

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Misty M. Lauby, Esq. [CSB No. 243009]
misty@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
4590 Allstate Drive
Riverside, CA 92501
Tel: (951) 320-1444 || Fax: (951) 320-1445

Assigned for all Purposes
Judge Peter Wilson
CX-102

Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

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

WESLEY STOPNIK, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

UNITED DEFENSE TECHNOLOGIES, a
Nevada Corporation; UNITED DEFENSE
TACTICAL, INC., a Delaware Corporation;
WES FOX, an individual; JENNIFER FOX,
an individual; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: 30-2022-01242496-CU-OE-CXC

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 Reimburse Bus. Expenses;
- (6) Failure to Timely Pay Final Wages;
- (7) Failure to Provide Accurate Itemized Wage Statements;
- (8) Unfair and Unlawful Competition;

PAGA CLAIMS

- (9) Willful Misclassification;
- (10) Failure to Pay Minimum Wages;
- (11) Failure to Pay Overtime Wages;
- (12) Failure to Provide Meal Periods;
- (13) Failure to Provide Rest Breaks;
- (14) Failure to Reimburse Bus. Expenses;
- (15) Failure to Timely Pay Wages Each Period;
- (16) Failure to Timely Pay Final Wages; and
- (17) Failure to Provide Accurate Itemized Wage Statements
- (18) Failure to Maintain Accurate Employment Records

1 Plaintiff Wesley Stopnik (“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 employer(s), United Defense Technologies,
5 United Defense Tactical, Wes Fox and Jennifer Fox, (“Defendants”), on behalf of all current and
6 former nonexempt employees employed by Defendants in California (“Represented
7 Employees”).

8 2. Plaintiff brings these claims alleging Labor Code violations stemming from
9 Defendants’ failure to pay all wages owed, including minimum, regular, and overtime wages,
10 failure to provide meal periods, failure to provide rest breaks, failure to pay reimburse business
11 expenses, failure to timely pay wages, and failure to provide accurate itemized wage statements
12 and failure to maintain accurate employment records.

13 3. Plaintiff was employed by Defendants from approximately 2015 through the
14 present.

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

18 5. Plaintiff and the Represented Employees were not provided all minimum, regular,
19 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
20 worked. As one such example, between approximately 2015 through 2019, Defendants paid its
21 employees under the table on a flat rate basis without taking into account the number of hours
22 worked by the employee. As a result, Plaintiff and the Represented Employees were often denied
23 proper minimum and overtime wages.

24 6. Additionally, starting in approximately January 2019, Defendants engaged in a
25 practice of willfully misclassifying the Represented Employees as independent contractors when
26 the Represented Employees are/were employees of the Defendants because (A) are/were subject
27 to the control and direction of the Defendants in connection with the performance of their work,
28 both under contract and in fact, (B) performed work that was the core business of the Defendants

1 (e.g., providing armed security for the Defendants' clients, etc.), and therefore the Represented
2 Employee's tasks were not outside the usual course of the Defendants' business, and (C) were
3 not customarily engaged in an independently established trade, occupation, or business of the
4 same nature as the work performed by the Defendants.

5 7. Also at all relevant times, Plaintiff and the Represented Employees were subject
6 to the direction and control of the Defendants in regard to work assignments, scheduling
7 requirements, and days of work. Furthermore, the Defendants directly and indirectly exercised
8 control over the wages, hours, and working conditions of Plaintiff and the Represented
9 Employees. At all relevant times, the daily schedule for Plaintiff and the Represented
10 Employees was controlled solely by the Defendants, and the Defendants told them the exact time
11 and location for all of his daily appointments. Furthermore, through the performance of their job
12 duties, Plaintiff and the Represented Employees performed an integral and entirely essential
13 aspect of the Defendants' business. In fact, Plaintiff and the Represented Employees were tasked
14 to perform the one and only service that the Defendants provided: security for the Defendants'
15 clients. Additionally, the customers are and/or were the Defendants' customers, not those of
16 Plaintiff or the Represented Employees. Plaintiff and the Represented Employees were also
17 prohibited from performing similar services for other companies and, thus, were not engaged in
18 an independently established trade, occupation or business of the same nature as the work
19 performed by the Defendants. And, perhaps most importantly, the Defendants retained the right
20 to terminate Plaintiff and the Represented Employees working relationship without cause and at
21 its discretion. Despite these facts, the Defendant misclassified Plaintiff and the Represented
22 Employees as independent contractors.

23 8. Plaintiff and the Represented Employees were also denied 30-minute off-duty
24 meal periods, as mandated by California law. As a result of the Defendants policies and
25 practices of paying employees under the table and misclassifying them as independent
26 contractors, Defendants also failed to observe labor laws related to meal breaks. Moreover, the
27 Represented Employees were subjected to meal period violations when they were: (1) unable to
28 take meal periods due to workload, (2) forced to take on-duty meal periods while under

1 Defendants' control, (3) forced to take meal periods, if such a meal occurred, after the 5th hour
2 of work, (4) not provided a mandated first meal period for shifts in excess of 6 hours, and (5) not
3 provided mandated second meal periods for shifts over 10 hours.

4 9. Defendants also failed to provide Plaintiff and the Represented Employees with
5 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
6 mandated by California law. Due to the same policies and practices stated above, employees
7 were denied paid rest breaks. In addition, Defendants did not schedule rest breaks and the
8 Represented Employees were often not authorized and/or permitted to take mandated rest breaks
9 due to the lack of adequate staffing and coverage and being overwhelmed by the hectic
10 workload. Furthermore, on occasions when Plaintiff and the Represented Employees worked in
11 excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest
12 break.

13 10. Moreover, at all relevant times, Defendants required Plaintiff and the Represented
14 Employees to incur necessary business-related expenses and costs without reimbursement. For
15 example, Plaintiff was required to incur substantial expenses without reimbursement, including
16 setting up and using their personal vehicles to drive substantial distances to discharge their duties
17 for the Defendants without adequate reimbursement, and acquiring and maintaining a smart
18 phone and related monthly data plan to communicate with Defendants via phone, text message,
19 and e-mail.

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

26 12. Plaintiff further alleges that Defendants failed to provide the Represented
27 Employees with accurate itemized wage statements that fully complied with the requirements of
28 Labor Code § 226(a).

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

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

11 15. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
12 monetary relief against Defendants and each of them, on behalf of himself and the Represented
13 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys’ fees,
14 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
15 210, 218.6, 226, 226.3, 226.7, 226.8 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198,
16 1199, and 2802, among possibly other sections inadvertently omitted. Plaintiff also reserves the
17 right to name additional representatives throughout the State of California.

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

26 **II. JURISDICTION**

27 17. This Court has jurisdiction over the claims for relief of Plaintiff and the
28 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

1 **III. VENUE**

2 18. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
3 Procedure § 395(a), as Defendants transact business in Orange County, the unlawful acts alleged
4 herein have a direct effect on the Represented Employees in Orange County, and each
5 Defendants' principal place of business is in Orange County.

6 **IV. PARTIES**

7 **Plaintiff**

8 19. Plaintiff and Class Representative Wesley Stopnik has been employed by
9 Defendants from approximately 2015 through present.

10 **Defendants**

11 20. Plaintiff is informed and believes and thereon alleges that Defendant United
12 Defense Technologies, is a Nevada Corporation authorized to and doing business in Orange
13 County, California. Plaintiff is also informed and believes that Defendant United Defense
14 Technologies is and/or was the legal employer of Plaintiff and the Represented Employees during
15 the applicable statutory periods.

16 21. Plaintiff is informed and believes and thereon alleges that United Defense
17 Tactical, is an Delaware Corporation authorized to and doing business in Orange County,
18 California. Plaintiff is also informed and believes that United Defense Tactical is and/or was the
19 legal employer of Plaintiff and the Represented Employees during the applicable statutory
20 periods.

21 22. Plaintiff is informed and believes and thereon alleges that Defendant Wes Fox, is
22 an individual authorized to and doing business in Orange County, California. Plaintiff is also
23 informed and believes that Wes Fox is and/or was the legal employer of Plaintiff and the
24 Represented Employees during the applicable statutory periods.

25 23. Plaintiff is informed and believes and thereon alleges that Defendant Jennifer Fox,
26 is an individual authorized to and doing business in Orange County, California. Plaintiff is also
27 informed and believes that Defendant Jennifer Fox is and/or was the legal employer of Plaintiff
28 and the Represented Employees during the applicable statutory periods.

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

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

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

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

1 their remaining co-Defendants.

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

10 **V. CLASS ACTION ALLEGATIONS**

11 29. Plaintiff incorporates the preceding paragraphs of Complaint as if fully alleged
12 herein.

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

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

17 32. The two separate Classes, collectively referred to as the “Represented
18 Employees,” that Plaintiff seeks to represent are defined as follows:

19 **Under-the-Table Class**

20 All current and former nonexempt employees employed by
21 Defendants in California and were paid under-the-table at
22 any time during the Relevant Time Period.

23 **Misclassified Class**

24 All current and former nonexempt employees who
25 performed services for Defendants in the State of California
26 and who were classified as independent contractors at any
27 time during the Relevant Time Period.

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33. Plaintiff also seeks to represent the following subclasses:

Meal Break Subclass

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

Rest Break Subclass

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

Unreimbursed Expense Subclass

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

Waiting Time Penalties Subclass

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

Wage Statement Penalties Subclass

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

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

35. Plaintiff, as Class Representative, is a member of the classes and subclasses that
he seeks to represent.

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

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

4 38. **Commonality:** There are questions of law and fact common to the class which
5 predominate over any questions affecting only individual members of the class, including
6 without limitation:

7 i. Whether Defendants violated the California Labor Code and applicable
8 IWC Wage Order by paying the Represented Employees under-the-table;

9 ii. Whether Defendants misclassified the Represented Employees as
10 independent contractors;

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

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

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

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

27 vii. Whether Defendants violated the California Labor Code and applicable
28 IWC Wage Order by failing to reimburse Plaintiff and the Unreimbursed Expense Subclass for

business expenses incurred while discharging their duties or in obedience to the directions of their employer;

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

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

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

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

39. **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 reimburse business expenses, failure to timely pay final wages, and failure to provide accurate itemized wage statements.

40. **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.

41. **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

1 law and fact common to the Class predominate over any questions affecting only individual
2 members of the Class. Each Represented Employee has been damaged and is entitled to
3 recovery by reason of Defendants' illegal policies and practices set forth above. Class action
4 treatment will allow those similarly situated persons to litigate their claims in the manner that is
5 most efficient and economical for the parties and the judicial system.

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PAY MINIMUM WAGES**

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

9 *Plaintiff and the Represented Employees Against All Defendants*

10 42. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
11 alleged herein.

12 43. Plaintiff and the Represented Employees were not exempt from the requirement
13 to be paid at least the applicable California minimum wage throughout the statutory period for
14 each hour worked.

15 44. Plaintiff and the Represented Employees were not provided proper minimum and
16 regular wages due to Defendants' failure to accurately record and compensate for all hours
17 worked.

18 45. As one such example, Defendants paid Plaintiff and the Represented Employees
19 on a flat-rate basis while they were working under-the-table, regardless of how many hours they
20 worked. Therefore, Plaintiff and the Represented Employees were regularly denied proper
21 minimum and regular wages. Moreover, Defendants failed to keep time records for the
22 Represented Employees making it impossible for them to determine if they were receiving
23 adequate minimum wages.

24 46. Additionally, at certain times, Defendant misclassified Plaintiff and the
25 Represented Employees as independent contractors. As a result, the Represented Employees
26 often worked substantial hours without adequate compensation.

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

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

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

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

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

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

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

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FAILURE TO PAY OVERTIME WAGES

Plaintiff and the Represented Employees Against All Defendants

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

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

59. Plaintiff is informed and believes and thereon alleges that Defendants intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the Represented Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

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

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

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

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

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

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

17 65. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
18 alleged herein.

19 66. Plaintiff and the Meal Break Subclass are and/or were employees of Defendants
20 who did not receive proper protections and benefits of the laws governing mandatory meal
21 periods.

22 67. Labor Code § 226.7 requires employers, including Defendants, to provide
23 employees with meal periods as mandated by the Industrial Welfare Commission.

24 68. Labor Code § 512(a), in part, provides that employers, including Defendants, may
25 not employ an employee for a work period of more than five hours per day without providing an
26 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
27 except that if the total work period per day of the employee is no more than six hours, the meal
28 period may be waived by mutual consent of both the employer and the employee. Employers

1 may not employ an employee for a work period more than 10 hours per day without providing
2 the employee with a second meal period of not less than 30 minutes.

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

6 70. At all relevant times herein, Plaintiff and the Meal Break Subclass were denied
7 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
8 practices, Defendants did not observe California labor laws relating to meal periods during
9 periods when they paid the Represented Employees under-the-table and/or misclassified them as
10 independent contractors. Furthermore, Plaintiff and the Represented Employees were subjected
11 to meal period violations when they were: (1) unable to take meal periods due to workload, (2)
12 forced to take on-duty meal periods while under Defendants' control, (3) forced to take meal
13 periods, if such a meal occurred, after the 5th hour of work, (4) not provided a mandated first
14 meal period for shifts in excess of 6 hours, and (5) not provided mandated second meal periods
15 for shifts over 10 hours.

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

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

23 73. On information and belief, Plaintiff and the Meal Break Subclass did not
24 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
25 obtained from Plaintiff and the Meal Break Subclass were not willfully obtained, were not
26 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
27 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Meal Break Subclass
28 to take meal periods in accordance with California law.

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

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

10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE REST BREAKS**

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

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

14 76. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
15 alleged herein.

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

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

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

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

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1 81. At all relevant times, Defendants also failed to provide Plaintiff and the Rest
2 Break Subclass with 10 minutes of net rest break time for every 4 hours worked, or major
3 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and the
4 Rest Break Subclass were often not authorized and/or permitted to take mandated rest breaks due
5 to the policies and practices of paying the Represented Employees under-the-table and/or
6 misclassifying them as independent contractors, the lack of adequate staffing and coverage and
7 being overwhelmed by the hectic workload. Furthermore, on occasions when Plaintiff and the
8 Represented Employees worked in excess of 10 hours in a shift, Defendants failed to authorize
9 and/or permit a third mandated rest break.

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

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

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

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

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 (Labor Code § 2802)

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

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

7 87. Plaintiff and the Unreimbursed Expense Subclass are and/or were employees of
8 Defendants who did not receive proper protections and benefits of the laws governing
9 reimbursement of business expenses.

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

13 89. At all relevant times herein mentioned, as a condition of employment, Defendants
14 required Plaintiff and the Unreimbursed Expense Subclass to incur necessary business-related
15 expenses and costs without reimbursement, including, but not limited to, using their personal
16 vehicles to drive substantial distances to discharge their duties for Defendants without adequate
17 reimbursement if any, and acquiring and maintaining a smart phone and related monthly data
18 plan to communicate with Defendants via phone, text message, and e-mail.

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

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

25 92. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage
26 Order § 9(B), Plaintiff and the Unreimbursed Expense Subclass have suffered, and continue to
27 suffer, substantial losses related to such incurred expenses, expenses, and attorney's fees in
28 seeking to compel Defendants to fully perform their obligations under the law, all in an amount

1 to be proved at time of trial.

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

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

15 **SIXTH CAUSE OF ACTION**

16 **FAILURE TO TIMELY PAY FINAL WAGES**

17 (Labor Code §§ 201 – 203)

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

19 95. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
20 alleged herein.

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

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

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

1 99. 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.

4 100. 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.

7 101. 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, as well as
10 meal and rest period premiums.

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

17 **SEVENTH CAUSE OF ACTION**

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

19 (Labor Code § 226)

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

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

23 104. Plaintiff and the Wage Statement Penalties Subclass are and/or were employees of
24 Defendants who did not receive proper protections and benefits of the laws governing the
25 provision of accurate itemized wage statements.

26 105. Labor Code § 226(a) requires an employer to provide its employees with itemized
27 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
28 inclusive dates of the pay period, the employee's name and the last four digits of his or her

1 Social Security number (or employee identification number), the name and address of the legal
2 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
3 corresponding number of hours worked at each hourly rate by the employee.

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

8 107. Here, Defendants violate Labor Code § 226 each pay period because they failed to
9 provide any wage statements to Plaintiff and the Represented Employees during times where
10 employees were paid under-the-table and/or misclassified as independent contractors.

11 108. In addition, Defendants' wage statements that were provided failed to comply
12 with other requirements of Labor Code § 226 due to violations including: failure to accurately
13 state total hours worked (the wage statements failed to accurately reflect the hours worked since
14 Defendants did not compensate for certain tasks); failure to accurately state gross wages earned;
15 failure to accurately state all deductions; failure to accurately state net wages earned; failure to
16 state the applicable hourly rates (including the accurate overtime rate of pay); and failure to
17 accurately state the corresponding number of hours worked at each hourly rate.

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

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

1 interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully
2 perform its obligation under state law, all to their respective damages in amounts according to
3 proof at trial.

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

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

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

22 **EIGHTH CAUSE OF ACTION**

23 **UNFAIR AND UNLAWFUL COMPETITION**

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

25 *Plaintiff and the Represented Employees against All Defendants*

26 114. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
27 alleged herein.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 129. Therefore, once more than sixty-five (65) days have passed since the notice date,
14 Plaintiff will have fully satisfied the administrative prerequisites to suit under the PAGA and this
15 Complaint will be deemed amended to include the PAGA allegations enumerated below. Once
16 this occurs, Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to
17 Labor Code § 2699, as well as attorneys’ fees, costs, and/or other damages as permitted by
18 PAGA through a representative action pursuant to the PAGA and the California Supreme Court
19 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Plaintiff is not required to, nor does he, seek
20 class certification of the PAGA claims under Code of Civil Procedure § 382.

21 **NINTH CAUSE OF ACTION**

22 **PAGA ASSESSMENT FOR WILLFUL MISCLASSIFICATION**

23 (Labor Code § 226.8)

24 130. Plaintiff incorporates the preceding paragraphs of the Second Amended
25 Complaint as if fully alleged herein.

26 131. At all relevant times, Plaintiff and the Aggrieved Employees performed various
27 duties for Defendants as employees. However, Defendants have maintained policies and
28 practices based on or including the willful misclassification of Plaintiff and the Aggrieved

1 Employees as independent contractors despite that, under applicable standards of law, Plaintiff
2 and all Aggrieved Employees are, or were during their employment with Defendants, employees
3 and not independent contractors.

4 132. Defendants engaged in a practice of willfully misclassifying Plaintiff and the
5 Aggrieved Employees as independent contractors despite that Plaintiff and the Aggrieved
6 Employees are/were employees of Defendants because they (A) are/were subject to the control
7 and direction of Defendants in connection with the performance of their work, both under
8 contract and in fact, (B) performed work that was the core business of Defendants (e.g.,
9 providing security to Defendant's clients/customers), and therefore the Aggrieved Employees'
10 tasks were not outside the usual course of the Company's business, and (C) were not customarily
11 engaged in an independently established trade, occupation, or business of the same nature as the
12 work performed by Defendants.

13 133. Also, Plaintiff and the Aggrieved Employees were subject to the direction and
14 control of Defendants in regard to work assignments, scheduling requirements, and days of work.
15 Furthermore, Defendants directly and indirectly exercised control over the wages, hours, and
16 working conditions of Plaintiff and the Aggrieved Employees. At all relevant times, the daily
17 schedule for Plaintiff and the Aggrieved Employees was controlled solely by Defendants, and
18 Defendants told them the exact time and location for all daily assignments. Furthermore,
19 through the performance of their job duties, Plaintiff and the Aggrieved Employees performed an
20 integral and entirely essential aspect of Defendants' business. In fact, Plaintiff and the
21 Aggrieved Employees were tasked to perform the one and only service that Defendants
22 provided: providing security to Defendants' clients/customers. Additionally, the customers are
23 and/or were Defendants' customers, not those of Plaintiff or the Aggrieved Employees. Plaintiff
24 and the Aggrieved Employees were also not engaged in an independently established trade,
25 occupation or business of the same nature as the work performed by Defendants. And, perhaps
26 most importantly, Defendants retained the right to terminate Plaintiff and the Aggrieved
27 Employees' working relationship without cause and at its discretion.

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1 134. Despite these facts, Defendants misclassified Plaintiff and the Aggrieved
2 Employees as independent contractors.

3 135. Labor Code § 226.8(a) states “It is unlawful for any person or employer to engage
4 in any of the following activities: (1) Willful misclassification of an individual as an independent
5 contractor.”

6 136. Labor Code § 226.8(b) states that if “a person or employer has engaged in any of
7 the enumerated violations of subdivision (a), the person or employer shall be subject to a
8 civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand
9 dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.”

10 137. Labor Code § 226.8(c) further states that if “a person or employer has engaged in
11 any of the enumerated violations of subdivision (a) and the person or employer has engaged in or
12 is engaging in a pattern or practice of these violations, the person or employer shall be subject to
13 a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five
14 thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines
15 permitted by law.

16 138. At all relevant times herein, Defendants engaged in a pattern and practice of
17 willfully and knowingly misclassifying Plaintiff and the Aggrieved Employees as independent
18 contractors. Therefore, Plaintiff and the Aggrieved Employees are entitled to the stepped-up
19 penalties as set forth in Labor Code § 226.8(c).

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

23 **TENTH CAUSE OF ACTION**

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

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

26 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

4 142. Plaintiff and the Aggrieved Employees were not provided proper minimum and
5 regular wages due to Defendants' failure to accurately record and compensate for all hours
6 worked.

7 143. As one such example, Defendants paid Plaintiff and the Represented Employees
8 on a flat-rate basis while they were working under-the-table, regardless of how many hours they
9 worked. Therefore, Plaintiff and the Represented Employees were regularly denied proper
10 minimum and regular wages. Moreover, Defendants failed to keep time records for the
11 Represented Employees making it impossible for them to determine if they were receiving
12 adequate minimum wages.

13 144. Additionally, at certain times, Defendant misclassified Plaintiff and the
14 Represented Employees as independent contractors. As a result, the Represented Employees
15 often worked substantial hours without adequate compensation.

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

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

22 147. As a result of the unlawful employment practices alleged herein, 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.

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PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES

PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES

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

Plaintiff and the Aggrieved Employees against All Defendants

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

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

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

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

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

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

154. 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.

1 **TWELFTH CAUSE OF ACTION**

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

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

4 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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

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

22 160. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied
23 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
24 practices that did not provide compliant meal periods when Aggrieved Employees were being
25 paid under-the-table and/or misclassified as independent contractors. Further, Plaintiff and the
26 Aggrieved Employees were subjected to meal period violations when they were: (1) unable to
27 take meal periods due to workload, (2) forced to take on-duty meal periods while under
28 Defendants' control, (3) forced to take meal periods, if such a meal occurred, after the 5th hour

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

3 161. 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.

7 162. 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.

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

16 **THIRTEENTH CAUSE OF ACTION**

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

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

19 *Plaintiff and the Aggrieved Employees against All Defendants*

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

22 165. 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.

24 166. 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.

26 167. 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.

168. 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.

169. 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 and the Aggrieved Employees were often not authorized and/or permitted to take mandated rest breaks due to the lack of adequate staffing and coverage and being overwhelmed by their hectic workload. Furthermore, on occasions when Plaintiff and the Aggrieved Employees worked in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

170. 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.

171. 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.

FOURTEENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802)

Plaintiff and the Aggrieved Employees against All Defendants

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

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

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

7 175. At all relevant times herein mentioned, as a condition of employment, Defendants
8 required Plaintiff and the Aggrieved Employees to incur necessary business-related expenses and
9 costs without reimbursement, including, but not limited to, driving personal vehicles while
10 discharging their duties for Defendants without adequate reimbursement, and acquiring and
11 maintaining a smart phone and related monthly data plan to communicate with Defendants via
12 phone, text message, and e-mail.

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

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

19 **FIFTEENTH 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*

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

25 179. 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.

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1 180. 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.

6 181. 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.”

9 182. 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, within the
14 time specified by Labor Code § 204.

15 183. 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 **SIXTEENTH CAUSE OF ACTION**

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

20 (Labor Code §§ 201 – 203)

21 *Plaintiff and the Aggrieved Employees against All Defendants*

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

24 185. 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.

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

1 187. 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.

4 188. 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.

7 189. 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, as well as meal and rest period premiums,
10 within the time specified by Labor Code §§ 201 – 203.

11 190. 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.

14 191. 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 **SEVENTEENTH 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*

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

24 193. 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.

27 194. 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.

5 195. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
6 and the Aggrieved Employees because Defendants failed to provide a wage statement to Plaintiff
7 and the Aggrieved Employees that complied with the requirements of Labor Code § 226(a).

8 196. Here, Defendants violate Labor Code § 226(a)(9) each pay period because the
9 wage statements provided to Plaintiff and the Aggrieved Employees failed to list any rate of pay
10 for regular and overtime hours and failed to state the hours worked under each category.

11 197. In addition, Defendants' wage statements failed to comply with other
12 requirements of Labor Code § 226 due to violations including: failure to accurately state total
13 hours worked (the wage statements failed to accurately reflect the hours worked since
14 Defendants did not compensate for certain tasks); failure to accurately state gross wages earned;
15 failure to accurately state all deductions; failure to accurately state net wages earned; failure to
16 state the applicable hourly rates (including the accurate overtime rate of pay); and failure to
17 accurately state the corresponding number of hours worked at each hourly rate.

18 198. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
19 to Plaintiff and the Aggrieved Employees because Defendants' wage statements failed to comply
20 with the requirements of Labor Code § 226(a).

21 199. As a result of the Defendants' violations of Labor Code §226(a)(9), Plaintiff seeks
22 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
23 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.
24 See *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 675 ("Section
25 226.3 provides the civil penalty for failure to comply" with Labor Code § 226).

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1 **EIGHTEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR**

3 **FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

4 (Labor Code §§ 226, 226.3, 1174 and IWC Wage Order § 7)

5 *Plaintiff and the Aggrieved Employees against All Defendants*

6 200. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
7 alleged herein.

8 201. Labor Code § 1174 and IWC Wage Order § 7, require that Defendants maintain
9 accurate employment records showing the hours worked daily, including meal periods, by all
10 employees and the applicable wages paid to each. However, the Defendants violated such
11 provisions by failing to maintain accurate records of employee hours worked, including starting
12 and ending times of meal periods, and the applicable rates of pay for all hours worked.

13 202. Labor Code Section 226(a) requires an employer to furnish the employees with
14 nine categories of information. Labor Code 226 (b) requires Defendants to afford current and
15 former employees the right to inspect or receive a copy of records pertaining to their
16 employment upon reasonable request.

17 203. Here, due to policies and practices of paying their employees under-the-table and
18 misclassifying the Aggrieved Employees as independent contractors, the Defendants failed to
19 maintain accurate employment records.

20 204. As a result of the Defendants' violations of Labor Code §226, 226.3, and 1174
21 Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor
22 Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted
23 under PAGA.

24 **VII. PRAYER FOR RELIEF**

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

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1. As to the Ninth through Eighteen 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 Eighth 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, 226, 226.3, 226.7, 226.8 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, among other sections inadvertently omitted;
10. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties according to proof, including interest thereon;
11. For pre- and post-judgment interest; and
12. For such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

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

Dated: January 26, 2022

LAUBY, MANKIN & LAUBY LLP

BY:



Brian J. Mankin, Esq.
Misty M. Lauby, Esq.
Attorneys for Plaintiff