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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DANNY MARSANO, individually, and on
behalf of other members of the general
public similarly situated, and as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"),

Plaintiff,

vs.

H AND H DRUG STORES, INC., a
California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: 22STCV17192

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, *ET
SEQ.***

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;

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- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Danny Marsano, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all other aggrieved employees,
3 alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt, hourly
9 paid employees and received at least one wage statement and against whom one or more
10 violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision
11 regulating hours and days of work in the applicable Industrial Welfare Commission (“TWC”)
12 Wage Order were committed, as set forth in this complaint. The monetary damages, penalties,
13 and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court
14 and will be established according to proof at trial. This Court has jurisdiction over this action
15 pursuant to the California Constitution, Article VI, section 10. The statutes under which this
16 action is brought do not specify any other basis for jurisdiction. Plaintiff’s share of damages,
17 penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of jurisdiction
21 over them by the California courts consistent with traditional notions of fair play and substantial
22 justice.

23 3. Venue is proper in this Court, because Defendants employ persons within the
24 County of San Bernardino, and have violated the requirements of the California Labor Code
25 and applicable Wage Order in this county which give rise to the penalties sought in this action.
26 Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the
27 California Labor Code and applicable Wage Order in at least one location within the County of
28 Los Angeles. Pursuant to California Civil Code of Procedure section 393, venue is proper for

1 the recovery of a penalty or forfeiture imposed by statute in the county in which the cause, or
2 some part of the cause, arose. Because Defendants employed Plaintiff in Los Angeles County
3 and Plaintiff could bring this action to recover penalties in Los Angeles County, venue is proper.

4 **THE PARTIES**

5 4. Plaintiff Danny Marsano is a resident of Winnetka, in Los Angeles County,
6 California. Defendants employed Plaintiff as an hourly paid, non-exempt Delivery Technician
7 from approximately November 2017 to May 2021. During his employment, Plaintiff typically
8 worked ten (10) to twelve (12) hours or more per day and five (5) days per week. Plaintiff's
9 primary job duties included, without limitation, delivering or picking up medical devices and
10 equipment to and from hospitals, individuals, and rehabilitation facilities and providing
11 technical instruction to clients.

12 5. H AND H DRUG STORES, INC. was and is, upon information and belief, a
13 California corporation, and at all times hereinafter mentioned, an employer whose employees
14 are engaged throughout this county, the State of California.

15 6. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
16 under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the
17 complaint and serve such fictitiously named Defendants once their names and capacities
18 become known.

19 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
20 were the partners, agents, owners, or managers H AND H DRUG STORES, INC. at all relevant
21 times.

22 8. Plaintiff is informed and believes, and thereon alleges, that each and all of the
23 acts and omissions alleged herein was performed by, or is attributable to, H AND H DRUG
24 STORES, INC. and/or DOES 1 through 10 (collectively, "Defendants" or "WESTERN
25 DRUG"), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in
26 concert with, each of the other co-Defendants and was acting within the course and scope of
27 such agency, employment, joint venture, or concerted activity with legal authority to act on the
28 others' behalf. The acts of any and all Defendants were in accordance with, and represent, the

1 official policy of Defendants.

2 9. At all relevant times, Defendants, and each of them, ratified each and every act
3 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
4 and abetted the acts and omissions of each and all the other Defendants in proximately causing
5 the damages herein alleged.

6 10. Plaintiff is informed and believes, and thereon alleges, that each of said
7 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
8 omissions, occurrences, and transactions alleged herein.

9 **GENERAL ALLEGATIONS**

10 11. Defendants provide durable medical equipment and supplies to southern
11 California communities under the business name Western Drug Medical Supply. Upon
12 information and belief, Defendants maintain a single, centralized Human Resources (“HR”)
13 department at their company headquarters in Glendale, California, which is responsible for the
14 recruiting and hiring of new employees, and communicating and implementing Defendants’
15 company-wide policies, including timekeeping policies and meal and rest period policies, to
16 employees throughout California.

17 12. In particular, Plaintiff and class members, on information and belief, received
18 the same standardized documents and/or written policies. Upon information and belief, the
19 usage of standardized documents and/or written policies, including new-hire documents,
20 indicate that Defendants dictated policies at the corporate level and implemented them
21 company-wide, regardless of their employees’ assigned locations or positions. Upon
22 information and belief, Defendants set forth uniform policies and procedures in several
23 documents provided at an employee’s time of hire.

24 13. Upon information and belief, Defendants maintain a centralized Payroll
25 department at their company headquarters in Glendale, California, which processes payroll for
26 all non-exempt, hourly paid employees working for Defendants at their various locations and
27 jobsites in California, including Plaintiff and class members. Based upon information and
28 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid

1 employees in California, irrespective of their work locations. Upon information and belief,
2 Defendants process payroll for departing employees in the same manner throughout the State
3 of California, regardless of the manner in which each employee's employment ends.

4 14. Defendants continue to employ non-exempt or hourly paid employees in
5 California.

6 15. Plaintiff is informed and believes, and thereon alleges, that at all times herein
7 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
8 advisors knowledgeable about California labor and wage law, employment and personnel
9 practices, and about the requirements of California law.

10 16. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
11 members were not paid for all hours worked because all hours worked were not recorded.

12 17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and class members were entitled to receive certain wages for
14 overtime compensation and that they were not receiving certain wages for overtime
15 compensation.

16 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and class members were entitled to be paid at a regular rate of
18 pay, and corresponding overtime rates of pay, that included as eligible income all remuneration
19 required by law, including but not limited to, all income derived from incentive pay,
20 nondiscretionary bonuses, and/or other forms of compensation, but failed to include all forms
21 of remuneration in calculating the regular rate of pay for Plaintiff and class members.

22 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and class members were entitled to receive at least minimum
24 wages for compensation and that they were not receiving at least minimum wages for work that
25 was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and
26 class members were not paid at least minimum wages for work done off-the-clock.

27 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and class members were entitled to meal periods in accordance

1 with the California Labor Code and applicable IWC Wage Order or payment of one (1)
2 additional hour of pay at their regular rates of pay when they were not provided with timely,
3 uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members were not
4 provided with all meal periods or payment of one (1) additional hour of pay at their regular rates
5 of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

6 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and class members were entitled to rest periods in accordance
8 with the California Labor Code and applicable IWC Wage Order or payment of one (1)
9 additional hour of pay at their regular rates of pay when they were not authorized and permitted
10 to take a compliant rest period. In violation of the California Labor Code, Plaintiff and class
11 members were not authorized and permitted to take compliant rest periods, nor did Defendants
12 provide Plaintiff and class members with payment of one (1) additional hour of pay at their
13 regular rates of pay when they were not authorized and permitted to take a compliant rest period.

14 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and class members were entitled to receive complete and
16 accurate wage statements in accordance with California law. In violation of the California
17 Labor Code, Plaintiff and class members were not provided complete and accurate wage
18 statements.

19 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that they had a duty to maintain accurate and complete payroll records in
21 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
22 knowingly, and intentionally failed to do so.

23 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and class members were entitled to timely payment of all
25 wages earned upon termination of employment. In violation of the California Labor Code,
26 Plaintiff and class members did not receive payment of all wages due, including, but not limited
27 to, overtime wages, minimum wages, and/or meal and rest period premiums, within permissible
28 time periods.

1 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and class members were entitled to timely payment of wages
3 during their employment. In violation of the California Labor Code, Plaintiff and class members
4 did not receive payment of all wages, including, but not limited to, overtime wages, minimum
5 wages, and/or meal and rest period premiums, within permissible time periods.

6 26. Plaintiff is informed and believes, and thereon alleges, that at all times herein
7 mentioned, that Defendants knew or should have known that they had a duty to cover the costs
8 and expenses Plaintiff and/or class members incurred obtaining mandatory physical
9 examinations and/or drug tests, but failed to do so.

10 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to receive full reimbursement
12 for all business-related expenses and costs they incurred during the course and scope of their
13 employment and that they did not receive full reimbursement of applicable business-related
14 expenses and costs incurred.

15 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
16 mentioned, Defendants knew or should have known that Defendants had a duty to provide
17 Plaintiff and class members with written notice of the material terms of their employment with
18 Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

19 29. Plaintiff is informed and believes, and thereon alleges, that at all times herein
20 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff
21 and class members for all hours worked, and that Defendants had the financial ability to pay
22 such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
23 represented to Plaintiff and class members that they were properly denied wages, all in order to
24 increase Defendants' profits.

25 **PAGA REPRESENTATIVE ALLEGATIONS**

26 30. At all times herein set forth, PAGA provides that any provision of law under the
27 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and
28 collected by the LWDA for violations of the California Labor Code and applicable IWC Wage

Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on behalf of themselves and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

31. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.”

32. Plaintiff and other current and former employees of Defendants are “aggrieved employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current or former employees and one or more of the alleged violations were committed against them.

33. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

- (a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation.
- (b) An aggrieved employee’s notice filed with the LWDA pursuant to 2699.3(a) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).
- (c) The LWDA shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of the postmark date of the aggrieved employee’s notice. Upon receipt of the LWDA Notice, or if no LWDA Notice is provided within sixty-five (65) calendar days of the postmark date of the aggrieved employee’s notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties.

34. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,

1 through Plaintiff, may pursue a civil action arising under PAGA for violations of any provision
2 other than those listed in Section 2699.5 after the following requirements have been met:

3 (a) The aggrieved employee or representative shall give written notice by
4 online filing with the LWDA and by certified mail to the employer of the
5 specific provisions of the California Labor Code alleged to have been
6 violated (other than those listed in Section 2699.5), including the facts and
7 theories to support the alleged violation.

8 (b) An aggrieved employee's notice filed with the LWDA pursuant to
9 2699.3(c) and any employer response to that notice shall be accompanied
10 by a filing fee of seventy-five dollars (\$75).

11 (c) The employer may cure the alleged violation within thirty-three (33)
12 calendar days of the postmark date of the notice sent by the aggrieved
13 employee or representative. The employer shall give written notice
14 within that period of time by certified mail to the aggrieved employee or
15 representative and by online filing with the LWDA if the alleged violation
16 is cured, including a description of actions taken, and no civil action
17 pursuant to Section 2699 may commence. If the alleged violation is not
18 cured within the 33-day period, the aggrieved employee may commence
19 a civil action pursuant to Section 2699.

20 35. On December 8, 2021, Plaintiff provided written notice by online filing to the
21 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
22 Code alleged to have been violated, including facts and theories to support the alleged
23 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice
24 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
25 PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff
26 PAGA Case Number LWDA-CM-856622-21. A true and correct copy of Plaintiff's written
27 notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

28 36. As of the filing date of this complaint, over 65 days have passed since Plaintiff

1 sent the notice described above to the LWDA, and the LWDA has not responded that it intends
2 to investigate Plaintiff's claims and Defendants have not cured the violations.

3 37. Thus, Plaintiff has satisfied the administrative prerequisites under California
4 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
5 violations of California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a),
6 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

7 38. Labor Code section 558(a) provides "[a]ny employer or other person acting on
8 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
9 provision regulating hours and days of work in any order of the Industrial Welfare Commission
10 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
11 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
12 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
13 each pay period for which the employee was underpaid. . . ." Labor Code section 558(c)
14 provides "[t]he civil penalties provided for in this section are in addition to any other civil or
15 criminal penalty provided by law."

16 39. Defendants, at all times relevant to this complaint, were employers or persons
17 acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees'
18 rights by violating various sections of the California Labor Code as set forth above.

19 40. As set forth below, Defendants have violated numerous provisions of both the
20 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
21 Order.

22 41. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
23 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
24 private attorney general, seeks assessment and collection of civil penalties for himself, all other
25 aggrieved employees, and the State of California against Defendants for violations of California
26 Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,
27 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

28 **CLASS ACTION ALLEGATIONS**

1 42. Plaintiff brings this action on his own behalf, as well as on behalf of each and all
2 other persons similarly situated, and thus seeks class certification under California Code of Civil
3 Procedure section 382.

4 43. All claims alleged herein arise under California law for which Plaintiff seeks
5 relief authorized by California law.

6 44. Plaintiff's proposed class consists of and is defined as follows:

7 All persons who worked for Defendants as non-exempt, hourly
8 paid employees in California within four years prior to the filing
of the initial complaint until the date of trial ("Class").

9 45. Plaintiff's proposed subclass consists of and is defined as follows:

10 All persons who worked for Defendants as non-exempt, hourly
11 paid employees in California and who received at least one wage
12 statement within one (1) year prior to the filing of the initial
complaint until the date of trial ("Subclass").

13 46. Members of the Class and Subclass are referred to herein as "class members."

14 47. Plaintiff reserves the right to redefine the Class and Subclass and to add
15 additional subclasses as appropriate based on further investigation, discovery, and specific
16 theories of liability.

17 48. There are common questions of law and fact as to class members that
18 predominate over questions affecting only individual members, including, but not limited to:

- 19 (a) Whether Defendants required Plaintiff and class members to work over
20 eight (8) hours per day, over twelve (12) hours per day, or over forty (40)
21 hours per week and failed to pay all legally required overtime
22 compensation to Plaintiff and class members;
- 23 (b) Whether Defendants failed to properly calculate the "regular rate" of pay
24 on which Plaintiff's and class members' overtime rate of pay was based;
- 25 (c) Whether Defendants failed to pay Plaintiff and class members at least
26 minimum wages for all hours worked;
- 27 (d) Whether Defendants failed to provide Plaintiff and class members with
28 meal periods;

- (e) Whether Defendants failed to authorize and permit Plaintiff and class members to take rest periods;
- (f) Whether Defendants provided Plaintiff and class members with complete and accurate wage statements as required by California Labor Code section 226(a);
- (g) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);
- (h) Whether Defendants failed to pay earned overtime wages, minimum wages, and/or meal and rest period premiums, due to Plaintiff and class members upon their discharge;
- (i) Whether Defendants failed timely to pay overtime wages, minimum wages, and/or meal and rest period premiums, due to Plaintiff and class members during their employment;
- (j) Whether Defendants failed to pay Plaintiff and class members for the costs of mandatory physical examinations and/or drug testing;
- (k) Whether Defendants failed to reimburse Plaintiff and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;
- (l) Whether Defendants failed to provide written notice of information material to Plaintiff's and class members' employment with Defendants;
- (m) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (n) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

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

- (a) Numerosity: The class members are so numerous that joinder of all

1 members would be unfeasible and impractical. The membership of the
2 entire class is unknown to Plaintiff at this time; however, the class is
3 estimated to be greater than one hundred (100) individuals and the
4 identity of such membership is readily ascertainable by inspection of
5 Defendants' employment records.

6 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect
7 the interests of each class member with whom he has a well-defined
8 community of interest, and Plaintiff's claims (or defenses, if any) are
9 typical of all class members as demonstrated herein.

10 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect
11 the interests of each class member with whom he has a well-defined
12 community of interest and typicality of claims, as demonstrated herein.
13 Plaintiff acknowledges that he has an obligation to make known to the
14 Court any relationship, conflicts or differences with any class member.
15 Plaintiff's attorneys, the proposed class counsel, are versed in the rules
16 governing class action discovery, certification, and settlement. Plaintiff
17 has incurred, and throughout the duration of this action, will continue to
18 incur costs and attorneys' fees that have been, are, and will be necessarily
19 expended for the prosecution of this action for the substantial benefit of
20 each class member.

21 (d) Superiority: The nature of this action makes the use of class action
22 adjudication superior to other methods. A class action will achieve
23 economies of time, effort, and expense as compared with separate
24 lawsuits, and will avoid inconsistent outcomes because the same issues
25 can be adjudicated in the same manner and at the same time for the entire
26 class.

27 (e) Public Policy Considerations: Employers in the State of California
28 violate employment and labor laws every day. Current employees are

1 often afraid to assert their rights out of fear of direct or indirect retaliation.
2 Former employees are fearful of bringing actions because they believe
3 their former employers might damage their future endeavors through
4 negative references and/or other means. Class actions provide the class
5 members who are not named in the complaint with a type of anonymity
6 that allows for the vindication of their rights while simultaneously
7 protecting their privacy.

8 **FIRST CAUSE OF ACTION**

9 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

10 **(Against all Defendants)**

11 50. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
12 and every allegation set forth above.

13 51. Labor Code section 1198 makes it illegal to employ an employee under
14 conditions of labor that are prohibited by the applicable wage order. California Labor Code
15 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
16 be the . . . standard conditions of labor for employees. The employment of any employee . . .
17 under conditions of labor prohibited by the order is unlawful.”

18 52. California Labor Code section 1198 and the applicable IWC Wage Order provide
19 that it is unlawful to employ persons without compensating them at a rate of pay either time-
20 and-one-half or two-times that person’s regular rate of pay, depending on the number of hours
21 worked by the person on a daily or weekly basis.

22 53. Specifically, the applicable IWC Wage Order provides that Defendants are and
23 were required to pay Plaintiff and class members working more than eight (8) hours in a day or
24 more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours
25 worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

26 54. The applicable IWC Wage Order further provides that Defendants are and were
27 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
28 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s

1 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
2 employee, including nondiscretionary bonuses and incentive pay.

3 55. California Labor Code section 510 codifies the right to overtime compensation
4 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
5 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
6 (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for
7 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
8 the seventh (7th) day of work.

9 56. During the relevant time period, Defendants willfully failed to pay all overtime
10 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and class
11 members were not paid overtime premiums for all of the hours they worked in excess of eight
12 (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours
13 in a week, because all hours worked were not recorded.

14 57. First, during the relevant period, Defendants had a company-wide rotating "on-
15 call" policy, whereby they scheduled Plaintiff and class members to work "on-call" weeks.
16 During an "on-call" week, Plaintiff and class members had to be available 24 hours per day and
17 seven (7) days per week to respond to calls for after-hours "emergency" or rush deliveries or
18 pickups. Defendants issued company cellular phones to Plaintiff and class members which they
19 were required to keep on them and respond to immediately while working an "on-call" week.
20 When scheduled to be "on-call," Plaintiff and class members were in essence on controlled
21 standby for Defendants because they could not use that time freely for their own purposes and
22 were forced to put their lives on hold. For example, Plaintiff refrained from making plans
23 altogether while "on-call" because he knew that he had to drop whatever he was doing at a
24 moment's notice if he received a call. Defendants paid Plaintiff and class members a flat rate
25 of \$120.00 per week during an "on-call" week, plus time they spent at the clients' locations
26 delivering or picking up equipment. However, Defendants failed to pay Plaintiff and class
27 members for their travel time to and from the client locations or for the remainder of time during
28 which they were not free to use their time for their own purposes.

1 58. Second, Defendants have, systematically, and on a company-wide basis,
2 scheduled and dispatched their delivery drivers to complete time-sensitive deliveries, which
3 included traveling to various locations, unloading equipment and supplies from the vehicle,
4 completing delivery paperwork, and instructing patients and/or caregivers regarding the
5 operation and maintenance of delivered equipment, without building in sufficient time to allow
6 for 30-minute meal periods, such that Plaintiff and class members were prevented from taking
7 all timely, uninterrupted 30-minute meal periods, and were also forced to work off-the-clock
8 during their meal periods to complete their assigned routes. Deliveries could take longer than
9 the time Defendants allotted for them, such that Plaintiff and class members were unable to take
10 compliant meal periods. In conjunction with varying delivery durations, travel time between
11 delivery locations could take longer than anticipated due to traffic conditions, which further
12 impeded Plaintiff and class members from taking compliant meal periods. And, upon
13 information and belief, Defendants had no mechanism in place to permit Plaintiff and class
14 members to take meal periods when the schedule was thrown off because one or more of their
15 deliveries took longer than the scheduled time, or if travel time between appointments was
16 extended by traffic conditions. Defendants also had a practice of failing to schedule meal
17 periods, which further caused Plaintiff and class members to not be relieved of their duties for
18 compliant meal periods. In addition, even when Plaintiff and class members were able to take
19 their meal periods, Defendants pressured them to eat their meals while driving between
20 customer sites. Thus, Plaintiff and class members performed work during meal periods and
21 received no compensation for this time.

22 59. Third, Defendants had, and continue to have, a company-wide policy and/or
23 practice of requiring employees to use company mobile devices and/or personal cellular phones
24 to communicate with dispatch and supervisors at all times, including during unpaid meal
25 periods. Defendants expected that Plaintiff and class members respond to calls and text
26 messages promptly to discuss work-related matters. For example, Plaintiff had his meal periods
27 interrupted by calls from dispatch to discuss deliveries and other work-related matters.
28 However, Defendants did not compensate Plaintiff and class members for the time they spent

1 communicating with dispatch and supervisors regarding work-related issues during meal
2 periods while off-the-clock.

3 60. Fourth, on information and belief, because Defendants frowned upon employees
4 accruing meal period penalties, Defendants' management pressured Plaintiff and class members
5 to clock out for meal periods on their timesheets regardless of whether they had received a
6 compliant meal period or not, in order to strictly limit meal penalties that would need to be paid
7 by Defendants. Alternatively, Defendants' management would adjust employees' time records
8 to reflect compliant meal periods or would automatically deduct 30-minute meal periods from
9 Plaintiff's and class members' time records even when meal periods were missed, short, and/or
10 interrupted. Thus, Defendants did not record all hours worked during meal periods, and Plaintiff
11 and class members performed work during meal periods for which they were not paid.

12 61. Defendants knew or should have known that as a result of these company-wide
13 practices and/or policies, Plaintiff and class members were performing their assigned duties off-
14 the-clock and/or during meal periods, and were suffered or permitted to perform work for which
15 they were not paid. Because Plaintiff and class members worked shifts of eight (8) hours or
16 more a day or forty (40) hours a week or more, some of this off-the-clock work qualified for
17 overtime premium pay. Therefore, Plaintiff and class members were not paid overtime wages
18 for all of the overtime hours they actually worked.

19 62. Furthermore, Defendants did not pay Plaintiff and class members the correct
20 overtime rate for the recorded overtime hours that they generated. In addition to an hourly
21 wage, Defendants paid Plaintiff and class members incentive pay, nondiscretionary bonuses,
22 and/or other forms of remuneration. However, in violation of the California Labor Code,
23 Defendants failed to incorporate all compensation, including incentive pay, nondiscretionary
24 bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for
25 purposes of calculating the overtime wage rate. Therefore, during times when Plaintiff and
26 class members worked overtime and received these other forms of pay, Defendants failed to pay
27 all overtime wages by paying a lower overtime rate than required.

28 63. For example, Defendants paid Plaintiff and class members incentive pay and/or

1 nondiscretionary bonuses which were listed on Plaintiff's and class members' wage statements
2 as "Beeper." During pay periods that Plaintiff and class members were paid overtime wages,
3 Defendants did not incorporate the incentive pay and/or nondiscretionary bonuses into
4 Plaintiff's and class members' regular rate of pay and, as a result, paid them at incorrect and
5 lower rates of pay for overtime hours worked. Specifically, Defendants paid Plaintiff and class
6 members 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay.
7 Defendants' failure to properly calculate the overtime rates of pay based on all remuneration
8 paid has resulted in an underpayment of overtime wages to Plaintiff and class members on a
9 company-wide basis.

10 64. Defendants' failure to pay Plaintiff and class members the balance of overtime
11 compensation as required by California law, violates the provisions of California Labor Code
12 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
13 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
14 and attorneys' fees.

15 **SECOND CAUSE OF ACTION**

16 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 17 **Minimum Wages** 18 **(Against all Defendants)**

19 65. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
20 and every allegation set forth above.

21 66. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
22 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
23 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
24 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as "the
25 time during which an employee is subject to the control of an employer, and includes all the
26 time the employee is suffered or permitted to work, whether or not required to do so." Cal.
27 Code. Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

28 67. As set forth above, Defendants systematically, and on a company-wide basis,

1 required Plaintiff and class members to work “on-call” weeks during which they had to put their
2 lives on hold and were restricted from using that time freely for their own purposes. Even
3 though Plaintiff and class members were subject to Defendants’ control during an “on-call”
4 shift, Defendants did not pay Plaintiff and class members at least minimum wages for all hours
5 that they were suffered or permitted to work. Additionally, Defendants failed to pay Plaintiff
6 and class members for their travel time to and from the client locations when they responded to
7 calls after-hours.

8 68. Further, as stated above, due to Defendants’ policies and/or practices of
9 assigning heavy workloads while allowing insufficient time to complete driving routes, failing
10 to schedule meal periods, requiring employees to take their meal periods while driving, and
11 requiring employees to respond to calls at all times, Plaintiff and class members were forced to
12 forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of
13 all duties during meal period. Moreover, as stated, in order to prevent employees from accruing
14 meal period penalties, upon information and belief, Defendants’ management pressured
15 employees to clock out for meal periods, adjusted employee time records to reflect compliant
16 meal periods, and/or automatically deducted 30-minute meal periods from Plaintiff’s and class
17 members’ time records even when meal periods were missed, short, and/or interrupted. Thus,
18 Defendants systematically failed to pay Plaintiff and class members for actual hours worked
19 during unpaid meal periods because these hours were not always correctly recorded.

20 69. Moreover, Defendants maintained and implemented a company-wide policy of
21 requiring all employees to travel to a medical facility on their own time and using their own
22 personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times,
23 Defendants were in control of scheduling the date and time for the testing, selecting the provider
24 or facility where the testing and/or physical examinations were to take place, and determining
25 the scope of the testing and/or physical examinations. For example, Defendants gave Plaintiff
26 strict instructions to obtain drug testing, and Plaintiff underwent the drug testing for the sole
27 benefit of Defendants. Plaintiff followed Defendants’ instructions, traveled approximately 10
28 minutes roundtrip to and from the medical facility designated by Defendants, Adventist Health

1 Glendale Occupational Medicine Center, located at 600 S. Glendale Ave. in Glendale,
2 California, and spent an additional hour waiting at the medical facility undergoing the requisite
3 testing. However, Defendants did not compensate Plaintiff and class members for the time they
4 spent traveling to and undergoing the mandatory drug testing and/or physical examinations.

5 70. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
6 and class members. To the extent that these off-the-clock hours did not qualify for overtime
7 premium payment, Defendants did not pay at least minimum wages for those hours worked off-
8 the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

9 71. Defendants' failure to pay Plaintiff and class members minimum wages violates
10 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California
11 Labor Code section 1194.2, Plaintiff and class members are entitled to recover liquidated
12 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

13 **THIRD CAUSE OF ACTION**

14 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**

15 **Violations**

16 **(Against all Defendants)**

17 72. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
18 and every allegation set forth above.

19 73. At all relevant times herein set forth, California Labor Code section 512(a)
20 provides that an employer may not require, cause, or permit an employee to work for a period
21 of more than five (5) hours per day without providing the employee with a meal period of not
22 less than thirty (30) minutes, except that if the total work period per day of the employee is not
23 more than six (6) hours, the meal period may be waived by mutual consent of both the employer
24 and the employee. Under California law, first meal periods must start after no more than five
25 hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

26 74. At all relevant times herein set forth, California Labor Code sections 226.7,
27 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
28 meal period mandated by an applicable order of the IWC.

1 75. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a), and
2 the applicable IWC Wage Order also require employers to provide a second meal period of not
3 less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
4 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
5 hours worked is no more than twelve (12) hours, the second meal period may be waived by
6 mutual consent of the employer and the employee only if the first meal period was not waived.

7 76. As stated, Defendants had, and continue to have, a company-wide policy and/or
8 practice of assigning heavy workloads and scheduling time-sensitive deliveries while allowing
9 insufficient time for the drivers to actually complete the deliveries, which resulted in a lack of
10 meal period coverage and prevented Plaintiff and class members from taking all timely,
11 uninterrupted meal periods to which they were entitled. Further, as stated, Defendants had
12 company-wide practices and/or policies of failing to schedule meal periods, pressuring
13 employees to eat their meals while driving between customers' sites, and requiring employees
14 to use company mobile devices and/or personal cellular phones to communicate with dispatch
15 and supervisors during meal periods, which further caused Plaintiff and class members to not
16 be relieved of their duties for compliant meal periods. For example, Plaintiff frequently worked
17 through part or all of his meal periods, in order to complete his deliveries within Defendants'
18 management's expectations. When Plaintiff was able to take a meal period, he was often
19 required to drive while eating or respond to phone calls and text messages from dispatch about
20 deliveries. Thus, as a result of Defendants' policies and/or practices, Plaintiff and class
21 members were forced to work in excess of five (5) hours before taking a meal period and, at
22 times, had their meal periods interrupted, and/or had to forgo their meal periods altogether.

23 77. Defendants also did not provide Plaintiff and class members with second 30-
24 minute meal periods on days that they worked in excess of ten (10) hours in one day. During
25 his employment, Plaintiff worked shifts in excess of ten (10) or more hours per day but was
26 never provided a second 30-minute meal period. Plaintiff and class members did not sign valid
27 meal period waivers on days that they were entitled to meal periods and were not relieved of all
28 duties.

1 78. At all times herein mentioned, Defendants knew or should have known that, as a
2 result of these policies, Plaintiff and class members were prevented from being relieved of all
3 duties and required to perform some of their assigned duties during meal periods. Defendants
4 further knew or should have known that Defendants did not pay Plaintiff and class members
5 meal period premiums when meal periods were late, interrupted, shortened, or missed. As set
6 forth above, on information and belief, because Defendants frowned upon employees accruing
7 meal period penalties, Defendants' management pressured Plaintiff and class members to clock
8 out for meal periods on their timesheets regardless of whether they had received a compliant
9 meal period or not, in order to strictly limit meal penalties that would need to be paid by
10 Defendants. Alternatively, Defendants' management would adjust employees' time records to
11 reflect compliant meal periods or would automatically deduct 30-minute meal periods from
12 Plaintiff's and class members' time records even when meal periods were missed, short, and/or
13 interrupted.

14 79. Moreover, Defendants engaged in a company-wide practice and/or policy of not
15 paying all meal period premiums owed when compliant meal periods are not provided. Because
16 of this practice and/or policy, Plaintiff and class members have not received premium pay for
17 all missed, late, and interrupted meal periods. Alternatively, to the extent that Defendants did
18 pay Plaintiff and class members premium pay for missed, late, and interrupted meal periods,
19 Defendants did not pay Plaintiff and class members at the correct rate of pay for premiums
20 because Defendants systematically failed to include all forms of compensation, such as
21 incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate
22 of pay. As a result, Defendants failed to provide Plaintiff and class members compliant meal
23 periods in violation of California Labor Code sections 226.7, 512(a), and 516 and failed to pay
24 the full meal period premiums due.

25 80. Defendants' conduct violates the applicable IWC Wage Order, and California
26 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
27 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
28 rate of compensation for each work day that the meal period was not provided.

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FOURTH CAUSE OF ACTION
Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations
(Against all Defendants)

81. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

82. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff’s and class members’ employment by Defendants.

83. At all relevant times, the applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3 ½) hours.

84. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

85. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. Defendants maintained and implemented, on a

1 company-wide basis, a non-compliant written rest period policy that prevented Plaintiff and
2 class members from taking compliant rest periods. Defendants' non-compliant policy fails to
3 correctly state the timing of when rest periods must occur. The policy states, in relevant part:
4 "Please note, there is one break period for every four hours worked. One in the morning and
5 one in the afternoon. Employees cannot take more than the allowed time, or more than two
6 breaks per day." However, under California law, an employee is entitled to rest periods for
7 every four (4) hours worked or major fraction thereof. Thus, Defendants' written rest period
8 policy is non-compliant on its face, as it fails to authorize and permit employees to take a first
9 rest period for shifts between 3.5 and 6 hours, a second rest period for shifts between 6 and 10
10 hours, a third rest period for shifts between 10 and 14 hours, and so on.

11 86. Additionally, as with meal periods, Defendants' company-wide practices,
12 including understaffing and assigning heavy workloads, prevented Plaintiff and class members
13 from being able to take rest periods. Defendants also failed to schedule rest periods, which,
14 coupled with Defendants' failure to provide adequate rest period coverage, further led to
15 Plaintiff and class members not being authorized and permitted to take rest periods. Moreover,
16 as stated, Plaintiff and class members were required to respond to communications from
17 dispatch or management on their company mobile devices and/or personal cellular phones at all
18 times, including during rest periods.

19 87. Furthermore, Defendants maintained and implemented a company-wide on-
20 premises rest period policy, which mandated that Plaintiff and/or class members remain on the
21 premises during their rest periods. Because Plaintiff and/or class members were restricted from
22 leaving Defendants' premises during rest periods, they were denied the ability to use their rest
23 periods freely for their own purposes, such as running personal errands. Thus, Defendants
24 effectively maintained control over Plaintiff and/or class members during rest periods.

25 88. As a result of Defendants' practices and policies, Plaintiff and class members
26 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
27 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
28 Plaintiff regularly had to forego rest periods altogether, due to Defendants' policy of assigning

1 heavy workloads and failing to provide sufficient rest period coverage.

2 89. Defendants have also engaged in a company-wide practice and/or policy of not
3 paying all rest period premiums owed when compliant rest periods are not authorized and
4 permitted. Because of this practice and/or policy, Plaintiff and class members have not received
5 premium pay for all missed rest periods. Alternatively, to the extent that Defendants did pay
6 Plaintiff and class members one (1) additional hour of premium pay for missed rest periods,
7 Defendants did not pay Plaintiff and class members at the correct rate of pay for premiums
8 because Defendants failed to include all forms of compensation, such incentive pay,
9 nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. As a
10 result, Defendants denied Plaintiff and class members rest periods and failed to pay them rest
11 period premiums due, in violation of Labor Code sections 226.7 and 516, and the applicable
12 IWC Wage Order.

13 90. Defendants' conduct violates the applicable IWC Wage Order and California
14 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
15 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
16 compensation for each work day that a compliant rest period was not authorized and permitted.

17 **FIFTH CAUSE OF ACTION**

18 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 19 **Statements and Failure to Maintain Accurate Payroll Records** 20 **(Against all Defendants)**

21 91. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
22 and every allegation set forth above.

23 92. At all relevant times herein set forth, California Labor Code section 226(a)
24 provides that every employer shall furnish each of his or her employees an accurate and
25 complete itemized wage statement in writing, including, but not limited to, the name and address
26 of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked,
27 and all applicable rates of pay.

28 93. At all relevant times, Defendants have knowingly and intentionally provided

1 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements. For
2 example, Defendants issued uniform wage statements to Plaintiff and Subclass members that
3 fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
4 applicable hourly rates in effect during the pay period, including rates of pay for overtime wages
5 and/or meal and rest period premiums, and the corresponding number of hours worked at each
6 hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and
7 226(a)(9).

8 94. First, because Defendants did not record the time Plaintiff and Subclass members
9 spent working off-the-clock and deducted time from their records for meal periods that were
10 interrupted and/or missed (and therefore time for which they should have been paid),
11 Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff and
12 Subclass members in compliance with section 226(a)(1) and section 226(a)(5), respectively.
13 For the same reason, Defendants failed to accurately list the total number of hours worked by
14 Plaintiff and Subclass members, in violation of section 226(a)(2), and failed to list the applicable
15 hourly rates of pay in effect during the pay period and the corresponding accurate number of
16 hours worked at each hourly rate, in violation of section 226(a)(9)).

17 95. Second, because Defendants did not calculate Plaintiff's and Subclass members'
18 regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period
19 premiums, Defendants did not list the correct amount of gross wages in compliance with section
20 226(a)(1). For the same reason, Defendants failed to list the correct amount of net wages in
21 violation of section 226(a)(5). Defendants also failed to correctly list all applicable hourly rates
22 in effect during the pay period, namely, correct rates of pay for overtime wages, and/or meal
23 and rest premiums, in violation of section 226(a)(9).

24 96. The wage statement deficiencies also include, among other things, failing to list
25 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
26 piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for
27 which employees were paid; failing to list the name of the employee and only the last four digits
28 of his or her social security number or an employee identification number other than a social

1 security number; failing to list the name and address of the legal entity that is the employer;
2 and/or failing to state all hours worked as a result of not recording or stating the hours they
3 worked off-the-clock.

4 97. California Labor Code section 1174(d) provides that “[e]very person employing
5 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
6 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
7 plants or establishments at which employees are employed, payroll records showing the hours
8 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
9 applicable piece rate paid to, employees employed at the respective plants or
10 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
11 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
12 members showing the daily hours they worked and the wages paid thereto as a result of failing
13 to record the off-the-clock hours that they worked.

14 98. California Labor Code section 1198 provides that the maximum hours of work
15 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
16 forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment
17 of any employees for longer hours than those fixed by the order or under conditions of labor
18 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers
19 are required to keep accurate time records showing when the employee begins and ends each
20 work period and meal period. During the relevant time period, Defendants failed, on a
21 company-wide basis, to keep accurate records of work period and meal period start and stop
22 times for Plaintiff and Subclass members, in violation of section 1198. Also, as stated,
23 Defendants engaged in a company-wide practice and/or policy of falsifying Plaintiff’s and
24 Subclass members’ time records by recording that compliant meal periods were taken regardless
25 of if or when meal periods were actually taken, and thereby failed to keep accurate records of
26 meal start and end times for Plaintiff and Subclass members. Furthermore, in light of
27 Defendants’ failure to provide Plaintiff and Subclass members with second 30-minute meal
28 periods to which they were entitled, Defendants kept no records of meal start and end times for

1 second meal periods.

2 99. Plaintiff and Subclass members are entitled to recover from Defendants the
3 greater of their actual damages caused by Defendants' failure to comply with California Labor
4 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
5 employee.

6 **SIXTH CAUSE OF ACTION**

7 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon**
8 **Termination**
9 **(Against all Defendants)**

10 100. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
11 and every allegation set forth above.

12 101. This cause of action is dependent upon, and wholly derivative of, the overtime
13 wages, minimum wages, and/or meal and rest period premiums, that were not timely paid to
14 Plaintiff and those class members no longer employed by Defendants upon their termination.

15 102. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
16 that if an employer discharges an employee, the wages earned and unpaid at the time of
17 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
18 her employment, his or her wages shall become due and payable not later than seventy-two (72)
19 hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his
20 or her intention to quit, in which case the employee is entitled to his or her wages at the time of
21 quitting.

22 103. Defendants willfully failed to pay Plaintiff and class members who are no longer
23 employed by Defendants the earned and unpaid wages set forth above, including but not limited
24 to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time
25 of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

26 104. Defendants' failure to pay Plaintiff and class members who are no longer
27 employed by Defendants their wages earned and unpaid at the time of discharge, or within
28 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201

1 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
2 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
3 thirty (30) day maximum pursuant to California Labor Code section 203.

4 **SEVENTH CAUSE OF ACTION**

5 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During**
6 **Employment**

7 **(Against all Defendants)**

8 105. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
9 and every allegation set forth above.

10 106. This cause of action is dependent upon, and wholly derivative of, the overtime
11 wages, minimum wages, and/or meal and rest period premiums, that were not timely paid to
12 Plaintiff and those class members.

13 107. At all times relevant herein set forth, Labor Code section 204 provides that all
14 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
15 days, inclusive, of any calendar month, other than those wages due upon termination of an
16 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
17 the month during which the labor was performed. Labor Code section 204 further provides that
18 all wages earned by any person in any employment between the sixteenth (16th) and the last
19 day, inclusive, of any calendar month, other than those wages due upon termination of an
20 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
21 month.

22 108. At all times relevant herein, Labor Code section 204 provides that all wages
23 earned for labor in excess of the normal work period shall be paid no later than the payday for
24 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
25 204 provides that the requirements of this section are deemed satisfied by the payment of wages
26 for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7)
27 calendar days following the close of the payroll period.

28 109. During the relevant time period, Defendants willfully failed to pay Plaintiff and

1 class members all wages due including, but not limited to, overtime wages, minimum wages,
2 and/or meal and rest period premiums, within the time periods specified by California Labor
3 Code section 204.

4 110. Defendants' failure to pay Plaintiff and class members all wages due violates
5 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
6 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

7 **EIGHTH CAUSE OF ACTION**

8 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 9 **(Against all Defendants)**

10 111. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
11 and every allegation set forth above.

12 112. At all times herein set forth, California Labor Code section 2802 provides that
13 an employer must reimburse employees for all necessary expenditures and losses incurred by
14 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
15 to prevent employers from passing off their cost of doing business and operating expenses on
16 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
17 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: "[w]hen tools
18 or equipment are required by the employer or are necessary to the performance of a job, such
19 tools and equipment shall be provided and maintained by the employer, except that an employee
20 whose wages are at least two (2) times the minimum wage provided herein may be required to
21 provide and maintain hand tools and equipment customarily required by the trade or craft."

22 113. During the relevant time period, Plaintiff and class members were required to use
23 their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data
24 to carry out their job duties, but Defendants failed to reimburse them for the costs of their work-
25 related mobile device expenses. For example, Plaintiff was required to use his personal cellular
26 phone to navigate to customer sites and to converse with his supervisors and dispatch about
27 work-related matters via calls and/or text messages. Even when Defendants later provided
28 Plaintiff and class members with company mobile devices, Defendants continued to call

1 Plaintiff on his personal cellular phone whenever his company phone was turned off or when
2 he was otherwise unavailable during his meal periods and/or outside of his shifts. Although
3 Defendants required Plaintiff and class members to utilize their personal mobile devices and/or
4 mobile data to carry out their work-related responsibilities, Defendants failed to reimburse them
5 for these costs.

6 114. Additionally, during the relevant time period, Defendants had a company-wide
7 policy and/or practice of requiring Plaintiff and class members to travel in their own personal
8 vehicles or alternate transportation to medical facilities to undergo mandatory drug testing
9 and/or physical examinations, but did not reimburse them for their travel expenses, including
10 mileage. Defendants maintained and implemented a company-wide policy of requiring
11 employees to travel to a medical facility using their own personal vehicles to undergo mandatory
12 drug testing and/or physical examinations. At all times, Defendants were in control of
13 scheduling the date and time for the testing and/or physical examinations, selecting the provider
14 or facility where the testing and/or physical examinations were to take place, and determining
15 the scope of the testing and/or physical examinations.

16 115. For example, as stated, Defendants gave Plaintiff strict instructions to obtain drug
17 testing, and Plaintiff underwent the testing for the sole benefit of Defendants. Plaintiff followed
18 Defendants' instructions, traveled 3-5 miles roundtrip using his personal vehicle to and from
19 the medical facility designated by Defendants, Adventist Health Glendale Occupational
20 Medicine Center, located at 600 S. Glendale Ave. in Glendale, California, and underwent the
21 drug test. Although Defendants required Plaintiff and class members to undergo drug testing
22 and/or physical examinations, Defendants failed to reimburse them for their travel expenses.

23 116. Defendants could have provided Plaintiff and class members with the actual tools
24 for use on the job, such company mobile devices and company vehicles, to be used for fulfilling
25 work-related tasks. Or, Defendants could have reimbursed employees for their mobile device
26 usage, mileage, and travel expenses. Instead, Defendants passed these operating costs off onto
27 Plaintiff and class members. At all relevant times, Plaintiff did not earn at least two (2) times
28 the minimum wage.

117. Defendants' company-wide policy and/or practice of passing on their operating costs to Plaintiff and class members violates California Labor Code section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and other class members for necessary business-related expenses and costs.

118. Plaintiff and class members are entitled to recover from Defendants their business-related expenses incurred during the course and scope of their employment, plus interest.

NINTH CAUSE OF ACTION

For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.*

(Against all Defendants)

119. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

120. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516, 1182.12, and 2810.5.

121. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

(a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other aggrieved employees with all required overtime pay and failure to properly calculate the overtime rates paid to Plaintiff and other aggrieved employees, as alleged herein;

(b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order for Defendants' failure to

1 compensate Plaintiff and other aggrieved employees with at least
2 minimum wages for all hours worked, as alleged herein;

3 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
4 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
5 and other aggrieved employees with meal periods, as alleged herein;

6 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable
7 IWC Wage Order for Defendants' failure to authorize and permit Plaintiff
8 and other aggrieved employees to take rest periods, as alleged herein;

9 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
10 IWC Wage Order for failure to provide accurate and complete wage
11 statements to Plaintiff and other aggrieved employees, as alleged herein;

12 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
13 IWC Wage Order for failure to maintain payroll records, as alleged
14 herein;

15 (g) Violation of Labor Code sections 201 and 202 for failure to pay all earned
16 wages upon termination, as alleged herein;

17 (h) Violation of Labor Code section 204 for failure to pay all earned wages
18 during employment, as alleged herein;

19 (i) Violation of Labor Code section 222.5 for failing to compensate other
20 aggrieved employees for mandatory physical examinations and/or drug
21 testing, as set forth below;

22 (j) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
23 and other aggrieved employees for all business expenses necessarily
24 incurred, as alleged herein; and

25 (k) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
26 provide written notice of information material to Plaintiff's and other
27 aggrieved employees' employment with Defendants, as set forth below.

28 122. At all relevant times herein, California Labor Code section 222.5 requires

1 employers to pay for the costs an employee incurs for obtaining any required medical or physical
2 examination.

3 123. During the relevant time period, Defendants implemented, on a company-wide
4 basis, an employer-imposed requirement that other aggrieved employees undergo a mandatory
5 physical examination and/or drug testing but required them to do so at their own expense. Upon
6 information and belief, Defendants had a company-wide policy requiring that all employees
7 travel to a specified medical facility using their own personal vehicles to undergo physical
8 examinations and/or drug testing. At all times, Defendants were in control of scheduling the
9 date and time for the examinations and/or testing, selecting the provider/facility where the
10 examinations and/or testing were to take place, and determining the scope of the examinations
11 and/or testing.

12 124. However, Defendants did not compensate other aggrieved employees for the time
13 they spent traveling to and from their drug tests and/or physical examinations, for the time they
14 spent undergoing the testing and/or examinations, or reimburse them for the travel expenses
15 they incurred getting to and from the medical facilities. Defendants' policy and/or practice of
16 not paying for all costs other aggrieved employees incurred obtaining mandatory physical
17 examinations and/or drug testing is in violation of California Labor Code section 222.5. Other
18 aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code
19 sections 2699(a), (f), and (g).

20 125. At all relevant times herein, California's Wage Theft Prevention Act was enacted
21 to ensure that employers provide employees with basic information material to their
22 employment relationship at the time of hiring, and to ensure that employees are given written
23 and timely notice of any changes to basic information material to their employment. Codified
24 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
25 time of hiring, an employer must provide written notice to employees containing basic and
26 material payroll information, including, among other things, the rate(s) of pay and basis thereof,
27 whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including
28 any rates for overtime, the regular payday designated by the employer, and any allowances

claims as part of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-(C).

126. At all relevant times, on information and belief, Defendants failed, on a company-wide basis, to provide written notice to Plaintiff and other aggrieved employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiff and other aggrieved employees with written notice of basic information regarding their employment with Defendants is in violation of Labor Code section 2810.5. Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

TENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unlawful Business Practices

(Against all Defendants)

127. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

128. Defendants are "persons" as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

129. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' unlawful business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

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

131. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on the violation of any state or federal law. In the instant case, Defendants'

1 policies and practices have violated state law in at least the following respects:

- 2 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
3 class members, to work overtime without paying them proper
4 compensation in violation of California Labor Code sections 510 and
5 1198 and the applicable IWC Wage Order, and paying Plaintiff and class
6 members overtime at a lower rate than required by law by failing to
7 properly calculate the regular rate of pay for purposes of overtime, as
8 alleged herein;
- 9 (b) Failing to pay at least minimum wage to Plaintiff and class members in
10 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1,
11 and 1198, and the applicable IWC Wage Order, as alleged herein;
- 12 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
13 members in violation of California Labor Code sections 226.7, 512(a),
14 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- 15 (d) Failing to authorize and permit Plaintiff and class members to take
16 uninterrupted rest periods in violation of California Labor Code sections
17 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged
18 herein;
- 19 (e) Failing to provide Plaintiff and class members with accurate wage
20 statements and failing to maintain accurate payroll records in violation of
21 California Labor Code sections 226(a), 1174(d), and 1198, and the
22 applicable IWC Wage Order, as alleged herein;
- 23 (f) Failing timely to pay all earned wages to Plaintiff and class members in
24 violation of California Labor Code section 204, as alleged herein;
- 25 (g) Failing to pay the costs of mandatory physical examinations and/or drug
26 testing in violation of California Labor Code section 222.5, as set forth
27 below;
- 28 (h) Failing to reimburse Plaintiff and class members for all business expenses

1 necessarily incurred in violation of California Labor Code sections 2802,
2 as alleged herein; and

- 3 (i) Failing to provide written notice of information material to Plaintiff's and
4 class members' employment with Defendants in violation of California
5 Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

6 132. At all relevant times herein, California Labor Code section 222.5 requires
7 employers to pay for the costs an employee incurs for obtaining any medical or physical
8 examination taken pursuant to any law or regulation.

9 133. During the relevant time period, Defendants implemented, on a company-wide
10 basis, an employer-imposed requirement that Plaintiff and class members undergo mandatory
11 drug testing and/or physical examinations, but required them to do so at their own expense. As
12 stated, Defendants had a company-wide policy requiring that all employees, including Plaintiff
13 and class members, travel to a specified medical facility on their own time and use their own
14 means of transportation to undergo drug testing and/or physical examinations. At all times,
15 Defendants were in control of scheduling the date and time for the drug testing and/or physical
16 examinations, selecting the provider or facility where the drug testing and/or physical
17 examinations were to take place, and determining the scope of the drug testing and/or physical
18 examinations.

19 134. During the relevant time period, as stated, Plaintiff was instructed by Defendants
20 to travel to a specific medical facility and obtain a drug test. Plaintiff followed Defendants'
21 instructions, traveled approximately 3-5 miles roundtrip (for 10 minutes) to and from the
22 medical facility designated by Defendants, Adventist Health Glendale Occupational Medicine
23 Center, located at 600 S. Glendale Ave. in Glendale, California, and spent an additional hour
24 waiting at the medical facility undergoing the requisite drug testing.

25 135. However, Defendants did not compensate Plaintiff and class members for the
26 time they spent traveling to and from their drug testing and/or physical examinations, or for the
27 time they spent undergoing the drug testing and/or physical examinations, or reimburse them
28 for the travel expenses they incurred getting to and from the medical facilities. Defendants'

1 policy and/or practice of not paying for all costs Plaintiff and class members incurred obtaining
2 mandatory drug tests and/or physical examinations violates California Labor Code section
3 222.5.

4 136. At all relevant times herein, California's Wage Theft Prevention Act was enacted
5 to ensure that employers provide employees with basic information material to their
6 employment relationship at the time of hiring, and to ensure that employees are given written
7 and timely notice of any changes to basic information material to their employment. Codified
8 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
9 time of hiring, an employer must provide written notice to employees containing basic and
10 material payroll information, including, among other things, the rate(s) of pay and basis thereof,
11 whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including
12 any rates for overtime, the regular payday designated by the employer, and any allowances
13 claims as part of the minimum wage, including meal or lodging allowances. Labor Code
14 § 2810.5(a)(1)(A)-(C).

15 137. At all relevant times, on information and belief, Defendants failed, on a
16 company-wide basis, to provide written notice to Plaintiff and class members that lists the
17 requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure
18 to provide Plaintiff and class members with written notice of basic information regarding their
19 employment with Defendants is in violation of California Labor Code sections 2810.5(a)(1)(A)-
20 (C).

21 138. As a result of the violations of California law herein described, Defendants
22 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have
23 suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

24 139. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
25 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
26 Defendants during a period that commences four years prior to the filing of this complaint; a
27 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
28 class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure

1 section 1021.5 and other applicable laws; and an award of costs.

2 **ELEVENTH CAUSE OF ACTION**

3 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

4 **Unfair Business Practices**

5 **(Against all Defendants)**

6 140. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
7 and every allegation set forth above.

8 141. Defendants are “persons” as defined by California Business & Professions Code
9 sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
10 associations.

11 142. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, and
12 harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in
13 fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff seeks to
14 enforce important rights affecting the public interest within the meaning of Code of Civil
15 Procedure section 1021.5.

16 143. Defendants’ activities, namely Defendants’ company-wide practice and/or policy
17 of not paying Plaintiff and class members meal and rest period premiums due to them under
18 Labor Code section 226.7, deprived Plaintiff and class members of the compensation guarantee
19 and enhanced enforcement implemented by section 226.7. The statutory remedy provided by
20 section 226.7 is a “‘dual-purpose’ remedy intended primarily to compensate employees, and
21 secondarily to shape employer conduct.” *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th
22 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiff and
23 class members as part of their employment with Defendants, and thus Defendants’ practice
24 and/or policy of denying these statutory benefits constitutes an unfair business practice in
25 violation of California Business & Professions Code sections 17200, *et seq.* (*Id.*)

26 144. A violation of California Business & Professions Code sections 17200, *et seq.*
27 may be predicated on any unfair business practice. In the instant case, Defendants’ policies and
28 practices have violated the spirit of California’s meal and rest period laws and constitute acts

1 against the public policy behind these laws.

2 145. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
3 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
4 benefits implemented by section 226.7 withheld and retained by Defendants during a period that
5 commences four years prior to the filing of this complaint; a permanent injunction requiring
6 Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiff and class
7 members; an award of attorneys' fees pursuant to California Code of Civil Procedure section
8 1021.5 and other applicable laws; and an award of costs.

9 **REQUEST FOR JURY TRIAL**

10 Plaintiff requests a trial by jury.

11 **PRAYER FOR RELIEF**

12 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment against
13 Defendants, jointly and severally, as follows:

14 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
15 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
16 reserves the right to amend his prayer for relief to seek a different amount.

17 **Class Certification**

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

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

22 5. That the Court declare, adjudge, and decree that Defendants violated California
23 Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to
24 pay all overtime wages due to Plaintiff and class members;

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

27 7. For pre-judgment interest on any unpaid overtime compensation commencing
28 from the date such amounts were due, or as otherwise provided by law;

1 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
2 California Labor Code section 1194(a); and

3 9. For such other and further relief as the Court may deem equitable and
4 appropriate.

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

6 10. That the Court declare, adjudge and decree that Defendants violated California
7 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage
8 Order by willfully failing to pay minimum wages to Plaintiff and class members;

9 11. For general unpaid wages and such general and special damages as may be
10 appropriate;

11 12. For pre-judgment interest on any unpaid compensation from the date such
12 amounts were due, or as otherwise provided by law;

13 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
14 California Labor Code section 1194(a);

15 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

16 15. For such other and further relief as the Court may deem equitable and
17 appropriate.

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

19 16. That the Court declare, adjudge, and decree that Defendants violated California
20 Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by
21 willfully failing to provide all meal periods to Plaintiff and class members;

22 17. That the Court make an award to the Plaintiff and class members of one (1) hour
23 of pay at each employee's regular rate of pay for each workday that a meal period was not
24 provided;

25 18. For all actual, consequential, and incidental losses and damages, according to
26 proof;

27 19. For premiums pursuant to California Labor Code section 226.7(c);

28 20. For pre-judgment interest on any unpaid meal period premiums from the date

1 such amounts were due, or as otherwise provided by law;

2 21. For attorneys' fees pursuant to California Code of Civil Procedure section
3 1021.5, or as otherwise provided by law; and

4 22. For such other and further relief as the Court may deem equitable and
5 appropriate.

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

7 23. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully
9 failing to authorize and permit Plaintiff and class members to take all rest periods;

10 24. That the Court make an award to the Plaintiff and class members of one (1) hour
11 of pay at each employee's regular rate of pay for each workday that a rest period was not
12 authorized and permitted;

13 25. For all actual, consequential, and incidental losses and damages, according to
14 proof;

15 26. For premiums pursuant to California Labor Code section 226.7(c);

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

18 28. For attorneys' fees pursuant to California Code of Civil Procedure section
19 1021.5, or as otherwise provided by law; and

20 29. For such other and further relief as the Court may deem equitable and
21 appropriate.

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

23 30. That the Court declare, adjudge and decree that Defendants violated the
24 recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC
25 Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate
26 itemized wage statements thereto;

27 31. For all actual, consequential, and incidental losses and damages, according to
28 proof;

- 1 32. For injunctive relief pursuant to California Labor Code section 226(h);
2 33. For statutory penalties pursuant to California Labor Code section 226(e);
3 34. For attorneys' fees and costs pursuant to California Labor Code section
4 226(e)(1); and
5 35. For such other and further relief as the Court may deem equitable and
6 appropriate.

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

8 36. That the Court declare, adjudge and decree that Defendants violated California
9 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
10 and/or meal and rest period premiums owed at the time of termination of the employment of
11 Plaintiff and other terminated class members;

12 37. For all actual, consequential and incidental losses and damages, according to
13 proof;

14 38. For waiting time penalties according to proof pursuant to California Labor Code
15 section 203 for all employees who have left Defendants' employ;

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

18 40. For attorneys' fees pursuant to California Code of Civil Procedure section
19 1021.5, or as otherwise provided by law; and

20 41. For such other and further relief as the Court may deem equitable and
21 appropriate.

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

23 42. That the Court declare, adjudge and decree that Defendants violated California
24 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members overtime
25 wages, minimum wages, and/or meal and rest period premiums during their employment;

26 43. For all actual, consequential and incidental losses and damages, according to
27 proof;

28 44. For statutory penalties according to proof pursuant to California Labor Code

1 section 210;

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

4 46. For attorneys' fees pursuant to California Code of Civil Procedure section
5 1021.5, or as otherwise provided by law; and

6 47. For such other and further relief as the Court may deem equitable and
7 appropriate.

8 **As to the Eighth Cause of Action**

9 48. That the Court declare, adjudge and decree that Defendants violated California
10 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related
11 expenses and costs incurred by Plaintiff and class members;

12 49. For unpaid business-related expenses and such general and special damages as
13 may be appropriate;

14 50. For pre-judgment interest on any unpaid business-related expenses from the date
15 such amounts were due, or as otherwise provided by law;

16 51. For all actual, consequential, and incidental losses and damages, according to
17 proof;

18 52. For attorneys' fees and costs pursuant to California Labor Code section 2802(c),
19 or as otherwise provided by law; and

20 53. For such other and further relief as the Court may deem equitable and
21 appropriate.

22 **As to the Ninth Cause of Action**

23 54. That the Court declare, adjudge and decree that Defendants violated the
24 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
25 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
26 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
27 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
28 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage

statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); 222.5 (by failing to pay the costs of mandatory physical examinations and/or drug testing; 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to provide written notice of information material to employment);¹

55. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

56. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

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

58. For such other and further relief as the Court may deem equitable and appropriate.

As to the Tenth Cause of Action

59. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members, failing to timely pay Plaintiff and class members all earned wages during employment, failing to pay the costs of mandatory physical examinations and/or drug testing, failing to reimburse Plaintiff and class members for business-related expenses, and failing to provide written notice of material terms of employment, constitutes an unlawful business practice in violation of

¹ Plaintiff does not intend to seek injunctive relief for his Ninth Cause of Action.

1 California Business and Professions Code sections 17200, *et seq.*;

2 60. For restitution of unpaid wages to Plaintiff and all class members and
3 prejudgment interest from the day such amounts were due and payable;

4 61. For the appointment of a receiver to receive, manage, and distribute any and all
5 funds disgorged from Defendants and determined to have been wrongfully acquired by
6 Defendants as a result of violations of California Business & Professions Code sections 17200,
7 *et seq.*;

8 62. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
9 California Code of Civil Procedure section 1021.5; and

10 63. For such other and further relief as the Court may deem equitable and
11 appropriate.

12 **As to the Eleventh Cause of Action**

13 64. That the Court declare, adjudge and decree that Defendants' conduct of denying
14 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes an
15 unfair business practice in violation of California Business and Professions Code sections
16 17200, *et seq.*;

17 65. For restitution of the statutory benefits under section 226.7 unfairly withheld
18 from Plaintiff and class members and prejudgment interest from the day such amounts were due
19 and payable;

20 66. For the appointment of a receiver to receive, manage, and distribute any and all
21 funds disgorged from Defendants and determined to have been wrongfully acquired by
22 Defendants as a result of violations of California Business & Professions Code sections 17200,
23 *et seq.*;

24 67. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
25 California Code of Civil Procedure section 1021.5;

26 //

27 //

28 68. For pre-judgment and post-judgment interest as provided by law; and

1 For such other and further relief as the Court may deem equitable and appropriate.

2

3 Dated: August 29, 2023

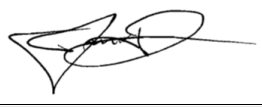
Respectfully submitted,

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Capstone Law APC

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By: 

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Robert Drexler

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Molly DeSario

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Jonathan Lee

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Attorneys for Plaintiff Danny Marsano

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EXHIBIT “1”

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

December 8, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Danny Marsano v. H and H Drug Stores, Inc.*

Dear PAGA Administrator:

This office represents Danny Marsano in connection with his claims under the California Labor Code. Mr. Marsano was an employee of H and H Drug Stores, Inc. ("H & H").

The employer may be contacted directly at the address below:

H AND H DRUG STORES, INC.
3604 SAN FERNANDO ROAD
GLENDALE CA 91204

Mr. Marsano intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Marsano seeks relief on behalf of himself, the State of California, and other persons who are or were employed by H & H as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

H & H employed Mr. Marsano as an hourly paid, non-exempt Delivery Technician from approximately November 2017 to May 2021. During his employment, Mr. Marsano typically worked ten (10) to twelve (12) hours per day and five (5) days per week. By the end of his employment, Mr. Marsano was compensated approximately \$18.00 per hour. His job duties included, without limitation, delivering or picking up medical devices and equipment to or from hospitals, individuals, and rehabilitation facilities and providing technical instructions to clients.

H & H committed one or more of the following Labor Code violations against Mr. Marsano, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

H & H’s Company-Wide and Uniform Payroll and HR Practices

H & H Drug Stores, Inc. is a California corporation and a provider of high-quality durable medical equipment and supplies to the Southern California communities under the business name Western Drug Medical Supply. Upon information and belief, H & H maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Glendale, California, for all non-exempt, hourly paid employees working for H & H in California, including Mr. Marsano and other aggrieved employees. At all relevant times, H & H issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Marsano and other aggrieved employees, regardless of their location or position.

Upon information and belief, H & H maintains a centralized Payroll department at its corporate headquarters in Glendale, California, which processes payroll for all non-exempt, hourly paid employees working for H & H in California, including Mr. Marsano and other aggrieved employees. Further, H & H issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Marsano and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, H & H utilized the same methods and formulas when calculating wages due to Mr. Marsano and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

H & H willfully failed to pay all overtime wages owed to Mr. Marsano and other aggrieved employees. During the relevant time period, Mr. Marsano and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of ten (10) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

¹ These facts, theories, and claims are based on Mr. Marsano’s experience and counsel’s review of those records currently available relating to Mr. Marsano’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Marsano reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

First, during the relevant period, H & H had a company-wide rotating “on-call” policy, whereby it scheduled Mr. Marsano and other aggrieved employees to work “on-call” weeks. During an “on-call” week, Mr. Marsano and other aggrieved employees had to be available 24 hours per day and seven (7) days per week to respond to calls for after-hours “emergency” or rush deliveries or pickups. H & H issued company cellular phones to Mr. Marsano and other aggrieved employees which they were required to keep on them and respond to immediately while working an “on-call” week. When scheduled to be “on-call,” Mr. Marsano and other aggrieved employees were in essence on controlled standby for H & H because they could not use that time freely for their own purposes and were forced to put their lives on hold. For example, Mr. Marsano refrained from making plans altogether while “on-call” because he knew that he had to drop whatever he was doing at a moment’s notice if he received a call. H & H paid Mr. Marsano and other aggrieved employees a flat rate of \$120.00 per week during an “on-call” week, plus time they spent at the clients’ locations delivering or picking up equipment. However, H & H failed to pay Mr. Marsano and other aggrieved employees for their travel time to and from the client locations or for the remainder of time during which they were not free to use their time for their own purposes.

Second, H & H has, systematically, and on a company-wide basis, scheduled and dispatched its delivery drivers to complete time-sensitive deliveries, which included traveling to various locations, unloading equipment and supplies from the vehicle, completing delivery paperwork, and instructing patients and/or caregivers regarding the operation and maintenance of delivered equipment, without building in sufficient time to allow for 30-minute meal periods, such that Mr. Marsano and other aggrieved employees were prevented from taking all timely, uninterrupted 30-minute meal periods, and were also forced to work off-the-clock during their meal periods to complete their assigned routes. Deliveries could take longer than the time H & H allotted for them, such that Mr. Marsano and other aggrieved employees were unable to take compliant meal periods. In conjunction with varying delivery durations, travel time between delivery locations could take longer than anticipated due to traffic conditions, which further impeded Mr. Marsano and other aggrieved employees from taking compliant meal periods. And, upon information and belief, H & H had no mechanism in place to permit Mr. Marsano and other aggrieved employees to take meal periods when the schedule was thrown off because one or more of their deliveries took longer than the scheduled time, or if travel time between appointments was extended by traffic conditions. H & H also had a practice of failing to schedule meal periods, which further caused Mr. Marsano and other aggrieved employees to not be relieved of their duties for compliant meal periods. In addition, even when Mr. Marsano and other aggrieved employees were able to take their meal periods, H & H pressured them to eat their meals while driving between customer sites. Thus, Mr. Marsano and other aggrieved employees performed work during meal periods and received no compensation for this time.

Third, H & H had, and continues to have, a company-wide policy and/or practice of requiring employees to use company mobile devices and/or personal cellular phones to communicate with dispatch and supervisors at all times, including during unpaid meal periods. H & H expected that Mr. Marsano and other aggrieved employees respond to calls and text messages promptly to discuss work-related matters. For example, Mr. Marsano had his meal periods interrupted by calls from dispatch to discuss deliveries and other work-related matters. However, H & H did not compensate Mr. Marsano and other aggrieved employees for the time they spent communicating with dispatch and supervisors regarding work-related issues during meal periods while off-the-clock.

Fourth, on information and belief, because H & H frowned upon employees accruing meal period penalties, H & H’s management pressured Mr. Marsano and other aggrieved employees to clock out for meal periods on their timesheets regardless of whether they had received a compliant meal period

or not, in order to strictly limit meal penalties that would need to be paid by H & H. Alternatively, H & H's management would adjust employees' time records to reflect compliant meal periods or would automatically deduct 30-minute meal periods from Mr. Marsano's and other aggrieved employees' time records even when meal periods were missed, short, and/or interrupted. Thus, H & H did not record all hours worked during meal periods, and Mr. Marsano and other aggrieved employees performed work during meal periods for which they were not paid.

H & H knew or should have known that as a result of these company-wide practices and/or policies, Mr. Marsano and other aggrieved employees were performing their assigned duties off-the-clock and/or during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Marsano and other aggrieved employees worked shifts of eight (8) hours or more a day or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Marsano and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, H & H did not pay Mr. Marsano and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, H & H paid Mr. Marsano and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, H & H failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Marsano and other aggrieved employees worked overtime and received these other forms of pay, H & H failed to pay all overtime wages by paying a lower overtime rate than required.

For example, H & H paid Mr. Marsano and other aggrieved employees incentive pay and/or nondiscretionary bonuses which were listed on Mr. Marsano's and other aggrieved employees' wage statements as "Beeper." During pay periods that Mr. Marsano and other aggrieved employees were paid overtime wages, H & H did not incorporate the incentive pay and/or nondiscretionary bonuses into Mr. Marsano's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, H & H paid Mr. Marsano and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. H & H's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Marsano and other aggrieved employees on a company-wide basis.

H & H's failure to pay Mr. Marsano and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Marsano and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the

employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11070(2)(G) (defining “Hours Worked”).

First, H & H systematically, and on a company-wide basis, required Mr. Marsano and other aggrieved employees to work “on-call” weeks during which they had to put their lives on hold and were restricted from using that time freely for their own purposes. Even though Mr. Marsano and other aggrieved employees were subject to H & H’s control during an “on-call” shift, H & H did not pay Mr. Marsano and other aggrieved employees at least minimum wages for all hours that they were suffered or permitted to work. Additionally, H & H failed to pay Mr. Marsano and other aggrieved employees for their travel time to and from the client locations when they responded to calls after-hours.

Further, as stated above, due to H & H’s policies and/or practices of assigning heavy workloads while allowing insufficient time to complete driving routes, failing to schedule meal periods, requiring employees to take their meal periods while driving, and requiring employees to respond to calls at all times, Mr. Marsano and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal period. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, H & H’s management pressured employees to clock out for meal periods, adjusted employee time records to reflect compliant meal periods, and/or automatically deducted 30-minute meal periods from Mr. Marsano’s and other aggrieved employees’ time records even when meal periods were missed, short, and/or interrupted. Thus, H & H systematically failed to pay Mr. Marsano and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Moreover, H & H maintained and implemented a company-wide policy of requiring all employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, H & H was in control of scheduling the date and time for the testing, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. For example, H & H gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the drug testing and/or physical examinations for the sole benefit of H & H. Other aggrieved employees were required to travel in their personal vehicles or obtain alternate transportation and spend time undergoing the requisite testing and/or examinations. However, H & H did not compensate other aggrieved employees for the time they spent traveling to and undergoing the mandatory drug testing and/or physical examinations.

Thus, H & H did not pay at least minimum wages for all hours worked by Mr. Marsano and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, H & H did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, H & H regularly failed to pay at least minimum wages to Mr. Marsano and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198. Mr. Marsano and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, H & H had, and continues to have, a company-wide policy and/or practice of assigning heavy workloads and scheduling time-sensitive deliveries while allowing insufficient time for the drivers to actually complete the deliveries, which resulted in a lack of meal period coverage and prevented Mr. Marsano and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, H & H had company-wide practices and/or policies of failing to schedule meal periods, pressuring employees to eat their meals while driving between customers' sites, and requiring employees to use company mobile devices and/or personal cellular phones to communicate with dispatch and supervisors during meal periods, which further caused Mr. Marsano and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Mr. Marsano frequently worked through part or all of his meal periods, in order to complete his deliveries within H & H's management's expectations. When Mr. Marsano was able to take a meal period, he was often required to drive while eating or respond to phone calls and text messages from dispatch about deliveries. Thus, as a result of H & H's policies and/or practices, Mr. Marsano and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether.

H & H also did not provide Mr. Marsano and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Marsano worked shifts in excess of ten (10) or more hours per day but was never provided a second 30-minute meal period. Mr. Marsano and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, H & H knew or should have known that, as a result of these policies, Mr. Marsano and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. H & H further knew or should have known that H & H did not pay Mr. Marsano and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, or missed.

As set forth above, on information and belief, because H & H frowned upon employees accruing meal period penalties, H & H's management pressured Mr. Marsano and other aggrieved employees to clock out for meal periods on their timesheets regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by H & H. Alternatively, H & H's management would adjust employees' time records to reflect compliant meal periods or would automatically deduct 30-minute meal periods from Mr. Marsano's and other aggrieved employees' time records even when meal periods were missed, short, and/or interrupted.

Moreover, H & H engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Marsano and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that H & H did pay Mr. Marsano and other aggrieved employees premium pay for missed, late, and interrupted meal periods, H & H did not pay Mr. Marsano and other aggrieved employees at the correct rate of pay for premiums because H & H systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, H & H failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Marsano and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

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

During the relevant time period, H & H regularly failed to authorize and permit Mr. Marsano and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. H & H maintained and implemented, on a company-wide basis, a non-compliant written rest period policy that prevented Mr. Marsano and other aggrieved employees from taking compliant rest periods. H & H's non-compliant policy fails to correctly state the timing of when rest periods must occur. The policy states, in relevant part: "Please note, there is one break period for every four hours worked. One in the morning and one in the afternoon. Employees

cannot take more than the allowed time, or more than two breaks per day.” However, under California law, an employee is entitled to rest periods for every four (4) hours worked or major fraction thereof. Thus, H & H’s written rest period policy is non-compliant on its face, as it fails to authorize and permit employees to take a first rest period for shifts between 3.5 and 6 hours, a second rest period for shifts between 6 and 10 hours, a third rest period for shifts between 10 and 14 hours, and so on.

Additionally, as with meal periods, H & H’s company-wide practices, including understaffing and assigning heavy workloads, prevented Mr. Marsano and other aggrieved employees from being able to take rest periods. H & H also failed to schedule rest periods, which, coupled with H & H’s failure to provide adequate rest period coverage, further led to Mr. Marsano and other aggrieved employees not being authorized and permitted to take rest periods. Moreover, as stated, Mr. Marsano and other aggrieved employees were required to respond to communications from dispatch or management on their company mobile devices and/or personal cellular phones at all times, including during rest periods.

Furthermore, H & H maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Marsano and/or other aggrieved employees remain on the premises during their rest periods. Because Mr. Marsano and/or other aggrieved employees were restricted from leaving H & H’s premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, H & H effectively maintained control over Mr. Marsano and/or other aggrieved employees during rest periods.

As a result of H & H’s practices and policies, Mr. Marsano and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Marsano regularly had to forego rest periods altogether, due to H & H’s policy of assigning heavy workloads and failing to provide sufficient rest period coverage.

H & H has also engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Marsano and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that H & H did pay Mr. Marsano and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, H & H did not pay Mr. Marsano and other aggrieved employees at the correct rate of pay for premiums because H & H failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, H & H failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Marsano and other aggrieved employees are entitled to civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep, and provide true, accurate, and complete employment records. H & H has not provided Mr. Marsano and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an

employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, H & H has knowingly and intentionally provided Mr. Marsano and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, H & H issued uniform wage statements to Mr. Marsano and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, H & H violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because H & H did not record the time Mr. Marsano and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), H & H did not list the correct amount of gross wages and net wages earned by Mr. Marsano and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, H & H failed to accurately list the total number of hours worked by Mr. Marsano and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9)).

Additionally, because H & H did not calculate Mr. Marsano's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, H & H did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, H & H failed to list the correct amount of net wages in violation of section 226(a)(5). H & H also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, and/or meal and rest premiums, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." At all relevant times, and in violation of

Labor Code section 1174(d), H & H willfully failed to maintain accurate payroll records for Mr. Marsano and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, H & H failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Marsano and other aggrieved employees, in violation of section 1198. Also, as stated, H & H engaged in a company-wide practice and/or policy of falsifying Mr. Marsano’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Marsano and other aggrieved employees. Furthermore, in light of H & H’s failure to provide Mr. Marsano and other aggrieved employees with second 30-minute meal periods to which they were entitled, H & H kept no records of meal start and end times for second meal periods.

Because H & H failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Marsano and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Marsano and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Marsano and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, H & H willfully failed to pay Mr. Marsano and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within the time periods specified by California Labor Code section 204.

Mr. Marsano and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

H & H willfully failed to pay Mr. Marsano and other aggrieved employees who are no longer employed by H & H the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving H & H's employ.

Mr. Marsano and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, H & H implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo a mandatory drug testing and/or physical examinations, but required them to do so at their own expense. As stated, upon information and belief, H & H had a company-wide policy requiring that all employees travel to a specified medical facility using their own personal vehicles to undergo drug testing and/or physical examinations. At all times, H & H was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations.

Other aggrieved employees were required to travel in their own personal vehicles to designated medical facilities and spend time undergoing H & H's mandatory drug test and/or physical examination. However, H & H did not compensate other aggrieved employees for the time they spent traveling to and from their drug tests and/or physical examinations, or for the time they spent undergoing the testing and/or examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. H & H's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory physical examinations and/or drug testing is in violation of California Labor Code section 222.5.

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

During the relevant time period, Mr. Marsano and other aggrieved employees were required to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but H & H failed to reimburse them for the costs of their work-related mobile device expenses. For example, Mr. Marsano was required to use his personal cellular phone to navigate to customer sites and to converse with his supervisors and dispatch about work-related matters via calls and/or text messages. Even when H & H later provided Mr. Marsano and other aggrieved employees with company mobile devices, H & H continued to call Mr. Marsano on his personal cellular phone whenever his company phone was turned off or when he was otherwise unavailable during his meal periods and/or outside of his shifts. Although H & H required Mr. Marsano and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, H & H failed to reimburse them for these costs.

Additionally, during the relevant time period, H & H had a company-wide policy and/or practice of requiring other aggrieved employees to travel in their own personal vehicles or alternate transportation to medical facilities to undergo mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. H & H maintained and implemented a company-wide policy of requiring employees to travel to a medical facility using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, H & H was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. H & H gave other aggrieved employees strict instructions to obtain drug testing, and other aggrieved employees underwent the testing for the sole benefit of H & H. Although H & H required other aggrieved employees to undergo drug testing and/or physical examinations, H & H failed to reimburse them for their travel expenses.

H & H could have provided Mr. Marsano and other aggrieved employees with the actual tools for use on the job, such company mobile devices and company vehicles, to be used for fulfilling work-related tasks. Or, H & H could have reimbursed employees for their mobile device usage, mileage, and travel expenses. Instead, H & H passed these operating costs off onto Mr. Marsano and other aggrieved employees. At all relevant times, Mr. Marsano did not earn at least two (2) times the minimum wage.

Thus, H & H had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Marsano and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

H & H failed to provide Mr. Marsano and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). H & H's failure to provide Mr. Marsano and other aggrieved employees with written notice of basic information regarding their employment with H & H is in violation of Labor Code section 2810.5.

Mr. Marsano and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." H & H, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Marsano's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Marsano seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Marsano, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against H & H for violations of California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Marsano seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Anthony Castillo

Copy: H AND H DRUG STORES, INC. (via U.S. Certified Mail)

Capstone
LAW APC

1875 Century Park East, Ste 1000
Los Angeles, CA 90067

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- Complete items 1, 2, and 3.
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1. Article Addressed to:

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3604 SAN FERNANDO ROAD
GLENDALE CA 91204



9590 9402 4882 9032 7444 89

2. Article Number (Transfer from service label)

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☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

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☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **August 29, 2023**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original ☒ a true copy thereof ☒ to interested parties as follows ☐ as stated on the attached service list:

Cheryl A. Sabnis
csabnis@vedderprice.com
Sheryl L. Skibbe
sskibbe@vedderprice.com
Ashley D. Stein
astein@vedderprice.com
VEDDER PRICE (CA), LLP
1 Post Street, Suite 2400
San Francisco, California 94104

Registered Agent for Defendants
H AND H DRUG STORES, INC.

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via CaseAnywhere eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **August 29, 2023**, at Los Angeles, California.

Sophia Flores
Type/Print Name


Signature