001, §§ 3, 4, 7, 8, 10, 11, and 18.

22 **Exhaustion of Administrative Remedies under PAGA**

23 132. On November 24, 2021, pursuant to Labor Code § 2699.3, Plaintiff filed notice
24 with California’s Labor and Workforce Development Agency (“LWDA”) and posted by certified
25 mail to Defendants notice of the specific provisions of the Labor Code that have been violated,
26 including the facts and theories to support the violations.

27 133. The LWDA has failed to notify Plaintiff of its intent to investigate these penalty
28 claims within sixty-five (65) days.

134. Thus, Plaintiff has exhausted administrative remedies under PAGA's Labor Code § 2699.3(a)(2)(A).

135. Pursuant to Labor Code Section 2698 et seq., Plaintiff, in a representative capacity, is entitled to recover civil penalties in connection with himself, and in connection with each and every current and former Aggrieved Employee of Defendants, for each and every pay period in which a Labor Code violation or applicable IWC Wage Order violation occurred, in an amount according to proof at trial.

136. Plaintiff and all aggrieved employees are also entitled to reasonable attorney's fees and costs pursuant to Labor Code §§ 2699(g), and any other applicable statute, which are respectfully requested, in an amount according to proof at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other members of the general public similarly situated, jointly and severally, pray as follows:

CLASS CERTIFICATION

1. That this action be certified as a Class action;
2. That Plaintiff be appointed as the representative of the Class; and
3. That counsel for Plaintiff be appointed as Class Counsel.

AS TO THE FIRST CAUSE OF ACTION

4. That the court declare, adjudge and decree that Defendants violated California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the other class members;
5. For general unpaid wages and such general and special damages as may be appropriate;
6. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiff and the other class members in the amount as may be established according to proof at trial;
7. For liquidated damages pursuant to California Labor Code section 1194.2;
8. For reasonable attorneys' fees, costs, and interest; and

1 9. For such other and further relief as the court may deem just and proper.

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

3 10. That the court declare, adjudge and decree that Defendants violated California
4 Labor Code sections 510, 1194, 1198 and IWC Wage Order 16 by willfully failing to pay all
5 overtime wages due to Plaintiff and the other class members;

6 11. For general unpaid wages at overtime wage rates and such general and special
7 damages as may be appropriate;

8 12. For reasonable attorneys' fees, costs, and interest; and

9 13. For such other and further relief as the court may deem just and proper.

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

11 14. That the court declare, adjudge and decree that Defendants violated California
12 Labor Code sections 226.7, 512 and IWC Wage Order 16 by willfully failing to provide legally
13 compliant meal periods to Plaintiff and the other Class members;

14 15. For compensation for meal periods not provided pursuant to Labor Code §
15 226.7(b) in an amount to be proven at trial;

16 16. For pre-judgment interest on any unpaid compensation from the date such
17 amounts were due; and

18 17. For such other and further relief as the court may deem just and proper.

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

20 18. That the court declare, adjudge and decree that Defendants violated California
21 Labor Code sections 226.7 and IWC Wage Order 16 by willfully failing to authorize and permit
22 legally compliant rest periods to Plaintiff and the other Class members;

23 19. For compensation for rest periods not provided pursuant to Labor Code § 226.7(b)
24 in an amount to be proven at trial;

25 20. For pre-judgment interest on any unpaid compensation from the date such
26 amounts were due; and

27 21. For such other and further relief as the court may deem just and proper.

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

2 22. For damages equal to the unreimbursed business expenses pursuant to California
3 Labor Code § 2802 in an amount of no less than \$100,000;

4 A. For attorneys' fees, costs, and interest;

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

6 23. That the court declare, adjudge and decree that Defendants violated California
7 Labor Code sections 201, 202, and 203 by willfully failing to timely pay all compensation owed
8 to Plaintiff and those other class members no longer employed by Defendants, at the time of
9 separation from their employment;

10 24. For statutory wage penalties pursuant to California Labor Code section 203 for
11 Plaintiff and all class members who have left Defendants' employ;

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

14 26. For such other and further relief as the court may deem just and proper.

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

16 27. That the court declare, adjudge and decree that Defendants violated the record-
17 keeping provisions of California Labor Code section 226, subdivision (a) and IWC Wage Order
18 16 as to Plaintiff and the other class members, and willfully failed to provide accurate itemized
19 wage statements thereto;

20 28. For statutory wage penalties for Plaintiff and all Class members pursuant to
21 California Labor Code section 226 (e);

22 29. For reasonable attorneys' fees, costs, and interest; and

23 30. For such other and further relief as the court may deem just and proper.

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

25 31. For restitution of unpaid wages to Plaintiff and all the other Class members and
26 all pre-judgment interest from the day such amounts were due and payable;

27 32. For the appointment of a receiver to receive, manage and distribute any and all
28 funds disgorged from Defendants and determined to have been wrongfully acquired by

1 Defendants as a result of their violation of California Business and Professions Code sections
2 17200, et seq.;

3 33. For injunctive relief and an order enjoining Defendants from engaging in further
4 unfair and unlawful business practices in violation of Business & Professions Code §§ 17200 et
5 seq.;

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

7 35. For such other and further relief as the court may deem just and proper.

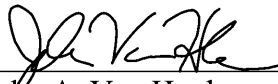
8 **AS TO THE NINTH CAUSE OF ACTION**

9 36. For civil penalties, attorney's fees, and costs pursuant to California Labor Code
10 sections 2698 et seq.; and

11 37. For such other and further relief as the court may deem just and proper.

12 Dated: May 24, 2022

VAN HOOK LAW FIRM
THE BYRNE LAW GROUP

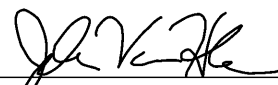
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15 John A. Van Hook
16 Adrian C. Byrne
17 Attorneys for Plaintiff Alonzo Pineda, the
Putative Class, and all Aggrieved Employees

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff, on behalf of himself individually, all those similarly situated, and all aggrieved
20 employees, hereby demands a trial by a jury.

22 Dated: May 24, 2022

VAN HOOK LAW FIRM
THE BYRNE LAW GROUP

24 
25 John A. Van Hook
26 Adrian C. Byrne
27 Attorneys for Plaintiff Alonzo Pineda, the
Putative Class, and all Aggrieved Employees