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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KINGS**

RALPH LOPEZ as an individual, and on
behalf of all others similarly situated,

Plaintiff,

v.

BHJ USA, LLC, a Nebraska limited liability
company; and DOES 1 through 100, inclusive,

Defendants.

Case No. 21C-0402

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);**
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, AND
1198);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7 AND 512);**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7 AND 516);**
- (5) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (6) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*);**
- (7) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200, *et seq.*);**
- (8) **FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENSES (LABOR CODE § 2802);
AND**
- (9) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Ralph Lopez (hereinafter "Plaintiff"), an individual, hereby brings this First
2 Amended Class and Representative Action Complaint ("FAC") against BHJ USA, LLC, a
3 Nebraska limited liability company, and DOES 1 to 100, inclusive (collectively "Defendants"),
4 and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff hereby brings this Class Action Complaint for recovery of unpaid wages
7 and penalties under California Business and Professions Code § 17200 *et. seq.*, Labor Code §§
8 201-203, 204, 226 *et. Seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802,
9 2698 *et seq.*; and Industrial Welfare Commission Wage Order 9 ("Wage Order 9"), in addition to
10 seeking declaratory relief and restitution. This Complaint is brought pursuant to California Code
11 of Civil Procedure § 382. This Court has jurisdiction over Defendants' violations of the California
12 Labor Code because the amount in controversy exceeds this Court's jurisdictional minimum.

13 **VENUE**

14 2. Venue is proper in this judicial district pursuant to California Code of Civil
15 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
16 occurred in the County of Kings. Defendants own, maintain offices, transact business, have an
17 agent or agents within the County of Kings, and/or otherwise are found within the County of
18 Kings, and Defendants are within the jurisdiction of this Court for purposes of service of process.

19 **PARTIES**

20 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
21 Plaintiff was and currently is a California resident. During the four years immediately preceding
22 the filing of the Complaint in this action and within the statute of limitations periods applicable
23 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
24 employee. Plaintiff was and is a victim of Defendants' policies and/or practices complained of
25 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
26 §§ 201-203, 204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802,
27 California Business and Professions Code § 17200 *et seq.* ("Unfair Competition Law"), and Wage
28 Order 9, which sets employment standards for the agricultural industries.

1 4. Plaintiff is informed and believes, and based thereon allege, that during the four
2 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
3 continue to do) business by transporting agricultural commodities in California and the United
4 States, employed Plaintiff within Kings County and the state of California and, therefore, were
5 (and are) doing business in Kings County and the State of California.

6 5. Plaintiff does not know the true names or capacities, whether individual, partner,
7 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
8 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
9 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
10 and believe, and based thereon allege, that each of said fictitious defendants, whether individual,
11 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
12 and proximately caused Plaintiff and the Classes (as defined herein) to be subjected to the
13 unlawful employment practices, wrongs, injuries and damages complained of herein.

14 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
15 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

16 7. At all times herein mentioned, each of said Defendants participated in the doing
17 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
18 Defendants, and each of them, were the agents, servants, and employees of each and every one of
19 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
20 were acting within the course and scope of said agency and employment. Defendants, and each
21 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
22 omissions complained of herein.

23 8. At all times mentioned herein, Defendants, and each of them, were members of
24 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
25 and scope of, and in pursuance of said joint venture, partnership, and common enterprise. Further,
26 Plaintiff alleges that all Defendants were joint employers for all purposes towards Plaintiff and
27 all members of the Classes.

28 ///

GENERAL FACTUAL ALLEGATIONS

9. Plaintiff began his employment with Defendants around 1992 as a truck driver. Plaintiff worked for Defendants until approximately February of 2021, when he separated his employment after sustaining an injury that left him unable to work.

10. Plaintiff generally worked Monday through Friday at least 8 hours per day. However, as discussed below, Plaintiff worked considerably more hours than he was credited for on the timesheets prepared by her supervisors. Plaintiff was paid at a rate of \$19.95 per hour at the time of his separation with Defendants.

11. Throughout the duration of Plaintiff's employment with Defendants, Plaintiff and other non-exempt employees were not paid for all hours worked. Furthermore, Plaintiff and other non-exempt employees routinely worked overtime hours did not receive overtime compensation equal to one and one-half times their regular rate of pay for all overtime hours worked. For example, on July 27, 2020, Plaintiff began his shift at 5:22 a.m., took a 27 minute meal period from 9:29 a.m. until 9:56 a.m., and finished his shift at 2:00 p.m for a total of 8 hours and 11 minutes. However, in the wage statement provided to Plaintiff for this pay period, he is only credited with having worked 8 hours during this shift. On July 28, 2020, Plaintiff worked for a total of 8 hours and 12 minutes and again was only credited with having worked 8 hours. On July 29, 2020, Plaintiff worked for a total of 8 hours and 5 minutes, but was only credited with having worked 8 hours. This is a consistent theme with Defendants, who shaved time off of the hours of Plaintiff and other non-exempt employees in an effort to avoid paying them all of their due minimum and overtime wages. During the week of July 27, 2020 alone, Plaintiff worked 59 minutes worth of overtime, however was only compensated for 49.8 minutes at his overtime rate of pay. Consequently, due to Defendants' unlawful timekeeping and payment policies and practices that failed to compensate for all hours worked, Plaintiff and other non-exempt employees have been deprived of all required minimum and overtime wages earned.

12. In addition, Plaintiff and other non-exempt employees were not provided all legally compliant meal periods due to Defendants' meal period policies and practices which fail to provide a timely 30-minute duty-free first meal period (i.e. a first meal period commencing

1 before the end of the fifth hour of work). For example, Plaintiff began his meal period on July
2 27, 2020 at 9:29 a.m. and ended his meal period at 9:56 a.m., an only 27 minute long meal period.
3 On July 28, 2020, Plaintiff was again only able to exercise the use of a 27 minute long meal
4 period. On July 29, 2020, Plaintiff was only able to exercise a 25 minute meal period. These
5 shortened meal periods were a common occurrence as Plaintiff and other non-exempt employees
6 were made to adhere to strict schedules and deadlines that caused them to be pressured to get back
7 to work as soon as possible after beginning their meal periods. Furthermore, Plaintiff estimates
8 that at least three times per week, he was unable to exercise the use of a meal period in any fashion
9 whatsoever. Instead, Plaintiff would be made to continue working and be made to wait in a long
10 line to receive products in Defendants' cold-storage facility until his truck was loaded up and
11 proceed to haul the products to a different facility in Fresno. On these occasions, Plaintiff would
12 be told that his meal period hours would be "fixed" by his supervisors and was told not to
13 affirmatively clock in or out. Plaintiff's supervisors would then falsely reverse engineer the
14 records to reflect that Plaintiff did exercise a meal period and he would not be compensated for
15 any of this off-the-clock work performed at the direction of his supervisors in any manner at all.
16 Furthermore, even on those occasions where Plaintiff and other non-exempt employees did
17 receive meal periods, they were almost always interrupted and/or on-duty. Plaintiff would have
18 to discuss work related matters with his supervisors and coworkers off-the-clock during his meal
19 periods and make sure that he did not leave his truck unattended making his meal periods
20 inherently not duty-free. Plaintiff's shortened, late, and on-duty meal periods were a direct result
21 of Defendants' policy/practice. Defendants also failed to provide second meal periods when non-
22 exempt employees worked shifts in excess of 10.0 hours. In addition, on those occasions when
23 Plaintiff and the other non-exempt employees were not provided with all legally compliant meal
24 periods to which they were entitled, Defendants failed to compensate them with the required meal
25 period premiums for each workday in which they experienced a meal period violation, as
26 mandated by Labor Code § 226.7.

27 13. Defendants have also failed to authorize and permit Plaintiff and other non-
28 exempt employees to take all statutorily mandated rest periods. Plaintiff and the other employees

1 would made to work through their rest periods to meet the intense workloads imposed on them
2 by Defendants. Due to the overwhelming workload, company culture, and lack of staff to cover
3 for him, Plaintiff and the other non-exempt employees were generally not permitted the exercise
4 any compliant duty-free rest periods. Defendants' policy/practice prohibited Plaintiff and other
5 non-exempt employees from leaving Defendants' facilities during their rest periods, and
6 therefore, failed to authorize and permit Plaintiff to take duty-free paid rest periods for every four-
7 hour period worked, or major fraction thereof. Further, upon information and belief during at
8 least a portion of the relevant time period, Defendants maintained no payroll code or other
9 mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the
10 event that a legally compliant rest period was not authorized or permitted to Plaintiff and the other
11 non-exempt employees.

12 14. Defendants failed to adequately reimburse Plaintiff and other non-exempt
13 employees for all reasonable and necessary work expenditures and required Plaintiff and other
14 non-exempt employees to use their personal cellular phone for work purposes, including
15 communicating with supervisors and plant managers, and was not ever reimbursed for the
16 necessary use of his personal cellular phone for work purposes.

17 15. Plaintiff and other non-exempt employees routinely worked in excess of 8 hours
18 per workday and/or 40 hours per workweek, but did not receive overtime compensation equal to
19 one and one-half times their regular rate of pay for working overtime hours. Specifically,
20 Defendants paid Plaintiff and other non-exempt employees non-discretionary bonuses, and other
21 forms of non-discretionary pay that are not excludable from the regular rate of pay (hereinafter
22 the aforementioned forms of pay are referred to as "Incentive Pay"). Despite Defendants'
23 payment of Incentive Pay to Plaintiff and other non-exempt employees, Defendants failed to
24 properly calculate the regular rate of pay, thereby causing Plaintiff and other non-exempt
25 employees to be underpaid all required overtime wages. For example, Plaintiff's wage statement
26 for the pay period ending on August 6, 2020, shows that Plaintiff worked 40.83 hours including
27 .83 hours of overtime paid at 1.5 times Plaintiff's hourly rate of pay (i.e. \$29.92). However, in
28 the same pay period Plaintiff also received \$30.93 of "Essential" pay and \$16.10 for "Production

Award” Therefore, Plaintiff’s overtime rate of pay of pay when including Incentive Pay, which are properly included in the overtime rate of pay, should have been \$31.68.

16. As a result of Defendants’ failure to pay all minimum and overtime wages, and meal and rest period premium wages, Defendants maintained inaccurate payroll records, and issued inaccurate and deficient wage statements.

17. As a further result of Defendants’ failure to pay all minimum and overtime wages, and meal and rest period premium wages, Defendants failed to pay all wages owed to Plaintiff and the other non-exempt employees upon their separation of employment from Defendants.

CLASS ACTION ALLEGATIONS

18. **Class Definitions:** Plaintiff brings this action on behalf of herself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

- a. The Minimum Wage Class consists of all current and former non-exempt employees of Defendants in California who were subject to Defendants’ timekeeping systems and/or practices, during the four years immediately preceding the filing of this lawsuit through the present.
- b. The Overtime Wage Class consists of all current and former non-exempt employees of Defendants in California who worked overtime hours (based on criteria set forth in Wage Order 9) and: (i) were subject to Defendants’ timekeeping systems and/or practices; and/or (ii) received Incentive Pay and worked overtime during a corresponding pay period, during the four years immediately preceding the filing of this lawsuit through the present.
- c. The Meal Period Class consists of all current and former non-exempt employees of Defendants in California in California who: worked at least one shift in excess of 5.0 hours without a meal period of at least 30 minutes in duration commencing prior to the conclusion of the fifth hour of work, and who do not have a corresponding meal period premium payment made for such shifts and/or (ii) worked at least one shift in excess of 10.0 hours while performing work for

Defendants in California without a second meal period of at least 30 minutes in duration commencing prior to the conclusion of the tenth hour of work, and who do not have a corresponding meal period premium payment made for such shifts during the four years preceding the filing of this lawsuit through the present.

- d. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift of 3.5 hours or more, during the four years immediately preceding the filing of this lawsuit through the present;
- e. The Employee Expense Class consists of all of Defendants in California who were not reimbursed for expenses associated with the use of their personal cellular phones in the performance of their job duties, during the four years immediately preceding the filing of this lawsuit to the present
- f. The Wage Statement Class consists of all members of the Minimum Wage Class, Overtime Class, Rest Period Class, and/or Meal Period Class who received a wage statement from Defendants during the one year immediately preceding the filing of this lawsuit through the present.
- g. The Waiting Time Class consists of all Defendants formerly employed members of the Minimum Wage Class, Overtime Class, Rest Period Class, and/or Meal Period Class who separated from employment during the three years immediately preceding the filing of this lawsuit through the present.

19. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

20. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members. Those

common questions include, without limitation:

- i. Whether Defendants paid all minimum wages owed for all hours worked to members of the Minimum Wage Class pursuant to Labor Code §§ 118.2, 1194, 1194.2, and 1197;
- ii. Whether Defendants violated the applicable Labor Code provisions, including, but not limited to, §§ 510 and 1194 and Wage Order 9 by requiring members of the Overtime Wage Class to perform overtime work and not paying for said work in accordance with the overtime laws of the State of California;
- iii. Whether Defendants' timekeeping policies/practices resulted in the failure to properly compensate members of the Minimum Wage Class;
- iv. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- v. Whether Defendants failed to reimburse members of the Employee Expense Class for business expenditures necessarily incurred in the performance of their duties;
- vi. Whether Defendants provided accurate, itemized wage statements to members of the Classes; and
- vii. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of separation from employment were lawful.

21. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform timekeeping policies and practices, meal period policies and practices, non-reimbursement policies and practices, wage statement policies and practices, and the policies and practices regarding the timely payment of final wages. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her

1 eligibility for recovery or as to the amount of his or her damages.

2 22. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
3 Plaintiff was employed by Defendants as a non-exempt employee in California during the
4 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged
5 herein, Plaintiff, like the members of the Classes, was subject to Defendants' meal period and
6 timekeeping policies and practices, was subjected to Defendants' unlawful failure to reimburse
7 business expenses, was provided inaccurate wage statements, and was not paid all wages earned
8 at the time of his separation of employment.

9 23. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
10 to represent fairly and adequately the interests of the members of the Classes. Moreover,
11 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
12 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
13 and-hour class actions in state and federal courts in the past and are committed to vigorously
14 prosecuting this action on behalf of the members of the Classes.
15

16 24. **Superiority:** The California Labor Code is broadly remedial in nature and serves
17 an important public interest in establishing minimum working conditions and standards in
18 California. These laws and labor standards protect the average working employee from
19 exploitation by employers who have the responsibility to follow the laws and who may seek to
20 take advantage of superior economic and bargaining power in setting onerous terms and
21 conditions of employment. The nature of this action and the format of laws available to Plaintiff
22 and members of the Classes make the class action format a particularly efficient and appropriate
23 procedure to redress the violations alleged herein. If each employee were required to file an
24 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
25 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
26 their vastly superior financial and legal resources. Moreover, requiring each member of the
27 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
28 employees who would be disinclined to file an action against their former and/or current employer

1 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
2 employment. Further, the prosecution of separate actions by the individual class members, even
3 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
4 with respect to the individual class members against Defendants herein; and which would
5 establish potentially incompatible standards of conduct for Defendants; and/or legal
6 determinations with respect to individual class members which would, as a practical matter, be
7 dispositive of the interest of the other class members not parties to adjudications or which would
8 substantially impair or impede the ability of the class members to protect their interests. Further,
9 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
10 individual prosecution considering all of the concomitant costs and expenses attending thereto.
11 As such, the Classes (as defined herein) are maintainable as a Class under § 382 of the Code of
12 Civil Procedure.

13
14 **FIRST CAUSE OF ACTION**

15 **MINIMUM WAGE VIOLATIONS**

16 **(AGAINST ALL DEFENDANTS)**

17 25. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

18 26. Wage Order 9, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
19 right of employees to be paid minimum wages for all hours worked in amounts set by state law.
20 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
21 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
22 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
23 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform
24 their pay practices to the requirements of the law by failing to pay Plaintiff and the Minimum
25 Wage Class for all hours actually worked including, but not limited to, all hours he was subject
26 to the control of Defendants and/or suffered or permitted to work under the California Labor Code
27 and Wage Order 9.

28 27. California Labor Code § 1198 makes unlawful the employment of an employee
under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide

1 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
2 those employees the balance of the unpaid wages as well as liquidated damages in an amount
3 equal to the wages due and interest thereon.

4 28. As a direct and proximate result of Defendants' unlawful conduct as alleged
5 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but
6 not limited to, unpaid wages and lost interest in an amount to be established at trial, and are
7 entitled to recover economic and statutory damages and penalties and other appropriate relief as
8 a result of Defendants' violations of the California Labor Code and Wage Order 9.

9 29. Defendants' practice and uniform administration of corporate policy regarding
10 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
11 the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated
12 damages, including interest thereon, statutory penalties, and attorneys' fees and costs of suit
13 according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and Code of Civil
14 Procedure § 1021.5.

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PAY ALL OVERTIME WAGES**

17 **(AGAINST ALL DEFENDANTS)**

18 30. Plaintiff re-allege and incorporates by reference all previous paragraphs.

19 31. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
20 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
21 overtime hours worked, and provide a private right of action for the failure to pay all overtime
22 compensation for overtime work performed.

23 32. At all times relevant herein, Defendants were required to properly compensate
24 Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California
25 Labor Code § 1194 and Wage Order 9. Wage Order 9, § 3 requires an employer to pay overtime
26 wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth
27 in the Wage Order.

28 33. The foregoing policies and practices are unlawful and create entitlement to

1 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
2 premiums owing, including interest thereon, statutory penalties, and attorneys' fees and costs of
3 suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order 9, and
4 Code of Civil Procedure § 1021.5.

5 **THIRD CAUSE OF ACTION**

6 **MEAL PERIOD VIOLATIONS**

7 **(AGAINST ALL DEFENDANTS)**

8 34. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

9 35. Plaintiff is informed and believe, and based thereon allege, that Defendants failed
10 in their affirmative obligation to provide all of their non-exempt employees in California,
11 including Plaintiff and members of the Meal Period Class with all legally compliant meal periods
12 in accordance with the mandates of the California Labor Code and Wage Order 9, § 11. Despite
13 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and the Meal
14 Period Class at their respective regular rate of pay, in accordance with California Labor Code §§
15 204, 210, 226.7, and 512.

16 36. As a result, Defendants are responsible for paying premium compensation for meal
17 period violations including interest thereon, as well as statutory penalties, civil penalties, and
18 costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 9, and Civil Code §§
19 3287(b) and 3289.

20 **FOURTH CAUSE OF ACTION**

21 **REST PERIOD VIOLATIONS**

22 **(AGAINST ALL DEFENDANTS)**

23 37. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

24 38. Wage Order 9, § 12 and California Labor Code §§ 226.7 and 516 establish the
25 right of employees to be provided with a duty-free rest period of at least ten (10) minutes for each
26 four (4) hour period worked or major fraction thereof.

27 39. Due to their unlawful rest period policies and/or practices, Defendants did not
28 authorize and permit Plaintiff and the Rest Period Class to take all duty-free rest periods to which

they were legally entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay to Plaintiff and the Rest Period Class at their respective regular rate of pay for each violation in accordance with California Labor Code § 226.7.

40. The foregoing violations create an entitlement to recovery by Plaintiff and the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, and costs of suit pursuant to Wage Order 9, California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION
WAITING TIME PENALTIES
(AGAINST ALL DEFENDANTS)

41. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

42. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of termination of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

43. Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at the time of their separation including, among other things, unpaid and/or underpaid overtime and minimum wages owed, and meal and rest period premium wages. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

44. Defendants' willful failure to timely pay Plaintiff and the Waiting Time Class their earned wages upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and the Waiting Time

Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

SIXTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

45. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

46. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and the Wage Statement Class with complete and accurate wage statements reflecting the accurate number of hours worked, meal period premiums, and rest period premiums in violation of Labor Code § 226 *et seq.*

47. Defendants' failures in furnishing Plaintiff and the Wage Statement Class with complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all minimum wages, overtime wages, meal and rest period premium wages, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

48. Defendants' failures create an entitlement to recovery by Plaintiff and the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code § 226 *et seq.*

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

49. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

50. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to pay Plaintiff and the Classes all minimum and overtime wages, provide all required meal periods and authorize and permit all rest periods, or pay premium payments in lieu

thereof, failing to furnish accurate, itemized wage statements, failing to reimburse for necessary business expenses, and willfully failing to timely pay Plaintiff and members of the Waiting Time class all final wages due upon separation of employment.

51. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which he is legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

52. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for himself and on behalf of the members of the Classes, seek full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

53. The acts complained of herein occurred within the last four years immediately preceding the filing of the Complaint in this action.

54. Plaintiff is compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

EIGHTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(AGAINST ALL DEFENDANTS)

55. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

56. At all relevant times herein, Defendants were subject to Labor Code § 2802, which states that "an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer..."

57. Due to Defendants' unlawful policy and practice of requiring employees to utilize

1 their own personal cellular phones for business purposes at their own expense, Defendants have
2 violated Labor Code § 2802.

3 58. Plaintiff and the members of the Employee Expense Class are entitled to attorneys'
4 fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

5 59. Pursuant to Labor Code §2802(b), any action brought for the reimbursement of
6 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff
7 and members of the Employee Expense Class are entitled to interest, which shall accrue from the
8 date on which they incurred the initial necessary expenditure.

9
10 **NINTH CAUSE OF ACTION**
11 **PRIVATE ATTORNEYS GENERAL ACT**
12 **(AGAINST ALL DEFENDANTS)**

13 60. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
14 fully set forth herein.

15 61. Defendants have committed several Labor Code violations against Plaintiff,
16 members of the Classes, and other aggrieved employees. Plaintiff, an “aggrieved employee” within
17 the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
18 employees, brings this representative action against Defendants to recover the civil penalties due
19 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
20 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
21 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
22 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
23 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
24 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
25 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
26 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
27 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
28 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent

violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum Wage Class, and other similarly aggrieved employees in violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
- b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to provide all legally required meal periods, and failing to pay meal period premium pay, to Plaintiff, the Meal Period Class, and other similarly aggrieved employees in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- d. Failing to timely pay all final wages and compensation earned by Plaintiff, the Waiting Time Penalty Class, and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203;
- e. Failing to authorize and permit all legally required rest periods, and failing to pay rest period premiums, to Plaintiff, the Rest Period Class, and other similarly aggrieved employees in violation of Labor Code §§ 226.7, 512, and 558;
- f. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- g. Failing to reimburse Plaintiff, the Business Expense Class, for all work-related expenses incurred in violation of Labor Code §§ 2802 and 2804;
- h. Failing to pay non-exempt employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and
- i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 558 and 1174.

62. On December 10, 2021, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of

Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 66 (a)-(h). The LWDA has not provided notice that it intends to investigate the violations, and therefore Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

63. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to receive under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, 1198 and Wage Order 9 § 5(A);
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, 1198 and Wage Order 9 § 5(A);
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226., 516, and 558;
8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;

11. Upon the Eighth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code § 2802;

12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations;

13. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §226, and Code of Civil Procedure § 1021.5; and

15. For such other and further relief the Court may deem just and proper.

Dated: February 17, 2022

Respectfully submitted,
STANSBURY BROWN LAW

1 By: 
2 Daniel J. Brown
3 Ethan C. Surls
4 Attorneys for Plaintiff

5 **DEMAND FOR JURY TRIAL**

6 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

7 Dated: February 17, 2022 Respectfully submitted,
8 STANSBURY BROWN LAW

9 By: 
10 Daniel J. Brown
11 Ethan C. Surls
12 Attorneys for Plaintiff
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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 2610 ½ Abbot Kinney Blvd. Venice, CA 90212

On February 16, 2022, I served the document listed below on the parties in this action as follows:

- **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**

- ☐ (BY MAIL) I placed such envelope on the above date, with postage fully prepaid, for deposit in the U.S. Postal Service at my place of business at Venice, California, following the ordinary business practices of my place of business. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mail with the U.S. Postal Service. Under that practice, such correspondence is deposited with the U.S. Postal Service the same day it is collected and processed in the ordinary course of business.
- ☐ (BY HAND DELIVERY) I delivered to an authorized courier or driver authorized by _____ to receive documents to be delivered on the same date.
- ☐ (BY FEDERAL EXPRESS) I am readily familiar with the practice of collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.
- ☐ (BY EMAIL) I transmitted said document(s) by electronic mail to the e-mail addresses indicated below pursuant to SB 1146 effective 9/18/20, which codifies parts of Emergency Rules 11 and 12, as amended, and CRC 2.251
- X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 16, 2022, at Venice, California.



Daniel J. Brown

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