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Attorney for Plaintiff,
JEFFERY CHARLES KUHN

IN THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, NORTH COUNTY

JEFFERY CHARLES KUHN, an individual, on
behalf of all others similarly situated,

Plaintiffs,

v.

SUPERIOR READY MIX CONCRETE, L.P.,
JACOB BROUWER, AND J. BROUWER
INVESTMENTS, INC., and DOES 1 through 20
inclusive,

Defendants.

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Veronica Navarro, Deputy Clerk

Case No. 37-2022-00016441-CU-OE-NC

CLASS ACTION COMPLAINT FOR:

1. Failure to Indemnify for Necessary Expenditures in Violation of Labor Code § 2802;
2. Failure to Provide Meal Periods in Violation of §§ 226.7, 512 (a), and 1198;
3. Failure to Provide Rest Periods in Violation of Labor Code §§ 226.7 and 1198;
4. Failure to Pay Minimum Wage in Violation of Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198;
5. Failure to Pay Overtime in Violation of Labor Code §§ 510 and 1198;
6. Failure to Furnish Compliant Wage Statements and Maintain Accurate Pay Records in violation of § 226, 1174 (d), and 1198;
7. Failure to Timely Pay Wages in Violation of Labor Code § 204;
8. Willful Failure to Pay Wages in Violation of Labor Code §§ 201-203;

9. Civil Penalties in Violation of Labor Code
§§ 2698, et seq.;

10. Unfair Competition in Violation of Labor
Code §§17200, et seq.

Jury Trial Demanded

1. Plaintiff JEFFERY CHARLES KUHN, on behalf of himself and all others similarly situated, and as an aggrieved employee on behalf of all other aggrieved employees, is informed and believes and thereon alleges as follows:

PARTIES, VENUE AND JURISDICTION

2. This Class Action is brought pursuant to Code of Civil Procedure § 382 to recover wages and all other available relief on behalf of Plaintiff and all similarly situated current and former non-exempt, hourly-paid employees of Defendants.

3. This enforcement action is brought pursuant to the Private Attorneys General Act of 2004, California Labor Code §§ 2698, et seq. (“PAGA”) to recover civil penalties and any other available relief on behalf of Plaintiff, the State of California, and other current and former aggrieved employees of Defendants and against whom one or more Labor Code violations or any provision regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order were committed, as set forth in this Complaint.

4. Plaintiff JEFFERY CHARLES KUHN has worked as a maintenance mechanic for SUPERIOR READY MIX CONCRETE, L.P., JACOB BROUWER, AND J. BROUWER INVESTMENTS, INC., and DOES 1-20, a concrete and materials supplier, at 1508 W. Mission Rd., Escondido, CA 92025, from October 12, 2020 to the present. Plaintiff's job duties included performing maintenance and repairs to on-road construction vehicles.

5. Plaintiff JEFFERY CHARLES KUHN was at all times relevant hereto a resident of Ramona, California.

6. At all relevant times herein, Defendant SUPERIOR READY MIX CONCRETE, L.P. was a Corporation with its principal place of business in Escondido, California. Defendant SUPERIOR READY MIX CONCRETE, L.P. also operates plants in Imperial County, Riverside

1 County, and throughout San Diego County.

2 7. Defendant JACOB BROUWER was at all times relevant herein the principal of
3 SUPERIOR READY MIX CONCRETE, L.P..

4 8. Venue is proper pursuant to California Civil Procedure Code §§ 395 (a) and 395.5
5 because this suit was filed in the county where the liability arises, where the breach occurred and where
6 Defendants resided at the commencement of this action.

7 9. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
8 unity of interest and ownership between SUPERIOR READY MIX CONCRETE, L.P., JACOB
9 BROUWER and DOES 1-20 that the individuality and separateness of defendants have ceased to exist.

10 10. Plaintiff is informed and believes, and based thereon alleges, that despite the formation
11 of purported corporate existence, SUPERIOR READY MIX CONCRETE, L.P., JACOB BROUWER
12 and DOES 1-20 are, in reality, one and the same.

13 11. SUPERIOR READY MIX CONCRETE, L.P., JACOB BROUWER and DOES 1-20
14 do not comply with all requisite corporate formalities to maintain a legal and separate existence.

15 12. The business affairs of SUPERIOR READY MIX CONCRETE, L.P., JACOB
16 BROUWER and DOES 1-20 are, and at all times relevant were, so mixed and intermingled that the
17 same cannot reasonably be segregated, and the same are in inextricable confusion. SUPERIOR
18 READY MIX CONCRETE, L.P. is, and at all times relevant hereto was, used by DOES 1-20 and
19 JACOB BROUWER as a mere shell and conduit for the conduct of certain of Defendants' affairs, and
20 is, and was, the alter ego of DOES 1-20. The recognition of the separate existence of SUPERIOR
21 READY MIX CONCRETE, L.P. would not promote justice, in that it would permit Defendants to
22 insulate themselves from liability to Plaintiff for violations of state law. The corporate existence of
23 SUPERIOR READY MIX CONCRETE, L.P. and DOES 1-20 should be disregarded in equity and for
24 the ends of justice because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

25 13. Accordingly, SUPERIOR READY MIX CONCRETE, L.P., JACOB BROUWER and
26 DOES 1-20 are the alter egos of one another, and the fiction of their separate corporate existence must
27 be disregarded.

28 14. As a result of the aforementioned facts, Plaintiff is informed and believes, and based

1 thereon alleges that SUPERIOR READY MIX CONCRETE, L.P., JACOB BROUWER and DOES
2 1-20 are joint employers by virtue of a joint enterprise, and that the employees and agents of
3 SUPERIOR READY MIX CONCRETE, L.P. were also employees of JACOB BROUWER and
4 DOES 1-20. SUPERIOR READY MIX CONCRETE, L.P. employees performed services for each
5 and every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants shared
6 control of them as employees, either directly or indirectly, and the manner in which Defendants'
7 business was and is conducted.

8 15. The true names and capacities, whether individual, corporate, associate, or otherwise,
9 of the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and
10 therefore these Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this
11 Complaint to insert the true names and capacities of these Defendants when they become known to
12 Plaintiff. Plaintiff is informed and believes and based thereupon alleges, that each of the fictitiously
13 named Defendants is responsible for the wrongful acts alleged herein and are therefore liable to
14 Plaintiff as alleged hereinafter.

15 16. Plaintiff is informed and believes and based thereupon alleges, that at all times relevant
16 hereto, Defendants were the agents, employees, managing agents, supervisors, coconspirators, parent
17 corporation, joint employers, alter egos, successors, and/or joint ventures of the other Defendants, and
18 each of them, and in doing the things alleged herein, were acting at least in part within the course and
19 scope of said agency, employment, conspiracy, joint employer, alter ego status, successor status and/or
20 joint venture and with the permission and consent of each of the other Defendants.

21 17. Plaintiff is informed and believes and based thereupon alleges, that Defendants,
22 including those defendants named as DOES 1-20 acted in concert with one another to commit the
23 wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the
24 wrongful acts alleged herein, and/or attempted to do so. Plaintiff is further informed and believes, and
25 based thereupon alleges, that Defendants, including those defendants named as DOES 1-20 formed
26 and executed a conspiracy or common plan pursuant to which they would commit the unlawful acts
27 alleged herein, with all such acts alleged herein done as part of and pursuant to said conspiracy,
28 intended to cause and actually causing Plaintiff's harm.

1 18. Whenever and wherever reference is made in this Complaint to any act or failure to act
2 by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
3 and/or failures to act by each Defendant acting individually, jointly and severally.

4 **FACTUAL ALLEGATIONS**

5 19. Plaintiff JEFFERY CHARLES KUHN has worked as a Maintenance Mechanic for
6 Defendants from October 12, 2020 to the present. Mr. Kuhn's job duties include maintainance and
7 repair of on-road construction vehicles. Mr. Kuhn performs most of his work for Defendants at one of
8 the company's many plants, located at 12494 California 67, Lakeside, California.

9 20. Defendants SUPERIOR READY MIX CONCRETE, L.P., JACOB BROUWER, and
10 J. BROUWER INVESTMENTS, INC. also operate numerous plants in Imperial County, Riverside
11 County, and San Diego County. Mr. Kuhn began work for Defendants at their plant on Mission Gorge
12 Road in San Diego.

13 21. Since he has worked for Defendants, Mr. Kuhn has been paid \$26 per hour.

14 22. As detailed below, Mr. Kuhn alleges that Defendants failed to reimburse him and the
15 class members for the tools necessary to perform their jobs; and Defendants failed to provide Plaintiff
16 and class members uninterrupted meal and rest periods, failed to pay minimum wage, failed to pay
17 overtime, failed to furnish itemized wage statements and maintain accurate pay records, willfully
18 failed to pay wages, and failed to timely pay wages.

19 **GENERAL ALLEGATIONS**

20 23. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class members
21 were not paid for all hours worked because all hours worked were not recorded.

22 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
23 have known that Plaintiff and class members were entitled to receive certain wages for overtime
24 compensation and that they were in fact not receiving certain wages for overtime compensation.

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

1 not paid at least minimum wages for work done off-the-clock.

2 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and class members were entitled to receive full reimbursement for
4 all business-related expenses and costs they incurred in direct consequence of the discharge of their
5 duties and that they did not receive full reimbursement of applicable business-related expenses and
6 costs incurred.

7 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to meal periods in accordance with
9 the Labor Code or payment of one additional hour of pay at their regular rates of pay when they were
10 not provided with timely, uninterrupted, 30 minute meal periods and that Plaintiff and class members
11 were not provided with all meal periods or payment of one additional hour of pay at their regular rates
12 of pay when they did not receive a timely, uninterrupted, 30 minute meal period.

13 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and class members were entitled to 10 minute rest periods in
15 accordance with the Labor Code and applicable IWC Wage Order or payment of one additional hour
16 of pay at their regular rates of pay when they were not provided with a compliant 10 minute rest
17 period and that Plaintiff and class members were not provided compliant 10 minute rest periods or
18 payment of one additional hour of pay at their regular rates of pay when they were not provided a
19 compliant 10 minute rest period.

20 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and class members were entitled to timely payment of all wages
22 earned upon termination of employment. In violation of the California Labor Code, Plaintiff and class
23 members did not receive payment of all wages due, including overtime wages, minimum wages, and
24 meal and rest period premiums, within the time periods required by law.

25 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and class members were entitled to timely payment of wages during
27 their employment. Plaintiff and class members did not receive payment of all wages, including
28 overtime wages, minimum wages, and meal and rest period premiums in violation of the California

1 Labor Code.

2 31. Plaintiff is informed and believes, and thereon alleges, that at all times herein
3 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff and
4 class members for all hours worked, and that Defendants had the financial ability to pay such
5 compensation, but willfully, knowingly, and intentionally failed to do so.

6 **CLASS ACTION ALLEGATIONS**

7 32. Plaintiff's proposed Class consists of:

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

11 33. Plaintiff's proposed subclass consists of:

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

15 34. Members of the Class and Subclass are referred to herein as "Class."

16 35. Plaintiff reserves the right to redefine the Class and to add additional subclasses as
17 appropriate based on further investigation and discovery.

18 36. At all relevant times, Defendants have had a common and consistent policy and practice
19 of failing to reimburse for necessary business expenditures, failure to provide uninterrupted meal and
20 rest periods, pay the proper minimum wage and overtime, furnish compliant wage statements,
21 maintain accurate pay records, and timely pay wages in violation of the Labor Code and IWC Wage
22 Orders.

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

25 38. **Numerosity:** The members of the Class are sufficiently numerous that joinder of all
26 members is impracticable. The membership of the entire Class is unknown to Plaintiff at this time.
27 However, the Class is estimated to be greater than 50 individuals and the identity of such membership
28 is readily ascertainable by inspection of Defendants' employment records. Such individuals are

1 employed at Defendants' numerous plants in Imperial County, Riverside County, and San Diego
2 County.

3 39. **Commonality:** There are questions of law and fact common to the Class that are
4 answerable on a common basis, and these questions predominate over individual questions. The
5 questions of law and fact common to the Class include, without limitation:

- 6 a. Whether Defendants failed to reimburse Plaintiff and class members for necessary
7 business expenditures, losses incurred by them in direct consequence of the
8 discharge of their duties or obedience to the directions of the employer;
- 9 b. Whether Defendants failed to provide Plaintiff and class members with meal
10 periods;
- 11 c. Whether Defendants failed to provide Plaintiff and class members with rest periods;
- 12 d. Whether Defendants failed to pay Plaintiff and class members at least minimum
13 wages for all hours worked;
- 14 e. Whether Defendants required Plaintiff and class members to work over 8 hours per
15 day, over 12 hours per day, or over 40 hours per week and failed to pay them all
16 legally required overtime compensation;
- 17 f. Whether Defendants failed to pay earned overtime wages, minimum wages, and
18 meal and rest period premiums due to Plaintiff and class members upon their
19 discharge;
- 20 g. Whether Defendants failed to timely pay overtime wages, minimum wages, and
21 meal and rest period premiums to Plaintiff and class members during their
22 employment;
- 23 h. Whether Defendants provided Plaintiff and class members with complete and
24 accurate wage statements as required by California Labor Code section 226 (a);
- 25 i. Whether Defendants engaged in unlawful and unfair business practices in violation
26 of California Business & Professions Code sections 17200, *et seq.*; and,
- 27 j. The appropriate amount of damages, restitution, or monetary penalties resulting
28 from Defendants' violations of California law.

40. **Typicality:** Plaintiff's claims are typical of the claims of the Class he seeks to represent. As set forth herein, Defendants' common course of conduct causes Plaintiff and similarly situated persons employed by Defendants the same or similar injuries and damages. Plaintiff's claims are thereby representative of and co-extensive with the claims of the Class.

41. **Adequacy:** Plaintiff will fairly and adequately represent the interests of all members of the Class he seeks to represent. Plaintiff is members of the Class he seeks to represent, does not have any conflicts of interest with the Class, will prosecute the case vigorously on behalf of the Class, and has already devoted time and resources to the initial investigation of these claims. Plaintiff's attorney is competent and experienced in litigating employment actions, including wage and hour class actions.

42. **Superiority of Class Action:** A class action is superior to other available methods for the fair and efficient adjudication of this controversy. In particular, Plaintiff is informed and believes that some Class Members may be unwilling to bring individual lawsuits for fear of retaliation by Defendants. Because the damages suffered by certain individual members of the Class may be relatively small, the expense and burden of individual litigation make it impracticable for Class Members to pursue their claims separately. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants' illegal, fraudulent and unfair employment practices and policies. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Class action treatment will also avoid inconsistent outcomes because the same issues can be adjudicated in the same manner for all members of the Class.

FIRST CAUSE OF ACTION

FAILURE TO INDEMNIFY FOR NECESSARY EXPENDITURES

IN VIOLATION OF LABOR CODE § 2802

(AGAINST ALL DEFENDANTS)

43. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though fully set forth herein.

44. An employer shall indemnify his or her 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

1 or her obedience to the directions of the employer.

2 45. At all times relevant herein, Defendants have had a uniform practice and policy of
3 paying their employees less than twice the minimum wage in contravention of the applicable IWC
4 Wage Orders and California Labor Code §§ 1182, 1194, 1194.2, and 1197.

5 46. At all times relevant herein, Class Members have been required by Defendants to
6 purchase tools, and in fact did purchase tools in order to perform their duties. All technicians and
7 mechanics employed by Defendants are required to supply their own tools to perform their job duties
8 because Defendants fail to supply them with a sufficient quantity at their work locations.

9 47. Since Plaintiff JEFFERY CHARLES KUHN has worked for Defendants, he has spent
10 about \$2,000 for tools for his work. He also uses about \$20,000 worth of tools that he owned prior to
11 working for Defendants. Mr. Kuhn carries these tools in two toolboxes, one an \$8,000 toolbox and
12 another \$2,000 toolbox, both of which he purchased himself. At Defendants' Lakeside shop, where
13 Mr. Kuhn works, Defendants supply one Lube Tech toolbox for the Lube Tech and a one-inch air gun.
14 However, Defendants provide no hand tools at the shop. When Mr. Kuhn was interviewing for the job
15 with Defendants, he was specifically asked if he had his own tools for the job; and Mr. Kuhn responded
16 affirmatively.

17 48. Since Defendants' locations either have no toolbox at all; or if there is one, it is not
18 stocked with all tools necessary to perform their jobs; mechanics and technicians must therefore supply
19 their own tools; and they are required to incur tool expenditures, which Defendants have not
20 reimbursed. Defendants' practice of failing to reimburse non-double minimum wage-earning
21 mechanics and technicians for the purchase of their hand tools and equipment is violation of Labor
22 Code § 2802.

23 49. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
24 Defendants have maintained a policy, practice, or a lack of policy, which resulted in their failure to
25 indemnify the Class for the reasonable expenses they incurred in the course of performing their duties.
26 Specifically, Plaintiff is informed and believes and thereon alleges that at all relevant times,
27 Defendants have not reimbursed Class Members for the purchase of their tools.

28 50. As a result of the foregoing, all members of the Class are entitled to recover all sums

1 incurred by them for the purchase of the tools that were necessary for the performance of their jobs
2 and which they were required to purchase in an amount according to proof at trial.

3 51. As a result of the foregoing, Class members are further entitled to an award of interest
4 at the same rate as judgments in civil actions, accruing from the date on which they incurred the
5 necessary expenditures or losses and all reasonable costs, including attorney's fees incurred by them
6 for enforcing the rights granted by Labor Code § 2802.

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PROVIDE MEAL PERIODS**

9 **LABOR CODE §§ 226.7, 512 (a) and 1198**

10 **(AGAINST ALL DEFENDANTS)**

11 52. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
12 though fully set forth herein.

13 53. "An employer shall not employ an employee for a work period of more than five hours
14 per day without providing the employee with a meal period of not less than 30 minutes, except that if
15 the total work period per day of the employee is no more than six hours, the meal period may be
16 waived by mutual consent of both the employer and employee. An employer shall not employ an
17 employee for a work period of more than 10 hours per day without providing the employee with a
18 second meal period of not less than 30 minutes, except that if the total hours worked is no more than
19 12 hours, the second meal period may be waived by mutual consent of the employer and the employee
20 only if the first meal period was not waived." Labor Code § 512; IWC Wage Order Nos. 1–2001 to
21 16–2001, § 11; IWC Wage Order No. 17-2001, § 9; 8 Cal Code Regs §§ 11010-11160, § 11; 8 Cal
22 Code Regs § 11170, § 9.

23 54. "An employer shall not require an employee to work during a meal ... period mandated
24 pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
25 Commission If an employer fails to provide an employee a meal ... period in accordance with a
26 state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order
27 of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of
28 pay at the employee's regular rate of compensation for each workday that the meal ... period is not

1 provided.” Lab. Code § 226.7 (b) & (c).

2 55. At all relevant times, Plaintiff and the Class regularly worked more than five hours per
3 day, and were thereby entitled to take uninterrupted 30-minute meal periods on each day of work.
4 Defendants have provided no designated times for employees to take lunch.

5 56. At all relevant times herein, Defendants had, and continue to have, a company-wide
6 policy and/or practice of understaffing their locations while simultaneously assigning demanding
7 workloads, which had the combined effect of preventing employees from taking all timely,
8 uninterrupted meal periods to which they were entitled. Therefore, there were no other employees
9 available to relieve employees of their duties, so as to allow them to take their meal periods.
10 Additionally, Defendants had no policy and/or practice of scheduling meal periods for employees. As
11 a result of Defendants’ policies and/or practices, employees had to work through some or all of their
12 meal periods, have their meal periods interrupted to return to work, and/or wait extended periods of
13 time before taking meal periods.

14 57. Between two to four times per month, Plaintiff JEFFERY CHARLES KUHN is unable
15 to take a full 30-minute lunch. This is because Mr. Kuhn and his fellow mechanics get “road calls” in
16 which they are sent to repair distressed vehicles out on the road. The road calls can be 30-40 miles
17 away from the shop. Because of understaffing, Mr. Kuhn and his co-workers are often interrupted
18 during their lunches, including to perform road calls; and thus Defendants are in violation of the
19 applicable Labor Codes, California Codes of Regulation, and Industrial Welfare Commission orders.

20 58. Plaintiff is also informed and believes that Defendants engaged in a systematic,
21 company-wide practice and/or policy of not paying meal period premiums for Plaintiff and class
22 members, regardless of whether they were able to take a compliant meal break, in violation of the
23 applicable IWC Wage Order and Labor Code sections 226.7 and 512 (a). As a result, Defendants
24 failed to provide Plaintiff and class members compliant meal periods in violation of California Labor
25 Code sections 226.7 and 512 and failed to pay the full meal period premiums due.

26 59. As alleged herein, Plaintiff and the Class are not exempt from the meal period
27 requirements of the applicable Code of Regulations and Industrial Welfare Commission Orders.
28 Consequently, Defendants’ conduct violates the applicable IWC Wage Order, and California Labor

1 Code §§ 226.7, 512 (a), and 1198. Plaintiff and class members are therefore entitled to recover from
2 Defendants one additional hour of pay at the employee’s regular rate of compensation for each work
3 day that the meal period was not provided, plus interest thereon and costs of suit in an amount subject
4 to proof at trial.

5 **THIRD CAUSE OF ACTION**
6 **FAILURE TO PROVIDE REST PERIODS**
7 **LABOR CODE §§ 226.7 and 1198**
8 **(AGAINST ALL DEFENDANTS)**

9 60. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
10 though fully set forth herein.

11 61. Employees must be given 10-minute net rest periods for every 4 hours of work, to be
12 taken in the middle of each 4-hour period insofar as practicable. However, a rest period need not be
13 provided for employees whose total daily work is less than 3.5 hours. Thus, employees are entitled to
14 one 10-minute net rest period for shifts from 3.5 to 6 hours in length, two for shifts of more than 6
15 hours up to 10 hours, and three for shifts of more than 10 hours up to 14 hours, and so on. *Brinker*
16 *Restaurant Corp. v Superior Court*, 53 Cal.4th 1004, 1029 (2012); Wage Order Nos. 1–2001 to 16–
17 2001, §§11–12 (A); 8 Cal Code Regs §§11010-11160.

18 62. “An employer shall not require an employee to work during a rest ... period mandated
19 pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
20 Commission If an employer fails to provide an employee a rest ... period in accordance with a
21 state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order
22 of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of
23 pay at the employee’s regular rate of compensation for each workday that the rest ... period is not
24 provided.” Lab. Code § 226.7 (b) & (c).

25 63. To comply with its obligation to provide rest periods under California Labor Code §
26 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how
27 employees spend their break time, and relieve their employees of all duties — including the obligation
28 that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus v. ABM*

1 *Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

2 64. Defendants' company-wide policy and practice of understaffing while simultaneously
3 assigning demanding workloads, prevented Plaintiff and class members from being relieved of all duty
4 in order to take compliant rest periods. Because of understaffing, Defendants' employees are so busy
5 they don't have time to take uninterrupted 10-minute rest breaks. At Defendants' facility where
6 Plaintiff JEFFERY CHARLES KUHN works, there is a designated break room, but Mr. Kuhn never
7 sees anyone there taking what should be their designated 10-minute breaks. Because he is so busy,
8 and there is no one to relieve him, Mr. Kuhn has never taken a 10-minute break since has worked for
9 Defendants. Mr. Kuhn alleges that his co-workers face the same situation – denial of rest breaks.

10 65. Defendants also had a uniform policy of failing to schedule rest breaks. As a result,
11 Plaintiff and class members missed their rest breaks, would be required to take them late, or would
12 have their rest breaks interrupted. Plaintiff and class members were prevented from being relieved of
13 all duty in order to take compliant rest periods and instead would be required to continue working.

14 66. Plaintiff and class members worked shifts in excess of 3 ½ hours, in excess of 6 hours,
15 and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
16 were entitled.

17 67. Defendants have also engaged in a systematic, company-wide practice and/or policy
18 of not paying rest period premiums owed when rest periods are not authorized or permitted. Thus,
19 Defendants denied Plaintiff and class members rest periods and failed to pay them rest period
20 premium wages due, in violation of Labor Code section 226.7 and the applicable IWC Wage Order.

21 68. As alleged herein, Plaintiff and the Class are not exempt from the rest period
22 requirements of the applicable Code of Regulations and Industrial Welfare Commission Orders.

23 69. Defendants' conduct violates the applicable IWC Wage Order and California Labor
24 Code §§ 226.7 and 1198. Plaintiff and class members are therefore entitled to recover from
25 Defendants one additional hour of pay at the employee's regular rate of compensation for each work
26 day that the rest period was not authorized or permitted, plus interest thereon and costs of suit in an
27 amount subject to proof at trial.

28

FOURTH CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGE IN VIOLATION OF
LABOR CODE §§ 1182.12, 1194, 1197, 1197.1, and 1198
(AGAINST ALL DEFENDANTS)

70. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though fully set forth herein.

71. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined by the applicable wage order as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11010 (2) (G).

72. Due to Defendants’ company-wide scheduling practices and policies, Plaintiff and class members were forced to forego meal periods and/or have their meal periods interrupted by work, and were not relieved of all duties for unpaid meal periods, in order to meet their deadlines and handle their workloads. Defendants did not pay minimum wages for meal periods Plaintiff and class members worked through that qualified for overtime premium payment. Defendants did not pay Plaintiff and class members for the time they continued to perform their duties during their meal periods.

73. Plaintiff JEFFERY CHARLES KUHN clocks out for meal breaks, and he is so clocked out when he is interrupted and assigned back to work. Neither Mr. Kuhn nor his co-workers are compensated for their interrupted meal breaks; and hence, Defendants have not paid their employees minimum wage for this time.

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

1 class members for all of the hours they worked. Defendants' failure to pay Plaintiff and class members
2 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

3 75. Pursuant to California Labor Code section 1194.2, Plaintiff and class members are
4 entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
5 thereon.

6 76. Defendants failure to pay the legal minimum wage to Plaintiff and the Class as alleged
7 herein is unlawful and creates entitlement, pursuant to Labor Code §1194, to recovery by Plaintiff and
8 the Class in a civil action for the unpaid balance of the full amount of the unpaid wages owed, including
9 interest thereon.

10 77. Pursuant to Labor Code §1194, Plaintiff and the Class are entitled to an award of
11 reasonable attorneys' fees and costs incurred in this action.

12 **FIFTH CAUSE OF ACTION**

13 **FAILURE TO PAY OVERTIME WAGE**

14 **IN VIOLATION OF LABOR CODE §§ 510 and 1198**

15 **(AGAINST ALL DEFENDANTS)**

16 78. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
17 though fully set forth herein.

18 79. Labor Code § 1198 makes it unlawful to employ an employee under conditions of labor
19 that are prohibited by the applicable wage order. California Labor Code § 1198 requires that "the
20 standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for
21 employees. The employment of any employee . . . under conditions of labor prohibited by the order
22 is unlawful."

23 80. The applicable IWC Wage Order required Defendants to pay Plaintiff and class
24 members working more than 8 hours in a day or more than 40 hours in a workweek, at the rate of time
25 and one-half for all hours worked in excess of 8 hours in a day or 40 hours in a workweek. The
26 applicable IWC Wage Order further required Defendants to pay Plaintiff and class members working
27 more than 12 hours in a day, overtime compensation at a rate of 2 times their regular rate of pay, and
28 2 times their regular rate of pay for hours worked in excess of 8 hours on the seventh consecutive

1 day of a work in a workweek.

2 81. At all relevant times, Defendants willfully failed to pay all overtime wages owed to
3 Plaintiff and class members. At all relevant times, Plaintiff and class members were not paid overtime
4 premiums for all of the hours they worked in excess of 8 hours in a day, in excess of 12 hours in a
5 day, and/or in excess of 40 hours in a week.

6 82. At all relevant times herein, Defendants had, and continue to have, a company-wide
7 policy of failing to implement any policies to authorize and permit employees to take compliant meal
8 periods and, instead, engaged in a practice of discouraging and impeding employees from taking meal
9 periods by assigning them a heavy workload and understaffing their facilities.

10 83. Additionally, Defendants, on a company-wide basis, failed to schedule meal periods
11 even though they are aware that employees are entitled to such meal periods. As a result of this
12 company-wide understaffing of its facilities and failure to schedule meal periods, Plaintiff and class
13 members were not always permitted and authorized to take uninterrupted 30-minute meal periods
14 during shifts to which they were entitled to receive a meal period. Plaintiff JEFFERY CHARLES
15 KUHN works Monday to Friday, from 6:00 a.m. to 3:30 p.m. On days that his meal periods are
16 interrupted, Mr. Kuhn can work up to 9 ½ hours per day; and he is not compensated for the interrupted
17 meal periods and break periods. Mr. Kuhn's co-workers experience the same lack of compensation for
18 such time.

19 84. Defendants knew or should have known that, as a result of their policies and practices,
20 Plaintiff and class members were performing some of their assigned duties off-the-clock and/or
21 during unpaid meal periods, and were suffered or permitted to perform work for which they were not
22 paid. Because Plaintiff and class members worked shifts in excess of 8 hours a day or more and 40
23 hours a week or more, much of this off-the-clock work qualified for overtime premium pay.
24 Therefore, Plaintiff and class members were not paid overtime wages for all of the overtime hours
25 they actually worked.

26 85. Defendants' failure to pay Plaintiff and class members the balance of overtime
27 compensation, as required by California law, violates the provisions of California Labor Code §§ 510
28 and 1198. Pursuant to California Labor Code § 1194, Plaintiff and class members are entitled to

1 recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

2 86. Labor Code §558 (a) requires that any person acting on behalf of an employer who
3 violates, or causes to be violated, overtime rules pay a civil penalty in the amount of \$50 for each
4 underpaid employee for each pay period in which the employee was underpaid in addition to an
5 amount sufficient to recover underpaid wages. Also, Labor Code §558 (a) for each subsequent
6 violation, the person acting on behalf of an employer is liable in the amount of \$100 for each underpaid
7 employee for each pay period for which the employee was underpaid in addition to an amount
8 sufficient to recover the underpaid wages.

9 87. In addition to the above withheld overtime wages, Plaintiff and the Class are entitled
10 to civil penalties based upon Defendants' underpayment of overtime wages. Defendants violated
11 Labor Code §558 on each of the past pay periods within the one-year preceding the filing of this
12 complaint, the first of which Defendants are penalized \$50.00, and the remainder of which Defendants
13 are penalized \$100.00 each, for a total due in Labor Code §558 penalties in an amount to be proven at
14 trial.

15 **SIXTH CAUSE OF ACTION**

16 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**

17 **AND FAILURE TO MAINTAIN ACCURATE PAYROLL RECORDS**

18 **IN VIOLATION OF LABOR CODE §§ 226 1174 (d), and 1198**

19 **(AGAINST ALL DEFENDANTS)**

20 88. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
21 though fully set forth herein.

22 89. Pursuant to Labor Code §§ 226 and 1174, employers have a duty to provide their non-
23 exempt employees with accurate itemized statements showing total hours worked, hourly wages, gross
24 wages, total deductions net wages earned and name of the employer.

25 90. "An employer ... shall furnish to his or her employee ... an accurate itemized statement
26 in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided
27 in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the
28 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written

1 orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
2 inclusive dates of the period for which the employee is paid, (7) the name of the employee and only
3 the last four digits of his or her social security number or an employee identification number other
4 than a social security number, (8) the name and address of the legal entity that is the employer ... and
5 (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours
6 worked at each hourly rate by the employee” Lab. Code § 226 (a).

7 91. “Every employer shall keep accurate information with respect to each employee
8 including the following: (1) Full name, home address, occupation and social security number ... (3)
9 Meal periods, split shift intervals and total daily hours worked shall also be recorded.” IWC Wage
10 Order 4-2001, section 7 (A) (1) & (3).

11 92. “Every person employing labor in this state shall: (c) Keep a record showing the names
12 and addresses of all employees employed and the ages of all minors. (d) Keep, at a central location in
13 the state or at the plants or establishments at which employees are employed, payroll records showing
14 the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and
15 any applicable piece rate paid to, employees employed at the respective plants or establishments.”
16 Lab. Code § 1174 (c) & (d).

17 93. At all relevant times, Defendants have knowingly and intentionally provided Plaintiff
18 and Class members with uniform, incomplete, and inaccurate wage statements. The wage statements
19 supplied by Defendants failed to include each employees’ social security numbers, meal periods, total
20 daily hours worked, payroll records showing the hours worked daily by and the wages paid to
21 employees employed at the respective shop location. Furthermore, the wage statements do not list the
22 proper address of the legal entity that is the employer. The wage statements list the employer address
23 as 1564 Mission Rd. Escondido, CA, when the address of record on the Certificate of Limited
24 Partnership lists 1508 W. Mission Rd. Escondido, CA as the legal address. Thus, Defendants are in
25 violation of Labor Code section 226 (a) (8).

26 94. Because Defendants failed to document and deduct time worked from Plaintiff’s and
27 Class members’ wage statements and employment records for meal periods they did not actually
28 receive, Defendants unlawfully deducted wages earned and meal period premiums that should have

1 been paid. Thus, Defendants did not furnish wage statements to Plaintiff and Subclass members
2 containing the correct amount of gross wages earned in violation of Labor Code § 226 (a) (1),
3 accurate total hours worked in violation of Labor Code § 226 (a) (2), correct amount of net wages
4 earned in violation of Labor Code § 226 (a) (5), or accurate number of hours worked at each
5 corresponding hourly rate in violation of Labor Code § 226 (a) (9).

6 95. To the extent that Defendants paid any meal break premium and/or rest break premium
7 payments, Defendants failed to identify such payments on Plaintiff's and Subclass members' wage
8 statements and employment records, and Defendants otherwise failed to provide information on the
9 wage statements sufficient to identify how many premium payments were paid during each pay
10 period, the specific dates worked giving rise to the premium payments owed, or to determine whether
11 such premium payments adequately and/or accurately compensated Plaintiff and Subclass members
12 for any and all premiums owed.

13 96. California Labor Code § 1198 provides that the maximum hours of work and the
14 standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the
15 applicable IWC Wage Orders. § 1198 further provides that "the employment of any employees for
16 longer hours than those fixed by the order or under conditions of labor prohibited by the order is
17 unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time
18 records showing when the employee begins and ends each work period and meal period. At all
19 relevant times, Defendants failed, on a company-wide basis, to keep records of meal period start and
20 stop times for Plaintiff and Subclass members in violation of section 1198.

21 97. California Labor Code section 1174 (d) provides that "every person employing labor
22 in this state shall ... keep a record showing the names and addresses of all employees employed and
23 the ages of all minors" and "keep, at a central location in the state or at the plants or establishments
24 at which employees are employed, payroll records showing the hours worked daily by and the wages
25 paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees
26 employed at the respective plants or establishments..." At all relevant times, and in violation of Labor
27 Code § 1174 (d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and
28 Subclass members showing the daily hours they worked and the wages paid thereto as a result of

1 failing to record the off-the-clock hours that they worked.

2 98. An employer who violates these Code sections is liable to its employees for the greater
3 of actual damages suffered by the employee, or \$50.00 in civil penalties for the initial pay period in
4 which a violation occurred, and \$100.00 per employee for each subsequent pay period, up to a statutory
5 maximum of \$4,000.00.

6 99. Pursuant to Labor Code § 558.1, any employer or other person acting on behalf of an
7 employer, who violates, or causes to be violated, Labor Code section 226, may be held liable as the
8 employer for such violation. The term ‘other person acting on behalf of an employer’ is limited to a
9 natural person who is an owner, director, officer, or managing agent of the employer.

10 100. Plaintiff and Subclass members are entitled to recover from Defendants the greater of
11 their actual damages caused by Defendants’ failure to comply with California Labor Code § 226 (a),
12 or an aggregate penalty not exceeding four thousand dollars \$4,000 per employee, in addition to
13 attorneys’ fees and costs.

14 **SEVENTH CAUSE OF ACTION**

15 **FAILURE TO TIMELY PAY WAGES**

16 **IN VIOLATION OF LABOR CODE § 204**

17 **(AGAINST ALL DEFENDANTS)**

18 101. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
19 though fully set forth herein.

20 102. “All wages ... earned by any person in any employment are due and payable twice
21 during each calendar month, on days designated in advance by the employer as the regular paydays
22 ... (d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly,
23 biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following
24 the close of the payroll period.” Labor Code § 204.

25 103. “In addition to, and entirely independent and apart from, any other penalty provided in
26 this article, every person who fails to pay the wages of each employee as provided in Sections ... 204
27 ... shall be subject to a penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for
28 each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional

1 violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the
2 amount unlawfully withheld.” Labor Code § 210.

3 104. As alleged above, Defendants’ employees are owed wages for unpaid minimum wage,
4 overtime, meal periods and unreimbursed business expenses. At no time during their employment
5 were these outstanding sums ever paid to them. Instead, these outstanding sums continued to
6 accumulate every pay period. Therefore, Defendants’ employees were not paid all wages earned by
7 the seventh calendar day following the close of their pay periods. This practice is in violation of Labor
8 Code § 204.

9 105. As a direct and proximate result of Defendants’ failure to timely pay wages, Plaintiff
10 and the Class are entitled to penalties under Labor Code § 210 in an amount subject to proof at trial.

11 **EIGHTH CAUSE OF ACTION**
12 **WILLFUL FAILURE TO PAY WAGES**
13 **IN VIOLATION OF LABOR CODE §§ 201-203**
14 **(AGAINST ALL DEFENDANTS)**

15 106. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
16 though fully set forth herein.

17 107. “If an employer discharges an employee, the wages earned and unpaid at the time of
18 discharge are due and payable immediately.” Labor Code § 201.

19 108. “If an employee not having a written contract for a definite period quits his or her
20 employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless
21 the employee has given 72 hours previous notice of his or her intention to quit, in which case the
22 employee is entitled to his or her wages at the time of quitting.” Labor Code § 202.

23 109. “If an employer willfully fails to pay any wages of an employee who is discharged or
24 who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same
25 rate until paid or until an action therefor is commenced.” Labor Code § 203.

26 110. Plaintiff and the Class were not exempt from the requirements of Labor Code §§ 201-
27 203.

28 111. As alleged above, Defendants’ employees are owed wages for unpaid minimum wage,

1 overtime, meal periods and unreimbursed business expenses. For employees who have left
2 Defendants' employ during the relevant time period, these outstanding sums were not paid to them.
3 Further, Defendants knew or should have known that they owed these outstanding sums to employees
4 and intentionally failed and refused to pay these sums immediately upon their termination or within
5 72 hours of their resignation of employment and continue to refuse to do so. This practice is in
6 violation of Labor Code §§ 201-203.

7 112. At no time since Class members' separation of employment did Defendants pay them
8 wait-time penalties as required by Labor Code § 203.

9 113. As a direct and proximate result of Defendants' willful failure to pay Class members'
10 wages upon their separation of employment, Plaintiff and the Class incurred wait-time penalties in an
11 amount equal to their daily rate of pay over the period that the wages were not paid in an amount
12 subject to proof at trial.

13 **NINTH CAUSE OF ACTION**
14 **CIVIL PENALTIES IN VIOLATION OF**
15 **LABOR CODE § 2699, ET SEQ.**
16 **(AGAINST ALL DEFENDANTS)**

17 114. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
18 though fully set forth herein.

19 115. Under Labor Code § 2698, et seq., Plaintiff, as a aggrieved employee, may bring an
20 action against defendants, on behalf of himself and other current or former employees, seeking civil
21 penalties for defendants' violations of the California Labor Code.

22 116. Plaintiff was a aggrieved employee within the meaning of Labor Code §2698, et seq.
23 by virtue of the numerous Labor Code violations he was subjected to as plead herein.

24 117. Defendants also subjected the aggrieved employees on whose behalf Plaintiff brings
25 this enforcement action to all of the Labor Code violations plead herein, including failing to reimburse
26 for necessary business expenditures in violation of Labor Code § 2802, failing to provide meal periods
27 in violation of §§ 226.7, 512 (a), and 1198, failing to provide rest periods in violation of Labor Code
28 §§ 226.7 and 1198, failing to pay minimum wages in violation of Labor Code §§ 1182.12, 1194, 1197,

1 1197.1, and 1198, failing to pay overtime in violation Labor Code §§ 510 and 1198, failing to furnish
2 compliant wage statements and maintain accurate pay records in violation of § 226, 1174 (d), and
3 1198, failure to timely pay wages in violation of Labor Code § 204 and willful failure to pay wages in
4 violation of Labor Code § 201-203.

5 118. On January 17, 2022, Plaintiff provided written notice by online filing with the Labor
6 and Workforce Development Agency and by certified mail to Defendants of the specific provisions of
7 the Labor Code alleged to have been violated, including the facts and theories to support the alleged
8 violation, as required by Labor Code § 2699.3 (a) (1) (A).

9 119. As of the filing of this Complaint, Plaintiff has received no notice from the Labor and
10 Workforce Development Agency of its intent to pursue an action against Defendants.

11 120. As a direct and proximate result of Defendants' California Labor Code violations as set
12 forth herein, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per pay period
13 for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent
14 violation, pursuant to Labor Code § 2699 (f), for those Labor Code sections not expressly providing
15 for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly
16 provide for a penalty.

17 121. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the
18 recovered civil penalties.

19 **TENTH CAUSE OF ACTION**

20 **UNFAIR COMPETITION IN VIOLATION OF**

21 **BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**

22 **(AGAINST ALL DEFENDANTS)**

23 122. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
24 though fully set forth herein.

25 123. Defendants are a "person" as defined by California Business & Professions Code
26 sections 17201.

27 124. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful
28 and harmful to Plaintiff, the Class, aggrieved employees and to the general public. Plaintiff and the

1 Class have suffered injury in fact and have lost money as a result of Defendants' unlawful business
2 practices. Plaintiff and the Class seek to enforce important rights affecting the public interest within
3 the meaning of Code of Civil Procedure section 1021.5.

4 125. A violation of California Business & Professions Code §§ 17200, *et seq.* may be
5 predicated on the violation of any state or federal law.

6 126. The employment practices engaged in by Defendant as plead herein, including
7 violations of the Labor Code sections, Code of Regulations and Wage Orders, constitute unfair
8 business practices in violation of Business & Professions Code §§17200, *et seq.*

9 127. As a result of Defendants' unfair business practices, Defendants have reaped unfair
10 benefits and illegal profits at the expense of Plaintiff, the Class and members of the public.

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

17 **PRAYER FOR RELIEF**

18 Plaintiff and the Class pray for relief and judgment against Defendants as follows:

19 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in excess
20 of \$25,000, exclusive of interest and costs.

21 **Class Certification**

- 22 2. That this case be certified as a class action;
23 3. That Plaintiff be appointed as the representatives of the Class and Subclass;
24 4. That counsel for Plaintiff be appointed as class counsel.

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

26 **(Unreimbursed Business Expenses)**

27 5. That the Court adjudge, declare and decree that Defendants violated Labor Code § 2802
28 by willfully failing to reimburse business expenses incurred by Plaintiff and the Class;

1 6. For unreimbursed business expenses and for all actual, consequential, and incidental
2 losses and damages, according to proof;

3 7. For interest at the same rate as judgments in civil actions, accruing from the date on
4 which Plaintiff and the Class incurred the necessary expenditures or loses pursuant to Labor Code §
5 2802;

6 8. For all reasonable costs and attorney's fees incurred by Plaintiff's and the Class's
7 enforcement of the rights granted by Labor Code § 2802 pursuant to Labor Code § 2802 (c); and

8 9. For such other relief that the Court deems just and appropriate.

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

10 **(Failure to Provide Meal Periods)**

11 10. That the Court declare, adjudge, and decree that Defendants violated California Labor
12 Code §§ 226.7, 512 (a), 1198, applicable IWC Wage Orders and Codes of Regulation by willfully
13 failing to provide all meal periods to Plaintiff and class members;

14 11. That the Court make an award to the Plaintiff and class members of one hour of pay at
15 each employee's regular rate of pay for each workday that a meal period was not provided;

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

17 13. For premiums pursuant to California Labor Code section 226.7 (b);

18 14. For pre-judgment interest on any unpaid meal period premiums from the date such
19 amounts were due, or as otherwise provided by law;

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

22 16. For such other relief that the Court deems just and appropriate.

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

24 **(Failure to Provide Rest Periods)**

25 17. That the Court declare, adjudge, and decree that Defendants violated California Labor
26 Code §§ 226.7, 1198, applicable IWC Wage Orders and Codes of Regulation by willfully failing to
27 provide all rest periods to Plaintiff and class members;

28 18. That the Court make an award to the Plaintiff and class members of one hour of pay at

- 1 each employee's regular rate of pay for each workday that a rest period was not provided;
- 2 19. For all actual, consequential, and incidental losses and damages, according to proof;
- 3 20. For premiums pursuant to California Labor Code section 226.7 (b);
- 4 21. For pre-judgment interest on any unpaid rest period premiums from the date such
- 5 amounts were due, or as otherwise provided by law;
- 6 22. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or
- 7 as otherwise provided by law; and
- 8 23. For such other relief that the Court deems just and appropriate.

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

10 **(Unpaid Minimum Wages)**

- 11 24. That the Court adjudge, declare and decree that Defendants violated Labor Code §§
- 12 1182.12, 1194, 1197, 1197.1, 1198, applicable Wage Orders and Codes of Regulation by willfully
- 13 failing to pay minimum wages to Plaintiff and class members;
- 14 25. For payment of unpaid wages in an amount subject to proof;
- 15 26. For liquidated damages pursuant to Labor Code §1194.2 in an amount subject to proof,
- 16 plus interest;
- 17 27. For prejudgment interest at the legal rate from the date the obligation became due
- 18 through the date of judgment in this matter;
- 19 28. For all reasonable costs and attorney's fees incurred by Plaintiff's and the Class's
- 20 enforcement of the rights granted by Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 pursuant
- 21 to Labor Code § 1194 (a); and
- 22 29. For such other relief that the Court deems just and appropriate.

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

24 **(Unpaid Overtime)**

- 25 30. That the Court adjudge, declare and decree that Defendants violated Labor Code §§
- 26 510 and 1198, applicable IWC Wage Orders and Codes of Regulation by willfully failing to pay
- 27 overtime wages to Plaintiff and class members;
- 28 31. For payment of unpaid overtime wages in an amount subject to proof;

32. For prejudgment interest at the legal rate from the date the obligation became due through the date of judgment in this matter;

33. For all reasonable costs and attorney's fees incurred by Plaintiff's and the Class's enforcement of the rights granted by Labor Code §§ 510 and 1198 pursuant to Labor Code § 1194 (a); and

34. For such other relief that the Court deems just and appropriate.

As to the Sixth Cause of Action

(Noncompliant Wage Statements and Payroll Records)

35. That the Court adjudge, declare and decree that Defendants violated Labor Code §§ 226 and 1198, applicable IWC Wage Orders and Codes of Regulation by willfully failing to furnish compliant, accurate itemized wage statements to Plaintiff and class members and for failure to keep accurate payroll records;

36. For consequential and incidental losses and damages according to proof;

37. For injunctive relief pursuant to Labor Code § 226 (h);

38. For statutory penalties pursuant to Labor Code § 226 (e);

39. For all reasonable costs and attorney's fees incurred by Plaintiff's and the Class's enforcement of the rights granted by Labor Code §§ 226 pursuant to Labor Code § 226 (e) (1); and

40. For such other relief that the Court deems just and appropriate.

As to the Seventh Cause of Action

(Failure to Timely Pay Wages)

41. That the Court declare, adjudge, and decree that Defendants violated California Labor Code § 204, applicable IWC Wage Orders and Codes of Regulation by willfully failing to timely pay wages to Plaintiff and class members;

42. For penalties pursuant to Labor Code § 210, plus 25 percent of amounts unlawfully withheld from Plaintiff and class members;

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

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

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

3 46. For such other relief that the Court deems just and appropriate.

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

5 **(Willful Failure to Pay Wages)**

6 47. That the Court declare, adjudge, and decree that Defendants violated California Labor
7 Code § 201-203, applicable IWC Wage Orders and Codes of Regulation by willfully failing to pay
8 minimum wages, overtime wages, and meal and rest premiums owed to Plaintiff and class members
9 either upon discharge or within 72 hours of their resignation;

10 48. For wait time penalties pursuant to Labor Code § 203;

11 49. For all actual, consequential, and incidental losses and damages, according to proof;

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

14 51. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or
15 as otherwise provided by law; and

16 52. For such other relief that the Court deems just and appropriate.

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

18 **(Civil Penalties under the PAGA)**

19 53. That the Court declare, adjudge, and decree that Defendants violated all California
20 Labor Code sections plead herein, including Labor Code §§ 201-204, 226, 226.7, 510, 512, 1174,
21 1182.12, 1194, 1197, 1197.1, 1198 and 2802;

22 54. For civil penalties pursuant to 210, 226.3, 256, 558, 1174.5, 1197.1, 2699 (a) and/or
23 2699 (a), (f) and (g), for violations of all California Labor Code sections plead herein, including Labor
24 Code §§ 201-204, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1197, 1197.1, 1198 and 2802;

25 55. For attorneys' fees and costs pursuant to California Labor Code § 2699 (g) (1), and any
26 and all other relevant statutes, for Defendants' violations of all California Labor Code sections plead
27 herein, including Labor Code §§ 201-204, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1197, 1197.1,
28 1198 and 2802;

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

57. For such other and further relief as the Court deems just and appropriate.

As to the Tenth Cause of Action

(Unfair Competition)

58. That the employment practices engaged in by Defendants as plead herein, including violations of the Labor Code, Code of Regulations and Wage Orders, constitute unfair business practices in violation of Business & Professions Code §§17200, et seq.;

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

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

61. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure § 1021.5; and

62. For such other and further relief as the Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff and the Class hereby demand a trial by jury on all issues.

PIMENTEL LAW, P.C.

Dated: April 29, 2022

By: Bruce T. Murray
Bruce T. Murray
Attorney for the Plaintiff