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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

ISAAC GALDAMEZ, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

SUPREME TRUCK BODIES OF
CALIFORNIA, INC., a California
Corporation; WABASH NATIONAL
CORPORATION, a Delaware Corporation;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: CVRI2200404
*[Assigned to Hon. Judge Craig Riemer,
Dept 1, for all purposes]*

FIRST AMENDED COMPLAINT

CLASS ACTION CLAIMS

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Meal Periods;
- (4) Failure to Provide Rest Breaks;
- (5) Failure to Pay Vested Vacation;
- (6) Failure to Timely Pay Final Wages;
- (7) Failure to Provide Accurate Itemized Wage Statements;
- (8) Unfair and Unlawful Competition;

PAGA CLAIMS

- (9) Failure to Pay Minimum Wages;
- (10) Failure to Pay Overtime Wages;
- (11) Failure to Provide Meal Periods;
- (12) Failure to Provide Rest Breaks;
- (13) Failure to Pay Vested Vacation;
- (14) Failure to Timely Pay Wages Each Period;
- (15) Failure to Timely Pay Final Wages; and
- (16) Failure to Provide Accurate Itemized Wage Statements;

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

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against his former employer(s), Defendants Supreme
5 Truck Bodies of California, Inc., Wabash National Corporation, and DOES 1 through 20,
6 inclusive, (collectively, “Defendants”) on behalf of all current and former nonexempt employees
7 employed by Defendants in California (the “Class” or “Represented Employees”), for Labor
8 Code violations stemming from Defendants’ failure to pay all wages owed, including minimum,
9 regular, and overtime wages, failure to provide meal periods, failure to provide rest breaks,
10 failure to pay vested vacation upon separation of employment, failure to timely pay wages upon
11 separation of employment, and failure to provide accurate itemized wage statements.

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

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

17 4. Plaintiff and the Represented Employees were not provided all minimum, regular,
18 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
19 worked. For example, Defendants required Plaintiff and the Represented Employees to perform
20 routine and recurring tasks at the beginning of the shift (before being allowed to clock in) and at
21 the end of the shift (after being allowed to clock out). However, because this time was spent
22 under Defendants’ control but before being allowed to clock in or after clocking out, it was
23 uncompensated in violation of California law and led to minimum and overtime wage violations.
24 See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law “do[es] not allow
25 employers to require employees to routinely work for minutes off the clock without
26 compensation”); See also *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable
27 when employee is under company’s control and where the tasks served the employer’s interests).
28

1 5. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the
2 Represented Employees. For example, Defendants paid Plaintiff and the Represented
3 Employees on an hourly basis but also paid additional nondiscretionary compensation (such as
4 shift differentials and bonuses). However, during workweeks where the Represented Employees
5 worked overtime hours and earned additional nondiscretionary compensation, Defendants failed
6 to include that compensation in the calculations for the regular rate of pay – violating the well-
7 established rule that overtime must always be paid at time and one-half the regular rate of pay.

8 6. Plaintiff and the Represented Employees were also denied 30-minute off-duty
9 meal periods, as mandated by California law. As a result of Defendants’ policies and practices,
10 the Represented Employees were subjected to meal period violations when they were: (1) unable
11 to take a meal period due to workload, (2) forced to take an on-duty meal period while under the
12 control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal
13 period after the 5th hour of work, and (5) not provided mandated second meal periods for shifts
14 in excess of 10 hours.

15 7. Defendants also failed to provide Plaintiff and the Represented Employees with
16 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
17 mandated by California law. Defendants did not schedule rest breaks for Plaintiff and the
18 Represented Employees, the Represented Employees were unable to leave the premises for rest
19 breaks, and the Represented Employees were often not authorized and/or permitted to take
20 mandated rest breaks due to being overwhelmed by their hectic workload. Furthermore, on
21 occasions when Plaintiff and the Represented Employees worked longer shifts, Defendants failed
22 to authorize and/or permit mandated third rest breaks.

23 8. Also, at all relevant times, Defendants utilized a policy and practice through
24 which Plaintiff and the Represented Employees accrued vacation and/or PTO hours (collectively,
25 “vacation hours”). However, on occasions when Plaintiff and the Represented Employees had
26 accrued but unused vacation hours upon separation of employment, Defendants failed to pay
27 these wages and, further, failed to pay them at the “final rate” required by Labor Code § 227.3.
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1 9. Plaintiff further alleges that he and the Represented Employees were not paid all
2 wages due and owing each pay period (Labor Code § 204) and upon separation of employment
3 within the time required by Labor Code §§ 201 – 203. Plaintiff further alleges that Defendants
4 engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Represented
5 Employees at the time their employment ended with Defendants, including, but not limited to
6 minimum, regular, and overtime wages, wage premiums, vacation and sick wages, among others.

7 10. Plaintiff further alleges that Defendants failed to provide accurate itemized wage
8 statements that fully complied with the requirements of Labor Code § 226(a). This claim is
9 detailed below, but one example relates to Defendants’ practice of paying Plaintiff and the
10 Represented Employees “Shifts Premium(s)” that were calculated and paid on an hourly basis,
11 yet Defendants’ wage statements failed to state the corresponding rates of pay or applicable
12 hours worked for each category, in direct violation of Labor Code § 226(a)(9).

13 11. Plaintiff alleges that Defendants’ violations of the wage and hour components of
14 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their
15 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
16 its competitors.

17 12. At all material times, Defendants and DOES 1 through 20 were and/or are the
18 Represented Employees’ employers or persons acting on behalf of the Represented Employees’
19 employer, within the meaning of California Labor Code § 558, who violated or caused to be
20 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
21 hours and days of work in an IWC Wage Order and, as such, are subject to penalties for each
22 underpaid employee as set forth in Labor Code § 558 and under California law.

23 13. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
24 monetary relief against Defendants and each of them, on behalf of himself and the Represented
25 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys’ fees,
26 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
27 210, 218.6, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and
28 1199, among possibly other sections inadvertently omitted. Plaintiff also reserves the right to

1 name additional representatives throughout the State of California.

2 **II. JURISDICTION**

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

5 **III. VENUE**

6 15. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
7 Procedure § 395(a). Defendants transact business in Riverside County and the unlawful acts
8 alleged herein have a direct effect on Plaintiff and the Represented Employees in Riverside
9 County. Furthermore, Defendants employed or employ Plaintiff and Represented Employees in
10 Riverside County.

11 **IV. PARTIES**

12 **Plaintiff**

13 16. Plaintiff and Class Representative Isaac Galdamez was employed by Defendants
14 from approximately September through December 2021 and performed work for Defendants in
15 Riverside County.

16 **Defendants**

17 17. Plaintiff is informed and believes and thereon alleges that Defendant Supreme
18 Truck Bodies of California, Inc. is a California corporation authorized to and doing business in
19 Riverside County, California. Plaintiff is also informed and believes that Defendant Supreme
20 Truck Bodies of California, Inc. is and/or was the legal employer of Plaintiff and the
21 Represented Employees during the applicable statutory periods.

22 18. Plaintiff is informed and believes and thereon alleges that Defendant Wabash
23 National Corporation is a Delaware corporation authorized to and doing business in Riverside
24 County, California. Plaintiff is also informed and believes that Defendant Wabash National
25 Corporation is and/or was the legal employer of Plaintiff and the Represented Employees during
26 the applicable statutory periods.

27 19. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
28 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,

1 inclusive, but on information and belief alleges that those Defendants are legally responsible for
2 the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of
3 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
4 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
5 Defendants when ascertained.

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

13 21. Furthermore, Plaintiff is informed and believes and thereon alleges that
14 Defendants, and each of them, are an integrated enterprise and should be treated as a single
15 employer because these entities share an interrelation of operations, with common human
16 resources and personnel policies and shared common offices and facilities. Additionally,
17 Defendants also have a shared website, common management, a centralized control of labor
18 operations, and common ownership or financial control.

19 22. Plaintiff is informed and believes and thereon alleges that, in conducting
20 themselves in the manner described herein, Defendants, and each of them, were acting in active
21 concert with one another such that the acts of each were and are fully attributable to the others in
22 all material respects. Plaintiff is further informed and believes that at all relevant times
23 Defendants and each of them are now, and at all material times herein mentioned were, the
24 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining
25 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and
26 purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of
27 their remaining co-Defendants.
28

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

9 **V. CLASS ACTION ALLEGATIONS**

10 24. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
11 as if fully alleged herein.

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

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

16 27. The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to
17 represent is defined as follows:

18 All current and former nonexempt employees employed by
19 Defendants in California during the Relevant Time Period.

20 28. Plaintiff also seeks to represent the following subclasses:

21 **Meal Break Subclass**

22 All Represented Employees who worked a shift in excess of
23 5 hours during the Relevant Time Period.

24 **Rest Break Subclass**

25 All Represented Employees who worked a shift of at least
26 3.5 hours during the Relevant Time Period.

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1 **Vested Vacation Subclass**

2 All Represented Employees who had accrued but unused
3 vacation upon separation of employment during the period
4 four years before the filing of this action and ending when
5 final judgment is entered.

6 **Waiting Time Penalties Subclass**

7 All Represented Employees who separated from their
8 employment with Defendants during the period three years
9 before the filing of this action and ending when final
10 judgment is entered.

11 **Wage Statement Penalties Subclass**

12 All Represented Employees during the period one year
13 before the filing of this action and ending when final
14 judgment is entered.

15 29. Plaintiff reserves the right to amend or modify the class description with greater
16 specificity or further division into subclasses or limitation to particular issues as appropriate.

17 30. Plaintiff, as Class Representative, is a member of the class and subclasses that he
18 seeks to represent.

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

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

25 33. **Commonality:** There are questions of law and fact common to the class which
26 predominate over any questions affecting only individual members of the class, including
27 without limitation:
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1 i. Whether Defendants violated the California Labor Code and applicable
2 IWC Wage Order by failing to pay wages to Plaintiff and the Represented Employees for all
3 hours worked;

4 ii. Whether Defendants violated the California Labor Code and applicable
5 IWC Wage Order by failing to pay proper overtime wages to Plaintiff and the Represented
6 Employees for hours above 8 and/or 12 per day and/or 40 per week;

7 iii. Whether Defendants violated the California Labor Code and applicable
8 IWC Wage Order by failing to provide compliant meal periods to Plaintiff and the Meal Break
9 Subclass and whether Defendants failed to compensate Plaintiff and the Meal Break Subclass
10 with one additional hour of wages at the regular rate of pay for each instance when a compliant
11 meal period was not provided;

12 iv. Whether Defendants violated the California Labor Code and applicable
13 IWC Wage Order by failing to provide compliant rest breaks to Plaintiff and the Rest Break
14 Subclass and whether Defendants failed to compensate Plaintiff and the Rest Break Subclass
15 with one additional hour of wages at the regular rate of pay for each instance when a paid rest
16 break was not provided;

17 v. Whether Defendants violated the California Labor Code by failing to
18 compensate Plaintiff and the Vested Vacation Subclass for all accrued but unused vacation hours
19 upon separation of employment;

20 vi. Whether Defendants violated the California Labor Code by failing to
21 timely pay all wages due upon separation of employment between Defendants and Plaintiff and
22 the Waiting Time Penalties Subclass, whether such separation was voluntary or involuntary;

23 vii. Whether Defendants violated the California Labor Code by failing to
24 provide Plaintiff and the Wage Statement Penalties Subclass with complete, accurate, itemized
25 wage statements;

26 viii. Whether Defendants violated California Business & Professions Code §§
27 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest
28 breaks, failure to provide mandated meal periods, and failure to timely pay final wages; and

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

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

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

36. **Superiority of Class Action.** Class certification is appropriate because a class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Represented Employees is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each Represented Employee has been damaged and is entitled to recovery by reason of Defendants' illegal policies and practices set forth above. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

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

Plaintiff and the Represented Employees Against All Defendants

37. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

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

4 39. Plaintiff and the Represented Employees were not provided proper minimum and
5 regular wages due to Defendants' failure to accurately record and compensate for all hours
6 worked. As a result of this policy and practice, Plaintiff and the Represented Employees were
7 required to perform off-the-clock work that Defendants either knew or should have known they
8 were performing.

9 40. For example, Defendants required Plaintiff and the Represented Employees to
10 perform routine and recurring tasks at the beginning of the shift (before being allowed to clock
11 in) and at the end of the shift (after being allowed to clock out). However, because this time was
12 spent under Defendants' control but before being allowed to clock in or after clocking out, it was
13 uncompensated in violation of California law and led to minimum wage violations. See *Troester*
14 *v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law "do[es] not allow employers to
15 require employees to routinely work for minutes off the clock without compensation"); See also
16 *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when employee is under
17 company's control and where the tasks served the employer's interests).

18 41. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
19 Represented Employees for all hours worked.

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

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

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

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

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

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

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

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO PAY OVERTIME WAGES**

18 (Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

19 *Plaintiff and the Represented Employees Against All Defendants*

20 49. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
21 as if fully alleged herein.

22 50. Plaintiff and the Represented Employees were employees of Defendants who did
23 not receive proper protections and benefits of the laws governing payment of overtime wages.

24 51. Labor Code § 204 requires that the employer timely pay all overtime wages to its
25 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
26 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in
27 any one workweek shall be compensated at the rate of no less than one and one-half times the
28

1 regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12)
2 in one workday shall be compensated at twice the regular rate of pay for an employee.

3 52. At all relevant times, Plaintiff and the Represented Employees were required by
4 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
5 Defendants' failure to accurately record and compensate for all hours worked Plaintiff and the
6 Represented Employees did not receive proper overtime compensation.

7 53. For example, Defendants required Plaintiff and the Represented Employees to
8 perform routine and recurring tasks at the beginning of the shift (before being allowed to clock
9 in) and at the end of the shift (after being allowed to clock out). However, because this time was
10 spent under Defendants' control but before being allowed to clock in or after clocking out, it was
11 uncompensated in violation of California law and led to overtime wage violations. See *Troester*
12 *v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law "do[es] not allow employers to
13 require employees to routinely work for minutes off the clock without compensation"); See also
14 *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when employee is under
15 company's control and where the tasks served the employer's interests).

16 54. Additionally, Defendants paid Plaintiff and the Represented Employees on an
17 hourly basis but also paid additional nondiscretionary compensation (such as shift differentials
18 and/or bonuses). However, during workweeks where the Represented Employees worked
19 overtime hours and earned additional nondiscretionary compensation, Defendants failed to
20 include that compensation in the calculations for the regular rate of pay – violating the well-
21 established rule that overtime must always be paid at time and one-half the regular rate of pay.

22 55. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
23 Represented Employees for all overtime hours worked.

24 56. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
25 Order § 3(A) every pay period with respect to Plaintiff and the Represented Employees because
26 Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per
27 week without proper overtime compensation.
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1 57. Plaintiff is informed and believes and thereon alleges that Defendants
2 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the
3 Represented Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

4 58. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
5 Represented Employees were entitled to be paid proper overtime wages throughout the statutory
6 period, yet Defendants chose not to pay them in accordance thereto.

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

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

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

16 62. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of
17 all unpaid overtime wages, penalties, interest, attorneys' fees, and costs of suit against
18 Defendants in an amount to be proven at trial.

19 **THIRD CAUSE OF ACTION**

20 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

23 63. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
24 as if fully alleged herein.

25 64. Plaintiff and the Meal Break Subclass are and/or were employees of Defendants
26 who did not receive proper protections and benefits of the laws governing mandatory meal
27 periods.
28

1 65. Labor Code § 226.7 requires employers, including Defendants, to provide
2 employees with meal periods as mandated by the Industrial Welfare Commission.

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

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

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

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

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

27 71. On information and belief, Plaintiff and the Meal Break Subclass did not
28 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers

1 obtained from Plaintiff and the Meal Break Subclass were not willfully obtained, were not
2 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
3 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Meal Break Subclass
4 to take meal periods in accordance with California law.

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

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

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO PROVIDE REST BREAKS**

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

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

18 74. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
19 as if fully alleged herein.

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

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

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

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

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

12 80. Additionally, Plaintiff and the Rest Break Subclass were subjected to rest break
13 violations on every shift because Defendants maintained a policy and practice that required them
14 to remain on-premises during the rest break. This violates California law, which makes clear
15 that “[d]uring required rest periods, employers must relieve their employees of all duties and
16 relinquish any control over how employees spend their break time.” *Augustus v. ABM Security*
17 *Services, Inc.* (2016) 2 Cal.5th 257, 260. And these violations are further confirmed by the fact
18 that, due to Defendants’ policies, the Represented Employees could not “use their time as [they]
19 would like” during rest breaks. See *Ridgeway v. Walmart Inc.* (9th Cir. 2020) 946 F.3d 1066,
20 1080.

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

25 82. At all relevant times herein, Defendants failed to provide Plaintiff and the Rest
26 Break Subclass all mandated rest breaks and failed to pay wage premiums in lieu of mandated
27 rest periods, thereby receiving an economic benefit.
28

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

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

10 **FIFTH CAUSE OF ACTION**
11 **FAILURE TO PAY VESTED VACATION**
12 (Labor Code § 227.3)

13 *Plaintiff and the Vested Vacation Subclass Against All Defendants*

14 85. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
15 as if fully alleged herein.

16 86. Plaintiff and the Vested Vacation Subclass were employees of Defendants who
17 did not receive proper protections and benefits of the laws governing the payment of vested
18 vacation time and/or paid time off upon separation of employment.

19 87. Pursuant to Labor Code § 227.3, an employer that has implemented a paid
20 vacation, paid time off, or compensated time off policy must, upon an employee's separation
21 from employment, pay to the employee all vested but unused vacation and/or paid time off at his
22 final rate of pay.

23 88. At all relevant times, Defendants utilized a policy and practice through which
24 Plaintiff and the Vested Vacation Subclass accrued vacation hours. However, on occasions
25 when Plaintiff and the Vested Vacation Subclass had accrued but unused vacation hours upon
26 separation of employment, Defendants failed to pay these wages and, further, failed to pay them
27 at the "final rate" required by Labor Code § 227.3.

1 89. As a result, Plaintiff and the Vested Vacation Subclass did not receive
2 compensation for all accrued but unused vacation hours as required by Labor Code § 227.3.

3 90. At all relevant times herein, Defendants failed to pay the Vested Vacation
4 Subclass, including Plaintiff, all vested but unused vacation time and/or paid time off upon
5 separation from employment, thereby receiving an economic benefit.

6 91. Plaintiff is informed and believes and thereon alleges that Defendants, and each of
7 them, knowingly refused to perform their obligations to compensate the Vested Vacation
8 Subclass for all vested but unused vacation time and/or paid time off upon separation from
9 employment.

10 92. As a result of Defendants' violations of Labor Code § 227.3, Plaintiff and the
11 Vested Vacation Subclass seek to recover the unpaid vacation hours, as well as penalties,
12 interest, attorneys' fees, and costs as permitted under California law.

13 **SIXTH CAUSE OF ACTION**

14 **FAILURE TO TIMELY PAY FINAL WAGES**

15 (Labor Code §§ 201 – 203)

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

17 93. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
18 as if fully alleged herein.

19 94. Plaintiff and the Waiting Time Penalties Subclass are and/or were employees of
20 Defendants who did not receive proper protections and benefits of the laws governing the timing
21 and payment of wages.

22 95. Labor Code § 201 requires that the employer immediately pay any wages, without
23 abatement or reduction, to any employee who is discharged.

24 96. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
25 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
26 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.
27
28

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

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

7 99. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
8 wages due and owing to Plaintiff and the Waiting Time Penalties Subclass upon separation of
9 employment, including, but not limited to, minimum, regular, and overtime wages, meal and rest
10 period premiums, and vested vacation wages.

11 100. Additionally, at all relevant times, Defendants failed to pay all mandated sick
12 wages owed to the Waiting Time Penalties Subclass at the proper rate of pay.

13 101. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees
14 must be “calculated in the same manner as the regular rate of pay for the workweek in which the
15 employee uses paid sick time, whether or not the employee actually works overtime in that
16 workweek.” Additionally, Labor Code § 246(l)(2) states that the paid sick time must be
17 “calculated by dividing the employee’s total wages, not including overtime premium pay, by the
18 employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

19 102. Here, Plaintiff and the Waiting Time Penalties Subclass were compensated on an
20 hourly basis plus additional compensation in the form of hazard pay and/or nondiscretionary
21 bonuses. However, on the occasions that the Waiting Time Penalties Subclass took sick time
22 and received paid sick leave, Defendants only paid sick time at the base rate of pay (not factoring
23 in the additional compensation as required by Labor Code §§ 246(l)(1-2)), leading to unpaid
24 wages at the time of separation of employment.

25 103. Plaintiff alleges that, at all times material to this action, Defendants had a planned
26 pattern and practice of failing to timely pay Plaintiff and the Waiting Time Penalties Subclass all
27 wages due and owing upon separation of employment as required by Labor Code §§ 201 and
28 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Waiting

1 Time Penalties Subclass the above-described waiting time penalty, all in an amount to be shown
2 according to proof at trial and within the jurisdiction of this Court.

3 **SEVENTH CAUSE OF ACTION**

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

5 (Labor Code § 226)

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

7 104. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
8 as if fully alleged herein.

9 105. Plaintiff and the Wage Statement Penalties Subclass are and/or were employees of
10 Defendants who did not receive proper protections and benefits of the laws governing the
11 provision of accurate itemized wage statements.

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

18 107. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
19 and the Wage Statement Penalties Subclass due to violations including: failure to accurately state
20 total hours worked (for example, the wage statements failed to accurately reflect the
21 compensable hours for as well as pre- and post-shift duties); failure to accurately state gross
22 wages earned; failure to accurately state all deductions; failure to accurately state net wages
23 earned; failure to state the applicable hourly rates (including the accurate overtime rate of pay);
24 failure to state the inclusive dates of the pay period; failure to accurately state the name of the
25 legal entity of the employer; and failure to accurately state the corresponding number of hours
26 worked at each hourly rate.

27 108. Additionally, Defendants' wage statements violated Labor Code § 226(a)(9) each
28 period. At all relevant times, Defendants paid Plaintiff and the Represented Employees hourly

1 wages in the form of “Shift Premium(s).” Yet, despite that these amounts were calculated and
2 paid on an hourly basis, Defendants’ wage statements failed to state the corresponding rates of
3 pay or applicable hours worked for each category.

4 109. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
5 to Plaintiff and the Wage Statement Penalties Subclass because Defendants failed to provide a
6 wage statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
7 requirements of Labor Code § 226(a).

8 110. Defendants’ failure to provide the required writing deprived Plaintiff and the
9 Wage Statement Penalties Subclass of the ability to know, understand, and question the
10 calculation and rate of pay and hours used to calculate the wages paid by Defendants. Therefore,
11 Plaintiff and the Wage Statement Penalties Subclass had no way to dispute the resulting
12 miscalculation of wages, all of which resulted in an unjustified economic enrichment to said
13 Defendants. As a direct result, Plaintiff and the Wage Statement Penalties Subclass have suffered
14 and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost
15 interest on such wages and expenses and attorney’s fees in seeking to compel Defendants to fully
16 perform its obligation under state law, all to their respective damages in amounts according to
17 proof at trial.

18 111. As a result of Defendants’ knowing and intentional failure to comply with Labor
19 Code § 226(a), Plaintiff and the Wage Statement Penalties Subclass have suffered an injury in
20 that each was prevented from knowing, understanding and disputing the wage payments paid to
21 them. Furthermore, Plaintiff and the Wage Statement Penalties Subclass have each suffered an
22 injury in that the failure to show all wages earned on the itemized wage statements resulted in
23 Plaintiff and the Represented Employees being denied all necessary deductions, payments, and
24 withholdings owed by the employer, including, but not limited to, the failure to make all
25 necessary contributions for unemployment benefits, social security benefits, proper payment of
26 taxes and withholdings, and other mandated state and federal benefits.
27
28

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

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

10 **EIGHTH CAUSE OF ACTION**

11 **UNFAIR AND UNLAWFUL COMPETITION**

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

13 *Plaintiff and the Represented Employees against All Defendants*

14 114. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
15 as if fully alleged herein.

16 115. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
17 competition, which includes any "unlawful, unfair or fraudulent business act or practice." The
18 Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact,
19 due to the unfair and unlawful business practices of Defendants as alleged herein.

20 116. Defendants, and each of them, are "persons" as defined under Business &
21 Professions Code § 17021.

22 117. As alleged herein, Defendants engaged in conduct that violated California's wage
23 and hour laws, including failure to pay all wages owed, including minimum, regular, overtime,
24 sick, and vacation wages, failure to provide mandated meal periods and rest breaks, and failure to
25 timely pay wages upon separation of employment, all to decrease their costs and increase profits.

26 118. At all times relevant herein, Defendants did not pay Plaintiff and the Represented
27 Employees wages and monies and other financial obligations to which they were entitled.
28

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

5 120. Defendants' violations of the California Labor Code and IWC Wage Orders and
6 its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business
7 practices because it was done in a systematic manner over a period of time to the detriment of the
8 Plaintiff and all others similarly situated.

9 121. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
10 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
11 Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code
12 of Civil Procedure § 1021.5.

13 122. A violation of California Business & Professions Code § 17200, *et seq.* may be
14 predicated on the violation of any state or federal law. All of the acts described herein as
15 violations of, among other things, the California Labor Code and IWC Wage Orders, are
16 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,
17 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
18 practices in violation of California Business and Professions Code §§ 17200, *et seq.*

19 123. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
20 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
21 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
22 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
23 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
24 harm unless Defendants, and each of them, are restrained from continuing to engage in said
25 unfair, unlawful and/or fraudulent business practices.

26 124. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
27 and does, seek such relief as may be necessary to disgorge the profits which Defendants have
28 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the

1 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
2 Represented Employees are not obligated to establish individual knowledge of the unfair
3 practices of Defendants in order to recover restitution.

4 125. Plaintiff, individually, and on behalf of the Represented Employees, is further
5 entitled to and do seek a declaration that the above described business practices are unfair,
6 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
7 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
8 the future.

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

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

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

23 128. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to
24 Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by
25 PAGA through a representative action pursuant to the PAGA and the California Supreme Court
26 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor
27 does he, seek class certification of the PAGA claims under Code of Civil Procedure § 382.
28

1 129. Pursuant to Labor Code § 2699.3(a), on or around January 28, 2022, Plaintiff
2 gave written notice by online filing to the Labor and Workforce Development Agency
3 (“LWDA”) and by certified mail to Defendants of the specific provisions of the Labor Code
4 alleged to have been violated, including the facts and theories to support the alleged violations.
5 More than sixty-five (65) days have elapsed since the date Plaintiff provided the written notice of
6 the claims alleged herein without the LWDA assuming jurisdiction over the claims alleged.
7 Accordingly, Plaintiff has fully satisfied the administrative prerequisites to suit under the PAGA.

8 **NINTH CAUSE OF ACTION**

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

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

11 *Plaintiff and the Aggrieved Employees against All Defendants*

12 130. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
13 as if fully alleged herein.

14 131. Plaintiff and the Aggrieved Employees were not exempt from the requirement to
15 be paid at least the applicable California minimum wage throughout the statutory period for each
16 hour worked.

17 132. Plaintiff and the Aggrieved Employees were not provided proper minimum and
18 regular wages due to Defendants’ failure to accurately record and compensate for all hours
19 worked. As a result of this policy and practice, Plaintiff and the Aggrieved Employees were
20 required to perform off-the-clock work that Defendants either knew or should have known they
21 were performing.

22 133. For example, Defendants required Plaintiff and the Aggrieved Employees to
23 perform routine and recurring tasks at the beginning of the shift (before being allowed to clock
24 in) and at the end of the shift (after being allowed to clock out). However, because this time was
25 spent under Defendants’ control but before being allowed to clock in or after clocking out, it was
26 uncompensated in violation of California law and led to minimum wage violations. See *Troester*
27 *v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law “do[es] not allow employers to
28 require employees to routinely work for minutes off the clock without compensation”); See also

1 *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when employee is under
2 company's control and where the tasks served the employer's interests).

3 134. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
4 Represented Employees for all hours worked.

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

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

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

14 **TENTH CAUSE OF ACTION**

15 **PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES**

16 (Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

17 *Plaintiff and the Aggrieved Employees against All Defendants*

18 138. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
19 as if fully alleged herein.

20 139. Plaintiff and the Aggrieved Employees were employees of Defendants who did
21 not receive proper protections and benefits of the laws governing payment of overtime wages.

22 140. Labor Code § 204 requires that the employer timely pay all overtime wages to its
23 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
24 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in
25 any one workweek shall be compensated at the rate of no less than one and one-half times the
26 regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12)
27 in one workday shall be compensated at twice the regular rate of pay for an employee.
28

1 141. At all relevant times, Plaintiff and the Aggrieved Employees were required by
2 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
3 Defendants' failure to accurately record and compensate for all hours worked Plaintiff and the
4 Aggrieved Employees did not receive proper overtime compensation.

5 142. For example, Defendants required Plaintiff and the Aggrieved Employees to
6 perform routine and recurring tasks at the beginning of the shift (before being allowed to clock
7 in) and at the end of the shift (after being allowed to clock out). However, because this time was
8 spent under Defendants' control but before being allowed to clock in or after clocking out, it was
9 uncompensated in violation of California law and led to overtime wage violations. See *Troester*
10 *v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law "do[es] not allow employers to
11 require employees to routinely work for minutes off the clock without compensation"); See also
12 *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when employee is under
13 company's control and where the tasks served the employer's interests).

14 143. Additionally, Defendants paid Plaintiff and the Aggrieved Employees on an
15 hourly basis but also paid additional nondiscretionary compensation (such as shift differentials
16 and/or bonuses). However, during workweeks where the Represented Employees worked
17 overtime hours and earned additional nondiscretionary compensation, Defendants failed to
18 include that compensation in the calculations for the regular rate of pay – violating the well-
19 established rule that overtime must always be paid at time and one-half the regular rate of pay.

20 144. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
21 Order § 3(A) every pay period with respect to Plaintiff and the Aggrieved Employees because
22 Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per
23 week without proper overtime compensation.

24 145. Plaintiff is informed and believes and thereon alleges that Defendants
25 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the
26 Aggrieved Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.
27
28

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

4 **ELEVENTH CAUSE OF ACTION**

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

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

7 *Plaintiff and the Aggrieved Employees against All Defendants*

8 147. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
9 as if fully alleged herein.

10 148. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
11 who did not receive proper protections and benefits of the laws governing meal periods.

12 149. Labor Code § 226.7 requires employers, including Defendants, to provide
13 employees with meal periods as mandated by the Industrial Welfare Commission.

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

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

24 152. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied
25 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
26 practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when
27 they were: (1) unable to take meal periods due to workload, (2) forced to take on-duty meal
28 periods while under Defendants' control, (3) forced to take meal periods, if such a meal

1 occurred, after the 5th hour of work, (4) not provided a mandated first meal period for shifts in
2 excess of 6 hours, and (5) not provided mandated second meal periods for shifts over 10 hours.

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

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

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

16 **TWELFTH CAUSE OF ACTION**

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

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

19 *Plaintiff and the Aggrieved Employees against All Defendants*

20 156. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
21 as if fully alleged herein.

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

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

26 159. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
27 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
28 each work period. Employees shall receive a 10-minute rest period every four hours or major

fraction thereof that they are required to work. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages.

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

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

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

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

THIRTEENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY VESTED VACATION

(Labor Code § 227.3)

Plaintiff and the Aggrieved Employees against All Defendants

164. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

1 165. Plaintiff and the Aggrieved Employees were employees of Defendants who did
2 not receive proper protections and benefits of the laws governing the payment of vested vacation
3 time and/or paid time off upon separation of employment.

4 166. Pursuant to Labor Code § 227.3, an employer that has implemented a paid
5 vacation, paid time off, or compensated time off policy must, upon an employee's separation
6 from employment, pay to the employee all vested but unused vacation and/or paid time off at his
7 final rate of pay.

8 167. At all relevant times, Defendants utilized a policy and practice through which
9 Plaintiff and the Aggrieved Employees accrued vacation hours. However, on occasions when
10 Plaintiff and the Aggrieved Employees had accrued but unused vacation hours upon separation
11 of employment, Defendants failed to pay these wages and, further, failed to pay them at the
12 "final rate" required by Labor Code § 227.3.

13 168. As a result, Plaintiff and the Aggrieved Employees did not receive compensation
14 for all accrued but unused vacation hours at the "final rate" upon separation of employment – in
15 violation of Labor Code § 227.3.

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

19 **FOURTEENTH CAUSE OF ACTION**

20 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD**

21 (Labor Code § 204)

22 *Plaintiff and the Aggrieved Employees against All Defendants*

23 170. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
24 as if fully alleged herein.

25 171. Plaintiff and the Aggrieved Employees are and/or were "nonexempt" employees
26 of Defendants who did not receive proper protections and benefits of the laws regarding the
27 timing of payment of wages each period.
28

1 172. Labor Code § 204(a) states that all wages earned by a person are due and payable
2 twice during each calendar month, and further states that wages earned during the first through
3 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
4 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
5 the following month.

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

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

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

18 **FIFTEENTH CAUSE OF ACTION**

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

20 (Labor Code §§ 201 – 203 and 256)

21 *Plaintiff and the Aggrieved Employees against All Defendants*

22 176. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
23 as if fully alleged herein.

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

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

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

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

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

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

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

17 **SIXTEENTH CAUSE OF ACTION**

18 **PAGA ASSESSMENT FOR**

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

20 (Labor Code § 226)

21 *Plaintiff and the Aggrieved Employees against All Defendants*

22 184. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
23 as if fully alleged herein.

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

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

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

5 187. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
6 and the Aggrieved Employees due to violations including: failure to accurately state total hours
7 worked (for example, the wage statements failed to accurately reflect the compensable hours for
8 as well as pre- and post-shift duties); failure to accurately state gross wages earned; failure to
9 accurately state all deductions; failure to accurately state net wages earned; failure to state the
10 applicable hourly rates (including the accurate overtime rate of pay); failure to state the inclusive
11 dates of the pay period; failure to accurately state the name of the legal entity of the employer;
12 and failure to accurately state the corresponding number of hours worked at each hourly rate.

13 188. Additionally, Defendants' wage statements violated Labor Code § 226(a)(9) each
14 period. At all relevant times, Defendants paid Plaintiff and the Aggrieved Employees hourly
15 wages in the form of "Shift Premium(s)." Yet, despite that these amounts were calculated and
16 paid on an hourly basis, Defendants' wage statements failed to state the corresponding rates of
17 pay or applicable hours worked for each category.

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

22 190. As a result of the Defendants' violations of Labor Code §226(a)(9), Plaintiff seeks
23 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
24 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

25 **VII. PRAYER FOR RELIEF**

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

1. As to the Ninth through Sixteenth Causes of Action, the assessment of all applicable and available remedies under the PAGA;
2. For reasonable attorneys' fees and costs as permitted under the PAGA;
3. That the First through Eighth Causes of Action be certified as a class action;
4. That Plaintiff be appointed as Class Representative;
5. That counsel for Plaintiff be appointed Class Counsel;
6. For all applicable statutory penalties recoverable under the First through Seventh Causes of Action to the extent permitted by law, including those pursuant to Labor Code and Orders of the Industrial Welfare Commission;
7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including those pursuant to the Labor Code;
8. For injunctive relief and/or restitution as provided by the Labor Code and Business and Professions Code § 17200, *et seq.*;
9. For a declaratory judgment that Defendants have violated Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194, 1197, 1198, and 1199, among other sections inadvertently omitted;
10. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties according to proof, including interest thereon;
11. For pre- and post-judgment interest; and
12. For such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

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

Dated: April 11, 2022

LAUBY, MANKIN & LAUBY LLP

BY:



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

PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 4590 Allstate Drive, Riverside, California 92501.

On May 26, 2022, I caused to be served the foregoing document(s) described as follows:

FIRST AMENDED COMPLAINT

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **By Mail** I deposited such envelope in the mail at Riverside, California. The envelope was mailed with postage thereon fully prepaid.

☐ **By Facsimile** I sent this document via fax to all parties as listed on attached service list, on

☐ **By Overnight Service** I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

☐ **By Certified Mail-Return Receipt Requested** I caused such envelope with postage fully prepaid thereon, to be placed in the United States mail at Riverside, California

☐ **By Personal Service** I caused said document(s) to be personally served by hand on the parties listed on the attached service list

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 26, 2022, Riverside, California.

☐ **Federal** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



Tracie Chiarito, Declarant

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