

PIMENTEL LAW, P.C.

Gabriel J. Pimentel, Esq. (SBN 265328)

GJP@PimentelLaw.com

Yesenia L. Rodriguez, Esq. (SBN 331499)

YLR@PimentelLaw.com

30 N. Raymond Avenue, Suite 211

Pasadena, CA 91103

Telephone: (626) 765-9800

Fax: (626) 628-3081

Attorneys for Plaintiff, putative class and aggrieved employees

ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

03/29/2022

Clerk of the Court

BY: JUDITH NUNEZ

Deputy Clerk

IN THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO, CIVIC CENTER COURTHOUSE

TREVOR NEADEAU, an individual, on behalf of
all those similarly situated and aggrieved
employees,

Plaintiff,

vs.

BROADWAY MANAGEMENT COMPANY,
LLC, a California corporation, HARRY LEWIS,
an individual, WILLIAM R. LEWIS III, an
individual, ELIZABETH CONRON, an
individual, LINDA STAPLETON, an individual,
AND JOSEPH CONRON, an individual,

Defendants.

Case No.: CGC-22-598314

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Indemnify for Necessary Expenditures in Violation of Labor Code § 2802;
2. Failure to Pay Overtime in Violation of Labor Code §§ 510 and 1198;
3. Failure to Furnish Compliant Wage Statements and Maintain Accurate Pay Records in violation of § 226, 1174 (d), and 1198;
4. Failure to Provide Rest Periods in Violation of Labor Code §§ 226.7 and 1198;
5. Failure to Timely Pay Wages in Violation of Labor Code § 204;
6. Willful Failure to Pay Wages in Violation of Labor Code §§ 201-203;
7. Civil Penalties in Violation of Labor Code §§ 2698, et seq.;

Jury Trial Demanded

1 1. Plaintiff TREVOR NEADEAU is informed and believes and thereon alleges as
2 follows:

3 **PARTIES, VENUE AND JURISDICTION**

4 2. Plaintiff TREVOR NEADEAU was at all times relevant hereto a resident of San Mateo,
5 California.

6 3. At all relevant times herein, Defendant BROADWAY MANAGEMENT COMPANY,
7 LLC was a California corporation with its principal place of business in San Ramon, California.

8 4. Venue is proper pursuant to California Civil Procedure Code §§ 395 (a) and 395.5
9 because this suit was filed in the county where the liability arises, where the breach occurred and where
10 Defendants resided at the commencement of this action.

11 5. Defendant HARRY LEWIS was at all times relevant herein a principal of Defendant
12 BROADWAY MANAGEMENT COMPANY, LLC.

13 6. Defendant WILLIAM R. LEWIS III was at all times relevant herein a principal of
14 Defendant BROADWAY MANAGEMENT COMPANY, LLC.

15 7. Defendant ELIZABETH CONRON was at all times relevant herein a principal of
16 Defendant BROADWAY MANAGEMENT COMPANY, LLC.

17 8. Defendant LINDA STAPLETON was at all times relevant herein a principal of
18 Defendant BROADWAY MANAGEMENT COMPANY, LLC.

19 9. Defendant JOSEPH CONRON was at all times relevant herein a principal of Defendant
20 BROADWAY MANAGEMENT COMPANY, LLC.

21 10. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
22 unity of interest and ownership between BROADWAY MANAGEMENT COMPANY, LLC,
23 HARRY LEWIS, WILLIAM R. LEWIS III, ELIZABETH CONRON, LINDA STAPLETON, and
24 JOSEPH CONRON, and DOES 1-20 that the individuality and separateness of defendants have ceased
25 to exist.

26 11. Plaintiff is informed and believes, and based thereon alleges, that despite the formation
27 of purported corporate existence, BROADWAY MANAGEMENT COMPANY, LLC, HARRY
28 LEWIS, WILLIAM R. LEWIS III, ELIZABETH CONRON, LINDA STAPLETON, and JOSEPH

1 CONRON, and DOES 1-20 are, in reality, one and the same.

2 12. BROADWAY MANAGEMENT COMPANY, LLC, HARRY LEWIS, WILLIAM R.
3 LEWIS III, ELIZABETH CONRON, LINDA STAPLETON, and JOSEPH CONRON, and DOES 1-
4 20 do not comply with all requisite corporate formalities to maintain a legal and separate existence.

5 13. The business affairs BROADWAY MANAGEMENT COMPANY, LLC, HARRY
6 LEWIS, WILLIAM R. LEWIS III, ELIZABETH CONRON, LINDA STAPLETON, and JOSEPH
7 CONRON, and DOES 1-20 are, and at all times relevant were, so mixed and intermingled that the
8 same cannot reasonably be segregated, and the same are in inextricable confusion. BROADWAY
9 MANAGEMENT COMPANY, LLC is, and at all times relevant hereto was, used by HARRY LEWIS,
10 WILLIAM R. LEWIS III, ELIZABETH CONRON, LINDA STAPLETON, and JOSEPH CONRON,
11 and DOES 1-20 and, as a mere shell and conduit for the conduct of certain of Defendants' affairs, and
12 is, and was, the alter ego of DOES 1-20. The recognition of the separate existence BROADWAY
13 MANAGEMENT COMPANY, LLC would not promote justice, in that it would permit Defendants to
14 insulate themselves from liability to Plaintiff for violations of state law. The corporate existence of
15 BROADWAY MANAGEMENT COMPANY, LLC and DOES 1-20 should be disregarded in equity
16 and for the ends of justice because such disregard is necessary to avoid fraud and injustice to Plaintiff
17 herein.

18 14. Accordingly, BROADWAY MANAGEMENT COMPANY, LLC, HARRY LEWIS,
19 WILLIAM R. LEWIS III, ELIZABETH CONRON, LINDA STAPLETON, and JOSEPH CONRON,
20 and DOES 1-20 are the alter egos of one another, and the fiction of their separate corporate existence
21 must be disregarded.

22 15. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
23 thereon alleges that BROADWAY MANAGEMENT COMPANY, LLC, HARRY LEWIS,
24 WILLIAM R. LEWIS III, ELIZABETH CONRON, LINDA STAPLETON, and JOSEPH CONRON,
25 and DOES 1-20 are joint employers by virtue of a joint enterprise, and that the employees and agents
26 of BROADWAY MANAGEMENT COMPANY, LLC were also employees of HARRY LEWIS,
27 WILLIAM R. LEWIS III, ELIZABETH CONRON, LINDA STAPLETON, and JOSEPH CONRON,
28 and DOES 1-20. BROADWAY MANAGEMENT COMPANY, LLC employees performed services

1 for each and every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants
2 shared control of them as employees, either directly or indirectly, and the manner in which Defendants'
3 business was and is conducted.

4 16. The true names and capacities, whether individual, corporate, associate, or otherwise,
5 of the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and
6 therefore these Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this
7 Complaint to insert the true names and capacities of these Defendants when they become known to
8 Plaintiff. Plaintiff is informed and believes and based thereupon alleges, that each of the fictitiously
9 named Defendants is responsible for the wrongful acts alleged herein and are therefore liable to
10 Plaintiff as alleged hereinafter.

11 17. Plaintiff is informed and believes and based thereupon alleges, that at all times relevant
12 hereto, Defendants were the agents, employees, managing agents, supervisors, coconspirators, parent
13 corporation, joint employers, alter egos, successors, and/or joint ventures of the other Defendants, and
14 each of them, and in doing the things alleged herein, were acting at least in part within the course and
15 scope of said agency, employment, conspiracy, joint employer, alter ego status, successor status and/or
16 joint venture and with the permission and consent of each of the other Defendants.

17 18. Plaintiff is informed and believes and based thereupon alleges, that Defendants,
18 including those defendants named as DOES 1-20 acted in concert with one another to commit the
19 wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the
20 wrongful acts alleged herein, and/or attempted to do so. Plaintiff is further informed and believes, and
21 based thereupon alleges, that Defendants, including those defendants named as DOES 1-20 formed
22 and executed a conspiracy or common plan pursuant to which they would commit the unlawful acts
23 alleged herein, with all such acts alleged herein done as part of and pursuant to said conspiracy,
24 intended to cause and actually causing Plaintiff's harm.

25 19. Whenever and wherever reference is made in this Complaint to any act or failure to act
26 by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
27 and/or failures to act by each Defendant acting individually, jointly and severally.

28

GENERAL ALLEGATIONS

20. Plaintiff TREVOR NEDEAU worked as a Building Maintenance Technician for Defendants from November 5, 2020 to July 27, 2021.

21. Plaintiff TREVOR NEDEAU'S job duties performing building maintenance and repairs, as well as administrative management tasks. Additionally, Plaintiff was required to visit different hardware stores about three times per week to restock supplies.

22. During his employment, Plaintiff was assigned to three different apartment complexes: 1) Peninsula Pines Apartments; 2) Fairmont Apartments; and 3) Colonial Gardens.

23. Plaintiff worked Monday through Friday, from 8:00 a.m. to 5:00 p.m. and was to be paid \$21 per hour. Plaintiff's schedule involved visiting Peninsula Pines Apartments about five times per week and the Fairmont Apartments about six times per week.

24. Additionally, Plaintiff was assigned on-call duties every six weeks. His on-call duties would last for two weeks, and his on-call responsibilities consisted of responding to afterhours emergencies.

25. Defendants required Plaintiff and its other employees to use their personal cell phones to respond to after hours emergencies.

26. At no point during Plaintiff's employment was he compensated for the time spent on-call or for the time spent responding to after hours emergencies.

27. Plaintiff did not receive compliant rest periods, specifically, when workloads due to big projects did not allow Plaintiff and other aggrieved employees to take their full 10-minute breaks.

28. At no point during Plaintiff's employment was he paid double minimum wage despite that Plaintiff supplied his own tools to perform his job duties, as required by the IWC Wage Orders.

29. Plaintiff was not reimbursed for the tools purchased.

30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other aggrieved employees were entitled to receive full reimbursement for all business-related expenses and costs they incurred in direct consequence of the discharge of their duties and that they did not receive full reimbursement of applicable business-related expenses and costs incurred.

1 31. Plaintiff worked a minimum of eight hours a day. Although Plaintiff and other
2 aggrieved employees were provided one meal period; they were never given a second meal period on
3 days when they worked in excess of 10 hours in one day.

4 32. Additionally, it was custom and practice for Plaintiff and all other aggrieved employees
5 to continue working without taking any 10-minute rest periods when the workload demands did not
6 allow.

7 33. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
8 aggrieved employees were not paid for all hours worked because all hours worked were not recorded.

9 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
10 have known that Plaintiff and other aggrieved employees were entitled to receive at least minimum
11 wages for compensation and that they were not receiving at least minimum wages for work that was
12 required to be done off-the-clock. In violation of the Labor Code, Plaintiff and other aggrieved
13 employees were not paid at least minimum wages for work done off-the-clock.

14 35. Plaintiff is informed and believes, and thereon allege, that Defendants knew or should
15 have known that Plaintiff and other aggrieved employees were entitled to receive certain wages for
16 overtime compensation and that they were in fact not receiving certain wages for overtime
17 compensation.

18 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
19 have known that Plaintiff and other aggrieved employees were entitled to 10 minute rest periods in
20 accordance with the Labor Code and applicable IWC Wage Order or payment of one additional hour
21 of pay at their regular rates of pay when they were not provided with a compliant 10 minute rest
22 period and that Plaintiff and other aggrieved employees were not provided compliant 10 minute rest
23 periods or payment of one additional hour of pay at their regular rates of pay when they were not
24 provided a compliant 10 minute rest period.

25 37. As discussed above, Defendants' employees are owed wages for unpaid overtime, rest
26 periods and unreimbursed business expenses. At no time since their separation of employment were
27 these outstanding sums ever paid to them. Further, Defendant knew or should have known that it owed
28 these outstanding sums to employees and intentionally failed and refused to pay these sums

1 immediately upon their termination or within 72 hours of their resignation of employment and
2 continue to refuse to do so. This practice is in violation of Labor Code §§ 201-203.

3 38. Plaintiff is informed and believes, and thereon alleges, that Defendants engaged in
4 this same practice with respect to all other aggrieved employees whose employment separated.
5 Specifically, Plaintiff alleges that Defendants' aggrieved employees are owed wages for unpaid
6 overtime, 10-minute rest periods, and unreimbursed business expenses. These outstanding sums
7 continued to accumulate every pay period. At the time of their discharge or resignation, Defendants'
8 aggrieved employees were not paid all compensation due.

9 39. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
10 have known that Plaintiff and other aggrieved employees were entitled to timely payment of all wages
11 earned upon termination of employment. In violation of the Labor Code, Plaintiff and other aggrieved
12 employees did not receive payment of all wages due, including overtime wages, and rest period
13 premiums, within the time periods required by law.

14 40. Plaintiff is informed and believes, and thereon alleges, that at all times herein
15 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff and
16 other aggrieved employees for all hours worked, and that Defendants had the financial ability to pay
17 such compensation, but willfully, knowingly, and intentionally failed to do so.

18 41. Plaintiff's proposed Class consists of: All persons who worked for Defendants as non-
19 exempt, hourly employees in California, within four years prior to the filing of the initial complaint
20 until the date of trial ("Class").

21 42. Plaintiff's proposed subclass consists of: All persons who worked for Defendants as
22 non-exempt, hourly paid employees in California and who received at least one wage statement within
23 a one year period prior to the filing of the initial complaint until the date of trial ("Subclass").

24 43. Members of the Class and Subclass are referred to herein as "Class."

25 44. Plaintiff reserves the right to redefine the Class and to add additional subclasses as
26 appropriate based on further investigation and discovery.

27 45. At all relevant times, Defendants have had a common and consistent policy and practice
28 of failing to pay the proper overtime, reimburse for necessary business expenditures, furnish compliant

1 wage statements, maintain accurate pay records, provide uninterrupted rest periods and timely pay
2 wages in violation of the Labor Code and IWC Wage Orders.

3 46. There is a well-defined community of interest in the litigation and the class members
4 are readily ascertainable:

5 47. **Numerosity:** The members of the Class are sufficiently numerous that joinder of all
6 members is impracticable. The membership of the entire Class is unknown to Plaintiff at this time.
7 However, the Class is estimated to be greater than 25 individuals and the identity of such membership
8 is readily ascertainable by inspection of Defendants' employment records.

9 48. **Commonality:** There are questions of law and fact common to the Class that are
10 answerable on a common basis, and these questions predominate over individual questions. The
11 questions of law and fact common to the Class include, without limitation:

- 12 a. Whether Defendants required Plaintiff and class members to work on-call hours
13 for which they were not compensated;
- 14 b. Whether Defendants required Plaintiff and class members to work over 8 hours
15 per day, over 12 hours per day, or over 40 hours per week and failed to pay them
16 all legally required overtime compensation;
- 17 c. Whether Defendants failed to provide Plaintiff and class members with rest
18 periods;
- 19 d. Whether Defendants provided Plaintiff and class members with complete and
20 accurate wage statements as required by California Labor Code section 226 (a);
- 21 e. Whether Defendants failed to timely pay overtime wages and rest period
22 premiums to Plaintiff and class members during their employment;
- 23 f. Whether Defendants failed to reimburse Plaintiff and class members for
24 necessary business expenditures, losses incurred by them in direct consequence
25 of the discharge of their duties or obedience to the directions of the employer;
- 26 g. The appropriate amount of damages, restitution, or monetary penalties resulting
27 from Defendants' violations of California law.

28 49. **Typicality:** Plaintiff's claims are typical of the claims of the Class he seeks to represent.

1 As set forth herein, Defendants' common course of conduct causes Plaintiff and similarly situated
2 persons employed by Defendants the same or similar injuries and damages. Plaintiff's claims are
3 thereby representative of and co-extensive with the claims of the Class.

4 50. **Adequacy:** Plaintiff will fairly and adequately represent the interests of all members of
5 the Class he seeks to represent. Plaintiff is a member of the Class he seeks to represent, does not have
6 any conflicts of interest with the Class, will prosecute the case vigorously on behalf of the Class, and
7 has already devoted time and resources to the initial investigation of these claims. Plaintiff's attorney
8 is competent and experienced in litigating employment actions, including wage and hour class actions.

9 51. **Superiority of Class Action:** A class action is superior to other available methods for
10 the fair and efficient adjudication of this controversy. In particular, Plaintiff is informed and believes
11 that some Class Members may be unwilling to bring individual lawsuits for fear of retaliation by
12 Defendants. Because the damages suffered by certain individual members of the Class may be
13 relatively small, the expense and burden of individual litigation make it impracticable for Class
14 Members to pursue their claims separately. Each member of the Class has been damaged and is entitled
15 to recovery by reason of Defendants' illegal, fraudulent and unfair employment practices and policies.
16 Class action treatment will allow those similarly situated persons to litigate their claims in the manner
17 that is most efficient and economical for the parties and the judicial system. Class action treatment
18 will also avoid inconsistent outcomes because the same issues can be adjudicated in the same manner
19 for all members of the Class.

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO INDEMNIFY FOR NECESSARY EXPENDITURES**

22 **IN VIOLATION OF LABOR CODE § 2802**

23 **(AGAINST ALL DEFENDANTS)**

24 52. Plaintiffs incorporate, by reference, all allegations in the foregoing paragraphs as
25 though fully set forth herein.

26 53. An employer shall indemnify his or her employee for all necessary expenditures or
27 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his
28 or her obedience to the directions of the employer.

1 54. At all times during their employment, Mr. Neadeau and class members were required
2 by Defendants to furnish their own tools and in fact used those tools to perform their job duties. Indeed,
3 there were an insufficient quantity of tools to allow Mr. Neadeau or class members to perform their
4 job duties without having to supply their own tools. Despite that, Mr. Neadeau and class members
5 were required to supply their own hand tools, they never reimbursed for the cost of these tools in
6 violation of Labor Code § 2802.

7 55. Mr. Neadeau also contends that Defendants failed to pay him or the class members
8 double minimum wage required by IWC Wage Order No. 4-2001, section 9 (b).

9 56. Plaintiff is informed and believes that Defendants' budget concerns prevented its
10 employees from using the company card to make necessary purchases.

11 57. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
12 Defendants have maintained a policy, practice, or a lack of policy, which resulted in their failure to
13 indemnify the Class for the reasonable expenses they incurred in the course of performing their duties.
14 Specifically, Plaintiff is informed and believes and thereon alleges that at all relevant times,
15 Defendants have not reimbursed Class Members for the purchase of their tools.

16 58. As a result of the foregoing, all members of the Class are entitled to recover all sums
17 incurred by them for the purchase of the tools that were necessary for the performance of their jobs
18 and which they were required to purchase in an amount according to proof at trial.

19 59. As a result of the foregoing, class members are further entitled to an award of interest
20 at the same rate as judgments in civil actions, accruing from the date on which they incurred the
21 necessary expenditures or loses and all reasonable costs, including attorney's fees incurred by them
22 for enforcing the rights granted by Labor Code § 2802.

23 **SECOND CAUSE OF ACTION**

24 **FAILURE TO PAY OVERTIME WAGE**

25 **IN VIOLATION OF LABOR CODE §§ 510 and 1198**

26 **(AGAINST ALL DEFENDANTS)**

27 60. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
28 though fully set forth herein.

1 61. Labor Code § 1198 makes it unlawful to employ an employee under conditions of labor
2 that are prohibited by the applicable wage order. California Labor Code § 1198 requires that “the
3 standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for
4 employees. The employment of any employee . . . under conditions of labor prohibited by the order
5 is unlawful.”

6 62. The applicable IWC Wage Order required Defendants to pay Plaintiff and class
7 members working more than 8 hours in a day or more than 40 hours in a workweek, at the rate of time
8 and one-half for all hours worked in excess of 8 hours in a day or 40 hours in a workweek. The
9 applicable IWC Wage Order further required Defendants to pay Plaintiff and class members working
10 more than 12 hours in a day, overtime compensation at a rate of 2 times their regular rate of pay, and
11 2 times their regular rate of pay for hours worked in excess of 8 hours on the seventh consecutive
12 day of a work in a workweek.

13 63. At all relevant times, Defendants willfully failed to pay all overtime wages owed to
14 Plaintiff and class members. At all relevant times, Plaintiff and class members were not paid overtime
15 premiums for all of the hours they worked in excess of 8 hours in a day, in excess of 12 hours in a
16 day, and/or in excess of 40 hours in a week, and for all hours worked in excess of 8 hours on the
17 seventh consecutive day of work in a workweek.

18 64. Plaintiff and class members are owed overtime and double time compensation for the
19 on-call hours worked during their employment. Further, Plaintiff and class members were not paid for
20 all hours worked, including time that they spent “on call” even after their shifts had ended. Because
21 Plaintiff and class members worked shifts in excess of 8 hours a day or more and 40 hours a week or
22 more, much of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and
23 class members were not paid overtime wages for all of the overtime hours they actually worked.

24 65. Defendants’ failure to pay Plaintiff and class members the balance of overtime
25 compensation, as required by California law, violates the provisions of California Labor Code §§ 510
26 and 1198. Pursuant to California Labor Code § 1194, Plaintiff and class members are entitled to
27 recover their unpaid overtime compensation, as well as interest, costs, and attorneys’ fees.

28 66. Labor Code §558 (a) requires that any person acting on behalf of an employer who

1 violates, or causes to be violated, overtime rules pay a civil penalty in the amount of \$50 for each
2 underpaid employee for each pay period in which the employee was underpaid in addition to an amount
3 sufficient to recover underpaid wages. Also, Labor Code §558 (a) for each subsequent violation, the
4 person acting on behalf of an employer is liable in the amount of \$100 for each underpaid employee
5 for each pay period for which the employee was underpaid in addition to an amount sufficient to
6 recover the underpaid wages.

7 67. In addition to the above withheld overtime wages, Plaintiff and the Class are entitled
8 to civil penalties based upon Defendants' underpayment of overtime wages. Defendants violated
9 Labor Code §558 on each of the past pay periods within the one-year preceding the filing of this
10 complaint, the first of which Defendants are penalized \$50.00, and the remainder of which Defendants
11 are penalized \$100.00 each, for a total of Labor Code §558 penalties in an amount to be proven at trial.

12 **THIRD CAUSE OF ACTION**

13 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**
14 **AND FAILURE TO MAINTAIN ACCURATE PAYROLL RECORDS**
15 **IN VIOLATION OF LABOR CODE §§ 226 1174 (d), and 1198**
16 **(AGAINST ALL DEFENDANTS)**

17 68. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
18 though fully set forth herein.

19 69. Pursuant to Labor Code §§ 226 and 1174, employers have a duty to provide their non-
20 exempt employees with accurate itemized statements showing total hours worked, hourly wages, gross
21 wages, total deductions net wages earned and name of the employer. An employer who violates these
22 Code sections is liable to its employees for the greater of actual damages suffered by the employee, or
23 \$50.00 in civil penalties for the initial pay period in which a violation occurred, and \$100.00 per
24 employee for each subsequent pay period, up to a statutory maximum of \$4,000.00.

25 70. Pursuant to Labor Code § 558.1, any employer or other person acting on behalf of an
26 employer, who violates, or causes to be violated, Labor Code section 226, may be held liable as the
27 employer for such violation. The term 'other person acting on behalf of an employer' is limited to a
28 natural person who is an owner, director, officer, or managing agent of the employer.

1 71. At all relevant times, Defendants willfully provided Plaintiff and subclass members
2 with incorrect wage statements accurately reflecting the time spent on-call. The additional time that
3 Plaintiff and subclass members are owed is not accurately reflected in their wage statements.

4 72. Additionally, because Defendants failed to document time worked on Plaintiff's and
5 subclass members' wage statements and employment records for time spent working during meal
6 periods, Defendants unlawfully deducted wages earned and meal period premiums that should have
7 been paid. Thus, Defendants did not furnish wage statements to Plaintiff and subclass members
8 containing the correct amount of gross wages earned in violation of Labor Code § 226 (a) (1),
9 accurate total hours worked in violation of Labor Code § 226 (a) (2), correct amount of net wages
10 earned in violation of Labor Code § 226 (a) (5), or accurate number of hours worked at each
11 corresponding hourly rate in violation of Labor Code § 226 (a) (9).

12 73. Further, Plaintiff is informed and believes that Defendants failed to give him and
13 subclass members access to digital copies of wage statements or hard copies in violation of Labor
14 Code § 226 (a)

15 74. To the extent that Defendants paid any rest break premium payments, Defendants
16 failed to identify such payments on Plaintiff's and subclass members' wage statements and
17 employment records, and Defendants otherwise failed to provide information on the wage statements
18 sufficient to identify how many premium payments were paid during each pay period, the specific
19 dates worked giving rise to the premium payments owed, or to determine whether such premium
20 payments adequately and/or accurately compensated Plaintiff and subclass members for any and all
21 premiums owed.

22 75. California Labor Code section 1174 (d) provides that "every person employing labor
23 in this state shall ... keep a record showing the names and addresses of all employees employed and
24 the ages of all minors" and "keep, at a central location in the state or at the plants or establishments
25 at which employees are employed, payroll records showing the hours worked daily by and the wages
26 paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees
27 employed at the respective plants or establishments..." At all relevant times, and in violation of Labor
28 Code § 1174 (d), Defendants willfully failed to maintain accurate and/or any payroll records for

1 Plaintiff and Subclass members showing the daily hours they worked and the wages paid thereto as
2 a result of failing to record the off-the-clock hours that they worked.

3 76. Plaintiff and subclass members are entitled to recover the greater of their actual
4 damages caused by Defendants' failure to comply with Labor Code § 226 (a), or an aggregate penalty
5 not exceeding four thousand dollars \$4,000 per employee, plus attorneys' fees and costs.

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE REST PERIODS**

8 **LABOR CODE §§ 226.7 and 1198**

9 **(AGAINST ALL DEFENDANTS)**

10 77. Employees must be given 10-minute net rest periods for every 4 hours of work, to be
11 taken in the middle of each 4-hour period insofar as practicable. However, a rest period need not be
12 provided for employees whose total daily work is less than 3.5 hours. Thus, employees are entitled to
13 one 10-minute net rest period for shifts from 3.5 to 6 hours in length, two for shifts of more than 6
14 hours up to 10 hours, and three for shifts of more than 10 hours up to 14 hours, and so on. *Brinker*
15 *Restaurant Corp. v Superior Court*, 53 Cal.4th 1004, 1029 (2012); Wage Order Nos. 1–2001 to 16–
16 2001, §§11–12 (A); 8 Cal Code Regs §§11010-11160.

17 78. “An employer shall not require an employee to work during a rest ... period mandated
18 pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
19 Commission If an employer fails to provide an employee a rest ... period in accordance with a
20 state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order
21 of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of
22 pay at the employee’s regular rate of compensation for each workday that the rest ... period is not
23 provided.” Lab. Code § 226.7 (b) & (c).

24 79. To comply with its obligation to provide rest periods under California Labor Code §
25 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how
26 employees spend their break time, and relieve their employees of all duties — including the obligation
27 that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus v. ABM*
28 *Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

1 80. Defendants' company-wide policy and practice of understaffing while simultaneously
2 assigning demanding workloads, prevented Plaintiff and class members from being relieved of all duty
3 in order to take compliant rest periods.

4 81. Defendants also had a uniform policy of failing to schedule rest breaks. As a result,
5 Plaintiff and class members missed their rest breaks, would be required to take them late, or would
6 have their rest breaks interrupted. Plaintiff and class members were prevented from being relieved of
7 all duty in order to take compliant rest periods and instead would be required to continue working.

8 82. Plaintiff and class members worked shifts in excess of 3 ½ hours, in excess of 6 hours,
9 and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
10 were entitled.

11 83. Defendants have also engaged in a systematic, company-wide practice and/or policy of
12 not paying rest period premiums owed when rest periods are not authorized or permitted. Thus,
13 Defendants denied Plaintiff and class members rest periods and failed to pay them rest period
14 premium wages due, in violation of Labor Code section 226.7 and the applicable IWC Wage Order.

15 84. As alleged herein, Plaintiff and the Class are not exempt from the rest period
16 requirements of the applicable Code of Regulations and Industrial Welfare Commission Orders.

17 85. Defendants' conduct violates the applicable IWC Wage Order and California Labor
18 Code §§ 226.7 and 1198. Plaintiff and class members are therefore entitled to recover from
19 Defendants one additional hour of pay at the employee's regular rate of compensation for each work
20 day that the rest period was not authorized or permitted, plus interest thereon and costs of suit in an
21 amount subject to proof at trial.

22 **FIFTH CAUSE OF ACTION**

23 **FAILURE TO TIMELY PAY WAGES**

24 **IN VIOLATION OF LABOR CODE § 204**

25 86. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
26 though fully set forth herein.

27 87. "All wages ... earned by any person in any employment are due and payable twice
28 during each calendar month, on days designated in advance by the employer as the regular paydays ...

1 (d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly,
2 biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following
3 the close of the payroll period.” Labor Code § 204.

4 88. “In addition to, and entirely independent and apart from, any other penalty provided in
5 this article, every person who fails to pay the wages of each employee as provided in Sections ... 204
6 ... shall be subject to a penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for
7 each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional
8 violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the
9 amount unlawfully withheld.” Labor Code § 210.

10 89. At all times relevant herein, Defendants engaged in a practice of failing to pay Plaintiff
11 and the Class by the seventh calendar day following the close of the payroll period. Indeed, as
12 discussed above, Plaintiff and the Class are owed wages for unpaid overtime, rest periods and
13 unreimbursed business expenses. At no time during their employment were these outstanding sums
14 ever paid to them. Instead, these outstanding sums continued to accumulate every pay period.
15 Therefore, Plaintiff and the Class were not paid all wages earned by the seventh calendar day following
16 the close of their pay periods.

17 90. As a direct and proximate result of Defendants’ failure to timely pay wages, Plaintiff
18 and the Class are entitled to penalties under Labor Code § 210 in an amount subject to proof at trial.

19 **SIXTH CAUSE OF ACTION**

20 **WILLFUL FAILURE TO PAY WAGES**

21 **IN VIOLATION OF LABOR CODE §§ 201-203**

22 91. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
23 though fully set forth herein.

24 92. “If an employer discharges an employee, the wages earned and unpaid at the time of
25 discharge are due and payable immediately.” Labor Code § 201.

26 93. “If an employee not having a written contract for a definite period quits his or her
27 employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless
28 the employee has given 72 hours previous notice of his or her intention to quit, in which case the

1 employee is entitled to his or her wages at the time of quitting.” Labor Code § 202.

2 94. “If an employer willfully fails to pay any wages of an employee who is discharged or
3 who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same
4 rate until paid or until an action therefor is commenced.” Labor Code § 203.

5 95. Plaintiff and the Class were not exempt from the requirements of Labor Code §§ 201-
6 203.

7 96. Defendants engaged in a practice of failing to pay class members either immediately
8 upon discharge, or within 72 hours of their resignation in violation of Labor Code § 203. As discussed
9 above, class members are owed wages for unpaid minimum wage, overtime, and unreimbursed
10 business expenses. At no time since their separation of employment were these outstanding sums ever
11 paid to them. Further, Defendants knew or should have known that they owed these outstanding sums
12 to these aggrieved employees and intentionally failed and refused to pay these sums within the time
13 required by Labor Code § 201-202 and continue to refuse to do so.

14 97. At no time since Plaintiff’s or the Class’s separation of employment did Defendants pay
15 them wait-time penalties as required by Labor Code § 203.

16 98. As a direct and proximate result of Defendants’ willful failure to pay Plaintiff’s and the
17 Class’s wages within the time required by Labor Code § 201-202, Plaintiff and the Class incurred
18 wait-time penalties in an amount equal to their daily rate of pay over the period that the wages were
19 not paid in an amount subject to proof at trial.

20 **SEVENTH CAUSE OF ACTION**
21 **CIVIL PENALTIES IN VIOLATION OF**
22 **LABOR CODE § 2698, ET SEQ.**
23 **(AGAINST ALL DEFENDANTS)**

24 99. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
25 though fully set forth herein.

26 100. Under Labor Code § 2698, et seq., Plaintiff, as a aggrieved employee, may bring an
27 action against defendants, on behalf of himself and other current or former employees, seeking civil
28 penalties for defendants’ violations of the California Labor Code.

101. Plaintiff was an aggrieved employee within the meaning of Labor Code §2698, et seq. by virtue of the numerous Labor Code violations he was subjected to as plead herein.

102. Defendants also subjected the aggrieved employees on whose behalf Plaintiff brings this enforcement action to all of the Labor Code violations plead herein, including failing to reimburse for necessary business expenditures in violation of Labor Code § 2802, failing to pay overtime in violation Labor Code §§ 510 and 1198, failing to furnish compliant wage statements and maintain accurate pay records in violation of § 226, 1174 (d), and 1198, failing to provide rest periods in violation of Labor Code §§ 226.7 and 1198, failure to timely pay wages in violation of Labor Code § 204, and willful failure to pay wages in violation of Labor Code § 201-203.

103. On November 10, 2021, Plaintiff provided written notice by online filing with the Labor and Workforce Development Agency and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violation, as required by Labor Code § 2699.3 (a) (1) (A).

104. As of the filing of this Complaint, Plaintiff has received no notice from the Labor and Workforce Development Agency of its intent to pursue an action against Defendants.

105. As a direct and proximate result of Defendants' California Labor Code violations as set forth herein, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation, pursuant to Labor Code § 2699 (f), for those Labor Code sections not expressly providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly provide for a penalty.

106. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the recovered civil penalties.

PRAYER FOR RELIEF

Plaintiff and the Class pray for relief and judgment against Defendants as follows:

1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in excess of \$25,000, exclusive of interest and costs.

1 **Class Certification**

- 2 2. That this case be certified as a class action;
- 3 3. That Plaintiff be appointed as the representative of the Class and Subclass;
- 4 4. That counsel for Plaintiff be appointed as class counsel.

5 **As to the First Cause of Action**

6 **(Unreimbursed Business Expenses)**

7 5. That the Court adjudge, declare and decree that Defendants violated Labor Code § 2802

8 by willfully failing to reimburse business expenses incurred by Plaintiff and the Class;

9 6. For unreimbursed business expenses and for all actual, consequential, and incidental

10 losses and damages, according to proof;

11 7. For interest at the same rate as judgments in civil actions, accruing from the date on

12 which Plaintiff and the Class incurred the necessary expenditures or loses pursuant to Labor Code §

13 2802;

14 8. For all reasonable costs and attorney's fees incurred by Plaintiff's and the Class's

15 enforcement of the rights granted by Labor Code § 2802 pursuant to Labor Code § 2802 (c); and

16 9. For such other relief that the Court deems just and appropriate.

17 **As to the Second Cause of Action**

18 **(Unpaid Overtime)**

19 10. That the Court adjudge, declare and decree that Defendants violated Labor Code §§

20 510 and 1198, applicable IWC Wage Orders and Codes of Regulation by willfully failing to pay

21 overtime wages to Plaintiff and class members;

22 11. For payment of unpaid overtime wages in an amount subject to proof;

23 12. For prejudgment interest at the legal rate from the date the obligation became due

24 through the date of judgment in this matter;

25 13. For all reasonable costs and attorney's fees incurred by Plaintiff's and the Class's

26 enforcement of the rights granted by Labor Code §§ 510 and 1198 pursuant to Labor Code § 1194 (a);

27 and

28 14. For such other relief that the Court deems just and appropriate.

1 **As to the Third Cause of Action**

2 **(Noncompliant Wage Statements and Payroll Records)**

3 15. That the Court adjudge, declare and decree that Defendants violated Labor Code §§
4 226 and 1198, applicable IWC Wage Orders and Codes of Regulation by willfully failing to furnish
5 compliant, accurate itemized wage statements to Plaintiff and class members and for failure to keep
6 accurate payroll records;

7 16. For consequential and incidental losses and damages according to proof;

8 17. For injunctive relief pursuant to Labor Code § 226 (h);

9 18. For statutory penalties pursuant to Labor Code § 226 (e);

10 19. For all reasonable costs and attorney's fees incurred by Plaintiff's and the Class's
11 enforcement of the rights granted by Labor Code §§ 226 pursuant to Labor Code § 226 (e) (1); and

12 20. For such other relief that the Court deems just and appropriate.

13 **As to the Fourth Cause of Action**

14 **(Failure to Provide Rest Periods)**

15 21. That the Court declare, adjudge, and decree that Defendants violated California Labor
16 Code §§ 226.7, 1198, applicable IWC Wage Orders and Codes of That the Court declare, adjudge, and
17 decree that Defendants violated California Labor Code §§ 226.7, 1198, applicable IWC Wage Orders
18 and Codes of Regulation by willfully failing to provide all rest periods to Plaintiff and class members;

19 22. That the Court make an award to the Plaintiff and class members of one hour of pay at
20 each employee's regular rate of pay for each workday that a rest period was not provided;

21 23. For all actual, consequential, and incidental losses and damages, according to proof;

22 24. For premiums pursuant to California Labor Code section 226.7 (b);

23 25. For pre-judgment interest on any unpaid rest period premiums from the date such
24 amounts were due, or as otherwise provided by law;

25 26. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or
26 as otherwise provided by law; and

27 27. For such other relief that the Court deems just and appropriate.

1 **As to the Fifth Cause of Action**

2 **(Failure to Timely Pay Wages)**

3 28. That the Court declare, adjudge, and decree that Defendants violated California Labor
4 Code § 204, applicable IWC Wage Orders and Codes of Regulation by willfully failing to timely pay
5 wages to Plaintiff and class members;

6 29. For penalties pursuant to Labor Code § 210, plus 25 percent of amounts unlawfully
7 withheld from Plaintiff and class members;

8 30. For all actual, consequential, and incidental losses and damages, according to proof;

9 31. For pre-judgment interest on any unpaid wages from the date such amounts were due,
10 or as otherwise provided by law;

11 32. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or
12 as otherwise provided by law; and

13 33. For such other relief that the Court deems just and appropriate.

14 **As to the Sixth Cause of Action**

15 **(Willful Failure to Pay Wages)**

16 34. That the Court declare, adjudge, and decree that Defendants violated California Labor
17 Code § 201-203, applicable IWC Wage Orders and Codes of Regulation by willfully failing to pay
18 minimum wages, overtime wages, and meal and rest premiums owed to Plaintiff and class members
19 either upon discharge or within 72 hours of their resignation;

20 35. For wait time penalties pursuant to Labor Code § 203;

21 36. For all actual, consequential, and incidental losses and damages, according to proof;

22 37. For pre-judgment interest on any unpaid wages from the date such amounts were due,
23 or as otherwise provided by law;

24 38. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or
25 as otherwise provided by law; and

26 39. For such other relief that the Court deems just and appropriate.

1 **As to the Seventh Cause of Action**

2 **(Civil Penalties under the PAGA)**

3 40. That the Court declare, adjudge, and decree that Defendants violated all California
4 Labor Code sections plead herein, including Labor Code §§ 201-204, 226, 226.7, 510, 1198 and 2802;

5 41. For civil penalties pursuant to 210, 226.3, 256, 558, 2699 (a) and/or 2699 (a), (f) and
6 (g), for violations of all California Labor Code sections plead herein, including Labor Code §§ 201-
7 204, 226, 226.7, 510, 1198 and 2802;

8 42. For attorneys' fees and costs pursuant to California Labor Code § 2699 (g) (1), and any
9 and all other relevant statutes, for Defendants' violations of all California Labor Code sections plead
10 herein, including Labor Code §§ 201-204, 226, 226.7, 510, 1198 and 2802;

11 43. For pre-judgment and post-judgment interest as provided by law; and

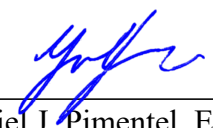
12 44. For such other and further relief as the Court deems just and appropriate.

13 **DEMAND FOR JURY TRIAL**

14 Plaintiff and the Class hereby demand a trial by jury on all issues.

15 **PIMENTEL LAW, P.C.**

16
17 Dated: March 29, 2022

18 By: 
Gabriel J. Pimentel, Esq.
Yesenia L. Rodriguez, Esq.
Attorneys for Plaintiff, putative class and
aggrieved employees