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

GLORIA LOPEZ QUIJANO, an individual,
on behalf of herself, the State of California,
as a private attorney general, and on behalf
of all others similarly situated,

Plaintiff,

v.

GXO LOGISTICS SUPPLY CHAIN, INC.
fka XPO LOGISTICS SUPPLY CHAIN.,
INC.; and DOES 1 TO 50,

Defendants.

FILED
Superior Court of California
County of Los Angeles

12/18/2023

David W. Slayton, Executive Officer / Clerk of Court

By: M. Concepcion Deputy

CASE NUMBER: 22STCV01988

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

1. Failure to Pay All Minimum Wages,
2. Failure to Pay All Overtime Wages,
3. Failure to Provide Rest Periods and Pay Missed Rest Period Premiums,
4. Failure to Provide Meal Periods and Pay Missed Meal Period Premiums,
5. Failure to Maintain Accurate Employment Records,
6. Failure to Pay Wages Timely During Employment,
7. Failure to Pay All Wages Earned and Unpaid at Separation,
8. Failure to Reimburse Business Expenses,
9. Failure to Furnish Accurate Itemized Wage Statements,
10. Unfair Competition Law, and
11. PAGA Penalties

DEMAND FOR JURY TRIAL

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Attorneys for Plaintiff Anthony Carlos,
the Putative Class, and the Aggrieved Employees

1 Plaintiff GLORIA LOPEZ QUIJANO and Plaintiff ANTHONY CARLOS (“Plaintiffs”),
2 on behalf of themselves, the State of California, as a private attorneys general, and all other
3 similarly situated employees within the State of California, complain and allege of defendant
4 GXO Logistics Supply Chain, Inc. fka XPO Logistics Supply Chain., Inc. and Does 1 to 50
5 (collectively, “Defendants”) as follows:

6 **I. INTRODUCTION**

7 1. This is a class action complaint brought pursuant to California Code of Civil
8 Procedure section 382.

9 2. To the extent that the claims pled in this action are encompassed by the judgment
10 entered in *Emerita Corado-Cortez v. XPO Logistics, Inc.*, Case No. 19-CV-00670-TJH (SHKx),
11 the “Class Period” as used herein, is defined as the period from October 30, 2020, and continuing
12 into the present and ongoing. Defendants’ violations of California’s laws as described more
13 fully below have been ongoing throughout the Class Period and are still ongoing.

14 3. Plaintiffs bring this class action on behalf of themselves and the following class:
15 *All individuals who are or were employed by Defendants as non-exempt employees in California*
16 *during the Class Period* (the “Class Members”). (Code Civ. Proc., § 382.)

17 4. Plaintiffs bring this action on behalf of themselves and the Class Members, as a
18 class action, against Defendants for:

- 19 A. Failure to pay all minimum wages,
- 20 B. Failure to pay all overtime wages,
- 21 C. Failure to provide rest periods and pay missed rest period premiums,
- 22 D. Failure to provide meal periods and pay missed meal period premiums,
- 23 E. Failure to maintain accurate employment records,
- 24 F. Failure to pay wages timely during employment,
- 25 G. Failure to pay all wages earned and unpaid at separation,
- 26 H. Failure to indemnify all necessary business expenditures,
- 27 I. Failure to furnish accurate itemized wage statements, and
- 28

1 J. Violations of California's Unfair Competition Law ("UCL") (Bus. & Prof.
2 Code, §§ 17200–17210).

3 5. This action is also a representative action brought pursuant to the California Labor
4 Code Private Attorneys General Act of 2004 ("PAGA"), codified at California Labor Code
5 sections 2698 through 2699.6.

6 6. The "PAGA Period" as used herein, is defined as the period from the filing of this
7 action and continuing into the present and ongoing.

8 7. This PAGA action is brought on behalf of Plaintiffs, the State of California as
9 private attorney general, and on behalf of the following aggrieved employees: *All individuals*
10 *who are or were employed by Defendants as non-exempt employees in California during the*
11 *PAGA Period* (the "Aggrieved Employees").

12 8. Plaintiffs are informed and believe and thereon allege that the California
13 Industrial Welfare Commission ("IWC") Wage Orders applicable to the facts of this case are
14 IWC Wage Orders 1-2001 and/or 9-2001 (the "Applicable Wage Orders") and possibly others
15 that may be applicable. (Cal. Code of Regs., tit. 8, §§ 11130, 11140.) Plaintiffs reserve the right
16 to amend or modify the definition of "Applicable Wage Orders" with greater specificity or add
17 additional IWC Wage Orders if additional applicable wage orders are discovered in litigation.

18 **II. JURISDICTION & VENUE**

19 9. This Court has subject matter jurisdiction over all causes of action asserted herein
20 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure
21 section 410.10 because this is a civil action in which the matter in controversy, exclusive of
22 interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the
23 State of California or is subject to adjudication in the courts of the State of California.

24 10. This Court has personal jurisdiction over Defendants because Defendants have
25 caused injuries in the County of Los Angeles and the State of California through their acts, and
26 by their violation of the California Labor Code and California state common law. Defendants
27 transact millions of dollars of business within the State of California. Defendants own, maintain
28 offices, transact business, have an agent or agents within the County of Los Angeles, and/or

1 otherwise are found within the County of Los Angeles, and Defendants are within the
2 jurisdiction of this Court for purposes of service of process.

3 11. Venue as to Defendants is proper in this judicial district, pursuant to section 395
4 of the Code of Civil Procedure. Defendants operate within California and do business within
5 Los Angeles County, California. The unlawful acts alleged herein have a direct effect on
6 Plaintiff and all of Defendants' employees identified above within Los Angeles County and
7 surrounding counties where Defendants may remotely operate.

8 **III. THE PARTIES**

9 **A. PLAINTIFFS**

10 12. At all relevant times, Plaintiffs, who are over the age of 18, were and currently are
11 citizens of California residing in the State of California. Defendants employed Plaintiffs as non-
12 exempt hourly employees.

13 13. Plaintiffs bring this action on behalf of themselves and the following class
14 pursuant to section 382 of the Code of Civil Procedure as follows: *All individuals who are or*
15 *were employed by Defendants as non-exempt employees in California during the Class Period*
16 *(the "Class Members")*.

17 14. Plaintiffs also bring this action on behalf of themselves and the State of
18 California, as a private attorney general, and on behalf of the following group of aggrieved
19 employees: *All individuals who are or were employed by Defendants as non-exempt employees*
20 *in California during the PAGA Period (the "Aggrieved Employees")*.

21 15. The Class Members and the Aggrieved Employees, at all times pertinent hereto,
22 are or were employees of Defendants during the relevant statutory period.

23 **B. DEFENDANTS**

24 16. Plaintiffs are informed and believe and thereon allege that Defendants were
25 authorized to and doing business in Los Angeles County and are and/or were the legal employer
26 of Plaintiffs, the other Aggrieved Employees, and the other Class Members during the applicable
27 statutory periods. Plaintiffs, the other Aggrieved Employees, and the other Class Members were,
28 and are, subject to Defendants' policies and/or practices complained of herein and have been

1 deprived of the rights guaranteed to them by: California Labor Code sections 201, 202, 203, 204,
2 210, 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199,
3 2802, and others that may be applicable; California Business and Professions Code sections
4 17200 through 17210 (“UCL”); and the Applicable Wage Orders (Cal. Code of Regs., tit. 8, §§
5 11130, 11140).

6 17. Plaintiffs are informed and believe, and based thereon allege, that during the Class
7 Period and PAGA Period, Defendants did (and continue to do) business in the State of
8 California, County of Los Angeles.

9 18. Plaintiffs do not know the true names or capacities, whether individual, partner, or
10 corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said
11 defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to
12 amend this complaint when such true names and capacities are discovered. Plaintiffs are
13 informed, and believe, and thereon allege, that each of said fictitious defendants, whether
14 individual, partners, or corporate, were responsible in some manner for the acts and omissions
15 alleged herein, and proximately caused Plaintiffs, the other Aggrieved Employees, and the other
16 Class Members to be subject to the unlawful employment practices, wrongs, injuries, and
17 damages complained of herein.

18 19. Plaintiffs are informed, and believe, and thereon allege, that at all times
19 mentioned herein, Defendants were and/or are the employers of Plaintiffs, the other Aggrieved
20 Employees, and the other Class Members. At all times herein mentioned, each of said
21 Defendants participated in the doing of the acts hereinafter alleged to have been done by the
22 named Defendants. Furthermore, the Defendants, and each of them, were the agents, servants,
23 and employees of each and every one of the other Defendants, as well as the agents of all
24 Defendants, and at all times herein mentioned were acting within the course and scope of said
25 agency and employment. Defendants, and each of them, approved of, condoned, or otherwise
26 ratified every one of the acts or omissions complained of herein.

27 20. At all relevant times, Defendants, and each of them, were members of and
28 engaged in a joint venture, partnership, and common enterprise, and acting within the course and

scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiffs are informed, and believe, and thereon allege, that all Defendants were joint employers for all purposes of Plaintiffs, the other Aggrieved Employees, and the other Class Members.

IV. COMMON FACTS & ALLEGATIONS

21. Plaintiffs and the other Class Members (collectively, the “Class Members”) are, and were at all relevant times, employed by the Defendants within the State of California.

22. Likewise, Plaintiffs and the other Aggrieved Employees (collectively, the “Aggrieved Employees”) are, and were at all relevant times, employed by the Defendants within the State of California.

23. The Class Members and the Aggrieved Employees are, and were, at all relevant times, non-exempt employees for the purposes of minimum wages, overtime, rest breaks, meal periods, and the other claims alleged in this complaint.

24. Specifically, Plaintiffs were employed by Defendants within the statutory Class Period and PAGA Period, working as hourly, non-exempt laborers for Defendants. Plaintiff Quijano’s duties included general labor, packaging, warehousing needs, maintenance, and other tasks at Defendants’ facilities throughout California. Plaintiff Carlos worked for Defendant as a forklift driver.

A. MINIMUM WAGE VIOLATIONS

25. Labor Code section 1197 requires employees to be paid at least the minimum wage fixed by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code section 1194 entitles “any employee receiving less than the legal minimum wage . . . to recover in a civil action the unpaid balance of the full amount of this minimum wage.” Likewise, the Applicable Wage Orders also obligate employers to pay each employee minimum wages for all hours worked. (Cal. Code of Regs., tit. 8, §§ 11130, 11140.) Labor Code section 1198 makes unlawful the employment of an employee under conditions that the IWC Wage Orders prohibit.

26. These minimum wage standards apply to each hour that employees work. Therefore, an employer’s failure to pay for any particular time worked by an employee is

1 unlawful, even if averaging an employee's total pay over all hours worked, paid or not, results in
2 an average hourly wage above minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135
3 Cal.App.4th 314, 324.)

4 27. Here, Defendants failed to fully conform their pay practices to the requirements of
5 the law during the relevant statutory periods. The Class Members and the Aggrieved Employees
6 were not compensated for all hours worked including, but not limited to, all hours they were
7 subject to the control of Defendants and/or suffered or permitted to work under the California
8 Labor Code and the Applicable Wage Orders. Among other violations, the Class Members and
9 the Aggrieved Employees were subject to the control of Defendants while off-the-clock and did
10 not receive minimum wage for each hour worked. For example, the Class Members and the
11 Aggrieved Employees were required to undergo a security check prior to clocking into work
12 each workday and when returning from meal breaks, which included waiting in line for that
13 security check, off the clock and uncompensated. Also, the Class Members and the Aggrieved
14 Employees were required to undergo COVID screening prior to clocking into work, including
15 waiting in line in order to undergo that screening uncompensated. Further, the Class Members
16 and the Aggrieved Employees were required to wait in line in order to scan their badges in order
17 to clock into work each workday and when returning from meal breaks, off the clock and
18 uncompensated.

19 28. Additionally, the Class Members and the Aggrieved Employees were not paid all
20 wages for all hours worked due to Defendants' uniform payroll policies and practices that
21 unfairly rounded employees' wages to the detriment of the Class Members and the Aggrieved
22 Employees. This rounding policy routinely failed to capture the entirety of the hours the Class
23 Members and the Aggrieved Employees worked and was structured in a way that in favored
24 underpayment. (See *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889,
25 907.) As a result, the Class Members and the Aggrieved Employees suffered periodic shortages
26 in the hours for which they were compensated. This uncompensated time violated California's
27 requirement that employees be compensated for all hours worked. As a result of this practice,
28

1 the Class Members and the Aggrieved Employees were not compensated their minimum wages
2 for all hours worked.

3 29. Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide
4 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
5 those employees the unpaid balance of the unpaid wages as well as liquidated damages in an
6 amount equal to the wages due and interest thereon.

7 30. When employees, such as the Class Members, are not paid for all hours worked
8 under Labor Code section 1194, they are entitled to recover minimum wages for the time which
9 they received no compensation. (See *Sillah v. Command International Security Services* (N.D.
10 Cal. 2015) 154 F.Supp.3d 891 [employees suing for failure to pay overtime could recover
11 liquidated damages under Labor Code section 1194.2 if they also showed they were paid less
12 than minimum wage].)

13 31. Labor Code section 1197.1 authorizes employees who are paid less than the
14 minimum wage fixed by an applicable state or local law, or by an order of the IWC, a civil
15 penalty, among other damages, as follows:

16 (1) “For any initial violation that is intentionally committed,
17 one hundred dollars (\$100) for each underpaid employee for each
18 pay period for which the employee is underpaid.”

19 (2) “For each subsequent violation for the same specific
20 offense, two hundred fifty dollars (\$250) for each underpaid
21 employee for each pay period for which the employee is underpaid
22 regardless of whether the initial violation is intentionally
23 committed.” (Lab. Code, § 1197.1, subd. (a).)

24 32. As set forth above, Defendants failed to fully compensate the Class Members and
25 the Aggrieved Employees for all minimum wages. Accordingly, the Class Members are entitled
26 to recover liquidated damages for violations of Labor Code section 1197.1.

27 33. Based upon these same factual allegations, the Class Members are likewise
28 entitled to penalties under Labor Code sections 1199.

1 **B. OVERTIME VIOLATIONS**

2 34. Labor Code section 510 requires employers to compensate employees who work
3 more than eight hours in one workday, forty hours in a workweek, and for the first eight hours
4 worked on the seventh consecutive day no less than one and one-half times the regular rate of
5 pay for an employee. (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates
6 employers to compensate employees at no less than twice the regular rate of pay when an
7 employee works more than twelve hours in a day or more than eight hours on the seventh
8 consecutive day of work. (Lab. Code, § 510, subd. (a).) These rules are also reflected in the
9 Applicable Wage Orders.

10 35. In accordance with Labor Code section 1194 and the Applicable Wage Orders,
11 the Class Members could not then agree and cannot now agree to work for a lesser wage than the
12 amount provided by Labor Code sections 510 or the Applicable Wage Orders.

13 36. Here, Defendants violated their duty to accurately and completely compensate the
14 Class Members for all overtime worked. The Class Members periodically worked hours that
15 entitled them to overtime compensation under the law but were not fully compensated for those
16 hours.

17 37. Moreover, during the relevant statutory periods, Defendants had a policy and
18 practice of failing to pay overtime wages at the proper rate when it actually paid overtime.
19 Specifically, when Defendants paid overtime wages to the Class Members, Defendants failed to
20 include all compensation when calculating the regular rate of pay used in overtime calculations
21 and when paying overtime.

22 38. For instance, the Class Members would often receive, along with their hourly
23 rates of pay for their working hours, additional remuneration and/or non-discretionary bonus pay.
24 Defendants, however, calculated the regular rate of pay for the Class Members without factoring
25 into the regular rate of pay all other non-hourly pay earnings received during the pay period. As
26 a result, the Class Members were underpaid overtime wages when they worked in excess of eight
27 hours in any workday and/or forty hours in a workweek when such additional forms of
28 remuneration were earned. By its practice of periodically requiring the Class Members to work

1 in excess of eight hours in a workday and/or forty hours in a workweek without compensating
2 them at the rate of one and one-half (1½) their regular rate of pay, Defendants willfully violated
3 the provisions of Labor Code sections 510, 1194, and 1199.

4 39. Further, throughout the statutory period, the Class Members and the Aggrieved
5 Employees were paid based on an alternative workweek schedule, working 4 days per week and
6 at least 10 hours each workday. However, Defendants did not satisfy the requirements for an
7 alternative workweek schedule at the location in which the Class Members and the Aggrieved
8 Employees were employed. Therefore, Plaintiffs and the other Class Members were not paid
9 overtime premiums for work performed in excess of 8 hours per workday.

10 40. These actions were and are in clear violation of California's overtime laws as set
11 forth in Labor Code sections 510, 1194, 1199, and the Applicable Wage Orders. (Cal. Code of
12 Regs., tit. 8, §§ 11050, 11070.) As a result of Defendants' faulty policies and practices, the Class
13 Members were not compensated for all hours worked or paid accurate overtime compensation.

14 **C. REST BREAK VIOLATIONS**

15 41. Pursuant to Labor Code section 226.7 and the Applicable Wage Orders,
16 Defendants were and are required to provide the Class Members and the Aggrieved Employees
17 with compensated, duty-free rest periods of not less than ten minutes for every major fraction of
18 four hours worked. Under the Applicable Wage Orders, an employer must authorize and permit
19 all employees to take ten minute duty free rest periods for every major fraction of four hours
20 worked. (Cal. Code of Regs., tit. 8, §§ 11130, 11140.)

21 42. Likewise, Labor Code section 226.7 provides that "[a]n employer shall not
22 require an employee to work during a meal or rest or recovery period mandated pursuant to an
23 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
24 Commission" (Lab. Code, § 226.7, subd. (b).) Labor Code section 226.7 also provides that
25 employers must pay their employees one additional hour of pay at the employee's regular rate
26 for each workday that a "meal or rest or recovery period is not provided." (Lab. Code, § 226.7,
27 subd. (c).) Thus, the Wage Orders set when and for how long the rest period must take place and
28 the Labor Code establishes that violations of the IWC Wage Orders are unlawful and sets forth

1 the premium pay employer must pay their employees when employers fail to provide rest
2 periods.

3 43. The California Supreme Court has held that, during required rest periods,
4 “employers must relieve their employees of all duties and relinquish any control over how
5 employees spend their break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th
6 257, 260.) Relinquishing control over employees during rest periods requires that employees be
7 “free to leave the employer’s premises” and be “permitted to attend to personal business.” (*Id.* at
8 p. 275.) The *Brinker* Court explained in the context of rest breaks that employer liability
9 attaches from adopting an unlawful policy:

10 “An employer is required to authorize and permit the amount of rest break
11 time called for under the wage order for its industry. If it does not—if, for
12 example, it adopts a uniform policy authorizing and permitting only one
13 rest break for employees working a seven-hour shift when two are
14 required—it has violated the wage order and is liable.” (*Brinker Rest.*
15 *Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1033.)

16 44. Here, Defendants periodically did not permit the Class Members and the
17 Aggrieved Employees to take compliant duty-free rest breaks, free from Defendants’ control as
18 required by Labor Code section 226.7, the Applicable Wage Orders, and applicable precedent.
19 (See *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269 [concluding that “during
20 rest periods employers must relieve employees of all duties and relinquish control over how
21 employees spend their time.”].) At all relevant times, the Class Members and the Aggrieved
22 Employees were periodically not provided with legally-compliant and timely rest periods of at
23 least ten minutes for each four hour work period, or major fraction thereof due to Defendants’
24 unlawful rest period policies/practices. The Class Members and the Aggrieved Employees were
25 often expected and required to continue working through rest periods to meet the Defendants’
26 expectations and finish the workday. In some cases when the Class Members and the Aggrieved
27 Employees worked more than ten hours in a shift, Defendants failed to authorize and/or permit a
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1 third mandated rest period. As a result, the Class Members and the Aggrieved Employees were
2 periodically unable to take compliant rest periods.

3 45. In such cases where Defendants did not offer the Class Members and the
4 Aggrieved Employees the opportunity to receive a compliant off-duty rest period, “the court may
5 not conclude employees voluntarily chose to skip those breaks.” (*Alberts v. Aurora Behavioral*
6 *Health Care* (2015) 241 Cal.App.4th 388, 410 (2015) [“If an employer fails to provide legally
7 compliant meal or rest breaks, the court may not conclude employees voluntarily chose to skip
8 those breaks.”]; *Brinker Rest. Corp. v. Superior Court, supra*, 53 Cal.4th at p. 1033 [“No issue
9 of waiver ever arises for a rest break that was required by law but never authorized; if a break is
10 not authorized, an employee has no opportunity to decline to take it.”].)

11 46. In addition to failing to authorize and permit compliant rest periods, the Class
12 Members and the Aggrieved Employees were not compensated with one hour’s worth of pay at
13 their regular rate of compensation when they were not provided with a compliant rest period in
14 accordance with Labor Code section 226.7, subdivision (c). Thus, Defendants have violated
15 Labor Code section 226.7 and the Applicable Wage Orders.

16 47. Based on the foregoing, Plaintiffs seek to recover, on behalf of themselves and
17 other non-exempt employees, rest period premiums and penalties.

18 **D. MEAL BREAK VIOLATIONS**

19 48. Labor Code section 512 and the Applicable Wage Orders require employers to
20 provide employees with a thirty-minute uninterrupted and duty-free meal period within the first
21 five hours of work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee
22 for a work period of more than five hours per day without providing the employee with a meal
23 period of not less than 30 minutes”]; Cal. Code of Regs., tit. 8, §§ 11130, 11140 [“No
24 employer shall employ any person for a work period of more than five (5) hours without a meal
25 period of not less than 30 minutes”].) Additionally, an employee who works more than ten
26 hours per day is entitled to receive a second thirty-minute uninterrupted and duty-free meal
27 period. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for a work
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1 period of more than 10 hours per day without providing the employee with a second meal period
2 of not less than 30 minutes”].)

3 49. “An on-duty meal period is permitted only when the nature of the work prevents
4 an employee from being relieved of all duty and the parties agree in writing to an on-duty paid
5 meal break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written
6 agreement must include a provision allowing the employee to revoke it at any time. (*Ibid.*)
7 Generally, the California Department of Industrial Relations, Division of Labor Standards
8 Enforcement (“DLSE”) and courts have “found that the nature of the work exception applies:
9 (1) where the work has some particular external force that requires the employee to be on duty at
10 all times, and (2) where the employee is the sole employee of a particular employer.” (*Id.* at p.
11 945, internal quotation marks omitted; *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013)
12 731 F.3d 952, 958–959.) “[I]t is the employer’s obligation to determine whether the nature of
13 the work prevents an employee from being relieved before requiring an employee to take an on-
14 duty meal period.” (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 946.)

15 50. Here, the Class Members and the Aggrieved Employees were never asked to sign
16 any enforceable document agreeing to an on-duty meal period. Moreover, nothing in the nature
17 of their work involved the kind of “external force” that might justify on-duty meal breaks.
18 (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 945.) Nevertheless, Defendants
19 periodically did not provide compliant off-duty meal periods within the first five hours of work
20 for the Class Members and the Aggrieved Employees.

21 51. As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v.*
22 *Superior Court* (2012) 53 Cal.4th 1004, 1035 [“The IWC’s wage orders have long made a meal
23 period’s duty-free nature its defining characteristic.”].) Relinquishing control over employees
24 during meal periods requires that employees be “free to leave the employer’s premises” and be
25 “permitted to attend to personal business.” (*Augustus v. ABM Security Services, Inc.*, *supra*, 2
26 Cal.5th at p. 275.) Under Labor Code section 512, if an employer maintains a uniform policy
27 that does not authorize and permit the amount of meal time called for under the law (as specified
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1 in the Labor Code and/or applicable IWC Wage Order), “it has violated the wage order and is
2 liable.” (*Brinker Restaurant Corp. v. Superior Court*, *supra*, 53 Cal.4th at p. 1033.)

3 52. During the applicable statutory periods here, the Class Members and the
4 Aggrieved Employees were periodically denied legally-compliant and timely off-duty meal
5 periods of at least thirty minutes due to Defendants’ unlawful meal period policy and practices.
6 As a result of Defendants’ uniform meal period policies and practices, the Class Members and
7 the Aggrieved Employees were often not permitted to take complaint first meal periods before
8 the end of the fifth hour of work. The Class Members and the Aggrieved Employees were also
9 periodically not permitted to take second meal periods for shifts in excess of ten hours.
10 Defendants thus violated Labor Code section 512 and the Applicable Wage Orders by failing to
11 advise, authorize, or permit the Class Members and the Aggrieved Employees to receive thirty-
12 minute, off-duty meal periods within the first five hours of their shifts.

13 53. Labor Code section 226.7 provides that “[a]n employer shall not require an
14 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
15 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab.
16 Code, § 226.7, subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage
17 Orders further obligate employers to pay employees one additional hour of pay at the employee’s
18 regular rate of compensation for each workday that the meal period is not provided. (Lab. Code,
19 § 226.7, subd. (c); Cal. Code of Regs., tit. 8, §§ 11130, 11140 [“If an employer fails to provide
20 an employee a meal period in accordance with the applicable provisions of this order, the
21 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
22 compensation for each workday that the meal period is not provided.”].)

23 54. Accordingly, for each day that the Class Members and the Aggrieved Employees
24 did not receive compliant meal periods, they were and are entitled to receive meal period
25 premiums pursuant to Labor Code section 226.7 and the Applicable Wage Orders. Defendants,
26 however, failed to pay the Class Members and the Aggrieved Employees applicable meal period
27 premiums for many workdays that the employees did not receive a compliant meal period. Thus,
28 Defendants have violated Labor Code section 226.7 and the Applicable Wage Orders.

1 55. Based on the foregoing, Plaintiffs seek to recover, on behalf of themselves and
2 other non-exempt employees, meal period premiums and penalties.

3 **E. FAILURE TO REIMBURSE BUSINESS EXPENSES**

4 56. At all relevant times herein, Defendants were subject to Labor Code section 2802,
5 which states that “an employer shall indemnify his or her employees for all necessary
6 expenditures or losses incurred by the employee in direct consequence of the discharge of his or
7 her duties, or of his or her obedience to the directions of the employer.” The purpose of this
8 section is to “prevent employers from passing along their operating expenses onto their
9 employees.” (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 562.)

10 57. At all relevant times herein, Defendants were subject to Labor Code section 2804,
11 which states that “any contract or agreement, express or implied, made by any employee to
12 waive the benefits of this article or any part thereof, is null and void, and this article shall not
13 deprive any employee or his personal representative of any right or remedy to which he is
14 entitled under the laws of this State.”

15 58. Thus, the Class Members were and are entitled to reimbursement for the expenses
16 they incurred during the course of their duties. The duty to reimburse even extends to the use of
17 equipment the employee may already own and would be required to pay for anyway. (*Cochran*
18 *v. Schwan’s Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 [“The threshold question in
19 this case is this: Does an employer always have to reimburse an employee for the reasonable
20 expense of the mandatory use of a personal cell phone, or is the reimbursement obligation
21 limited to the situation in which the employee incurred an extra expense that he or she would not
22 have otherwise incurred absent the job? The answer is that reimbursement is always required.
23 Otherwise, the employer would receive a windfall because it would be passing its operating
24 expenses on to the employee.”].)

25 59. Here, Defendants failed to fully reimburse the Class Members for necessary
26 expenditures incurred as a direct consequence and requirement of performing their job duties,
27 including the costs associated with their personal cell phone they required to perform their work.
28 Consequently, Defendants failed to comply with Labor Code section 2802.

1 **F. FAILURE TO PAY PAID SICK LEAVE**

2 60. California law requires that employees be provided with paid sick leave pursuant
3 to Labor Code sections 245 through 248.5, which includes specifications for the rate of accrual
4 of paid sick leave, the rate at which paid sick leave is paid, and required notices to employees
5 pertaining to paid sick leave balances. In this case, Defendants failed to pay Plaintiffs, the Class,
6 and the Aggrieved Employees all paid sick leave due, because sick leave was incorrectly accrued
7 and was calculated at an incorrect rate of pay due to Defendants' failure to incorporate all
8 remuneration when calculating the regular rate of pay.

9 **G. UNTIMELY WAGES DURING EMPLOYMENT**

10 61. Labor Code section 204 expressly requires employers who pay employees on a
11 weekly, biweekly, or semimonthly basis to pay all wages "not more than seven calendar days
12 following the close of the payroll period." Labor Code section 210, subdivision (a), makes
13 employers who violate Labor Code section 204 subject to a penalty of:

14 “(1) For any initial violation, one hundred dollars (\$100) for
15 each failure to pay each employee.

16 “(2) For each subsequent violation, or any willful or intentional
17 violation, two hundred dollars (\$200) for each failure to pay each
18 employee, plus 25 percent of the amount unlawfully withheld.”

19 (Lab. Code, § 210, subd. (a).)

20 62. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and
21 entirely independent and apart from, any other penalty provided in this article” (Lab. Code,
22 § 210, subd. (a).)

23 63. Due to Defendants' failure to pay the Class Members and the Aggrieved
24 Employees the wages described above, along with rest and meal break premiums, Defendants
25 failed to timely pay the Class Members and the Aggrieved Employees within seven calendar
26 days following the close of payroll in accordance with Labor Code section 204 on a regular and
27 consistent basis. (See *Parson v. Golden State FC, LLC* (N.D. Cal., May 2, 2016, No. 16-CV-
28

00405-JST) 2016 WL 1734010, at p. *3–5, 2016 U.S. Dist. LEXIS 58299 [finding that a failure to pay rest period premiums can support claims under Labor Code sections 203 and 204].)

H. UNTIMELY WAGES AT SEPARATION

64. Labor Code section 203 provides “if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty” for up to thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) As a result of Defendants’ failure to pay the Class Members and the Aggrieved Employees for the wages described above, along with rest and meal break premiums, Defendants violated and continue to violate Labor Code section 203.

65. Due to Defendants’ faulty pay policies, those former Class Members whose employment with Defendants concluded were not compensated for each and every hour worked at the appropriate rate. Defendants have failed to pay former Class Members whose sums were certain at the time of termination within seventy-two hours of their resignation and have failed to pay those sums for thirty days thereafter.

I. WAGE STATEMENT VIOLATIONS

66. Defendants also failed to provide accurate itemized wage statements in accordance with Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) The gross wages earned;
- (2) The total hours worked by the employee;
- (3) The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate basis;
- (4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) The net wages earned;

1 (6) The inclusive dates of the period for which the employee is
2 paid;

3 (7) The name of the employee and only the last four digits of
4 his or her social security number or an employee identification
5 number other than a social security number;

6 (8) The name and address of the legal entity that is the
7 employer; and

8 (9) All applicable hourly rates in effect during the pay period
9 and the corresponding number of hours worked at each hourly rate
10 by the employee.

11 67. Due to Defendants' failure to pay the Class Members and the Aggrieved
12 Employees properly as described above, the wage statements issued do not indicate the correct
13 amount of gross wages earned, total hours worked, or the net wages earned, or the applicable
14 hourly rates in effect during the pay period and the corresponding number of hours worked at
15 each hourly rate. Thus, Defendants have violated Labor Code section 226, subdivisions (a)(1),
16 (2), (5), and (9).

17 68. In addition to Labor Code section 226, subdivision (a), Defendants also
18 knowingly and intentionally failed to provide the Class Members and the Aggrieved Employees
19 with accurate itemized wage statements in violation of Labor Code section 226, subdivision (e).
20 Defendants knew that they were not providing the Class Members and the Aggrieved Employees
21 with wage statements required by California law but nevertheless failed to correct their unlawful
22 practices and policies. (See *Garnett v. ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d 1121, 1134
23 [finding the defendant knowingly and intentionally violated Labor Code section 226 because the
24 “[d]efendant knew that it was not providing total hours worked to plaintiff or other employees
25 paid on commission” even though it believed that employees paid solely on commission or
26 commission and salary “are exempt and therefore we do not record hours on a wage
27 statement.”].)
28

1 **J. RECORDKEEPING VIOLATIONS**

2 69. Labor Code section 226, subdivision (a), requires employers to keep an accurate
3 record of, among other things, all hours worked by employees. Labor Code section 226.3
4 provides, in pertinent part, as follows:

5 “Any employer who violates subdivision (a) of Section 226 shall be
6 subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
7 per employee per violation in an initial citation and one thousand dollars
8 (\$1,000) per employee for each violation in a subsequent citation, for
9 which the employer fails to provide the employee a wage deduction
10 statement or fails to keep the records required in subdivision (a) of Section
11 226. The civil penalties provided for in this section are in addition to any
12 other penalty provided by law.” (Lab. Code, § 226.3, emphasis added.)

13 70. Likewise, Labor Code section 1174, subdivision (d), requires every employer,
14 including Defendants, to:

15 “Keep, at a central location in the state or at the plants or establishments at
16 which employees are employed, payroll records showing the hours worked
17 daily by and the wages paid to, and the number of piece-rate units earned
18 by and any applicable piece rate paid to, employees employed at the
19 respective plants or establishments. These records shall be kept in
20 accordance with rules established for this purpose by the commission, but
21 in any case shall be kept on file for not less than three years. An employer
22 shall not prohibit an employee from maintaining a personal record of
23 hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”
24 (Lab. Code, § 1174, subd. (d), emphasis added.)

25 71. As explained in detail above, Defendants failed to provide the Class Members and
26 the Aggrieved Employees with accurate itemized wage statements. Defendants did so, in part,
27 because they failed to accurately track hours worked by the Class Members and the Aggrieved
28 Employees. Defendants have thus failed to keep accurate records of the “total hours worked by

1 the employee[s]” in violation of Labor Code section 226, subdivision (a), and are therefore
2 subject to the penalties provided by Labor Code section 226.3. These penalties are “in addition
3 to any other penalty provided by law.” (Lab. Code, § 226.3.)

4 72. The failure to accurately track hours worked also resulted in a failure of
5 Defendants to keep a record of all “payroll records showing the hours worked daily by”
6 Defendants’ employees, including Plaintiffs and the other Class Members, in violation of Labor
7 Code section 1174, subdivision (d).

8 **V. CLASS ACTION ALLEGATIONS**

9 73. As mentioned above, Plaintiffs bring this action on behalf of themselves and the
10 Class Members pursuant to section 382 of the Code of Civil Procedure.

11 74. **Numerosity/Ascertainability:** The Class Members are so numerous that joinder
12 of all members would be unfeasible and not practicable. The membership of the class is
13 unknown to Plaintiff at this time; however, it is estimated that the number of Class Members is
14 greater than 100 individuals. The identity of such membership is readily ascertainable via
15 inspection of Defendants’ employment records.

16 75. **Common Questions of Law and Fact Predominate/Well Defined Community**
17 **of Interest:** There are common questions of law and fact as to Plaintiffs and all other similarly
18 situated non-exempt employees, which predominate over questions affecting only individual
19 members including, without limitation to:

20 A. Whether Defendants’ pay policies/practices resulted in a failure to pay the
21 Class Members for all hours worked, including all minimum wages;

22 B. Whether Defendants’ pay policies/practices resulted in a failure to pay the
23 Class Members for all required overtime wages at the rate of one and one-half times the
24 Class Members’ regular rate of pay;

25 C. Whether Defendants’ rest period policies and practices afforded legally
26 compliant rest periods or compensation in lieu thereof;

27 D. Whether Defendants’ meal period policies and practices afforded legally
28 compliant meal periods or compensation in lieu thereof;

1 E. Whether Defendants properly paid all paid sick leave at the Class
2 Members' regular rate of pay;

3 F. Whether Defendants maintained accurate employment records;

4 G. Whether Defendants timely paid all wages during employment;

5 H. Whether Defendants timely paid all wages earned and unpaid at
6 separation;

7 I. Whether Defendants furnished legally-compliant wage statements to the
8 Class Members pursuant to Labor Code section 226; and

9 J. Whether Defendants' violations of the Labor Code and the Applicable
10 Wage Orders amounted to a violation of California's UCL.

11 76. **Predominance of Common Questions:** Common questions of law and fact
12 predominate over questions that affect only individual Class Members. The common questions
13 of law set forth above are numerous and substantial and stem from Defendants' uniform policies
14 and practices applicable to each individual class member, such as Defendants' uniform policy
15 and practice of failing to pay for all hours worked, Defendants' uniform policies and practices
16 which failed to provide complaint rest periods, Defendants' uniform policies and practices which
17 failed to provide compliant meal periods, Defendants' failure to provide accurate itemized wage
18 statements, and others. As such, the common questions predominate over individual questions
19 concerning each individual class member's showing as to his or her eligibility for recovery or as
20 to the amount of his or her damages.

21 77. **Typicality:** The claims of Plaintiffs are typical of the claims of the Class
22 Members because Plaintiffs were employed by Defendants as non-exempt employees in
23 California during the statute(s) of limitation applicable to each cause of action pleaded in this
24 complaint. As alleged herein, Plaintiffs, like the other Class Members, were deprived of
25 minimum, regular, and overtime wages because of Defendants' unlawful timekeeping policies
26 and practices, were deprived of rest periods and premium wages in lieu thereof, were deprived of
27 meal periods and premium wages in lieu thereof, were subject to Defendants' uniform rest period
28 policies and practices, were subject to Defendants' uniform meal period policies and practices,

1 were not provided accurate itemized wage statements, were not paid all wages in full and on
2 time, and were subject to other similar policies and practices to which the Class Members were
3 subject.

4 78. **Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary
5 steps to represent fairly and adequately the interests of the Class Members. Moreover, Plaintiffs'
6 attorneys are ready, willing, and able to fully and adequately represent the Class Members and
7 Plaintiffs. Plaintiffs' attorneys have prosecuted numerous wage-and-hour class actions in state
8 and federal court in the past and are committed to vigorously prosecuting this action on behalf of
9 the Class Members.

10 79. **Superiority:** The California Labor Code is broadly remedial in nature and serves
11 an important public interest in establishing minimum working conditions and standards in
12 California. These laws and labor standards protect the average working employee from
13 exploitation by employers who have the responsibility to follow the laws and who may seek to
14 take advantage of superior economic and bargaining power in setting onerous terms and
15 conditions of employment. The nature of this action and the format of laws available to
16 Plaintiffs and the Class Members make the class action format a particularly efficient and
17 appropriate procedure to redress the violations alleged herein. If each employee were required to
18 file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since
19 they would be able to exploit and overwhelm the limited resources of each individual plaintiff
20 with their vastly superior financial and legal resources.

21 80. Moreover, requiring each Class Member to pursue an individual remedy would
22 also discourage the assertion of lawful claims by employees who would be disinclined to file an
23 action against their former or current employer for real and justifiable fear of retaliation and
24 permanent damages to their careers at subsequent employment. Further, the prosecution of
25 separate actions by the individual Class Members, even if possible, would create a substantial
26 risk of inconsistent or varying verdicts or adjudications with respect to the individual Class
27 Members against Defendants herein, and which would establish potentially incompatible
28 standards of conduct for Defendants or legal determinations with respect to individual Class

1 Members which would, as a practical matter, be dispositive of the interest of the other Class
2 Members not parties to adjudications or which would substantially impair or impede the ability
3 of the Class Members to protect their interests.

4 81. Further, the claims of the individual Class Members are not sufficiently large to
5 warrant vigorous individual prosecution considering the concomitant costs and expenses
6 attending thereto. As such, the Class Members identified above are maintainable as a class under
7 section 382 of the Code of Civil Procedure.

8 **VI. EXHAUSTION OF REMEDIES**

9 82. Plaintiffs have fully and completely exhausted administrative remedies under
10 PAGA prior to proceeding with the PAGA claims stated in this complaint. Each Plaintiff filed a
11 PAGA notice online with the Labor Workforce Development Agency (“LWDA”) and sent a
12 letter by certified mail to Defendants setting forth the facts and theories of the violations alleged
13 against Defendants, as prescribed by PAGA. (Lab. Code, §§ 2698–2699.6.)

14 83. As required by PAGA, both Plaintiffs have submitted the \$75.00 filing fee with
15 the LWDA by regular mail. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), no
16 notice was received by Plaintiffs from the LWDA evidencing its intention to investigate within
17 sixty-five calendar days of the postmark date of the PAGA notice. Plaintiffs are therefore
18 entitled to commence and proceed with a civil action pursuant to Labor Code section 2699.

19 **VII. CAUSES OF ACTION**

20 **First Cause of Action**

21 *Failure to Pay All Minimum Wages*

22 *(Against All Defendants)*

23 84. Plaintiffs reallege and incorporate by reference all previous paragraphs.

24 85. Section 4 of the Applicable Wage Orders and Labor Code section 1197 establish
25 the right of employees to be paid minimum wages for all hours worked, in amounts set by state
26 law. (Lab. Code, § 1197; Cal. Code of Regs., tit. 8, §§ 11130, 11140.) Labor Code sections
27 1194, subdivision (a), and 1194.2, subdivision (a), provide that an employee who has not been
28 paid the legal minimum wage as required by Labor Code section 1197 may recover the unpaid

1 balance, together with attorneys' fees and costs of suit, as well as liquidated damages in an
2 amount equal to the unpaid wages and interest accrued thereon.

3 86. Here, Defendants failed to fully conform their pay practices to the requirements of
4 the law during the relevant statutory periods. Plaintiffs and the other Class Members were not
5 compensated for all hours worked including, but not limited to, all hours they were subject to the
6 control of Defendants and/or suffered or permitted to work under the Labor Code and the
7 Applicable Wage Orders.

8 87. Labor Code section 1198 makes unlawful the employment of an employee under
9 conditions that the IWC Wage Orders prohibit. Labor Code sections 1194, subdivision (a), and
10 1194.2, subdivision (a), provide that an employer who has failed to pay its employees the legal
11 minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well
12 as liquidated damages in an amount equal to the wages due and interest thereon.

13 88. As a direct and proximate result of Defendants' unlawful conduct as alleged
14 herein, Plaintiffs and the other Class Members have sustained economic damages, including but
15 not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are
16 entitled to recover economic and statutory damages and penalties and other appropriate relief
17 because of Defendants' violations of the Labor Code and Applicable Wage Orders.

18 89. Defendants' practices and policies regarding illegal employee compensation are
19 unlawful and create an entitlement to recovery by Plaintiffs and the other Class Members in a
20 civil action for the unpaid amount of minimum wages, liquidated damages, including interest
21 thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code sections
22 204, 218.5, 1194, 1194.2, 1197, and 1198, and Code of Civil Procedure section 1021.5.

23 **Second Cause of Action**

24 *Failure to Pay All Overtime Wages*

25 *(Against All Defendants)*

26 90. Plaintiffs reallege and incorporate by reference all previous paragraphs.

27 91. This cause of action is brought pursuant to Labor Code sections 204, 510, 1194,
28 and 1198, which provide that non-exempt employees are entitled to overtime wages for all

1 overtime hours worked and provide a private right of action for the failure to pay all overtime
2 compensation for overtime work performed. At all times relevant herein, Defendants were
3 required to properly pay Plaintiffs and the other Class Members for all overtime wages earned
4 pursuant to Labor Code section 1194 and the Applicable Wage Orders. Defendants caused
5 Plaintiffs and the other Class Members to work overtime hours but did not compensate them at
6 one and one-half times their regular rate of pay for such hours in accordance with California law.
7 Likewise, Defendants caused Plaintiffs and the other Class Members to work double-time hours
8 but did not compensate them at twice their regular rate of pay for such hours in accordance with
9 California law.

10 92. Defendants failed to fully conform their pay practices to the requirements of
11 California law. This unlawful conduct includes but is not limited to Defendants' uniform and
12 unlawful pay policies and practices of failing to accurately record all the time that non-exempt
13 employees were under the supervision and control of Defendants. The foregoing policies and
14 practices are unlawful and allow Plaintiffs and the other Class Members to recover in a civil
15 action the unpaid amount of overtime premiums owing, including interest thereon, statutory
16 penalties, attorney's fees, and costs of suit according to Labor Code section 204, 510, 1194, and
17 1198, the Applicable Wage Orders, and Code of Civil Procedure section 1021.5.

18 **Third Cause of Action**

19 *Failure to Provide Rest Periods and Pay Missed Rest Period Premiums*

20 *(Against All Defendants)*

21 93. Plaintiffs reallege and incorporate by reference all previous paragraphs.

22 94. Section 12 of the Applicable Wage Orders, and Labor Code section 226.7
23 establish the right of employees to be provided with a rest period of at least ten minutes for each
24 four hour period worked, or major fraction thereof. (See Cal. Code of Regs., tit. 8, §§ 11130,
25 11140.)

26 95. Due to Defendants' unlawful rest period policies and practices described in detail
27 above, Defendants did not authorize and permit Plaintiffs and the other Class Members to take
28 all rest periods to which they were legally entitled. Despite Defendants' violations, Defendants

1 have not paid an additional hour of pay to Plaintiffs and the other Class Members at their
2 respective regular rates of pay for each violation, in accordance with California Labor Code
3 section 226.7.

4 96. The foregoing violations create an entitlement to recovery by Plaintiffs and the
5 other Class Members in a civil action for the unpaid amount of rest period premiums owing,
6 including interest thereon, statutory penalties, and costs of suit pursuant to the Applicable Wage
7 Orders, and California Labor Code section 226.7.

8 **Fourth Cause of Action**

9 *Failure to Provide Meal Periods and Pay Missed Meal Period Premiums*

10 *(Against All Defendants)*

11 97. Plaintiffs reallege and incorporate by reference all previous paragraphs.

12 98. Plaintiffs are informed and believe and thereon allege, that Defendants failed in
13 their affirmative obligation to provide their hourly non-exempt employees, including Plaintiffs
14 and the other Class Members, with all required meal periods in accordance with the mandates of
15 the Labor Code and the Applicable Wage Orders, for the reasons set forth herein above. Despite
16 Defendants' violations, Defendants have not paid an additional hour of pay to Plaintiffs and the
17 other Class Members at their respective regular rates of pay for each violation, in accordance
18 with California Labor Code section 226.7.

19 99. As a result, Defendants are responsible for paying premium compensation for
20 meal period violations, including interest thereon, statutory penalties, and costs of suit pursuant
21 to the Applicable Wage Orders and Labor Code sections 226.7 and 512, and Civil Code sections
22 3287, subdivision (b), and 3289. (See Cal. Code of Regs., tit. 8, §§ 11130, 11140.)

23 **Fifth Cause of Action**

24 *Failure to Maintain Accurate Employment Records*

25 *(Against All Defendants)*

26 100. Plaintiffs reallege and incorporate by reference all previous paragraphs.

27 101. Pursuant to California Labor Code section 1174, subdivision (d), an employer
28 shall keep at a central location in the state or at the plants or establishments at which employees

1 are employed, payroll records showing the hours worked daily by and wages paid to employees
2 employed at the respective plants or establishments. These records must be kept in accordance
3 with rules established for this purpose by the commission, but in any case shall be kept on file
4 for not less than two years.

5 102. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's
6 failure to maintain accurate and complete records.

7 103. Defendant has intentionally and willfully failed to keep accurate and complete
8 records showing the hours worked daily and wages paid to Plaintiffs and the other Class
9 Members. Thus, Plaintiffs and the other Class Members have been denied their legal right and
10 protected interest in having available at a central location at the plant or establishment where
11 they are employed, accurate and complete payroll records showing the hours worked daily by,
12 and the wages paid to, employees at those respective locations pursuant to Labor Code 1174.

13 **Sixth Cause of Action**

14 *Failure to Pay Wages Timely during Employment*

15 *(Against All Defendants)*

16 104. Plaintiffs reallege and incorporate by reference all previous paragraphs.

17 105. Labor Code section 200 provides that "wages" include all amounts for labor
18 performed by employees of every description, whether the amount is fixed or ascertained by the
19 standard of time, task, pieces, commission basis, or other method of calculation. Labor Code
20 section 204 states that all wages earned by any person in any employment are payable twice
21 during the calendar month and must be paid not more than seven days following the close of the
22 period when the wages were earned. Labor Code section 210, subdivision (a), makes employers
23 who violate Labor Code section 204 subject to a penalty of \$100 for any initial failure to timely
24 pay each employee's full wages and \$200 for each subsequent violation, plus 25% of the amount
25 unlawfully withheld.

26 106. Labor Code section 216 establishes that it is a misdemeanor for any person, with
27 regards to wages due, to "falsely deny the amount or validity thereof, or that the same is due,
28 with intent to secure himself, his employer or other person, any discount upon such indebtedness,

1 or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such
2 indebtedness is due.”

3 107. Defendants as a matter of established company policy and procedure in the State
4 of California, scheduled, required, suffered, and/or permitted Plaintiffs and the other Class
5 Members, to work without full compensation, to work without legally-compliant off-duty meal
6 periods, to work without legally-compliant off-duty rest periods, and thereby failed to fully pay
7 Plaintiffs and the other Class Members within seven days of the close of payroll, as required by
8 law.

9 108. Defendants, as a matter of established company policy and procedure in the State
10 of California, falsely deny they owe Plaintiffs and the other Class Members these wages, with
11 the intent of securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress,
12 hinder, delay, and/or defraud Plaintiffs and the other Class Members.

13 109. Defendants’ pattern, practice, and uniform administration of its corporate policy
14 of illegally denying employees compensation, as described herein, is unlawful and entitles
15 Plaintiffs and the other Class Members to recover, pursuant to Labor Code section 218, the
16 unpaid balance of the compensation owed to them in a civil action and any applicable penalties,
17 attorney fees, and interest owed to them pursuant to Labor Code sections 210 and 218.5.

18 **Seventh Cause of Action**

19 *Failure to Pay All Wages Earned and Unpaid at Separation*

20 *(Against All Defendants)*

21 110. Plaintiffs reallege and incorporate by reference all previous paragraphs.

22 111. Labor Code sections 201 and 202 of the California Labor Code require
23 Defendants to pay all compensation due and owing to its former employees (including the
24 formerly-employed Class Members) at or around the time that their employment is or was
25 terminated, or ended.

26 112. Section 203 of the Labor Code provides that if an employer willfully fails to pay
27 compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then
28 the employer is liable for penalties in the form of continued compensation up to thirty workdays.

113. Due to Defendants' faulty pay policies, those Class Members whose employment with Defendants has concluded were not compensated for each and every hour worked at the appropriate rate. Defendants have willfully failed to pay those formerly-employed Class Members whose sums were certain at the time of termination within seventy-two hours of their resignation and have failed to pay those sums for thirty days thereafter as required by Labor Code sections 201 through 203.

114. As a result, Defendants are liable to the formerly-employed Class Members for waiting time penalties amounting to thirty days' wages for the formerly-employed Class Members pursuant to Labor Code section 203. (See, e.g., DLSE Manual, § 4.3.4 [failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties].)

Eighth Cause of Action

Failure to Indemnify All Necessary Business Expenditures

(Against All Defendants)

115. Plaintiffs reallege and incorporate by reference all previous paragraphs.

116. California Labor Code Section 2802 states that employers must “indemnify” an employee for “all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” Likewise, Labor Code section 2804 states that “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

117. Here, Plaintiffs and the other Class Members paid out of pocket for necessary business expenditures incurred as a direct consequence and requirement of performing their job duties, including the costs associated with their personal cell phone they required to perform their work. Despite knowing that Plaintiffs and the other Class Members incurred these necessary business expenses, and requiring Plaintiffs and the other Class Members to use such items, Defendants did not reimburse them.

1 118. Thus, Plaintiffs and the other Class Members are entitled to recover the cost of
2 such necessary business expenses, plus interest from the date each incurred such business
3 expenses, plus fees and costs. (Lab. Code, § 2802, subds. (b), (c).)

4 **Ninth Cause of Action**

5 *Failure to Furnish Accurate Itemized Wage Statements*

6 *(Against All Defendants)*

7 119. Plaintiffs reallege and incorporate by reference all previous paragraphs.

8 120. Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at
9 the time of each payment to furnish an itemized wage statement in writing showing:

- 10 (1) The gross wages earned;
 - 11 (2) The total hours worked by the employee;
 - 12 (3) The number of piece-rate units earned and any applicable
13 piece rate if the employee is paid on a piece rate basis;
 - 14 (4) All deductions, provided that all deductions made on
15 written orders of the employee may be aggregated and shown as
16 one item;
 - 17 (5) The net wages earned;
 - 18 (6) The inclusive dates of the period for which the employee is
19 paid;
 - 20 (7) The name of the employee and only the last four digits of
21 his or her social security number or an employee identification
22 number other than a social security number;
 - 23 (8) The name and address of the legal entity that is the
24 employer; and
 - 25 (9) All applicable hourly rates in effect during the pay period
26 and the corresponding number of hours worked at each hourly rate
27 by the employee.
- 28

121. As set forth above, Defendants issued and continues to issue wage statements to Plaintiffs and the other Class Members that are inadequate under Labor Code section 226, subdivision (a). By failing to pay Plaintiffs and the other Class Members properly as described above, Defendants failed to include required information on their wage statements, including, but not limited to, the gross wages earned, the net wages earned in violation of Labor Code section 226, subdivision (a).

122. Defendants' failure to comply with Labor Code section 226, subdivision (a), of the Labor Code was knowing and intentional. (Lab. Code, § 226, subd. (e)).

123. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiffs and the other Class Members in violation of Labor Code section 226, subdivision (a), Plaintiffs and the other Class Members are each entitled to recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiffs and per each Class Member from Defendants pursuant to Labor Code section 226, subdivision (e), along with costs and reasonable attorneys' fees.

Tenth Cause of Action

Violations of California's Unfair Competition Law

(Against All Defendants)

124. Plaintiffs reallege and incorporate by reference all previous paragraphs.

125. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code section 17200 through 17210, by committing the unlawful acts described above. Defendants' utilization of these unfair and unlawful business practices deprived and continue to deprive Plaintiffs and the other Class Members of compensation to which they are legally entitled. These practices constitute unfair and unlawful competition and provide an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

126. Because Plaintiffs are victims of Defendants' unfair and unlawful conduct alleged herein, Plaintiffs for themselves and on behalf of the Class Members, seek full restitution of

1 monies, as necessary and according to proof, to restore any and all monies withheld, acquired
2 and/or converted by Defendants pursuant to Business and Professions Code sections 17203 and
3 17208.

4 127. The acts complained of herein occurred during the Class Period and are
5 continuing into the present and ongoing.

6 128. Plaintiffs were compelled to retain the services of counsel to file this Court action
7 to protect their interests and those of the Class Members, to obtain restitution and injunctive
8 relief on behalf of Defendants' current non-exempt employees and to enforce important rights
9 affecting the public interest. Plaintiffs have thereby incurred the financial burden of attorneys'
10 fees and costs, which Plaintiffs are entitled to recover under Code of Civil Procedure section
11 1021.5.

12 **Eleventh Cause of Action**

13 *Penalties Pursuant to PAGA for Violations of California Labor Code Sections*

14 *201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2,*

15 *1197, 1197.1, 1198, 1198.5, 1199, and Other Provisions of the Labor Code*

16 *(Against All Defendants)*

17 129. Plaintiffs reallege and incorporate by reference all previous paragraphs.

18 130. Based on the above allegations incorporated by reference, Defendants violated
19 Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194,
20 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, and others that may be applicable; and the Applicable
21 Wage Orders (Cal. Code of Regs., tit. 8, §§ 11130, 11140), and others that may be applicable.

22 131. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code
23 sections 2698 through 2699.6 because of Defendants' violation of Labor Code sections 201, 202,
24 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198,
25 1198.5, 1199, and others that may be applicable; and the Applicable Wage Orders (Cal. Code of
26 Regs., tit. 8, §§ 11130, 11140), and others that may be applicable.

1 132. Under Labor Code section 2699, subdivision (f)(2), and 2699.5, for each such
2 violation, Plaintiffs and the Aggrieved Employees are entitled to penalties in an amount to be
3 shown at the time of trial subject to the following formula:

4 A. \$100 for the initial violation per employee per pay period; and

5 B. \$200 for each subsequent violation per employee per pay period.

6 133. These penalties must be allocated seventy-five percent to the Labor and
7 Workforce Development Agency (“LWDA”) and twenty-five percent to the affected employees.
8 These penalties may be stacked separately for each of Defendants violations of the California
9 Labor Code. (*Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 780–781 [citing
10 with approval *Stoddart v. Express Services, Inc.* (E.D. Cal., Sept. 16, 2015, No. 2:12-CV-01054-
11 KJM) 2015 WL 5522142, at *9, for the proposition that plaintiff could pursue separate claims for
12 penalties under Labor Code section 226, subdivision (e), and penalties for Labor Code section
13 226, subdivision (a), violations]; see also *Hernandez v. Towne Park, Ltd.* (C.D. Cal., June 22,
14 2012, No. CV 12-02972 MMM JCGX) 2012 WL 2373372, at *17 fn. 70 [noting that federal
15 courts applying California law have found that “PAGA penalties can be stacked, i.e., multiple
16 PAGA penalties can be assessed for the same pay period for different Labor Code violations.”],
17 internal quotation marks omitted).

18 134. In addition, to the extent permitted by law, Defendants failed to provide Plaintiffs
19 and all Aggrieved Employees with accurate itemized wage statements in compliance with Labor
20 Code section 226, subdivision (a). Plaintiffs seek separate PAGA penalties for Defendants’
21 violations of Labor Code section 226, subdivisions (a) and (e). (*Lopez v. Friant & Associates,*
22 *LLC, supra*, 15 Cal.App.5th at pp. 780, 788.)

23 135. For violations of Labor Code section 226, subdivision (a), Plaintiffs seeks the
24 default penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that
25 “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in
26 the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation
27 and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for
28 which the employer fails to provide the employee a wage deduction statement or fails to keep the

1 required in subdivision (a) of Section 226.” Accordingly, through PAGA and to the extent
2 permitted by law Plaintiffs and the Aggrieved Employees are entitled to recover penalties for
3 violations of Labor Code section 226.3 and seeks default PAGA penalties for each of
4 Defendants’ numerous violations of Labor Code section 226, subdivision (e).

5 136. Labor Code section 210 provides that “in addition to, and entirely independent
6 and apart from, any other penalty provided in this article, every person who fails to pay the
7 wages of each employee as provided in Sections . . . 204 . . . shall be subject to a civil penalty as
8 follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
9 employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred
10 dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully
11 withheld.” As a result of the faulty compensation policies and practices, Plaintiff and the
12 Aggrieved Employees are also entitled to recover penalties under Labor Code section 210
13 through PAGA.

14 137. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
15 liquidated damages, in the amount of: (1) one hundred dollars (\$100) for any initial violation that
16 is intentionally committed for each underpaid employee for each pay period for which the
17 employee is underpaid, and (2) two hundred fifty dollars (\$250) for each subsequent violation for
18 the same specific offense for each underpaid employee for each pay period for which the
19 employee is underpaid regardless of whether the initial violation is intentionally committed.
20 Accordingly, through PAGA and to the extent permitted by law, Plaintiffs and the Aggrieved
21 Employees are entitled to recover pursuant to Labor Code section 1197.1.

22 138. Plaintiffs were compelled to retain the services of counsel to file this action to
23 protect their interests and those of the Aggrieved Employees, and to assess and collect the wages
24 and penalties owed by Defendants. Plaintiffs have thereby incurred attorneys’ fees and costs,
25 which Plaintiffs are also entitled to recover under Labor Code section 2699, subdivision (g)(1).

26 **VIII. DEMAND FOR JURY TRIAL**

27 139. Plaintiffs hereby demand trial by jury of Plaintiffs’ and the Class Members’
28 claims against Defendants.

1 **IX. PRAYER FOR RELIEF**

2 Plaintiffs pray for judgment for themselves and for all others on whose behalf this suit is
3 brought against Defendants, as follows:

- 4 1. For an order certifying the proposed class;
- 5 2. For an order appointing Plaintiffs as representatives of the class;
- 6 3. For an order appointing Plaintiffs' counsel as counsel for the class;
- 7 4. For the failure to pay all minimum wages, compensatory, consequential, general,
8 and special damages according to proof pursuant to Labor Code sections 1194, 1194.2, 1197, and
9 others as may be applicable;
- 10 5. For the failure to pay all overtime wages, compensatory, consequential, general,
11 and special damages according to proof pursuant to Labor Code sections 204, 510, 1194, 1198,
12 and others as may be applicable;
- 13 6. For the failure to provide rest periods and pay missed rest period premiums,
14 compensatory, consequential, general, and special damages according to proof pursuant to Labor
15 Code section 226.7;
- 16 7. For the failure to provide meal periods and pay missed meal period premiums,
17 compensatory, consequential, general, and special damages according to proof pursuant to Labor
18 Code sections 226.7 and 512;
- 19 8. For the failure to maintain accurate employment records, penalties pursuant to
20 Labor Code sections 226.3, 1174.5, and others that may be applicable;
- 21 9. For the failure to pay wages timely during employment, the unpaid balance of the
22 compensation owed to Plaintiffs and the other Class Members and any applicable penalties owed
23 to them pursuant to Labor Code section 210;
- 24 10. For the failure to pay all wages earned and unpaid at separation, statutory waiting
25 time penalties pursuant to Labor Code sections 201 through 203, for the Class Members who quit
26 or were fired in an amount equal to their daily wage multiplied by thirty days, as may be proven;
- 27
- 28

1 11. For the failure to indemnify all necessary business expenditures, all unreimbursed
2 business expenses, and interest thereon, that are owed, pursuant to Labor Code section 2802, and
3 attorney fees, pursuant to Labor Code section 2802, subdivision (c);

4 12. For the violations of California's Unfair Competition Law, restitution to Plaintiffs
5 and the other Class Members of all money and/or property unlawfully acquired by Defendants by
6 means of any acts or practices declared by this Court to be in violation of Business and
7 Professions Code sections 17200 through 17210;

8 13. For the claim of penalties pursuant to PAGA and other provisions of the
9 California Labor Code, a civil penalty in the amount of \$100 for the initial violation and \$200 for
10 each subsequent violation as specified in Labor Code section 2699, subdivision (f)(2), in the
11 representative action brought on behalf of Plaintiffs and the Aggrieved Employees pursuant the
12 Labor Code Private Attorneys General Act of 2004, and for civil penalties available under Labor
13 Code section 210;

14 14. Prejudgment interest on all due and unpaid wages pursuant to Labor Code section
15 218.6 and Civil Code sections 3287 and 3289;

16 15. On all causes of action for which attorneys' fees may be available, for attorneys'
17 fees and costs as provided by Labor Code sections 218.5, 226, Code of Civil Procedure section
18 1021.5, and others as may be applicable;

19 16. For an order enjoining Defendants, and each of them, and their agents, servants,
20 and employees, and all persons acting under, in concert with, or for them, from acting in
21 derogation of any rights or duties adumbrated in this complaint; and

22 17. For such other and further relief, this Court may deem just and proper.

23
24 Dated: December 14, 2023

BOKHOUR LAW GROUP, P.C.

/s/ Mehrdad Bokhour

Mehrdad Bokhour
Attorneys for Plaintiff Gloria Lopez Quijano, the
Putative Class, and the Aggrieved Employees

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Dated: December 14, 2023

MOON LAW GROUP, PC

/s/ Kane Moon

Kane Moon
Attorneys for Plaintiff Anthony Carlos, the
Putative Class, and the Aggrieved Employees

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I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1901 Avenue of the Stars, Suite 450, Los Angeles, California 90067.

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Executed on December 18, 2023, at Los Angeles, California.

Carlos Garcia