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individually and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

Marion Jones, individually and on behalf of all
others similarly situated,

Plaintiff,

vs.

Michael Stapleton Associates, Ltd., d/b/a MSA
Security, a Delaware corporation; and Does 1
through 20, inclusive,

Defendants.

Case No. 37-2022-00001449-CU-OE-CTL

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

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Pay Reporting Time Pay;
4. Failure to Pay All Wages;
5. Failure to Provide Meal Periods;
6. Failure to Permit Rest Breaks;
7. Failure to Provide Accurate Itemized Wage Statements;
8. Failure to Reimburse All Business Expenses;
9. Failure to Pay All Wages Due Upon Separation of Employment;
10. Violation of Business and Professions Code §§ 17200, *et seq.*; and
11. Enforcement of Labor Code § 2698 *et seq.* (“PAGA”)

DEMAND FOR JURY TRIAL

1 Plaintiff Marion Jones, individually and on behalf of others similarly situated, alleges as
2 follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Marion Jones (“Plaintiff”) brings this putative class action against
5 defendants Michael Stapleton Associates, Ltd. d/b/a MSA Security, and DOES 1 through 20,
6 inclusive (collectively, “Defendants”), on behalf of himself individually and a putative class of
7 non-exempt employees employed by Defendants.

8 2. Defendants operate security services in the state of California.

9 3. Through this action, Plaintiff alleges that Defendants have engaged in a
10 systematic pattern of wage and hour violations under the California Labor Code and Industrial
11 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
12 unfair competition.

13 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
14 increased their profits by violating state wage and hour laws by, among other things:

15 (a) Failing to pay minimum wages;

16 (b) Failing to pay overtime and doubletime wages;

17 (c) Failing to pay reporting time pay;

18 (d) Failing to provide meal periods or compensation in lieu thereof;

19 (e) Failing to authorize or permit rest breaks or provide compensation in lieu thereof;

20 (f) Failing to provide accurate itemized wage statements;

21 (g) Failing to reimburse for all business expenses; and

22 (h) Failing to pay all wages due upon separation of employment.

23 5. Defendants maintained and enforced against the class the following unlawful
24 practices and policies, in violation of California state wage and hour laws:

25 (a) Defendants forced Plaintiff and Class Members to remain on premises during
26 meal and rest breaks. Plaintiff and Class Members remained on call during
27 breaks and were required to be responsive to spontaneous work-related radio
28 calls. As a result, class members did not clock in and out for breaks and were

1 often forced to skip meal and rest breaks due to being interrupted by work-
2 related radio calls.

3 (b) Defendants forced Plaintiff and Class Members to use their personal cellular
4 phones without proper reimbursement for the purpose of clocking in and out of
5 work and for GPS navigation for work-related security calls.

6 (c) Defendants made Plaintiff and Class Members pay for work-related online
7 training programs out-of-pocket and without reimbursement for costs or for time
8 spent on the required training programs.

9 (d) Defendants failed to provide meal and rest breaks in violation of California law.
10 Based on the lack of proper coverage, requirements to be responsive to radio
11 calls, and the scheduling of meal periods during these employees' shifts,
12 Plaintiff and Class Members were not able to take required off-duty meal or rest
13 periods during their shifts. Class Members were also routinely denied a second
14 meal break for shifts lasting longer than ten hours. When Class Members
15 suffered meal and rest period violations, Defendants failed to pay an additional
16 hour of pay at the regular rate of pay to Class Members.

17 (e) Defendants have also subjected Plaintiff and other Class Members to a uniform
18 policy and practice of unlawful time rounding and manipulation. That is,
19 Defendants rounded the hours worked of Plaintiff and other Class Members to
20 the nearest quarter of an hour, or otherwise manipulated the reported hours,
21 which over time, unlawfully favored Defendant and resulted in time loss to the
22 employees, including Plaintiff. This rounding policy was not neutral on its face
23 or in application and resulted in cumulative loss of time to the employees.

24 (f) Defendants also failed to pay all Reporting Time Pay to Class Members in
25 violation of Section 5 of the applicable Wage Order. Defendants required Class
26 Members to report to work on the day of their scheduled shift or be on call and
27 did not put them to work or furnished less than half of their usual day's work
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1 and did not pay them their required Reporting Time Pay of at least two (2) hours
2 nor more than four (4) hours at the employee's regular rate of pay.

3 (g) Defendants also failed to reimburse Plaintiff and Class Members for all business
4 expenses, including, masks, hand sanitizers and any other Personal Protective
5 Equipment ("PPE").

6 6. Plaintiff brings this lawsuit seeking monetary relief against Defendants on
7 behalf of himself and all others similarly situated in California to recover, among other things,
8 unpaid wages and benefits, interest, attorneys' fees, costs and expenses and penalties pursuant
9 to Labor Code §§ 201-203, 204, 210, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1198, 2698,
10 2800, and 2802.

11 **JURISDICTION AND VENUE**

12 7. This is a class action, pursuant to California Code of Civil Procedure § 382. The
13 monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits
14 of the Superior Court and will be established according to proof at trial.

15 8. This Court has jurisdiction over this action pursuant to the California
16 Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all
17 causes except those given by statutes to other courts. The statutes under which this action is
18 brought do not specify any other basis for jurisdiction.

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

24 10. Venue is proper in this Court because, upon information and belief, Defendants
25 reside, transact business or have offices in this county and the acts and omissions alleged herein
26 took place in this county.

27 **THE PARTIES**

28 11. Plaintiff is a citizen of California. Plaintiff was employed by Defendants during

1 the Class Period in California.

2 12. Plaintiff is informed and believes, and thereon alleges, that Defendants at all
3 times hereinafter mentioned, were and are employers as defined in and subject to the Labor
4 Code and IWC Wage Orders, whose employees were and are engaged throughout this county
5 and the State of California.

6 13. Plaintiff is unaware of the true names or capacities of the defendants sued herein
7 under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this
8 Complaint and serve such fictitiously named defendants once their names and capacities
9 become known.

10 14. Plaintiff is informed and believes, and thereon alleges, that each defendant acted
11 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
12 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant
13 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as
14 the employer and/or joint employer of Plaintiff and the class members.

15 15. Plaintiff is informed and believes, and thereon alleges, that each and all of the
16 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
17 Does 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
18 the other's behalf. The acts of any and all Defendants were in accordance with, and represent,
19 the official policy of Defendants.

20 16. At all relevant times, Defendants, and each of them, acted within the scope of
21 such agency or employment, or ratified each and every act or omission complained of herein.
22 At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
23 each and all the other Defendants in proximately causing the damages herein alleged.

24 17. Plaintiff is informed and believes, and thereon alleges, that each of said
25 Defendants is in some manner intentionally, negligently or otherwise responsible for the acts,
26 omissions, occurrences and transactions alleged herein.

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1 **CLASS ACTION ALLEGATIONS**

2 18. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of
3 himself and all others similarly situated who were affected by Defendants' Labor Code,
4 Business and Professions Code §§ 17200 and IWC Wage Order violations.

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

7 20. Plaintiff's proposed Class consists of and is defined as follows:

8 Class

9 All current and former non-exempt employees who worked for
10 Defendants in the State of California from four years plus 179 days
11 before the filing of the original complaint filed on January 12, 2022 to
12 the date of trial.¹

13 Plaintiff also seeks to certify the following Subclass of employees:

14 Waiting Time Subclass

15 All members of the Class who separated their employment from Defendants from
16 three years plus 179 days before the filing of the original complaint filed on
17 January 12, 2022 to the date of trial.

18 21. Members of the Class and Subclass described above will be collectively referred
19 to as "class members." Plaintiff reserves the right to establish other or additional subclasses, or
20 modify any Class or Subclass definition, as appropriate based on investigation, discovery and
21 specific theories of liability.

22 22. This action has been brought and may properly be maintained as a class action
23 under the California Code of Civil Procedure § 382 because there are common questions of law
24 and fact as to the Class that predominate over questions affecting only individual members
25 including, but not limited to:

26 (a) Whether Defendants paid Plaintiff and class members all minimum wage
27 compensation;

28 (b) Whether Defendants paid Plaintiff and class members overtime and doubletime

1 ¹ The statute of limitations for this matter was tolled pursuant to Cal. Rules of Court, Appendix I,
2 Emergency Rule No. 9.

1 compensation at the proper rates;

2 (c) Whether Defendants failed to pay Plaintiff and class members Reporting Time
3 Pay;

4 (d) Whether Defendants deprived Plaintiff and class members of compliant meal
5 periods or required Plaintiff and class members to work through meal periods
6 without compensation;

7 (e) Whether Defendants deprived Plaintiff and class members of compliant rest
8 breaks;

9 (f) Whether Defendants failed to timely pay Plaintiff and former class members all
10 wages due upon termination or within 72 hours of resignation;

11 (g) Whether Defendants failed to furnish Plaintiff and class members with accurate,
12 itemized wage statements;

13 (h) Whether Defendants failed to reimburse Plaintiff and class members for business
14 expenses; and

15 (i) Whether Defendants engaged in unfair business practices in violation of Business
16 & Professions Code §§ 17200, *et seq.*

17 23. There is a well-defined community of interest in this litigation and the Class is
18 readily ascertainable:

19 (a) Numerosity: The members of the Class are so numerous that joinder of all
20 members is impractical. Although the members of the Class are unknown
21 to Plaintiff at this time, on information and belief, the Class is estimated to
22 be greater than 100 individuals. The identity of the class members are
23 readily ascertainable by inspection of Defendants' employment and payroll
24 records.

25 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
26 claims (or defenses, if any) of the Class because Defendants' failure to
27 comply with the provisions of California wage and hour laws entitled each
28 class member to similar pay, benefits, and other relief. The injuries

1 sustained by Plaintiff are also typical of the injuries sustained by the Class
2 because they arise out of and are caused by Defendants' common course of
3 conduct as alleged herein.

4 (c) Adequacy: Plaintiff is qualified to, and will fairly and adequately represent
5 and protect the interests of all members of the Class because it is in his best
6 interest to prosecute the claims alleged herein to obtain full compensation
7 and penalties due to him and the Class. Plaintiff's attorneys, as proposed
8 class counsel, are competent and experienced in litigating large
9 employment class actions and are versed in the rules governing class action
10 discovery, certification, and settlement. Plaintiff has incurred and,
11 throughout the duration of this action, will continue to incur attorneys' fees
12 and costs that have been and will be necessarily expended for the
13 prosecution of this action for the substantial benefit of each class member.

14 (d) Superiority: The nature of this action makes the use of class action
15 adjudication superior to other methods. A class action will achieve
16 economies of time, effort, and expense as compared with separate lawsuits,
17 and will avoid inconsistent outcomes because the same issues can be
18 adjudicated in the same manner and at the same time for each Class. If
19 appropriate this Court can, and is empowered to, fashion methods to
20 efficiently manage this case as a class action.

21 (e) Public Policy Considerations: Employers in the State of California and
22 other states violate employment and labor laws every day. Current
23 employees are often afraid to assert their rights out of fear of direct or
24 indirect retaliation. Former employees are fearful of bringing actions
25 because they believe their former employers might damage their future
26 endeavors through negative references and/or other means. Class actions
27 provide the class members who are not named in the complaint with a
28 type of anonymity that allows for the vindication of their rights at the

1 same time as affording them privacy protections.

2 **FIRST CAUSE OF ACTION**

3 **FAILURE TO PAY MINIMUM WAGES**

4 **(Violation of Labor Code §§ 1194, 1194.2, and 1197; Violation of IWC Wage Order § 3)**

5 24. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
6 though fully set forth herein.

7 25. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
8 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
9 wage than the minimum so fixed is unlawful.

10 26. During the relevant time period, Defendants paid Plaintiff and class members
11 less than minimum wages when, for example, Defendants required Plaintiff and class members
12 to work off-the-clock during meal breaks, be on call and responsive to radio calls during rest
13 breaks and meal periods, and attend work-related training programs off-the-clock. In addition,
14 Defendants unlawfully rounded and manipulated hours worked of Plaintiff and Class members,
15 which over time, unlawfully favored Defendant and resulted in time loss to employees. To the
16 extent these hours do not qualify for the payment of overtime or doubletime, Plaintiff and class
17 members were not being paid at least minimum wage for their work.

18 27. During the relevant time period, Defendants regularly failed to pay at least
19 minimum wage to Plaintiff and class members for all hours worked pursuant to Labor Code
20 §§ 1194 and 1197.

21 28. Defendants' failure to pay Plaintiff and class members the minimum wage as
22 required violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and class
23 members are entitled to recover the unpaid balance of their minimum wage compensation as
24 well as interest, costs, and attorney's fees.

25 29. Pursuant to Labor Code § 1194.2, Plaintiff and class members are entitled to
26 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
27 thereon.

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PAY REPORTING TIME PAY**

3 **(Violation of Labor Code § 1198; Violation of IWC Wage Order)**

4 37. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
5 though fully set forth herein.

6 38. Cal Labor Code § 1198 prohibits employers from violating the IWC Wage
7 Orders.

8 39. Section 5 of the applicable IWC Wage Order requires that on each workday that
9 an employee reports for work as scheduled but is not put to work or is furnished less than half
10 of the employee's usual or scheduled day's work, the employee shall be paid for half the usual
11 or scheduled day's work, but in no event for less than two (2) hours nor more than four (4)
12 hours at the employee's regular rate of pay, which shall not be less than the minimum wage.
13 Section 5 of the applicable Wage Order denominates this as "Reporting Time Pay."

14 40. During the Class Period, Plaintiff and class members were required to report to
15 work but were not put to work and would be sent home early.

16 41. Accordingly, for those times that Plaintiff and class members were required to
17 report to work but were not put to work or were furnished with less than half of their usual
18 scheduled day's work, Plaintiff and class members are entitled to recover from Defendant
19 compensation for half a day's work, plus interest thereon, together with their reasonable
20 attorneys' fees and costs.

21 **FOURTH CAUSE OF ACTION**

22 **FAILURE TO TIMELY PAY ALL EARNED WAGES**

23 **(Violation of Labor Code §§ 204 and 210; Violation of IWC Wage Order)**

24 42. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
25 though fully set forth herein.

26 43. Labor Code § 204 provides that all wages earned by an employee are due and
27 payable twice during each calendar month.

28 44. Defendants failed to timely pay Plaintiff and class members all of their earned

1 wages as required by Labor Code Section 204.

2 45. Plaintiff and class members have been deprived of their rightfully earned wages
3 as a direct and proximate result of Defendants' failure to pay said compensation. Plaintiff and
4 class members are entitled to recover such amounts, plus interest thereon, attorney's fees, and
5 costs.

6 46. In addition, Plaintiff and class members are entitled to penalties pursuant to
7 Labor Code § 210 as follows: (1) for Defendants' initial violation, \$100 for each failure to pay
8 each Class Member; and (2) for each of Defendants' subsequent violations, or any willful or
9 intentional violation, \$200 for each failure to pay each class member, plus 25 percent of the
10 amount unlawfully held.

11 **FIFTH CAUSE OF ACTION**

12 **FAILURE TO PROVIDE MEAL PERIODS**

13 **(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order)**

14 47. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
15 though fully set forth herein.

16 48. Labor Code § 226.7 provides that no employer shall require an employee to work
17 during any meal period mandated by the IWC Wage Orders.

18 49. Section 11 of the applicable IWC Wage Order states, "no employer shall employ
19 any person for a work period of more than five (5) hours without a meal period of not less than
20 30 minutes, except that when a work period of not more than six (6) hours will complete the
21 day's work the meal period may be waived by mutual consent of the employer and the
22 employee."

23 50. Labor Code § 512(a) provides that an employer may not require, cause, or permit
24 an employee to work for a period of more than five (5) hours per day without providing the
25 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if
26 the total work period per day of the employee is not more than six (6) hours, the meal period
27 may be waived by mutual consent of both the employer and the employee.

28 51. Labor Code § 512(a) also provides that an employer may not employ an

1 employee for a work period of more than ten (10) hours per day without providing the employee
2 with a second meal period of not less than thirty (30) minutes, except that if the total hours
3 worked is no more than twelve (12) hours, the second meal period may be waived by mutual
4 consent of the employer and the employee only if the first meal period was not waived.

5 52. During the relevant time period, Plaintiff and class members did not receive
6 compliant meal periods for each five hours worked per day as a result of, among other things,
7 lack of proper coverage and scheduling of meal periods during these employees' shifts.
8 Defendants also required class members to be "on duty" during meal and rest periods such that
9 they were not provided with legally compliant meal and rest periods under California law.
10 Finally, Defendants also routinely failed to provide Plaintiff and class members with a second,
11 off-the-clock meal break for shifts lasting longer than ten hours.

12 53. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
13 an employer to pay an employee one additional hour of pay at the employee's regular rate of
14 compensation for each work day that a meal period is not provided.

15 54. At all relevant times, Defendants failed to pay Plaintiff and class members all
16 meal period premiums due for meal period violations pursuant to Labor Code § 226.7(b) and
17 section 11 of the applicable IWC Wage Order.

18 55. As a result of Defendants' failure to pay Plaintiff and class members an
19 additional hour of pay for each day a meal period was not provided, Plaintiff and class members
20 suffered and continue to suffer a loss of wages and compensation.

21 **SIXTH CAUSE OF ACTION**

22 **FAILURE TO PERMIT REST BREAKS**

23 **(Violation of Labor Code §§ 226.7; Violation of IWC Wage Order)**

24 56. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
25 though fully set forth herein.

26 57. Labor Code § 226.7(a) provides that no employer shall require an employee to
27 work during any rest period mandated by the IWC Wage Orders.

28 58. Section 12 of the applicable IWC Wage Order states "every employer shall

1 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
2 the middle of each work period” and the “authorized rest period time shall be based on the total
3 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
4 fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

5 59. During the relevant time period, Plaintiff and class members did not receive a ten
6 (10) minute rest period for every four (4) hours or major fraction thereof worked. For instance,
7 Plaintiff and class members were required to remain on premises during breaks and were
8 required to be responsive to spontaneous work-related radio calls during their break periods.

9 60. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order require
10 an employer to pay an employee one additional hour of pay at the employee’s regular rate of
11 compensation for each workday that the rest period is not provided.

12 61. At all relevant times, Defendants failed to pay Plaintiff and class members all
13 rest period premiums due for rest period violations pursuant to Labor Code § 226.7(b) and
14 section 12 of the applicable IWC Wage Order.

15 62. As a result of Defendants’ failure to pay Plaintiff and class members an
16 additional hour of pay for each day a rest period was not provided, Plaintiff and class members
17 suffered and continue to suffer a loss of wages and compensation.

18 **SEVENTH CAUSE OF ACTION**

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

20 **(Violation of Labor Code § 226; Violation of IWC Wage Order)**

21 63. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
22 though fully set forth herein.

23 64. Labor Code § 226(a) requires Defendants to provide each employee with an
24 accurate wage statement in writing showing nine pieces of information, including: (1) gross
25 wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units
26 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
27 deductions, provided that all deductions made on written orders of the employee may be
28 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period

1 for which the employee is paid, (7) the name of the employee and the last four digits of his or
2 her social security number or an employee identification number other than a social security
3 number, (8) the name and address of the legal entity that is the employer, and (9) all applicable
4 hourly rates in effect during the pay period and the corresponding number of hours worked at
5 each hourly rate by the employee.

6 65. During the relevant time period, Defendants have knowingly and intentionally
7 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff
8 and class members. The deficiencies include, among other things, the failure to correctly state
9 the gross and net wages earned, accurate inclusive dates of the pay period, and all applicable
10 hourly rates in effect and the number of hours worked at each hourly rate by Plaintiff and class
11 members.

12 66. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff
13 and class members have suffered injury and damage to their statutorily protected rights.
14 Specifically, Plaintiff and class members have been injured by Defendants' intentional
15 violation of California Labor Code § 226(a) because they were denied both their legal right to
16 receive, and their protected interest in receiving, accurate itemized wage statements under
17 California Labor Code § 226(a). Plaintiff has had to file this lawsuit in order to determine the
18 extent of the underpayment of wages, thereby causing Plaintiff to incur expenses and lost time.
19 Plaintiff would not have had to engage in these efforts and incur these costs had Defendants
20 provided the accurate wages earned. This has also delayed Plaintiff's ability to demand and
21 recover the underpayment of wages from Defendants.

22 67. California Labor Code § 226(a) requires an employer to pay the greater of all
23 actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred,
24 and one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods,
25 plus attorney's fees and costs, to each employee who was injured by the employer's failure to
26 comply with California Labor Code § 226(a).

27 68. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff
28 and class members from knowing, understanding, and disputing the wages paid to them, and

1 resulted in an unjustified economic enrichment to Defendants. As a result of Defendants'
2 knowing and intentional failure to comply with California Labor Code § 226(a), Plaintiff and
3 class members have suffered an injury, and the exact amount of damages and/or penalties is all
4 in an amount to be shown according to proof at trial.

5 69. Plaintiff and class members are also entitled to injunctive relief under California
6 Labor Code § 226(h), compelling Defendants to comply with California Labor Code § 226, and
7 seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

8 **EIGHTH CAUSE OF ACTION**

9 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

10 **(Violation of Labor Code §§ 2800, 2802, and the Applicable IWC Wage Order § 9)**

11 70. Plaintiff re-alleges and incorporates by this reference each and every allegation
12 set forth in all previous paragraphs of the Complaint.

13 71. Labor Code § 2800 provides, in pertinent part, "[a]n employer shall in all cases
14 indemnify his employee for losses caused by the employer's want of ordinary care."

15 72. Labor Code § 2802 provides, in pertinent part, "[a]n employer shall indemnify
16 his or her employee for all necessary expenditures or losses incurred by the employee in direct
17 consequence of the discharge of his or her duties..."

18 73. Further, Labor Code § 2802 additionally provides, in pertinent part: "(c)...the
19 term 'necessary expenditures or losses' shall include all reasonable costs, including but not
20 limited to, attorney's fees incurred by the employee enforcing the rights granted by this
21 section."

22 74. The Applicable IWC Wage Order § 9 provides that: "When tools or equipment
23 are required by the employer or are necessary to the performance of a job, such tools and
24 equipment shall be provided and maintained by the employer . . ."

25 75. California Labor Code section 2804 mandates that this statutory right cannot be
26 waived.

27 76. During the relevant time period, Defendants were required to indemnify and
28 reimburse Plaintiff and members of the Plaintiff Class for all expenditures or losses caused by

1 the employer's want of ordinary care and/or incurred in direct consequent of the discharge of
2 their duties, but failed to indemnify and reimburse Plaintiff and members of the Plaintiff Class.
3 In particular, Plaintiff and members of the Plaintiff Class were required to attend work-related
4 online training programs that they were not reimbursed for and were forced to use their
5 personal cell phones for work calls and GPS navigation without being reimbursed.

6 77. As a direct and proximate result, Plaintiff and members of the Plaintiff Class
7 have suffered, and continue to suffer, substantial losses, related to the use and enjoyment of
8 such monies to be reimbursed, lost interest on such monies, and expenses and attorney's fees in
9 seeking to compel Defendants to fully perform their obligations under California law, all to
10 their damage in amounts according to proof at the time of trial.

11 78. Accordingly, Plaintiff and members of the Plaintiff Class are entitled to recover,
12 and hereby seek, an amount equal to incurred necessary expenditures, pre- and post-judgment
13 interest, applicable penalties, attorneys' fees, and costs, and any further equitable relief this
14 Court may deem just and proper. *See* Cal. Lab. Code § 2802, *see also*, Cal. Civ. Proc. Code §
15 1021.5.

16 79. Plaintiff, on behalf of himself and members of the Plaintiff Class, requests relief
17 as described below.

18 **NINTH CAUSE OF ACTION**

19 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT AND**

20 **WITHIN THE REQUIRED TIME**

21 **(Violation of Labor Code §§ 201, 202 and 203; Violation of IWC Wage Order)**

22 80. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
23 though fully set forth herein.

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

1 employee is entitled to his wages at the time of quitting.

2 82. During the relevant time period, Defendants willfully failed to pay Plaintiff and
3 Waiting Time Subclass members all their earned wages upon termination including, but not
4 limited to, proper minimum wages, Reporting Time Pay, and overtime and doubletime
5 compensation, either at the time of discharge or within seventy-two (72) hours of their leaving
6 Defendants' employ. Further, Defendants failed to timely pay all wages due upon termination
7 of employment and instead paid such final wages weeks after they were due.

8 83. Defendants' failure to pay Plaintiff and Waiting Time Subclass members all
9 their earned wages at the time of discharge or within seventy-two (72) hours of their leaving
10 Defendants' employ is in violation of Labor Code §§ 201 and 202.

11 84. California Labor Code § 203 provides that if an employer willfully fails to pay
12 wages owed immediately upon discharge or resignation in accordance with Labor Code §§ 201
13 and 202, then the wages of the employee shall continue as a penalty from the due date at the
14 same rate until paid or until an action is commenced; but the wages shall not continue for more
15 than thirty (30) days.

16 85. Plaintiff and Waiting Time Subclass members are entitled to recover from
17 Defendants the statutory penalty which is defined as Plaintiff's and Waiting Time Subclass
18 members' regular daily wages for each day they were not paid, at their regular hourly rate of
19 pay, up to a thirty (30) day maximum pursuant to Labor Code § 203.

20 **TENTH CAUSE OF ACTION**

21 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**

22 86. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
23 though fully set forth herein.

24 87. Defendants' conduct, as alleged herein, has been and continues to be unfair,
25 unlawful and harmful to Plaintiff and class members. Plaintiff seeks to enforce important
26 rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

27 88. Defendants' activities, as alleged herein, violate California law and constitute
28 unlawful business acts or practices in violation of California Business and Professions Code §§

1 17200, *et seq.*

2 89. A violation of Business and Professions Code §§ 17200, *et seq.* may be
3 predicated on the violation of any state or federal law.

4 90. Defendants' policies and practices have violated state law in at least the
5 following respects:

6 (a) Failing to pay all overtime and doubletime wages at the proper rate to Plaintiff
7 and class members in violation of Labor Code §§ 510, 1194 and 1198;

8 (b) Failing to pay Reporting Time Pay to Plaintiff and class members in violation of
9 Labor Code § 1198;

10 (c) Failing to timely pay all wages earned in violation of Labor Code §§ 204 and
11 210;

12 (d) Failing to provide timely meal periods without paying Plaintiff and class
13 members premium wages for every day said meal periods were not provided in violation of
14 Labor Code §§ 226.7 and 512;

15 (e) Failing to authorize or permit rest breaks without paying Plaintiff and class
16 members premium wages for every day said rest breaks were not authorized or permitted in
17 violation of Labor Code § 226.7;

18 (f) Failing to provide Plaintiff and class members with accurate itemized wage
19 statements in violation of Labor Code § 226;

20 (g) Failing to reimburse business expenses in violation of Labor Code §§ 2800 and
21 2802.

22 (h) Failing to timely pay all earned wages to Plaintiff and Waiting Time Subclass
23 members upon separation of employment in violation of Labor Code §§ 201, 202 and 203.

24 91. Defendants intentionally avoided paying Plaintiff and class members' wages and
25 monies, thereby creating for Defendants an artificially lower cost of doing business in order to
26 undercut their competitors and establish and gain a greater foothold in the marketplace.

27 92. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and class
28 members are entitled to restitution of the wages unlawfully withheld and retained by

1 Defendants during a period that commences four years prior to the filing of the original
2 Complaint filed on January 12, 2022, an award of attorneys' fees pursuant to Code of Civil
3 Procedure § 1021.5, and other applicable laws; and an award of costs.

4 **ELEVENTH CAUSE OF ACTION**

5 **ENFORCEMENT OF LABOR CODE § 2698, ET SEQ.**

6 93. Plaintiff hereby re-alleges and incorporates by reference all paragraphs as
7 though fully set forth herein.

8 94. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that
9 provides for a civil penalty to be assessed and collected by the Labor and Workforce
10 Development Agency ("LWDA") or any of its departments, divisions, commissions, boards,
11 agencies or employees for violation of the code may, as an alternative, be recovered through a
12 civil action brought by an aggrieved employee on behalf of himself and other current or former
13 employees pursuant to the procedures specified in Labor Code § 2699.3.

14 95. Defendants' conduct violates numerous Labor Code sections including, but not
15 limited to, the following:

16 (a) Violation of Labor Code §§ 201, 202, 203, 204, 210, 510, 511, 558, 1182.12,
17 1194, 1197 and 1198 for failure to timely pay all earned wages (including minimum wages, and
18 overtime wages) owed to Plaintiff and other aggrieved employees during employment and upon
19 separation of employment as herein alleged;

20 (b) Violation of Labor Code § 1198 and Section 5 of the applicable IWC Wage
21 Order for failure to pay Reporting Time Pay to Plaintiff and other aggrieved employees;

22 (c) Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
23 Plaintiff and other aggrieved employees and failure to pay premium wages for missed meal
24 periods as herein alleged;

25 (d) Violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and
26 other aggrieved employees and failure to pay premium wages for missed rest periods as herein
27 alleged;

28 (e) Violation of Labor Code §§ 2800 and 2802 for failure to reimburse reasonable

1 and necessary business expenses of Plaintiff and other aggrieved employees as herein alleged;

2 (f) Violation of Labor Code § 226 for failing to provide accurate, itemized wage
3 statements;

4 96. Plaintiff is an “aggrieved employee” because he was employed by the alleged
5 violator and had one or more of the alleged violations committed against him, and therefore is
6 properly suited to represent the interests of all other aggrieved employees.

7 97. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3
8 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and
9 all other aggrieved employees under PAGA.

10 98. PAGA imposes a penalty of one hundred dollars (\$100.00) for each aggrieved
11 employee per pay period for the initial violation and two hundred dollars (\$200.00) for each
12 aggrieved employee per pay period for each subsequent violation.

13 99. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
14 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
15 cited above.

16 100. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred
17 herein.

18 **PRAYER FOR RELIEF**

19 Plaintiff, on his own behalf and on behalf of all others similarly situated, prays for relief
20 and judgment against Defendants, jointly and severally, as follows:

21 1. For certification of this action as a class action, including certifying the Class
22 and Subclass alleged by Plaintiff;

23 2. For appointment of Marion Jones as the class representative;

24 3. For appointment of Lebe Law, APLC as class counsel for all purposes;

25 4. For compensatory damages in an amount according to proof with interest
26 thereon;

27 5. For economic and/or special damages in an amount according to proof with
28 interest thereon;

1 6. For reasonable attorneys' fees, costs of suit and interest to the extent permitted
2 by law, including pursuant to Code of Civil Procedure § 1021.5, Labor Code §§ 226(e) and
3 1194;

4 7. For statutory penalties to the extent permitted by law, including those pursuant
5 to the Labor Code and IWC Wage Orders;

6 8. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

7 9. For an order requiring Defendants to restore and disgorge all funds to each
8 employee acquired by means of any act or practice declared by this Court to be unlawful, unfair
9 or fraudulent and, therefore, constituting unfair competition under Business and Professions
10 Code §§ 17200, *et seq.*;

11 10. For an award of damages in the amount of unpaid compensation including, but
12 not limited to, unpaid wages, benefits, and penalties, including interest thereon;

13 11. For pre-judgment interest;

14 12. For civil penalties; and

15 13. For such other relief as the Court deems just and proper.

16
17 Dated: April 6, 2022

Lebe Law, APLC

18
19 By: _____



Jonathan M. Lebe
Zachary T. Gershman
Nicolas W. Tomas

Attorneys for Plaintiff Marion Jones,
Individually and on behalf of all others similarly
situated

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Dated: April 6, 2022

Jonathan M. Lebe
Zachary T. Gershman
Nicolas W. Tomas
Attorneys for Plaintiff Marion Jones,
Individually and on behalf of all others similarly
situated

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California, I am over the age of
3 eighteen years and not a party to the within entitled action; my business address is 777 S.
Alameda Street, Los Angeles, CA 90021.

4 On April 6, 2022, I served the foregoing: **FIRST AMENDED CLASS AND**
5 **REPRESENTATIVE ACTION COMPLAINT** on the interested parties, by placing a true
copy thereof, by the method of service specified below:

6 Lauren B. Kalfsbeek
7 Jeremy T. Naftel
8 Diana Cabrera-Vega
9 MARTENSON HASBROUCK & SIMON LLP
455 Capitol Mall 400
Sacramento CA 95814

10 ☒ (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed
11 in the United States Mail at Los Angeles, California. I am "readily familiar" with the
12 firm's practice of collection and processing mail. Under that practice, it is deposited
13 with the U.S. postal service on that same day with postage thereon fully prepaid at
Los Angeles, California in the ordinary course of business. I am aware that on
motion of the party served, service is presumed invalid if the postal cancellation date
or postage meter dates is more than one day after date of deposit for mailing in
affidavit.

14 ☐ (VIA ELECTRONIC SERVICE) Based on a court order or an agreement of the
15 parties to accept service by electronic transmission, I caused the documents to be sent
16 to the persons at the electronic notification addresses listed above. I did not receive,
within a reasonable time after the transmission, any electronic message or other
indication that the transmission was unsuccessful.

17 ☒ (STATE) I declare under penalty of perjury under the laws of the State of
18 California that the above is true and correct.

19
20 Dated: April 6, 2022

Nicolas Tomas
Nicolas W. Tomas