

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN BERNARDINO
 SAN BERNARDINO DISTRICT

DEC 21 2021

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SAN BERNARDINO

JUAN NIEVES, individually, on a
 representative basis, and on behalf of all
 others similarly situated;

Plaintiff,

vs.

KLLM TRANSPORT SERVICES, LLC, a
 Texas Limited Liability Company; and DOES
 1 through 20, inclusive;

Defendants.

Case No.:

CIV SB 2134796

COMPLAINT

CLASS ACTION CLAIMS

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Provide Meal Periods;
- (3) Failure to Provide Rest Breaks;
- (4) Failure to Reimburse Bus. Expenses;
- (5) Failure to Timely Pay Final Wages;
- (6) Failure to Provide Accurate Itemized Wage Statements;
- (7) Unfair and Unlawful Competition;

PAGA CLAIMS

- (8) Failure to Pay Minimum Wages;
- (9) Failure to Provide Meal Periods;
- (10) Failure to Provide Rest Breaks;
- (11) Failure to Reimburse Bus. Expenses;
- (12) Failure to Timely Pay Wages;
- (13) Failure to Timely Pay Final Wages; and
- (14) Failure to Provide Accurate Itemized Wage Statements

By Fax

1 Plaintiff Juan Nieves (“Plaintiff”) on behalf of himself, on a representative basis, and on
2 behalf of others similarly situated, complains and alleges as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against his employer(s), Defendants KLLM Transport
5 Services, LLC and DOES 1 through 20, inclusive, (collectively, “Defendants”) on behalf of all
6 current and former truck drivers who resided in California and who were employed by
7 Defendants within the last four years (the “Represented Employees”), for Labor Code violations
8 stemming from Defendants’ failure to pay all wages owed, including minimum and regular
9 wages, failure to provide meal periods, failure to provide rest breaks, failure to reimburse
10 business expenses, failure to timely pay wages upon separation of employment, and failure to
11 provide accurate itemized wage statements.

12 2. Plaintiff was employed by Defendants from approximately September through
13 December 2021.

14 3. Plaintiff alleges on information and belief that the Represented Employees were
15 subjected to the same policies, working conditions, and corresponding wage and hour violations
16 to which Plaintiff was subjected during employment.

17 4. Plaintiff and the Represented Employees were not provided all minimum and
18 regular wages due to Defendants’ failure to accurately record and compensate for all hours
19 worked. Specifically, Plaintiff alleges that Defendants’ pay policy did not compensate the
20 Represented Employees for all time spent under the Company’s direction and control. See
21 *Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575 (employees must be paid for all time that
22 the employer either knew, or reasonably should have known, that its employees are subject to its
23 control or otherwise working). Additionally, Defendants often paid “trip pay” and/or piece-rate
24 compensation to the Represented Employees which did not compensate for all hours worked.

25 5. Plaintiff and the Represented Employees were also denied 30-minute off-duty
26 meal periods, as mandated by California law. As a result of Defendants’ policies and practices,
27 the Represented Employees were subjected to meal period violations when they were: (1) unable
28 to take a meal period due to workload, (2) forced to take an on-duty meal period while under the

1 control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal
2 period after the 5th hour of work, and (5) not provided mandated second and third meal periods.

3 6. Defendants also failed to provide Plaintiff and the Represented Employees with
4 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
5 mandated by California law. Defendants did not schedule rest breaks and the Represented
6 Employees were often not authorized and/or permitted to take mandated rest breaks due to being
7 overwhelmed by their hectic workload. Furthermore, on occasions when Plaintiff and the
8 Represented Employees worked longer shifts, Defendants failed to authorize and/or permit
9 mandated third or fourth rest breaks.

10 7. Moreover, at all relevant times, Defendants required Plaintiff and the Represented
11 Employees to incur necessary business-related expenses and costs without reimbursement. For
12 example, Plaintiff was required to incur substantial expenses without reimbursement during
13 employment, including but not limited to acquiring and maintaining a smart phone and related
14 monthly data plan to communicate with the Company via phone, text message, and e-mail.

15 8. Plaintiff also alleges that he and the Represented Employees were not paid all
16 wages due and owing each pay period (Labor Code § 204) and upon separation of employment
17 within the time required by Labor Code §§ 201 – 203. Plaintiff further alleges that Defendants
18 engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Represented
19 Employees at the time their employment ended with Defendants, including, but not limited to
20 minimum and regular wages, wage premiums, vacation wages, among others.

21 9. Plaintiff further alleges that Defendants failed to provide accurate itemized wage
22 statements that fully complied with the requirements of Labor Code § 226(a).

23 10. Plaintiff alleges that Defendants' violations of the wage and hour components of
24 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their
25 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
26 its competitors.

27 11. At all material times, Defendants and DOES 1 through 20 were and/or are the
28 Represented Employees' employers or persons acting on behalf of the Represented Employees'

1 employer, within the meaning of California Labor Code § 558, who violated or caused to be
2 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
3 hours and days of work in an IWC Wage Order and, as such, are subject to penalties for each
4 underpaid employee as set forth in Labor Code § 558 and under California law.

5 12. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
6 monetary relief against Defendants and each of them, on behalf of himself and the Represented
7 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
8 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
9 210, 218.6, 226, 226.3, 226.7, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802,
10 among possibly other sections inadvertently omitted. Plaintiff also reserves the right to name
11 additional representatives throughout the State of California.

12 13. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing
13 to the Labor and Workforce Development Agency ("LWDA") and by certified mail to
14 Defendants of the specific provisions of the Labor Code alleged to have been violated, including
15 the facts and theories to support the alleged violations. Thus, Plaintiff is currently complying
16 with the procedures for bringing suit specified in California Labor Code § 2699.3, and this
17 Complaint will be deemed amended to include the PAGA allegations enumerated below when
18 more than sixty-five (65) days have passed since the Notice was mailed to Defendants and the
19 LWDA chooses not to investigate the allegations herein.

20 **II. JURISDICTION**

21 14. This Court has jurisdiction over the claims for relief of Plaintiff and the
22 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

23 **III. VENUE**

24 15. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
25 Procedure § 395(a). Defendants transact business in San Bernardino County and the unlawful
26 acts alleged herein have a direct effect on Plaintiff and the Represented Employees in San
27 Bernardino County. Furthermore, Defendants employed or employ Plaintiff and Represented
28 Employees in San Bernardino County.

1 **IV. PARTIES**

2 **Plaintiff**

3 16. Plaintiff and Class Representative Juan Nieves was employed by Defendants from
4 approximately September through December 2021 and performed work for Defendants in San
5 Bernardino County.

6 **Defendants**

7 17. Plaintiff is informed and believes and thereon alleges that Defendant KLLM
8 Transport Services, LLC is a Texas limited liability company authorized to and doing business in
9 San Bernardino County, California. Plaintiff is also informed and believes that Defendant
10 KLLM Transport Services, LLC is and/or was the legal employer of Plaintiff and the
11 Represented Employees during the applicable statutory periods.

12 18. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
13 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
14 inclusive, but on information and belief alleges that those Defendants are legally responsible for
15 the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of
16 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
17 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
18 Defendants when ascertained.

19 19. Plaintiff is informed and believes and thereon alleges that he and the Represented
20 Employees worked under the joint direction and control of Defendants and that Defendants, and
21 each of them, acted in all respects pertinent to this action as the agent of the other Defendants,
22 carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of
23 each Defendant are legally attributable to the other Defendants. On information and belief, a
24 unity of interest and ownership between each Defendant exists such that all Defendants acted as
25 a single employer of Plaintiff and other Represented Employees.

26 20. Furthermore, Plaintiff is informed and believes and thereon alleges that
27 Defendants, and each of them, are an integrated enterprise and should be treated as a single
28 employer because these entities share an interrelation of operations, with common human

resources and personnel policies and shared common offices and facilities. Additionally, Defendants also have a shared website, common management, a centralized control of labor operations, and common ownership or financial control.

21. Plaintiff is informed and believes and thereon alleges that, in conducting themselves in the manner described herein, Defendants, and each of them, were acting in active concert with one another such that the acts of each were and are fully attributable to the others in all material respects. Plaintiff is further informed and believes that at all relevant times Defendants and each of them are now, and at all material times herein mentioned were, the agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of their remaining co-Defendants.

22. Plaintiff is further informed and believes that at all relevant times, Defendants have been inadequately capitalized to conduct business, have failed to follow appropriate corporate formalities, and have simply been a shell and instrumentality through which Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly, the corporate veil should be pierced, and any liability attached to Defendants should be imposed jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the separate existence of these corporate entities would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice.

V. CLASS ACTION ALLEGATIONS

23. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

24. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action, pursuant to Code of Civil Procedure § 382.

25. The relevant time period for this class action is defined as the period beginning four years prior to the filing of this action until class certification (the “Relevant Time Period”).

1 26. The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to
2 represent is defined as follows:

3 All current and former truck drivers who resided in
4 California and who were employed by Defendants at any
5 time during the Relevant Time Period.

6 27. Plaintiff also seeks to represent the following subclasses:

7 **Meal Break Subclass**

8 All Represented Employees who worked a shift in excess of
9 5 hours during the Relevant Time Period.

10 **Rest Break Subclass**

11 All Represented Employees who worked a shift of at least
12 3.5 hours during the Relevant Time Period.

13 **Unreimbursed Expense Subclass**

14 All Represented Employees who were required to incur
15 expenses to discharge their duties for Defendants without
16 reimbursement during the Relevant Time Period.

17 **Waiting Time Penalties Subclass**

18 All Represented Employees who separated from their
19 employment with Defendants during the period three years
20 before the filing of this action and ending when final
21 judgment is entered.

22 **Wage Statement Penalties Subclass**

23 All Represented Employees during the period one year
24 before the filing of this action and ending when final
25 judgment is entered.

26 28. Plaintiff reserves the right to amend or modify the class description with greater
27 specificity or further division into subclasses or limitation to particular issues as appropriate.
28

1 29. Plaintiff, as Class Representative, is a member of the class and subclasses that he
2 seeks to represent.

3 30. This action has been brought and may properly be maintained as a class action
4 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
5 litigation and the proposed class is easily ascertainable from Defendants' records.

6 31. **Numerosity:** The potential members of the Class as defined are so numerous that
7 a joinder of all Represented Employees is impracticable. Although the exact number is currently
8 unknown to Plaintiff, this information is easily ascertainable from Defendants' records.

9 32. **Commonality:** There are questions of law and fact common to the class which
10 predominate over any questions affecting only individual members of the class, including
11 without limitation:

12 i. Whether Defendants violated the Labor Code and applicable IWC Wage
13 Order by failing to pay wages to Plaintiff and the Represented Employees for all hours worked;

14 ii. Whether Defendants violated the Labor Code and applicable IWC Wage
15 Order by failing to provide compliant meal periods to Plaintiff and the Meal Break Subclass and
16 whether Defendants failed to compensate Plaintiff and the Meal Break Subclass with one
17 additional hour of wages at the regular rate of pay for each instance when a compliant meal
18 period was not provided;

19 iii. Whether Defendants violated the Labor Code and applicable IWC Wage
20 Order by failing to provide compliant rest breaks to Plaintiff and the Rest Break Subclass and
21 whether Defendants failed to compensate Plaintiff and the Rest Break Subclass with one
22 additional hour of wages at the regular rate of pay for each instance when a paid rest break was
23 not provided;

24 iv. Whether Defendants violated the Labor Code and applicable IWC Wage
25 Order by failing to reimburse Plaintiff and the Unreimbursed Expense Subclass for business
26 expenses incurred discharging their duties or in obedience to the directions of their employer;
27
28

1 v. Whether Defendants violated the Labor Code by failing to timely pay all
2 wages due upon separation of employment between Defendants and Plaintiff and the Waiting
3 Time Penalties Subclass, whether such separation was voluntary or involuntary;

4 vi. Whether Defendants violated the Labor Code by failing to provide
5 Plaintiff and the Wage Statement Penalties Subclass with accurate, itemized wage statements;

6 vii. Whether Defendants violated California Business & Professions Code §§
7 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest
8 breaks, failure to provide mandated meal periods, failure to reimburse business expenses, and
9 failure to timely pay final wages; and

10 viii. Whether Plaintiff and Represented Employees are entitled to equitable
11 relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

12 33. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the
13 claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants'
14 ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all
15 wages owed, failure to provide mandated meal periods, failure to provide mandated paid rest
16 breaks, failure to timely pay wages upon separation of employment, and failure to provide
17 accurate itemized wage statements.

18 34. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly
19 and adequately represent and protect the interests of the Class. Plaintiff's interests are not in
20 conflict with those of the Class. Class Representative's counsel are competent and experienced in
21 litigating large employment class actions and other complex litigation matters, including cases
22 like this case.

23 35. **Superiority of Class Action.** Class certification is appropriate because a class
24 action is superior to other available means for the fair and efficient adjudication of this
25 controversy. Individual joinder of all Represented Employees is not practicable, and questions of
26 law and fact common to the Class predominate over any questions affecting only individual
27 members of the Class. Each Represented Employee has been damaged and is entitled to
28 recovery by reason of Defendants' illegal policies and practices set forth above. Class action

1 treatment will allow those similarly situated persons to litigate their claims in the manner that is
2 most efficient and economical for the parties and the judicial system.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**

5 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

6 *Plaintiff and the Represented Employees Against All Defendants*

7 36. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
8 alleged herein.

9 37. Plaintiff and the Represented Employees were not exempt from the requirement
10 to be paid at least the applicable California minimum wage throughout the statutory period for
11 each hour worked.

12 38. Plaintiff and the Represented Employees were not provided proper minimum and
13 regular wages due to Defendants' failure to accurately record and compensate for all hours
14 worked. Specifically, Plaintiff alleges that Defendants' pay policy did not compensate the
15 Represented Employees for all time spent under the Company's direction and control. See
16 *Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575 (employees must be paid for all time that
17 the employer either knew, or reasonably should have known, that its employees are subject to its
18 control or otherwise working). Additionally, Defendants often paid "trip pay" and/or piece-rate
19 compensation to the Represented Employees which did not compensate for all hours worked.

20 39. As a result of these policies and practices, Plaintiff and the Represented
21 Employees were required to perform off-the-clock work that Defendants either knew or should
22 have known they were performing.

23 40. Consequently, Defendants violated California Labor Code laws and minimum
24 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
25 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

26 41. Plaintiff is informed and believes and thereon alleges that Defendants
27 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Represented
28 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

1 42. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
2 Represented Employees were entitled to be paid wages throughout the statutory period for each
3 hour worked, including proper minimum and regular wages, yet Defendants chose not to pay
4 them in accordance thereto.

5 43. At all material times, Defendants DOES 1 through 20 were and/or are the
6 employer of Plaintiff and the Represented Employees or were persons acting on behalf of said
7 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be
8 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
9 Labor Code regulating hours and days of work respectively.

10 44. During employment of Plaintiff and the Represented Employees, Defendants
11 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

12 45. As a result of the Defendants' wrongful conduct, Plaintiff and the Represented
13 Employees have been damaged in amounts to be proven at trial.

14 46. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of
15 all unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs of
16 suit, pursuant to Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be proven
17 at trial.

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO PROVIDE MEAL PERIODS**

20 (Labor Code §§ 226.7 and 512; IWC Wage Order § 11, 12)

21 *Plaintiff and the Meal Break Subclass Against All Defendants*

22 47. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
23 alleged herein.

24 48. Plaintiff and the Meal Break Subclass are and/or were employees of Defendants
25 who did not receive proper protections and benefits of the laws governing mandatory meal
26 periods.

27 49. Labor Code § 226.7 requires employers, including Defendants, to provide
28 employees with meal periods as mandated by the Industrial Welfare Commission.

1 50. Labor Code § 512(a), in part, provides that employers, including Defendants, may
2 not employ an employee for a work period of more than five hours per day without providing an
3 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
4 except that if the total work period per day of the employee is no more than six hours, the meal
5 period may be waived by mutual consent of both the employer and the employee. Employers
6 may not employ an employee for a work period more than 10 hours per day without providing
7 the employee with a second meal period of not less than 30 minutes.

8 51. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
9 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
10 pay for each meal period that is missed.

11 52. At all relevant times herein, Plaintiff and the Meal Break Subclass were denied
12 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
13 practices, Plaintiff and the Represented Employees were subjected to meal period violations
14 when they were: (1) unable to take a meal period due to workload, (2) forced to take an on-duty
15 meal period while under the control of the Company, (3) forced to take a shortened meal period,
16 (4) forced to take a meal period after the 5th hour of work, and (5) not provided mandated
17 second or third meal periods for shifts in excess of 10 and 15 hours, respectively.

18 53. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
19 Order every pay period because Plaintiff and the Meal Break Subclass were not provided with all
20 mandatory meal periods and Defendants failed to pay Plaintiff and the Meal Break Subclass one
21 additional hour of compensation at the regular rate of pay in lieu thereof.

22 54. At all relevant times herein, Defendants failed to provide Plaintiff and the Meal
23 Break Subclass all mandated meal periods and failed to pay wage premiums in lieu of mandated
24 meal or rest periods, thereby receiving an economic benefit.

25 55. On information and belief, Plaintiff and the Meal Break Subclass did not
26 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
27 obtained from Plaintiff and the Meal Break Subclass were not willfully obtained, were not
28 voluntarily agreed to, were a condition of employment, or were a part of a contract of an

1 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Meal Break Subclass
2 to take meal periods in accordance with California law.

3 56. By their failure to provide Plaintiff and the Meal Break Subclass with meal
4 periods as required by California law, and failing to pay one hour of additional wages in lieu of
5 each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and
6 IWC Wage Order § 11. Accordingly, Defendants are liable for one hour of additional wages at
7 the employee's regular rate of compensation for each work day that a meal period was not
8 lawfully provided in an amount to be proven at time of trial.

9 57. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
10 and IWC Wage Order § 11, Defendants, and each of them, are liable to Plaintiff and the Meal
11 Break Subclass for unpaid wage premiums, penalties, costs, and interest.

12 **THIRD CAUSE OF ACTION**

13 **FAILURE TO PROVIDE REST BREAKS**

14 (Labor Code §§ 226.7 and 512; IWC Wage Order § 12)

15 *Plaintiff and the Rest Break Subclass Against All Defendants*

16 58. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
17 alleged herein.

18 59. Plaintiff and the Rest Break Subclass are and/or were employees of Defendants
19 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

20 60. Labor Code § 226.7 requires employers, including Defendants, to provide rest
21 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

22 61. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
23 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
24 each work period. Employees shall receive a 10-minute rest period every four hours or major
25 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
26 hours worked, for which there shall be no deduction from wages.

62. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage Order, Defendants shall pay Plaintiff and the Represented Employees one additional hour of pay at his regular rate of compensation for each day that the rest period is not provided.

63. At all relevant times, Defendants also failed to provide Plaintiff and the Rest Break Subclass with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and the Rest Break Subclass were often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by their hectic workload. Furthermore, on occasions when Plaintiff and the Rest Break Subclass worked lengthy shifts, Defendants failed to authorize and/or permit mandated third or fourth rest breaks.

64. Additionally, Plaintiff and the Rest Break Subclass were denied compliant *paid* rest breaks on each occasion that Defendants paid them on a “per trip” or piece-rate basis since, logically, Plaintiff and the Rest Break Subclass could not earn or generate compensation during an off-duty rest break.

65. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order every pay period because Plaintiff and the Rest Break Subclass were not provided with all mandatory rest periods and Defendants failed to pay Plaintiff and the Represented Employees one additional hour of compensation in lieu thereof.

66. At all relevant times herein, Defendants failed to provide Plaintiff and the Rest Break Subclass all mandated rest breaks and failed to pay wage premiums in lieu of mandated rest periods, thereby receiving an economic benefit.

67. By their failure to provide Plaintiff and the Rest Break Subclass with rest breaks as required by California law, and failing to pay one hour of additional wages in lieu of each rest break not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage Order § 12. Accordingly, Defendants are liable for one hour of additional wages at the employee’s regular rate of compensation for each workday that a paid rest break was not lawfully provided in an amount to be proven at time of trial.

1 68. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
2 and IWC Wage Order § 12, Defendants, and each of them, are liable to Plaintiff and the Rest
3 Break Subclass for unpaid wage premiums, penalties, costs, and interest.

4 **FOURTH CAUSE OF ACTION**

5 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

6 (Labor Code § 2802)

7 *Plaintiff and the Unreimbursed Expense Subclass Against All Defendants*

8 69. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
9 alleged herein.

10 70. Plaintiff and the Unreimbursed Expense Subclass are and/or were employees of
11 Defendants who did not receive proper protections and benefits of the laws governing
12 reimbursement of business expenses.

13 71. Labor Code § 2802(a) requires that the employer indemnify its employees for
14 expenses and losses incurred while discharging their duties or in obedience to the directions of
15 their employer.

16 72. At all relevant times herein mentioned, as a condition of employment, Defendants
17 required Plaintiff and the Unreimbursed Expense Subclass to incur necessary business-related
18 expenses and costs without reimbursement, including but not limited to acquiring and
19 maintaining a smart phone and related monthly data plan to communicate with the Company via
20 phone, text message, and e-mail.

21 73. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
22 failed to reimburse Plaintiff and the Unreimbursed Expense Subclass for expenses incurred as a
23 direct consequence of employment with Defendants and/or under the direction of Defendants.

24 74. At all relevant times herein, Defendants failed to reimburse the Unreimbursed
25 Expense Subclass, including Plaintiff, for expenses incurred while discharging duties to
26 Defendants, thereby receiving an economic benefit.

27 75. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage
28 Order § 9(B), Plaintiff and the Unreimbursed Expense Subclass have suffered, and continue to

1 suffer, substantial losses related to such incurred expenses, expenses, and attorney's fees in
2 seeking to compel Defendants to fully perform their obligations under the law, all in an amount
3 to be proved at time of trial.

4 76. Labor Code § 2802(b) states that "[a]ll awards made by a Court for
5 reimbursement of necessary expenditures" shall carry interest, at the same rate as judgments in
6 civil actions, and said interest will accrue from the date on which the employee incurred the
7 necessary expenditure or loss including, but not limited to, reasonable costs and attorney's fees
8 incurred by the employee enforcing the rights granted pursuant to Labor Code § 2802. The exact
9 amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

10 77. Furthermore, Labor Code § 2802(c) states that "[f]or the purposes of this section,
11 the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not
12 limited to, attorney's fees incurred by the employee in enforcing the rights granted by this
13 section." Therefore, Plaintiff and the Unreimbursed Expense Subclass seek to recover the
14 unreimbursed expenses, interest on the unreimbursed expenses, and the costs and attorney's fees
15 necessarily incurred in pursuing same. The exact amount of reimbursements, interest, costs, and
16 attorney's fees will be in an amount to be proved at the time of trial.

17 **FIFTH CAUSE OF ACTION**

18 **FAILURE TO TIMELY PAY FINAL WAGES**

19 (Labor Code §§ 201 – 203)

20 *Plaintiff and the Waiting Time Penalties Subclass against All Defendants*

21 78. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
22 alleged herein.

23 79. Plaintiff and the Waiting Time Penalties Subclass are and/or were employees of
24 Defendants who did not receive proper protections and benefits of the laws governing the timing
25 and payment of wages.

26 80. Labor Code § 201 requires that the employer immediately pay any wages, without
27 abatement or reduction, to any employee who is discharged.
28

1 81. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
2 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
3 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

4 82. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
5 penalty from the due date thereof at the same rate until paid or until an action therefore is
6 commenced, but the wages shall not continue for more than thirty (30) days.

7 83. At all relevant times, Defendants employed a policy and practice whereby
8 Plaintiff and the Waiting Time Penalties Subclass were not paid all wages due and owing upon
9 separation of employment within the time required by Labor Code §§ 201 and 202.

10 84. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
11 wages due and owing to Plaintiff and the Waiting Time Penalties Subclass upon separation of
12 employment, including, but not limited to, minimum and regular wages, vacation or PTO wages,
13 as well as meal and rest period premiums.

14 85. Plaintiff alleges that, at all times material to this action, Defendants had a planned
15 pattern and practice of failing to timely pay Plaintiff and the Waiting Time Penalties Subclass all
16 wages due and owing upon separation of employment as required by Labor Code §§ 201 and
17 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Waiting
18 Time Penalties Subclass the above-described waiting time penalty, all in an amount to be shown
19 according to proof at trial and within the jurisdiction of this Court.

20 **SIXTH CAUSE OF ACTION**

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

22 (Labor Code § 226)

23 *Plaintiff and the Wage Statement Penalties Subclass against All Defendants*

24 86. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
25 alleged herein.

26 87. Plaintiff and the Wage Statement Penalties Subclass are and/or were employees of
27 Defendants who did not receive proper protections and benefits of the laws governing the
28 provision of accurate itemized wage statements.

1 88. Labor Code § 226(a) requires an employer to provide its employees with itemized
2 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
3 inclusive dates of the pay period, the employee's name and the last four digits of his or her
4 Social Security number (or employee identification number), the name and address of the legal
5 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
6 corresponding number of hours worked at each hourly rate by the employee.

7 89. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
8 and the Wage Statement Penalties Subclass due to violations including: failure to accurately state
9 total hours worked (the wage statements failed to state any information about hours worked);
10 failure to state the inclusive dates of the pay period (the wage statement failed to list the pay
11 period start date); failure to state the applicable hourly rates (including the failure to accurately
12 state the "differential" rate of pay); failure to accurately state the corresponding number of hours
13 worked at each hourly rate (including the failure to state the hours worked at the "differential"
14 rate); failure to state the name and address of the legal entity that is the employer (the wage
15 statements incorrectly listed an employer/entity that no longer exists); failure to accurately state
16 gross wages earned; failure to accurately state all deductions; failure to accurately state net
17 wages earned; and the failure to accurately state the amount and rate of pay for meal and rest
18 period violations.

19 90. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
20 to Plaintiff and the Wage Statement Penalties Subclass because Defendants failed to provide a
21 wage statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
22 requirements of Labor Code § 226(a).

23 91. Defendants' failure to provide the required writing deprived Plaintiff and the
24 Wage Statement Penalties Subclass of the ability to know, understand, and question the
25 calculation and rate of pay and hours used to calculate the wages paid by Defendants. Therefore,
26 Plaintiff and the Wage Statement Penalties Subclass had no way to dispute the resulting
27 miscalculation of wages, all of which resulted in an unjustified economic enrichment to said
28 Defendants. As a direct result, Plaintiff and the Wage Statement Penalties Subclass have suffered

1 and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost
2 interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully
3 perform its obligation under state law, all to their respective damages in amounts according to
4 proof at trial.

5 92. As a result of Defendants' knowing and intentional failure to comply with Labor
6 Code § 226(a), Plaintiff and the Wage Statement Penalties Subclass have suffered an injury in
7 that each was prevented from knowing, understanding and disputing the wage payments paid to
8 them. Furthermore, Plaintiff and the Wage Statement Penalties Subclass have each suffered an
9 injury in that the failure to show all wages earned on the itemized wage statements resulted in
10 Plaintiff and the Represented Employees being denied all necessary deductions, payments, and
11 withholdings owed by the employer, including, but not limited to, the failure to make all
12 necessary contributions for unemployment benefits, social security benefits, proper payment of
13 taxes and withholdings, and other mandated state and federal benefits.

14 93. Plaintiff has also been injured as a result of having to bring this action to attempt
15 to obtain correct wage information following Defendants' refusal to comply with many of the
16 mandates of California's Labor Code and related laws and regulations.

17 94. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
18 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and
19 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
20 attorney's fees and costs, to Plaintiff and the Wage Statement Penalties Subclass who were
21 injured by Defendants' failure to comply with Labor Code § 226(a). The exact amount of the
22 applicable penalty is all in an amount to be shown according to proof at trial.

23 **SEVENTH CAUSE OF ACTION**

24 **UNFAIR AND UNLAWFUL COMPETITION**

25 (Business and Professions Code § 17200 *et seq.*)

26 *Plaintiff and the Represented Employees against All Defendants*

27 95. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
28 alleged herein.

1 96. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
2 competition, which includes any “unlawful, unfair or fraudulent business act or practice.” The
3 Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact,
4 due to the unfair and unlawful business practices of Defendants as alleged herein.

5 97. Defendants, and each of them, are “persons” as defined under Business &
6 Professions Code § 17021.

7 98. As alleged herein, Defendants engaged in conduct that violated California’s wage
8 and hour laws, including failure to pay minimum and regular wages, failure to provide mandated
9 meal periods and rest breaks, failure to reimburse business expenses, and failure to timely pay
10 wages upon separation of employment, all to decrease their costs and increase profits.

11 99. At all times relevant herein, Defendants did not pay Plaintiff and the Represented
12 Employees wages and monies and other financial obligations to which they were entitled.

13 100. As a result of Defendants’ failure to comply with the Labor Code and IWC
14 Orders, Represented Employees, including Plaintiff, suffered a loss of wages and monies, all in
15 an amount to be shown according to proof at trial. Defendants’ ongoing violations of the
16 foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

17 101. Defendants’ violations of the California Labor Code and IWC Wage Orders and
18 its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business
19 practices because it was done in a systematic manner over a period of time to the detriment of the
20 Plaintiff and all others similarly-situated.

21 102. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
22 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
23 Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code
24 of Civil Procedure § 1021.5.

25 103. A violation of California Business & Professions Code § 17200, *et seq.* may be
26 predicated on the violation of any state or federal law. All of the acts described herein as
27 violations of, among other things, the California Labor Code and IWC Wage Orders, are
28 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,

1 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
2 practices in violation of California Business and Professions Code §§ 17200, et seq.

3 104. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
4 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
5 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
6 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
7 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
8 harm unless Defendants, and each of them, are restrained from continuing to engage in said
9 unfair, unlawful and/or fraudulent business practices.

10 105. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
11 and does, seek such relief as may be necessary to disgorge the profits which Defendants have
12 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the
13 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
14 Represented Employees are not obligated to establish individual knowledge of the unfair
15 practices of Defendants in order to recover restitution.

16 106. Plaintiff, individually, and on behalf of the Represented Employees, is further
17 entitled to and do seek a declaration that the above described business practices are unfair,
18 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
19 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
20 the future.

21 107. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and
22 Represented Employees are entitled to restitution of the wages withheld and retained by
23 Defendants during a period that commences four years prior to the filing of this complaint; a
24 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
25 Represented Employees; an award of attorneys' fees pursuant to California Code of Civil
26 Procedure § 1021.5 and other applicable laws; and an award of costs.

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1 **VI. LABOR CODE PRIVATE ATTORNEYS GENERAL ACT CAUSES OF ACTION**
2 **(Cal. Lab. Code. §§ 2698 – 2699.5)**

3 108. Plaintiff is an “aggrieved employee” under the PAGA as he was employed by
4 Defendants during the applicable statutory period and suffered one or more of the Labor Code
5 violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil
6 action filed on behalf of himself and all other similarly situated current and former aggrieved
7 employees in California against whom one or more of the alleged violations was committed
8 (hereinafter the “Aggrieved Employees”).

9 109. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to
10 Labor Code § 2699, as well as attorneys’ fees, costs, and/or other damages as permitted by
11 PAGA through a representative action pursuant to the PAGA and the California Supreme Court
12 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor
13 does he, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

14 110. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing
15 to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to
16 Defendants of the specific provisions of the Labor Code alleged to have been violated, including
17 the facts and theories to support the alleged violations.

18 111. Therefore, once more than sixty-five (65) days have passed since that date,
19 Plaintiff will have fully satisfied the administrative prerequisites to suit under the PAGA and this
20 Complaint will be deemed amended to include the PAGA allegations enumerated below. Once
21 this occurs, Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to
22 Labor Code § 2699, as well as attorneys’ fees, costs, and other damages as permitted by PAGA.

23 **EIGHTH CAUSE OF ACTION**

24 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES**

25 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

26 *Plaintiff and the Aggrieved Employees against All Defendants*

27 112. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
28 alleged herein.

1 113. Plaintiff and the Aggrieved Employees were not exempt from the requirement to
2 be paid at least the applicable California minimum wage throughout the statutory period for each
3 hour worked.

4 114. Plaintiff and the Aggrieved Employees were not provided proper minimum and
5 regular wages due to Defendants' failure to accurately record and compensate for all hours
6 worked. Specifically, Plaintiff alleges that Defendants' pay policy did not compensate the
7 Aggrieved Employees for all time spent under the Company's direction and control. See
8 *Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575 (employees must be paid for all time that
9 the employer either knew, or reasonably should have known, that its employees are subject to its
10 control or otherwise working). Additionally, Defendants often paid "trip pay" and/or piece-rate
11 compensation to the Aggrieved Employees which did not compensate for all hours worked.

12 115. As a result of this policy and practice, Plaintiff and the Aggrieved Employees
13 were required to perform off-the-clock work that Defendants either knew or should have known
14 they were performing.

15 116. Consequently, Defendants violated California Labor Code laws and minimum
16 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
17 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

18 117. Plaintiff is informed and believes and thereon alleges that Defendants
19 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved
20 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

21 118. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
22 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
23 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

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1 **NINTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS**

3 (Labor Code § 226.7 and 512; IWC Wage Order § 11, 12)

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 119. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
6 alleged herein.

7 120. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
8 who did not receive proper protections and benefits of the laws governing mandatory meal
9 periods.

10 121. Labor Code § 226.7 requires employers, including Defendants, to provide
11 employees with meal periods as mandated by the Industrial Welfare Commission.

12 122. Labor Code § 512(a), in part, provides that employers, including Defendants, may
13 not employ an employee for a work period of more than five hours per day without providing an
14 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
15 except that if the total work period per day of the employee is no more than six hours, the meal
16 period may be waived by mutual consent of both the employer and the employee. Employers
17 may not employ an employee for a work period more than 10 hours per day without providing
18 the employee with a second meal period of not less than 30 minutes.

19 123. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
20 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
21 pay for each meal period that is missed.

22 124. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied
23 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
24 practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when
25 they were: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal
26 period while under the control of the Company, (3) forced to take a shortened meal period, (4)
27 forced to take a meal period after the 5th hour of work, and (5) not provided mandated second or
28 third meal periods for shifts in excess of 10 and 15 hours, respectively.

1 125. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
2 Order every pay period because Plaintiff and the Aggrieved Employees were not provided with
3 all mandatory meal periods and Defendants failed to pay Plaintiff and the Aggrieved Employees
4 one additional hour of compensation at the regular rate of pay in lieu thereof.

5 126. On information and belief, Plaintiff and the Aggrieved Employees did not
6 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
7 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not
8 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
9 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved
10 Employees to take meal periods in accordance with California law.

11 127. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
12 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
13 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

14 **TENTH CAUSE OF ACTION**

15 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS**

16 (Labor Code § 226.7 and 512; IWC Wage Order § 12)

17 *Plaintiff and the Aggrieved Employees against All Defendants*

18 128. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
19 alleged herein.

20 129. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
21 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

22 130. Labor Code § 226.7 requires employers, including Defendants, to provide rest
23 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

24 131. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
25 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
26 each work period. Employees shall receive a 10-minute rest period every four hours or major
27 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
28 hours worked, for which there shall be no deduction from wages.

1 132. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
2 Order, Defendants shall pay Plaintiff and the Represented Employees one additional hour of pay
3 at his regular rate of compensation for each day that the rest period is not provided.

4 133. At all relevant times, Defendants also failed to provide Plaintiff and the
5 Aggrieved Employees with 10 minutes of net rest break time for every 4 hours worked, or major
6 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and the
7 Aggrieved Employees were often not authorized and/or permitted to take mandated rest breaks
8 due to the lack of adequate staffing and coverage and being overwhelmed by their hectic
9 workload. Furthermore, on occasions when Plaintiff and the Aggrieved Employees worked
10 lengthy shifts, Defendants failed to authorize and/or permit mandated third and fourth rest
11 breaks.

12 134. Additionally, Plaintiff and the Aggrieved Employees were denied compliant *paid*
13 rest breaks on each occasion that Defendants paid them on a “per trip” or piece-rate basis since,
14 logically, Plaintiff and the Aggrieved Employees could not earn or generate compensation during
15 an off-duty rest break.

16 135. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
17 Order every pay period because Plaintiff and the Aggrieved Employees were not provided with
18 all mandatory rest periods and Defendants failed to pay Plaintiff and the Aggrieved Employees
19 one additional hour of compensation in lieu thereof.

20 136. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
21 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
22 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

23 **ELEVENTH CAUSE OF ACTION**

24 **PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES**

25 (Labor Code § 2802)

26 *Plaintiff and the Unreimbursed Expense Subclass Against All Defendants*

27 137. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
28 alleged herein.

138. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing reimbursement of business expenses.

139. Labor Code § 2802(a) requires that the employer indemnify its employees for expenses and losses incurred while discharging their duties or in obedience to the directions of their employer.

140. At all relevant times herein mentioned, as a condition of employment, Defendants required Plaintiff and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, acquiring and maintaining a smart phone and related monthly data plan to communicate with the Company via phone, text message, and e-mail.

141. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they failed to reimburse Plaintiff and the Aggrieved Employees for expenses incurred as a direct consequence of employment with Defendants and/or under the direction of Defendants.

142. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

TWELFTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD

(Labor Code § 204)

Plaintiff and the Aggrieved Employees against All Defendants

143. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

144. Plaintiff and the Aggrieved Employees are and/or were “nonexempt” employees of Defendants who did not receive proper protections and benefits of the laws regarding the timing of payment of wages each period.

145. Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through

1 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
2 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
3 the following month.

4 146. Furthermore, Labor Code § 204(d) states “[t]he requirements of this section shall
5 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
6 the wages are paid not more than seven calendar days following the close of the payroll period.”

7 147. At all relevant times herein, Defendants did not provide Plaintiff and the
8 Aggrieved Employees with all wages due and owing each period within the time required by
9 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Aggrieved
10 Employees with all wages due and owing each pay period, including, but not limited to,
11 minimum and regular wages, as well as meal and rest period premiums, within the time specified
12 by Labor Code § 204.

13 148. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
14 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
15 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

16 **THIRTEENTH CAUSE OF ACTION**

17 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES**

18 (Labor Code §§ 201 – 203 and 256)

19 *Plaintiff and the Aggrieved Employees against All Defendants*

20 149. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
21 alleged herein.

22 150. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees
23 of Defendants who did not receive proper protections and benefits of the laws governing the
24 timing and payment of final wages.

25 151. Labor Code § 201 requires that the employer immediately pay any wages, without
26 abatement or reduction, to any employee who is discharged.

1 152. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
2 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
3 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

4 153. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
5 penalty from the due date thereof at the same rate until paid or until an action therefore is
6 commenced, but the wages shall not continue for more than thirty (30) days.

7 154. At all relevant times here, Defendants did not provide Plaintiff and the Aggrieved
8 Employees with all wages due and owing upon separation of employment, including, but not
9 limited to, minimum and regular wages, as well as meal and rest period premiums, within the
10 time specified by Labor Code §§ 201 – 203.

11 155. Plaintiff alleges that, at all times material to this action, Defendants had a planned
12 pattern and practice of failing to timely pay to Plaintiff and the Aggrieved Employees all wages
13 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.

14 156. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
15 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
16 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

17 **FOURTEENTH CAUSE OF ACTION**

18 **PAGA ASSESSMENT FOR**

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

20 (Labor Code § 226)

21 *Plaintiff and the Aggrieved Employees against All Defendants*

22 157. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
23 alleged herein.

24 158. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
25 who did not receive proper protections and benefits of the laws governing the provision of
26 accurate itemized wage statements.

27 159. Labor Code § 226(a) requires an employer to provide its employees with itemized
28 wage statements accurately stating gross wages earned, all deductions, net wages earned, the

1 inclusive dates of the pay period, the employee's name and the last four digits of his or her
2 Social Security number (or employee identification number), the name and address of the legal
3 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
4 corresponding number of hours worked at each hourly rate by the employee.

5 160. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
6 and the Aggrieved Employees because due to violations including: failure to accurately state
7 total hours worked (the wage statements failed to state any information about hours worked);
8 failure to state the inclusive dates of the pay period (the wage statement failed to list the pay
9 period start date); failure to state the applicable hourly rates (including the failure to accurately
10 state the "differential" rate of pay); failure to accurately state the corresponding number of hours
11 worked at each hourly rate (including the failure to state the hours worked at the "differential"
12 rate); failure to state the name and address of the legal entity that is the employer (the wage
13 statements incorrectly listed an employer/entity that no longer exists); failure to accurately state
14 gross wages earned; failure to accurately state all deductions; failure to accurately state net
15 wages earned; and the failure to accurately state the amount and rate of pay for meal and rest
16 period violations.

17 161. Therefore, Defendants violate Labor Code § 226(a) every pay period because
18 Defendants failed to provide a wage statement to Plaintiff and the Aggrieved Employees that
19 complied with the requirements of Labor Code § 226(a).

20 162. As a result of the Defendants' violations of Labor Code § 226(a), Plaintiff seeks
21 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
22 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.
23 See *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 675 ("Section
24 226.3 provides the civil penalty for failure to comply" with Labor Code § 226).

25 **VII. PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff, on behalf of himself, on a representative basis, and all others
27 similarly situated, prays for judgment and relief against Defendants, jointly and severally, as
28 follows:

1. As to the Eighth through Fourteenth Causes of Action, the assessment of all applicable and available remedies under the PAGA;
2. For reasonable attorneys' fees and costs as permitted under the PAGA;
3. That the First through Seventh Causes of Action be certified as a class action;
4. That Plaintiff be appointed as Class Representative;
5. That counsel for Plaintiff be appointed Class Counsel;
6. For all applicable statutory penalties recoverable under the First through Seventh Causes of Action to the extent permitted by law, including those pursuant to Labor Code and Orders of the Industrial Welfare Commission;
7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including those pursuant to the Labor Code;
8. For injunctive relief and/or restitution as provided by the Labor Code and Business and Professions Code § 17200, *et seq.*;
9. For a declaratory judgment that Defendants have violated Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 512, 558, 1194, 1197, 1198, 1199, and 2802, among other sections inadvertently omitted;
10. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties according to proof, including interest thereon;
11. For pre- and post-judgment interest; and
12. For such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial as to the First through Seventh Causes of Action pled herein.

Dated: December 17, 2021

LAUBY, MANKIN & LAUBY LLP

BY:



Brian J. Mankin, Esq.
Peter J. Carlson, Esq.
Attorneys for Plaintiff