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SUPERIOR COURT OF THE STATE OF CALIFORNIA

THE COUNTY OF LOS ANGELES

PHILIP HERNANDEZ, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

v.

LAKSH, INC.; GROUND ROUTE,
INC.; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: **22STCV03535**

CLASS ACTION

COMPLAINT FOR DAMAGES

1. Violation of Labor Code §§ 204, 206, 510, 1194, 1194.2, 1197, 1197.1, 1182.12 (Failure to Pay All Wages);
2. Violation of Labor Code §§ 226.7, 512 (Meal Period Violations);
3. Violation of Labor Code §§ 226.7 (Rest Period Violations);
4. Violation of Labor Code §§ 201, 202, 203 (Failure to Pay Wages Due at Separation of Employment);
5. Violation of Labor Code §§ 226, subd. (a), (e), 226.3, 1174, 1174.5 (Failure to Issue Accurate Itemized Wage Statements);
6. Violation of Labor Code §2802 (Failure to Reimburse for Necessary Business Expenditures);
7. Violation of Bus. & Prof. Code §§ 17200 et seq. (Unfair Business Practices); and
8. Violation of Private Attorney General Act (Lab. Code §§ 2698 et seq., and 2699 et seq.).

DEMAND FOR JURY TRIAL

1 Plaintiff PHILIP HERNANDEZ (“Plaintiff”), as an individual and on behalf of all
2 similarly situated employees, complains, and alleges on information and belief as follows:

3 **INTRODUCTION**

4 1. This is a class action brought on behalf of Plaintiff and the class he seeks to
5 represent (“Class Members”). Class Members consist of all current and former non-exempt
6 employees of Defendants LAKSH, INC. a California corporation (“LAKSH”), GROUND
7 ROUTE, INC. (“GRI”) and DOES 1 through 50, inclusive (collectively, “Defendants”), in the
8 State of California during the Class Period. The term “Class Period” is defined as four (4) years
9 prior to the filing of this complaint through judgment. Plaintiff reserves the right to amend this
10 complaint to reflect a different “Class Period” as further discovery is conducted.

11 2. Plaintiff, individually and on behalf of Class Members, seeks relief against
12 Defendants, for Defendants’ practices of violating the applicable Industrial Welfare Commission
13 (“IWC”) Wage Orders, Code of Regulations, and Labor Codes, including: (1) failure to pay all
14 wages (including minimum, regular, and overtime); (2) failure to make available meal periods or
15 provide compensation in lieu thereof; (3) failure to make available rest periods or provide
16 compensation in lieu thereof; (4) failure to pay all wages due upon separation of employment; (5)
17 failure to provide accurate itemized wage statements; (6) failure to reimburse business expenses;
18 and (7) unfair business practices. These violations concern current and past employees of
19 Defendants.

20 3. At all relevant times herein, Defendants have consistently maintained and enforced
21 against Plaintiff and Class Members the unlawful practices and policies set forth herein.

22 **JURISDICTION AND VENUE**

23 4. Venue is proper in this judicial district and the County of Los Angeles, pursuant
24 to the Code of Civil Procedure sections 395 and 395.5, because the acts that give rise to the causes
25 of action alleged herein occurred in this county.

26 5. This Court has personal jurisdiction over Defendants, because Defendants reside
27 in, are incorporated in, have their main place of business in, and/or conduct business in the State
28 of California, and a substantial portion of the acts, omissions, events, and transactions constituting

1 the causes of action alleged herein occurred within the State of California, and more specifically,
2 in the county of Los Angeles. (Code Civ. Proc., § 410.10.)

3 6. The California Superior Court has jurisdiction over this matter because the
4 individual claims are under the seventy-five thousand dollar (\$75,000.00) individual
5 jurisdictional threshold and the five million dollar (\$5,000,000.00) aggregate jurisdictional
6 threshold for federal court; and upon information and belief, Plaintiff and Defendants are citizens
7 of, residents of, and/or domiciled in the State of California. Further, there is no federal question
8 at issue as the issues herein are based solely on California statutes and law, including the Labor
9 Code, IWC Wage Orders, Code of Civil Procedure, Rules of Court, and the Business &
10 Professions Code. Thus, the above-entitled court maintains appropriate jurisdiction over this
11 matter.

12 **THE PARTIES**

13 **Plaintiff**

14 7. Plaintiff was employed by Defendants from approximately, January 30, 2020, until
15 on or around January 31, 2021, as an hourly, non-exempt employee. At all relevant times herein,
16 Plaintiff was employed by Defendants in a non-exempt position. At all relevant times herein,
17 Plaintiff was entitled to compensation for all hours worked, including minimum, regular, and
18 overtime wages, meal and rest period premiums, as well as reimbursement from Defendants.
19 Plaintiff was employed by Defendants within the four (4) years prior to the commencement of
20 this action.

21 8. Each of the Class Members consists of identifiable, current, and/or former
22 similarly situated persons, who were employed by Defendants as non-exempt employees in
23 California during the Class Period.

24 **Defendants**

25 9. Plaintiff is informed and believes, and based thereon alleges, that Defendant
26 LAKSH, INC. is a California corporation, providing transportation services throughout the state
27 of California, including Los Angeles County and Ventura County, and employed Plaintiff and
28 Class Members. On information and belief, and based thereon, Plaintiff alleges that Defendant

1 LAKSH is conducting business in good standing in California, and at all times herein mentioned
2 has regularly conducted business throughout the State of California.

3 10. Plaintiff is informed and believes, and based thereon alleges, that Defendants
4 GROUND ROUTE, INC. is a California corporation, providing parcel delivery services
5 throughout the state of California, including Los Angeles County and Ventura County, and
6 employed Plaintiff and Class Members. On information and belief, and based thereon, Plaintiff
7 alleges that Defendant GRI is conducting business in good standing in California, and at all times
8 herein mentioned has regularly conducted business throughout the State of California.

9 11. Plaintiff is ignorant of the true names, capacities, relationships and extent of
10 participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50,
11 inclusive, but on information and belief, alleges that said Defendants are legally responsible for
12 the violations alleged herein. Plaintiff will amend this complaint to allege the true names and
13 capacities of the DOE Defendants when that information is ascertained.

14 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
15 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
16 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant
17 are legally attributable to the other Defendants. Furthermore, Defendants operate as a joint
18 venture and/or single business enterprise, integrated enterprise, and/or are agents of one another,
19 are alter egos, joint employers, and conspire with one another to increase profits by engaging in
20 the conduct described in this complaint.

21 13. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
22 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
23 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
24 below was acting, at least in part, within the course and scope of that authority as such agent,
25 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
26 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant
27 are legally attributable to the other Defendants.

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15. On November 22, 2021, prior to the filing of this complaint, Plaintiff gave written notice of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations, as required by Labor Code section 2699.3. This written notice was given via certified mail to Defendants, and to the LWDA by electronically filing the notice via the Department of Industrial Relations website. Plaintiff was given a LWDA case number of LWDA-CM-854258-21. A true and correct copy of Plaintiff's notice to the LWDA and Defendants, dated November 22, 2021, is attached hereto as Exhibit A. More than sixty-five (65) days have passed from the date of submission of the letter to the LWDA and the LWDA has not responded. Therefore, Plaintiff may bring his complaint upon the expiration of the sixty-five (65) day period for the LWDA to provide notice of its intent to investigate Plaintiff's claims, if the LWDA fails to provide notice.

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17. Plaintiff is informed and believes, and based thereon alleges, that Defendants continue to employ non-exempt employees within California.

19. Plaintiff is informed and believes, and based 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.

20. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and Class Members were entitled to receive wages for all hours worked, including minimum, regular, and overtime wages, and that they were not receiving all wages earned for work that was required to be performed. In violation of the Labor Code and IWC Wage Orders, Defendant failed to pay Plaintiff and Class Members earned wages by failing to record all hours worked, paying for all hours worked, and paying the proper overtime and double time rates of pay, among other things. Further, Defendants failed to record and/or pay Plaintiff and Class Members for all hours worked in excess of eight (8) hours and/or twelve (12) hours per workday and failed to pay said hours at the proper overtime and double time rates. Additionally, during the Relevant Time Period, Plaintiff and Class Members received non-discretionary bonuses. However, Defendants failed to include in the regular rate of pay the non-discretionary bonuses for purposes of calculating Plaintiff and Class Members overtime rate of pay. The incorrect overtime rate resulted in lost wages to Plaintiff and Class Members.

21. Plaintiff is informed and believes, and based 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 and Class Members regular rate of pay when they did not receive a timely, uninterrupted off-duty meal period. In violation of the Labor Code and IWC Wage Orders, Defendant had a pattern, practice, and policy of not providing compliant meal periods. Plaintiff and Class Members were regularly unable to take a duty-free meal period or had their meal periods interrupted as a result of understaffing and a busy workload. In addition to having their meal periods interrupted, Plaintiff and Class Members were required to return to work before the end of their thirty (30) minute meal periods and continue working to meet Defendants' strict deadlines and quotas. Despite returning to work before the end of their thirty (30) minute meal periods, Defendant would alter Plaintiff and Class Members time records to reflect a thirty (30) minute meal period. Particularly, Defendants manipulated Plaintiff and Class Members time records to reflect a thirty (30) minute meal period, by utilizing an auto-

deduct policy in some instances, or by systematically rounding the time punches of Plaintiff and Class Members in other instances. Specifically, Defendants utilized an auto-deduct policy for meal periods when Plaintiff and Class Members failed to clock in/out for their meal periods, or received late, interrupted, or missed meal periods. On other occasions when Plaintiff and Class Members did clock in/out for their meal periods, Defendants would systematically round the time punches to the nearest five (5) to ten (10) minute increments. In these instances, Plaintiff and Class Members did not receive a meal premium, when the actual meal period taken by Plaintiff and Class Members were in reality substantially less than thirty (30) minutes.

22. As a result of Defendants' understaffing and daily work requirements and demands, auto-deduct and rounding policy, among other things, Plaintiff and Class Members did not receive all meal periods or payment of one (1) additional hour of pay at Plaintiff and Class Members regular rate of pay when they did not receive a timely, uninterrupted thirty (30) minute off-duty meal period.

23. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and Class Members were entitled to receive all paid rest periods or payment of one (1) additional hour of pay at Plaintiff and Class Members regular rate of pay when a rest period was missed, interrupted, or shortened. In violation of the Labor Code and IWC Wage Orders, Defendants had a pattern, practice, and policy of not providing paid rest periods. Defendants instructed Plaintiff and Class Members to forego their rest breaks when they were required to meet Defendants' strict deadlines and quotas. As a result of Defendants' understaffing and daily work requirements and demands, Plaintiff and Class Members did not receive all paid rest periods or payment of one (1) additional hour of pay at Plaintiff and Class Members regular rate of pay when a paid rest period was missed, truncated, or interrupted.

24. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and Class Members were entitled to receive itemized wage statements that accurately showed their actual hours worked, total hours worked, number of hours worked at each hourly rate, gross and net wages earned, and premium wages earned per pay period in accordance with California law. In violation of the Labor Code, Plaintiff and Class Members

1 were not provided with accurate itemized wage statements.

2 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
3 or should have known that Plaintiff and certain Class Members were entitled to timely payment
4 of wages due upon separation of employment. In violation of the Labor Code, Plaintiff and certain
5 Class Members did not receive payment of all wages due, within permissible time periods, upon
6 separation of employment.

7 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
8 or should have known that Plaintiff and Class Members were entitled to receive business
9 reimbursements for using their personal cellphones. Specifically, Defendants required Plaintiff
10 and Class Members to use their personal cellphones to carry out their work-related duties,
11 including without limitation, communicate with supervisors, provide status reports, retrieve wage
12 statements, utilize their personal cellphones GPS systems to make deliveries among other things.
13 However, despite the foregoing, Plaintiff and Class Members were not reimbursed for the
14 reasonable percentage of their cellphone bills. Defendants' failure to provide reimbursement to
15 Plaintiff and Class Members for expenditures herein mentioned is in violation of the Labor Code.

16 27. Moreover, Plaintiff is informed and believes, and based thereon alleges, that
17 Defendants knew or should have known that Plaintiff and Class Members were entitled to receive
18 business reimbursements for maintaining their uniforms to carry out their employment duties for
19 Defendants. Specifically, Defendants required Plaintiff and Class Members to wear uniforms
20 during their shifts. Despite this requirement, Defendants failed to reimburse Plaintiff and Class
21 Members for said expenditures. Defendants' failure to provide reimbursement to Plaintiff and
22 Class Members for expenditures herein mentioned is in violation of the Labor Code.

23 **CLASS ALLEGATIONS**

24 28. Plaintiff brings this action on behalf of himself and all other similarly situated
25 employees, as a class action pursuant to Code of Civil Procedure section 382.

26 29. Plaintiff's proposed class consists of and is defined as follows: all individuals who
27 worked for Defendants in a California location as non-exempt employees during the Class Period.

28 30. Plaintiff reserves the right under California Rules of Court, rule 3.765, to amend

1 or modify the class description(s) with greater specificity or further division into subclasses or
2 limitation to particular issues.

3 31. This action has been brought and may be maintained as a class action pursuant to
4 Code of Civil Procedure section 382 because there is a well-defined community of interest in the
5 litigation and because the proposed classes are easily ascertained by Defendants' personnel and
6 payroll records.

7 **Numerosity**

8 32. The potential members of the class as defined are so numerous that joinder of all
9 class members is impracticable. While the precise number of the Class Members is unknown,
10 Plaintiff is informed and believes that Defendants have employed more than forty (40) non-
11 exempt employees during the Class Period.

12 **Commonality**

13 33. There are common questions of law and fact arising out of Defendants' conduct
14 as described herein, including, but not limited to:

- 15 a. Whether Defendants failed to pay all wages, including minimum, regular,
16 and overtime wages earned and due to Plaintiff and Class Members;
- 17 b. Whether Defendants failed and continue to fail to provide meal periods or
18 compensation in lieu thereof to Class Members;
- 19 c. Whether Defendants failed and continue to fail to authorize and permit
20 Class Members to take rest periods or compensation in lieu thereof;
- 21 d. Whether Defendants failed to furnish to Plaintiff and Class Members wage
22 statements containing all information required by Labor Code section 226,
23 subdivision (a);
- 24 e. Whether Defendants failed to timely pay Plaintiff and former class
25 members all wages due during and after their employment;
- 26 f. Whether Defendants were required to reimburse Plaintiff and Class
27 Members for the use of their personal cellphones in connection with the
28 performance and execution of their job duties;

- 1 g. Whether Defendants were required to reimburse Plaintiff and Class
2 Members for maintaining their uniforms; and
3 h. Whether Defendants engaged in unfair/unlawful business practices.

4 **Typicality**

5 34. The claims of the Plaintiff are typical of the claims for the Class Members, all of
6 whom have incurred and/or will incur damages, as a result of Defendants' common course of
7 conduct and common policies and practices. The claims of Plaintiff are typical because
8 Defendants subjected all of its non-exempt employees to the identical violations of the IWC Wage
9 Orders, Code of Regulations, Labor Code, and Business and Professions Code, among other
10 statutes.

11 **Adequacy of Representation**

12 35. Plaintiff will fairly and adequately represent and protect the interests of the Class
13 Members. Plaintiff's interests are not in conflict with those of the Class Members. Plaintiff's
14 attorneys are competent, well-versed, and experienced in litigating employment class actions and
15 other complex litigation matters.

16 **Superiority of Class Action**

17 36. Under the facts and circumstances set forth above, a class action is superior to any
18 other method available for the fair and efficient adjudication of the rights of each class member
19 in as much as joinder of individual, relatively small claims of Class Members is not practical and
20 if each employee were required to file an individual lawsuit, the corporate defendant would
21 necessarily gain an unconscionable advantage as they would be able to exploit and overwhelm
22 the limited resources of each individual plaintiff. Requiring each Class Member to pursue an
23 individual remedy would also discourage the assertion of lawful claims by employees fearful of
24 retaliation and permanent damage to their careers at present and/or subsequent employment.
25 Further, the substantial risk of inconsistent or varying verdicts or adjudications with respect to the
26 individual Class Members against Defendants herein further support class certification.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL WAGES, INCLUDING MINIMUM AND OVERTIME WAGES**

3 **(Labor Code §§ 510, 1194, 1194.2, 1197, and 1197.1)**

4 **(Plaintiff against All Defendants)**

5 37. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
6 as if fully alleged.

7 38. Any employee receiving less than the legal minimum wage or legal overtime
8 compensation is entitled to recover in a civil action the amount of unpaid wages, attorneys' fees
9 and costs of suit. (Lab. Code, § 1194, subdivision (a).)

10 39. Labor Code section 1182.12 provides that for employers who employed twenty-
11 six (26) or more people from January 18, 2018, to December 31, 2018, the minimum wage rate
12 in California for all industries shall not be less than eleven dollars (\$11.00) per hour. From January
13 1, 2019, to December 31, 2019, the minimum wage rate in California is twelve dollars (\$12.00)
14 per hour. From January 1, 2020, to December 31, 2020, the minimum wage rate in California is
15 thirteen dollars (\$13.00) per hour. From January 1, 2021, to January 1, 2022, the minimum wage
16 rate in California is fourteen dollars (\$14.00) per hour. From January 1, 2022, to present, the
17 minimum wage rate in California is fifteen dollars (\$15.00) per hour Plaintiff is informed and
18 believes Defendants employed more than twenty-six (26) employees.

19 40. Notwithstanding any other provision of the Labor Code, hourly minimum wage
20 rates are set for all industries according to statute. (Lab. Code, § 1182.12.) Employers must pay
21 employees no less than minimum wage for each hour worked. (Lab. Code, § 1194.)

22 41. In any action to recover payment of wages less than the minimum wage an
23 employee shall be entitled to recover liquidated damages in an amount equal to the wages
24 unlawfully unpaid and interest thereon. (Lab. Code, § 1194.2.)

25 42. Any work in excess of eight (8) hours in any workday and any work in excess of
26 forty (40) hours in a workweek, shall be compensated at a rate of no less than one and one-half
27 times the regular rate of pay for an employee. (Lab. Code, § 510, subdivision (a).) Any work in
28 excess of twelve (12) hours in a workday shall be compensated at the rate of twice the regular

1 rate of pay for an employee. (Lab. Code, § 510, subdivision (a).)

2 43. All wages earned in employment are due and payable twice during each calendar
3 month on dates designated in advance by the employer. (Lab. Code, § 204.)

4 44. In case of a dispute over wages, the employer shall pay, without condition and
5 promptly under the Labor Code all wages conceded due, leaving to the employee all remedies
6 he/she is otherwise entitled to as to any balance claimed. (Lab. Code, § 206.)

7 45. At all relevant times herein, Plaintiff and Class Members were and are paid as non-
8 exempt employees.

9 46. Plaintiff and Class Members regularly worked over eight (8) hours per day and
10 forty (40) hours per week. Specifically, Plaintiff and Class Members routinely worked shifts of
11 twelve (12) hours or longer and often times worked seven (7) consecutive days in a given week.
12 However, Defendants failed to pay Plaintiff and Class Members for all hours worked by failing
13 to record actual hours worked, e.g., time spent working off-the-clock, including, during meal
14 periods, as well as when they were routinely required to spend time waiting in mandatory security
15 check lines, among other things. Consequently, Defendants failed to pay Plaintiff and Class
16 Members all minimum, regular, overtime, and/or double-time wages for all hours worked,
17 including hours in excess of over eight (8) per day and forty (40) per workweek. Pursuant to
18 Labor Code sections, *inter alia*, 204, 510, 1182.12, and 1194, the Class Members seeks the
19 payment of all minimum, regular, overtime, and/or double-time compensation which they earned
20 and accrued for four (4) years prior to filing this complaint, according to proof.

21 47. Furthermore, during the Relevant Time Period, Plaintiff and Class Members
22 received non-discretionary bonuses. However, Defendant did not include in the regular rate of
23 pay the non-discretionary bonuses for purposes of calculating, Plaintiff and Aggrieved
24 Employees' overtime rate of pay. An employee's regular rate of pay is properly determined by
25 "dividing his total remuneration for employment (except statutory exclusions) in any work week
26 by the total number of hours actually worked by him in that workweek for which such
27 compensation was paid. (*Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App.4th
28 893, 905.) thus, employees "who receive incentive bonuses in addition to their guaranteed base

pay clearly receive a greater regular rate than the minimum base rate.” Id. Quoting *Walling v. Hamischfeger Corp.*, 325 U.S. 427, 431 (1945). “Where an employee receives a higher wage or rate of because of undesirable hours or disagreeable work, such wage represents a shift differential or higher wage, because of the character of work done or the time at which he is required to labor...Such payments enter into the determination of the regular rate of pay.” *Huntington*. 131 Cal. App. 4th at 910: quoting *Bay Ridge operating Co. v. Aaron*, 334 U.S. 446, 468-469 (1948). On the other hand, “if an employee is employed solely on the basis of a single hourly rate, that hourly rate is his/her regular rate” See 29 C.F.R. §778.110 (2004).

20. Plaintiff believes and thereon alleges that, Defendants' failure to include both the shift differential and the non-discretionary bonuses also works to deprive Plaintiff and Class Members for the on-duty meal periods, and missed meal and rest period penalties, because Plaintiff and Aggrieved Employees were not paid at the correct regular rate as is required by Labor Code §226.7. Defendant failed to include all remuneration required when calculating the regular rate for overtime and premium pay purposes for Plaintiff and Aggrieved Employees.

48. Additionally, Plaintiff and Class Members are entitled to liquidated damages, attorneys' fees and costs pursuant to Labor Code section 1194 and Code of Civil Procedure section 1021.5, and prejudgment interest.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF

(Lab. Code, §§ 226.7, 512)

(By Plaintiff against All Defendants)

49. Plaintiff realleges and incorporates by reference all preceding paragraphs herein, as if fully alleged.

50. Labor Code sections 226.7, 512, and the applicable IWC Wage Order provide that no employer shall employ any person for a work period of more than five (5) hours without providing a meal period uninterrupted by work duties of not less than thirty (30) minutes, or employ any person for a work period of more than ten (10) hours without a second meal period of not less than thirty (30) minutes.

1 51. Labor Code section 226.7 provides that if an employer fails to provide an
2 employee a meal period in accordance with this section, the employer shall pay the employee one
3 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
4 period is not provided in accordance with this section. Plaintiff alleges Defendants failed to
5 provide legally compliant meal periods, in addition to impeding, discouraging, dissuading, and/or
6 not relieving employees from all work duties during meal periods thereby preventing employees
7 from taking legally compliant meal periods. Specifically, Plaintiff and Class Members worked
8 through their meal periods despite Defendants recording that a meal period was taken, or had their
9 meal periods interrupted or shortened, among other things.

10 52. At all times relevant hereto, Plaintiff and Class Members have worked shifts of
11 more than five (5) hours in a workday.

12 53. Pursuant to Labor Code section 226.7, Plaintiff and Class Members are entitled to
13 damages in the amount equal to one (1) hour of wages at their regular rate of pay for each missed
14 meal break, in an amount to be proven at trial.

15 54. At varying times relevant hereto, Plaintiff and Class Members have worked shifts
16 more than ten (10) hours in a workday and were regularly denied a legally compliant second meal
17 period.

18 55. Pursuant to Labor Code section 226.7, Plaintiff individually and on behalf of the
19 Class Members, request recovery of meal period compensation which they are owed beginning
20 four (4) years prior to filing this complaint, as well as the assessment of any statutory penalties
21 against the Defendants, and each of them, in a sum as provided by the Labor Code and/or other
22 statutes. Pursuant to Code of Civil Procedure section 1021.5, and any other provision of law,
23 Plaintiff requests the court award reasonable attorneys' fees and costs incurred by them in this
24 action.

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FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF
(Lab. Code, § 226.7)

56. Plaintiff realleges and incorporates by reference all preceding paragraphs herein, as if fully alleged.

58. Labor Code section 226.7, subdivision (b), provides that if an employer fails to provide and employee rest periods in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided. Plaintiff and Class Members consistently worked over four (4) hours per shift with no rest breaks, or otherwise had their rest breaks interrupted or shortened due to Defendants' uniform policies and practices.

60. Plaintiff and Class Members are entitled to damages in an amount equal to one (1) hour of wages per missed rest break, in a sum to be proven at trial. Pursuant to Code of Civil Procedure section 1021.5, and any other provision of law, Plaintiff requests the court award reasonable attorneys' fees and costs incurred by them in this action.

FAILURE TO PAY WAGES OF TERMINATED OR RESIGNED EMPLOYEES
(Lab. Code, §§ 201, 202, 203)

61. Plaintiff realleges and incorporates by reference all preceding paragraphs herein, as if fully alleged herein.

CLASS ACTION COMPLAINT

1 ongoing unfair business practices, Defendants failed to pay all employees all wages earned during
2 their employment at the time of their separation in violation of Labor Code sections 201 and 202.

3 63. Labor Code section 201 provides that an employer is required to pay an employee
4 whose employment is terminated by the employer all wages earned and unpaid immediately upon
5 termination.

6 64. Labor Code section 202 requires an employer pay to an employee who quits his or
7 her employment, all wages earned and unpaid no later than seventy-two (72) hours thereafter.

8 65. Labor Code section 203 provides that an employer who fails to pay all wages
9 earned and due an employee who is discharged or who quits within the timeframe set forth in
10 sections 201 and 202, the wages of the employee shall continue as a penalty from the due date at
11 the same rate of pay until paid, but not more than thirty (30) days. In other words, the employer
12 owes the employee his or her daily rate of pay at their regular rate of pay for each day the full
13 amount of unpaid wages is not paid, for a penalty of up to thirty (30) days' wages.

14 Plaintiff and members of the Class Members who terminated employment within four (4)
15 years of the filing of this complaint until the date of entry of judgment, without being paid
16 the proper payments as described herein are entitled to thirty (30) days of pay at their
17 regular rate of pay as waiting time penalties.

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO ISSUE ITEMIZED WAGE STATEMENTS AND MAINTAIN RECORDS**

20 **(Lab. Code, §§ 226, 226.3, 1174, 1174.5)**

21 **(By Plaintiff against All Defendants)**

22 66. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
23 as if fully alleged herein.

24 67. Labor Code sections 226, 226.3, 1174, and 1174.5, and applicable IWC Wage
25 Orders provides that employers must keep records and provide employees with itemized wage
26 statements showing all hours worked and each applicable rate of pay in effect during the pay
27 period with the corresponding number of hours worked at each hourly rate.

28 68. Labor Code section 1174, subdivision (d), requires an employer to keep at a central

1 location in California or at the plant or establishment at which the employee is employed, payroll
2 records showing the hours worked daily, and the wages paid to each employee. Labor Code
3 section 226, subdivision (a), requires an employer to provide employees—either as a detachable
4 part of the check, draft, or voucher paying the employee’s wages, or separately when wages are
5 paid by personal check or cash—an accurate itemized wage statement in writing, including
6 specified information, including, but not limited to: “(1) gross wages earned; (2) total hours
7 worked . . . (5) net wages earned... and (9) all applicable hourly rates in effect during the pay
8 period and the corresponding number of hours worked at each hourly rate by the employee.”

9 69. Labor Code section 226, subdivision (e), provides that if an employer knowingly
10 and intentionally fails to provide a statement itemizing, *inter alia*, the gross and net wages earned,
11 the total hours worked by the employee and the applicable hourly overtime rates, causing the
12 employee injury, then the employee is entitled to recover the greater of all actual damages or fifty
13 dollars (\$50.00) for the initial violation and one hundred dollars (\$100.00) for each subsequent
14 violation, up to four thousand dollars (\$4,000.00). Plaintiff is informed and believes that
15 Defendants willfully failed to make or keep accurate records for Plaintiff and Class Members.

16 70. The IWC Wage Orders require that every employer shall keep accurate
17 information with respect to each employee, including, but not limited to, time records showing
18 the total daily hours worked by each employee, the total hours worked in each payroll period, and
19 applicable rates of pay. Plaintiff is informed and believes that Defendants willfully and
20 intentionally failed to make and/or keep records which accurately reflect the hours worked by
21 Plaintiff and Class Members. Specifically, Plaintiff believes that Defendants’ records fail to
22 include, *inter alia*: (1) actual hours worked; (2) total hours worked; (3) number of hours worked
23 at each hourly rate/number of piece rate units earned and any applicable piece rate; (4) gross
24 wages earned; (5) net wages earned; (6) premium wages earned per pay period; and (7) the entity’s
25 legal name and address.

26 71. An employee is deemed to suffer injury if the employer fails to provide an accurate
27 wage statement containing all of the required information set forth in Labor Code section 226,
28 subdivision (a). (Lab. Code, § 226, subd. (e)(2).) In addition, the omission of time worked, proper

1 rates of pay, records of missed meal and rest breaks, and/or premium pay make it difficult for
2 employees to determine whether they were paid all wages due without complicated calculations
3 and/or reconstruction of records required to be maintained by the employer.

4 72. For each employee suffering an injury as a result of Defendants' knowing and
5 intentional failure to provide an accurate, itemized wage statement, the employee is entitled to
6 recover the greater of actual damages or fifty dollars (\$50.00) for the initial pay period in which
7 a violation occurs, and one hundred dollars (\$100.00) per employee for each violation in a
8 subsequent pay period.

9 73. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
10 failure to keep accurate payroll records, as described above, violated Labor Code section 1174,
11 subdivision (d), and section 226, subdivision (a), and the applicable Wage Order. Plaintiff intends
12 on seeking penalties under Labor Code section 2699, subdivision (f)(2), Plaintiff and the Class
13 Members are entitled to penalties of one hundred dollars (\$100.00) for the initial violation, and
14 two hundred dollars (\$200.00) for each subsequent violation, for every pay period during which
15 these records and information were not kept by Defendants.

16 74. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
17 failure to keep and maintain accurate records and information and provide to Plaintiff and Class
18 Members accurate itemized wage statements, as described above, was knowing and intentional,
19 and Plaintiff and Class Members are entitled to statutory penalties for each pay period in which a
20 violation occurred. Plaintiff further seeks recovery of attorneys' fees and costs pursuant to Labor
21 Code section 226, subdivision (e), and as otherwise permitted by law.

22 **SIXTH CAUSE OF ACTION**

23 **INDEMNIFICATION FOR EXPENDITURES OR LOSSES IN DISCHARGE OF**
24 **DUTIES**

25 **(Lab. Code § 2802)**

26 **(By Plaintiff against All Defendants)**

27 75. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
28 as if fully alleged herein.

1 76. Labor Code section 2802 states, ‘An employer shall indemnify his or her employee
2 for all necessary expenditures or losses incurred by the employee in direct consequence of the
3 discharge of his or her duties...”

4 77. Plaintiff and Class Members were not reimbursed by Defendants for necessary
5 expenditures as a direct consequence of the discharge of their duties.

6 78. Defendants knowingly, willingly, and intentionally attempted to offset the cost of
7 doing business on the Plaintiff and Class Members. Defendants had a corporate practice of
8 requiring Plaintiff and Class Members to shoulder the burden of Defendants’ cost of doing
9 business by failing to reimburse Plaintiff and Class Members for necessary business expenditures.

10 79. Plaintiff and Class Members further allege that during the course of their
11 employment they were required by Defendants to make use of their personal cellphones, to
12 without limitation, communicate with their supervisors, provide status reports, retrieve wage
13 statements, utilize their personal cellphones GPS systems to make deliveries among other things.
14 However, despite the foregoing, Defendants failed to reimburse Plaintiff and Class Members with
15 a reasonable percentage of their cellphone bills. Thus, the Defendants’ policy of having Plaintiff
16 and Class Members make use of their personal cellphones in order to carry out their employee
17 duties, without reimbursement for said expenditure constitutes a violation of Labor Code section
18 2802.

19 80. The Industrial Welfare Commission Order No. 9-2001, section (8)(A) provides,
20 “[w]hen the employer requires uniforms to be worn by the employee as a condition of
21 employment, such uniforms shall be provided *and maintained* by the employer.”

22 81. Defendant required Plaintiff and Class Members to wear uniforms during their
23 shifts. Notwithstanding this requirement, Defendants failed to maintain Plaintiff and Class
24 Members’ uniforms/ Instead, Plaintiff and Class Members were required to bear the costs
25 associated with maintaining their uniforms throughout their employment with Defendants, without
26 reimbursement for doing so.

27 82. As hereinabove mentioned, Defendants failed to indemnify Plaintiff and Class
28 Members for all necessary expenditures or losses incurred by Plaintiff and Class Members in-

1 direct consequence of the discharge of their duties. Specifically, Defendants' failure to indemnify
2 Plaintiff and Class Members for expenditures they incurred on their behalf, including, but not
3 limited to, use of their personal cellphones, as well as purchasing tools to carry out their
4 employment duties for Defendants.

5 83. Defendants have not reimbursed Plaintiff and Class Members for all expenditures.
6 Plaintiff and Class Members are therefore entitled to be paid damages, attorneys' fees and costs,
7 and interest pursuant to Labor Code section 2802, subdivisions (b) and (c), as well as all statutory
8 penalties against Defendants in accordance with Labor Code section 2802, subdivision (d).

9 **SEVENTH CAUSE OF ACTION**

10 **UNFAIR/UNLAWFUL BUSINESS PRACTICES**

11 **(Bus. & Prof. Code, §§ 17200 et seq.)**

12 **(By Plaintiff against All Defendants)**

13 84. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
14 as if fully alleged herein.

15 85. Plaintiff brings this claim individually and on behalf of Class Members.

16 86. Business and Professions Code section 17200 ("UCL") prohibits unfair
17 competition in the form of any unlawful, unfair, or fraudulent business act or practice.

18 87. Business and Professions Code section 17204 allows "any person who has suffered
19 injury in fact and has lost money or property as a result of such unfair competition" to prosecute
20 a civil action for violation of the UCL.

21 88. Labor Code section 90.5, subdivision (a), states it is the public policy of California
22 to vigorously enforce minimum labor standards in order to ensure employees are not required to
23 work under substandard and unlawful conditions, and to protect employers who comply with the
24 law from those who attempt to gain competitive advantage at the expense of their workers by
25 failing to comply with minimum labor standards.

26 89. Beginning at an exact date unknown to Plaintiff, but at least since the date four
27 years prior to the filing of this complaint, Defendants have committed acts of unfair competition
28 as defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair, and

1 fraudulent business practices and acts described in this complaint, including, but not limited to,
2 violations of Labor Code sections 201, 202, 203, 204, 206, 226, 226.3, 226.7, 510, 512, 1174,
3 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, as well as other statutes.

4 90. The violations of these laws and regulations, as well as of fundamental California
5 public policies protecting workers, serve as unlawful predicate acts and practices for purposes of
6 Business and Professions Code sections 17200 et seq.

7 91. As a result of these actions, Plaintiff, on information and belief, alleges that
8 Defendants are able to unfairly compete with other comparable companies in the State of
9 California in violation of Business and Professions Code sections 17000 et seq. and sections
10 17200 et seq. Due to these unlawful, unfair, and/or fraudulent business practices, Defendants have
11 gained a competitive advantage over other comparable companies doing business in the State of
12 California.

13 92. The victims of these unlawful, unfair, and/or fraudulent business practices include,
14 but are not limited to, Plaintiff, putative class members, competing manufacturers and distributors
15 in the State of California, and the general public. Plaintiff is informed and believes, and thereon
16 alleges, that Defendants performed the above-mentioned acts with the intent of gaining an unfair
17 competitive advantage and thereby injuring Plaintiff, putative class members, other competitors,
18 and the general public.

19 93. Plaintiff's success in this action will enforce important rights affecting the public
20 interest and public policy. In this regard, Plaintiff sues on behalf of the public as well as on behalf
21 of himself.

22 94. Business and Professions Code sections 17203 provides that a court may make
23 such orders or judgments as may be necessary to prevent the use or employment by any person
24 of any practice which constitutes unfair competition. Injunctive relief is necessary and appropriate
25 to prevent Defendants from repeating their unlawful, unfair, and fraudulent business acts and
26 business practices alleged above.

27 95. Business and Professions Code section 17203 provides that the Court may restore
28 to any person in interest any money or property that may have been acquired by means of such

1 unfair competition. Plaintiff and the Class Members are entitled to restitution pursuant to Business
2 and Professions Code section 17203 for wages and payments unlawfully withheld from
3 employees, including the fair value of the meal and rest periods and other losses alleged herein,
4 during the four-year period prior to the filing of this complaint. All remedies are cumulative
5 pursuant to Business and Professions Code section 17205.

6 96. Business and Professions Code section 17202 provides: “Notwithstanding section
7 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
8 forfeiture, or penal law in a case of unfair competition.” Plaintiff and Class Members are entitled
9 to enforce all applicable penalty provisions of the Labor Code pursuant to Business and
10 Professions Code section 17202.

11 97. Plaintiff requests injunctive relief pursuant to Business and Professions Code
12 section 17203 to enjoin Defendants from continuing the unfair/unlawful business practices
13 alleged herein.

14 98. Plaintiff herein takes upon enforcement of these laws and lawful claims. There is
15 a financial burden involved in pursuing this action. The action is seeking to vindicate a public
16 right, and it would be against the interests of justice to penalize Plaintiff by forcing Plaintiff to
17 pay attorneys’ fees from the recovery in this action. Attorneys’ fees are appropriate pursuant to
18 Code of Civil Procedure section 1021.5 and others.

19 **EIGHTH CAUSE OF ACTION**

20 **VIOLATION OF CALIFORNIA PRIVATE ATTORNEY GENERAL ACT**

21 **(Lab. Code, §§ 2698 et seq.)**

22 **(Plaintiff against All Defendants)**

23 99. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
24 as if fully alleged herein.

25 100. Plaintiff seeks recovery of penalties under the Labor Code Private Attorney’s
26 General Act of 2004 (“PAGA”), Labor Code sections 2698 et seq. on behalf on himself and all
27 similarly situated employees who were subjected to one or more of the violations alleged herein
28 (“Aggrieved Employees”) during the “PAGA Period”. The PAGA Period is defined as one (1)

1 year and sixty-five (65) days prior to the filing of this complaint. Plaintiff reserves the right to
2 amend this complaint to reflect a different PAGA Period as further discovery is conducted.

3 101. Pursuant to Labor Code Section 2699.3, subdivision (a)(1), on November 22,
4 2021, Plaintiff gave written notice to the LWDA and Defendants of the specified provisions
5 alleged to have been violated, including the facts and theories to support the alleged violations,
6 as required by Labor Code section 2699.3. A true and correct copy of Plaintiff's notice dated
7 November 22, 2021, is attached hereto as Exhibit A.

8 102. The Labor and Workforce Development Agency has not provided Plaintiff with
9 any notice that it intends to investigate the alleged violations, and more than sixty-five (65) days
10 have elapsed since the postmark date on Plaintiff's notice.

11 103. Pursuant to Labor Code section 2699, subdivision (1)(1), Plaintiff will within ten
12 (10) days of the filing of this complaint, provide the LWDA with a file-stamped copy of this
13 complaint.

14 104. Plaintiff has therefore exhausted the administrative requirements.

15 105. PAGA permits an "Aggrieved Employee" to recover penalties on behalf of
16 himself/herself and other employees subject to violation of the Labor Code.

17 106. Section 2699, subdivision (f) of the Labor Code provides for civil penalties for
18 violations of the California Labor Code, for which a specific civil penalty is not provided, which
19 here includes, inter alia, sections 201, 202, 203, 204, 206, 221, 226, 226.7, 227.3, 510, 512, 1174,
20 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, 2698 et seq. and the applicable Wage Order.
21 Plaintiff also seeks recovery of civil penalties for any section of the Labor Code included in this
22 action.

23 107. Plaintiff is informed and believes Defendants at all relevant times employed one
24 or more employees.

25 108. For those code sections that provide for the recovery of civil penalties, Plaintiff
26 will seek on behalf of all Aggrieved employees those penalties. For those sections of the Labor
27 Code that do not specifically provide for civil penalties, Plaintiff will seek civil penalties of one
28 hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation

1 and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each
2 subsequent violation pursuant to Labor Code section 2699, subdivision (f). the initial violation
3 occurs during the first pay period following notice of such violations served on Defendant through
4 the letter to the LWDA.

5 109. Section 2699, subdivision (a) provides that civil penalties may be “recovered
6 through a civil action brought by an aggrieved employee on behalf himself or herself and other
7 current or former employees.” (Code Civ. Proc., §2699, subdivision(a).) Section 2699,
8 subdivision (g) provides that an employee who prevails in a civil action under section 2699 shall
9 be entitled to an award of reasonable attorney’s fees and costs.

10 110. The State of California, Plaintiff and Aggrieved employees are, therefore entitled
11 to civil penalties, attorneys’ fees and costs according to proof.

12 **PRAYER FOR RELIEF**

13 **WHEREFORE**, Plaintiff prays for judgment as follows:

- 14 1. That the Court determine that this action may be maintained as a class action under
15 Code of Civil Procedure section 382;
- 16 2. The Court appoint Plaintiff as Class Representative;
- 17 3. The Court appoint Mahoney Law Group, APC, as class counsel;
- 18 4. For compensatory and statutory damages;
- 19 5. For restitution of all monies due to Plaintiff and Class Members from the
20 unlawful/unfair business practices of Defendants;
- 21 6. For injunctive relief;
- 22 7. For statutory and civil penalties according to proof;
- 23 8. For reasonable attorneys’ fees and costs pursuant to Labor Code section 226,
24 subdivision (e), and section 1194; Code of Civil Procedure section 1021.5, and/or
25 other applicable laws statutes; and

26 ///

27 ///

28 ///

1 9. That the Court award such other and further relief as this Court may deem
2 appropriate.

3
4 Dated: January 28, 2022

MAHONEY LAW GROUP, APC

5
6
7 By:



Berkeh Alemzadeh, Esq.
Attorneys for Plaintiff PHILIP
HERNANDEZ, as an individual and on
behalf of all similarly situated employees

1
2 **DEMAND FOR JURY TRIAL**

3 Plaintiff PHILIP HERNANDEZ, on behalf of himself and all Class Members, hereby
4 demands a jury trial on all causes of action and claims with respect to which they have a right to
5 a jury trial.

6
7 Dated: January 28, 2022

MAHONEY LAW GROUP, APC

8
9 By:



10 Berkeh Alemzadeh, Esq.
11 Attorneys for Plaintiff PHILIP
12 HERNANDEZ, as an individual and on
13 behalf of all similarly situated employees
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EXHIBIT A



Berkeh Alemzadeh, Esq.
Phone : (562) 590-5550
Facsimile : (562) 590-8400
balem@mahoney-law.net

November 22, 2021

Via Certified Electronic Mail

LABOR AND WORKFORCE DEVELOPMENT AGENCY

PAGAFilings@dir.ca.gov

VIA CERTIFIED MAIL# 7019 0700 0001 7488 9050

Return Receipt Requested

Laksh, Inc.

Attn.: Agent for Service: Dhaval Trivedi

1080 Avenida Acaso,

Camarillo, CA 93011

VIA CERTIFIED MAIL# 7019 0700 0001 7488 9067

Return Receipt Requested

Laksh, Inc.

1080 Avenida Acaso,

Camarillo, CA 93012

PO Box 3604, Camarillo CA 93011

VIA CERTIFIED MAIL# 7019 0700 0001 7488 9074

Return Receipt Requested

Ground Route Inc.

Attn.: Agent for Service: Dhaval Trivedi

1080 Avenida Acaso,

Camarillo, CA 93011

Re: Phillip Hernandez v. Laksh, Inc.; Ground Route Inc.

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

To: California Labor and Workforce Development Agency; Laksh, Inc.; Ground Route Inc.

From: Phillip Hernandez, on behalf of himself and other aggrieved employees who were subject to the Employers' wage and hour policies as set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents the interests of Mr. Phillip Hernandez ("Mr. Hernandez" or "Employee"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698 *et seq.* ("PAGA"), on behalf of himself and all other aggrieved employees.

Theories of Labor Code Violations and Remedies

Laksh, Inc., a California corporation (hereinafter "Laksh") provides transportation services throughout the state of California, including Los Angeles and Ventura County. Ground Route, Inc. is a California corporation ("hereinafter "GRI") ("collectively, "Employers" unless otherwise specifically stated) providing parcel delivery services throughout the state of California including Los Angeles and Ventura County. Mr. Hernandez began his employment with Employers on or around January 31, 2020, as a non-exempt employee, where he remained employed until on or around January 20, 2021.

Mr. Hernandez alleges Employers violated various sections of the Labor Code, including sections 201, 202, 203, 204, 206, 221, 226, 226.7, 227.3, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802 by failing to provide Mr. Hernandez and all other aggrieved employees with meal and rest periods or premium pay, failing to pay all wages owed, including minimum wage and overtime, failing to provide accurate wage statements and maintain accurate payroll records, failing to provide all wages earned at end of employment, and for failing to reimburse for necessary business expenditures. Mr. Hernandez and similarly aggrieved employees consist of identifiable, current, and/or former similarly situated persons who worked for Employers in non-exempt positions in California during the Liability Period of one (1) year plus sixty-five (65) days prior to the filing of a complaint alleging a PAGA cause of action.

A. Employers Failed to Provide Mr. Hernandez and Other Aggrieved Employees with Meal and Rest Periods, or Premium Compensation in Lieu Thereof, in Violation of California Law

Mr. Hernandez alleges that he and other aggrieved employees were often precluded from taking timely and uninterrupted meal and rest breaks in accordance with California law due to the nature of their shifts. Mr. Hernandez and other aggrieved employees allege that they did not always receive at least one duty-free, uninterrupted meal period within the first five (5) hours worked, and a second meal period before the start of the 11th hour of work. (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041-42.) In fact, at times Employers did not have sufficient employees to provide relief for meal periods and thereby required Mr. Hernandez and other aggrieved employees to continue working throughout their meal periods. Further, Mr. Hernandez and other aggrieved regularly worked in excess of ten (10) hours, however were not provided a second timely, uninterrupted duty-free meal period. When employees were prevented from taking

timely and complete meal periods, they did not receive premium pay as compensation for the missed meal period.

Moreover, Employers utilized an auto-deduct policy for meal periods regardless of whether Mr. Hernandez and other aggrieved employees actually took a meal period, or received a late or missed meal period. Such a policy failed to accurately and precisely illustrate the true record of Mr. Hernandez and other aggrieved employees' meal breaks. Furthermore, in some instances, Employers failed to keep actual and accurate anytime records for which Mr. Hernandez and other aggrieved employees spent taking meal breaks. Instead, Employers routinely utilized a rounding policy to round time punches for Mr. Hernandez and other aggrieved employees' meal periods. For example, Employers would systematically round the time punches to the nearest ten (10) minute increments. In these instances, Mr. Hernandez and other aggrieved employees did not receive a meal premium, even though the actual meal period taken by Mr. Hernandez and other aggrieved employees were substantially less than thirty (30) minutes. Due to Employers' rounding policy, Mr. Hernandez and other aggrieved employees did not receive proper premiums for meal periods that were shortened or delayed.

Mr. Hernandez further alleges that he and other aggrieved employees often did not receive at least one duty-free, uninterrupted rest period for every four (4) hours worked, or major fraction thereof, as required by the Labor Code. Mr. Hernandez and other aggrieved employees were generally precluded from taking rest periods due to Employers' failure to sufficiently staff shifts to provide relief and thereby allow Mr. Hernandez and other aggrieved employees the opportunity to take rest breaks. When employees were prevented from taking rest breaks, they did not receive premium pay for the missed rest break.

Mr. Hernandez alleges he and other aggrieved employees were not compensated with premium pay for every meal period and rest period that was not provided. Employers' conduct is actionable under PAGA as violations of Labor Code sections 226.7 and 512, and The Industrial Welfare Commission Order No. 9 ("Wage Order 9").

B. Employers Failed to Pay Mr. Hernandez and Other Aggrieved Employees for all Hours Worked, Including Minimum Wage and Overtime, in Violation of California Law

Employer failed to pay Mr. Hernandez and other aggrieved employees at the legally mandated wage rates for all hours worked in violation of California law. Employers rounded the hours worked by Mr. Hernandez and other aggrieved employees to a factor of fifteen (15) minutes. Mr. Hernandez alleges that on average, this rounding favored Employers and therefore resulted in lost wages to Mr. Hernandez and other aggrieved employees. As a result, Employers failed to provide compensation at least at a minimum wage rate for all hours worked as required by the Labor Code. Employers' failure to provide Mr. Hernandez and other aggrieved employees pay for all hours worked is a violation of California's minimum wage laws, as Mr. Hernandez and other aggrieved employees should have been provided at least the applicable minimum wage for all hours worked.

Further, to the extent that Mr. Hernandez and other aggrieved employees worked shifts of at least eight (8) hours per day, or forty (40) hours per week, all unpaid wages described above in excess of the hours specified herein were required to be compensated at a rate of at least one-and-a-half times each employee's base rate of pay. To the extent such hours exceeded twelve (12) in one day or eight (8) on the seventh consecutive day worked, such hours were required to be compensated at a rate of at least two times each employee's base rate of pay. Additionally, if/when Mr. Hernandez and other aggrieved employees were being compensated on a piece rate basis during any pay period, they were not compensated for rest and recovery periods and other non-productive time separate from any piece-rate compensation.

Furthermore, Mr. Hernandez and other aggrieved employees were regularly required to perform work off the clock without compensation. For example, Employers failed to compensate Mr. Hernandez and other aggrieved employees for time spent waiting in mandatory security check lines. Specifically, Mr. Hernandez and other aggrieved employees were routinely required to go through mandatory security checks whereby allowing Employers the inspection of their bags, purses, and packages, among other things through metal detectors, by a manager or a security guard. These security checks constitute hours worked, for which Mr. Hernandez and other aggrieved employees were not compensated.

During the Liability Period, Mr. Hernandez and other aggrieved employees received non-discretionary bonuses. However, Employers failed to include in the regular rate of pay the non-discretionary bonuses for purposes of calculating Mr. Hernandez' and other aggrieved employees' overtime rate of pay. The incorrect overtime rate resulted in lost wages to Mr. Hernandez and other aggrieved employees.

Employers' failure conduct is actionable under PAGA as a violation of Labor Code sections 227.3, 510 and 1194, and Wage Order 9.

C. Employers Failed to Provide Mr. Hernandez and Other Aggrieved Employees with Compliant Wage Statements, and Failed to Timely Pay All Wages Owed Upon Severance of Employment, in Violation of California Law

Employers further failed to maintain complete and accurate payroll records and failed to provide Mr. Hernandez and other aggrieved employees with complete and accurate wage statements. Specifically, Mr. Hernandez and other aggrieved employees received wage statements that failed to include all rest and meal break premiums earned per pay period, reimbursement for all necessary business expenditures, compensation for actual hours worked, total hours worked, number of hours worked at each hourly rate, the correct overtime rate, total hours of nonproductive time, total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period, gross and net wages earned, the name and address of the legal entity that is the employer(s), among other things. This conduct is in violation of Labor Code sections 226, 226.3, 1174 and 1174.5 and is actionable under PAGA.

As a further result of Employers' failure to pay all wages owed as described herein, Employers also violated Labor Code sections 201, 202, 203, and 204, and Wage Order 9, due to

its uniform policy, practice, and procedure of failing to pay all wages earned to former employees at the time their employment ended.

D. Employers Failed to compensate Mr. Hernandez and Other Aggrieved Employees for All Necessary Business Expenditures Incurred During their Employment

Pursuant to Labor Code section 2802(a) “[a]n employer shall indemnify his or her employee for all necessary business expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer...” The purpose of this statute is to “prevent employers from passing their operating expenses on to their employee,” *Gattuso v. Harte-Hanks Shoopers, Inc.*, 42 Cal 4th 554, 562 (2007) (quoting legislative history from the 2000 amendment to the statute). Under Labor Code section 2802, “necessary” is defined to include all “reasonable” expenses.

The employer’s obligation to reimburse business related expense arises when the employer “knew or should have known: that its employees have incurred business related expenses. *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901, 903 (N.D. Cal. 2009) (Hon. Edward Chen); *Wilson v. Kiewit Pacific Co.*, 2010 WL 5059522 (N.D. Cl Dec. 6, 2010) (Hon. Susan Illston) (adopting the “knew or should have known standard” standard from RadioShack.)

i. Employers Failed to Reimburse Mr. Hernandez and Other Aggrieved Employees for Using Their Personal Cellphones

Under Labor Code section 2802, employers must reimburse employees for required work-related use of personal cellphones – regardless of whether they incur any additional out of pocket expense from that work-related use. *See, Cochran v. Schwan’s Home Service, Inc.* 228 Cal App. 4th 1137 (August 12, 2014) (reversing denial of class certification in cell phone reimbursement class action). *Cochran* held that “[i]f an employee is required to use personal cellphone to carry out work related duties, then he or she is incurring an expense for the purpose of section 2802. It does not matter whether the phone bill is paid for by a third person, or at all...it is irrelevant whether the employee changed plans to accommodate work related cellphone usage...To show liability under section 2802, an employee need only show that he or she was required to use a personal cellphone to carry out work related duties, and he or she was no reimbursed.” *Id.* At 1144-45 (emphasis added.)

Mr. Hernandez and other aggrieved employees were required to regularly use their personal cellphones to carry out their work-related duties, including, without limitation, communicate with supervisors, clock in/out for their shifts by downloading and utilizing an application on their phones, provide status reports, retrieve wage statements as well as send/receive text messages regarding scheduling, as well as utilize their personal cellphones GPS systems to make deliveries, among other things. However, despite the foregoing, Employers failed to reimburse Mr. Hernandez and Aggrieved Employees with a reasonable percentage of their cellular phone bills.

ii. Employers Failed to Reimburse Mr. Hernandez and Other Aggrieved Employees for Maintaining their Uniforms

The Industrial Welfare Commission Order No. 9-2001, section (8)(A) provides, "[w]hen the employer requires uniforms to be worn by the employee as a condition of employment, such uniforms shall be provided *and maintained* by the employer."

Employers expected Mr. Hernandez and other aggrieved employees to wear uniforms during their shifts. Notwithstanding this requirement, Employers failed to maintain Mr. Hernandez and other aggrieved employees' uniforms. Instead, Mr. Hernandez and other aggrieved employees were required to bear the costs associated with maintaining their uniforms throughout their employment with Employers, without reimbursement for doing so.

Employers' failure to provide complete reimbursement for all necessary business expenditures incurred by Mr. Hernandez and other aggrieved employees in direct consequence of their duties to Employer is actionable under PAGA as a violation of Labor Code section 2800, 2802, and Wage Order 9.

E. Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Hernandez becomes aware of additional compensation owed or losses incurred by Mr. Hernandez or by any other aggrieved employee of the Employers, Mr. Hernandez expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

MAHONEY LAW GROUP, APC

Berkeh Alemzadeh, Esq.
249 E. Ocean Blvd., Suite 814
Long Beach, CA 90802
Telephone: (562) 590-5550
Email: balem@mahoney-law.net

Sincerely,



Berkeh Alemzadeh, Esq.
MAHONEY LAW GROUP, APC