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 individually, and on behalf of others similarly
 situated

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

RENE HERNANDEZ, individually, and on
 behalf of others similarly situated,

Plaintiff,

vs.

CUROGRAM INC., a Delaware corporation;
 and DOES 1 through 50, inclusive,

Defendants

CASE NO.: **22ST CV 34762**

COMPLAINT

CLASS ACTION:

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Periods
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wages
5. Failure to Pay All Wages Due to Discharged and Quitting Employees
6. Failure to Maintain Required Records
7. Failure to Furnish Accurate Itemized Wage Statements
8. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties
9. Unfair and Unlawful Business Practices

REPRESENTATIVE ACTION:

10. Penalties under the Labor Code Private Attorneys General Act, as Representative Action

DEMAND FOR JURY TRIAL

1 PLAINTIFF RENE HERNANDEZ (“PLAINTIFF”) an individual, demanding a jury trial,
2 on behalf of himself and other persons similarly situated, hereby alleges as follows:

3 INTRODUCTION

4 1. This is an action for relief from DEFENDANTS’ unlawful scheme to exploit their
5 current and former delivery driver employees depriving them of benefits and protections under the
6 California Labor Code and the California Industrial Welfare Commission (“IWC”) Wage Orders,
7 including but not limited to, by misclassifying them as “independent contractors.”

8 2. By misclassifying PLAINTIFF and other similarly situated employees as
9 “independent contractors,” DEFENDANTS have evaded various protections they owe and owed to
10 current and former employees under the California Labor Code, the California Minimum Wage
11 Order, and the IWC wage orders, including: the duty to indemnify employees for all necessary
12 expenses and losses incurred in connection with their employment (Cal. Lab. Code § 2802; IWC
13 Wage Order Nos. 4 & 9, §§ 8-9); the duty not to make illegal deductions from wages (Cal. Lab.
14 Code §§ 221, 223; IWC Wage Order Nos. 4 & 9, § 11); the duty to pay California minimum wages,
15 and to document employees’ actual hours worked (Cal. Lab. Code §§ 226, 1182.11, 1194, 1197;
16 IWC Wage Order Nos. 4 & 9, §§ 3, 4, 7; Minimum Wage Order); the duty to promptly pay all
17 wages due and owing upon termination (Cal. Lab. Code §§ 201, 203); the duty to pay wages twice
18 during a calendar month at statutorily-prescribed times (Cal. Lab. Code § 204); and other legal
19 obligations.

20 3. An employer, like DEFENDANTS, may not lawfully avoid these legal duties and
21 obligations by labeling workers “independent contractors,” who, by their terms and conditions of
22 engagement, are employees. DEFENDANTS exercise pervasive control over their transportation
23 operations, including retaining and exercising the right to control the manner and means of
24 PLAINTIFF’s and other employees’ work. Consequently, PLAINTIFF and other similarly situated
25 persons who performed work for DEFENDANTS are DEFENDANTS’ employees under
26 California law as alleged herein.

27 4. Because DEFENDANTS have willfully deprived PLAINTIFF and similarly
28 situated employees of the rights and protections guaranteed by California law to all employees, as

1 described herein, DEFENDANTS' misclassification of PLAINTIFF and the CLASS MEMBERS
2 as "independent contractors" and the attendant deprivation of substantial rights and benefits of
3 employment are part of an ongoing unfair and/or unlawful business practice.

4 5. PLAINTIFF brings claims under California law for unpaid minimum wages and
5 reimbursement of business expenses and losses, reimbursement of unlawful wage deductions,
6 injunctive relief, restitution, disgorgement, statutory penalties, liquidated damages, interest, and
7 attorneys' fees and costs. Due to the four-year statute of limitations for applicable claims under the
8 California Business and Professions Code § 17200 *et seq.*, PLAINTIFF seeks damages resulting
9 from DEFENDANTS' California wage and hour violations that have accrued or will accrue at any
10 time from four years prior to the filing of this Complaint through the date of final judgment

11 **JURISDICTION AND VENUE**

12 6. The Superior Court of the State of California has jurisdiction in this matter because
13 PLAINTIFF is a resident of the State of California, and Defendants CUROGRAM, INC., a
14 California corporation; and DOES 1 through 50 inclusive (collectively "DEFENDANTS"), are
15 qualified to do business in California and regularly conduct business in California. Further, no federal
16 question is at issue because the claims are based solely on California law.

17 7. Venue is proper in this judicial district and the County of Los Angeles, California
18 because PLAINTIFF, and other persons similarly situated, performed work for DEFENDANTS in
19 the County of Los Angeles, DEFENDANTS maintain offices and facilities and transact business in
20 the County of Los Angeles, and because DEFENDANTS' illegal payroll policies and practices
21 which are the subject of this action were applied, at least in part, to PLAINTIFF, and other persons
22 similarly situated, in the County of Los Angeles.

23 **PLAINTIFF**

24 8. PLAINTIFF is a male resident of the State of California and a former employee of
25 DEFENDANTS who worked for DEFENDANTS as a "driver."

26 9. PLAINTIFF brings this action on behalf of himself and the following similarly
27 situated class of individuals ("CLASS MEMBERS"): all current and former Drivers who
28 performed work for DEFENDANTS in the State of California at any time within the period

1 beginning four (4) years prior to the filing of this action and ending at the time this action settles
2 or proceeds to final judgment (the "CLASS PERIOD"). PLAINTIFF reserves the right to name
3 additional class representatives.

4 10. PLAINTIFF, on behalf of himself and other similarly situated employees of
5 DEFENDANTS in the State of California at any time during the four years preceding the filing of
6 this action, and continuing while this action is pending, brings this class action to recover, among
7 other things, wages and penalties from unpaid wages earned and due, including but not limited to
8 unpaid minimum wages, unpaid and illegally calculated overtime compensation, illegal meal and
9 rest period policies, failure to pay all wages due to discharged and quitting employees, failure to
10 indemnify employees for necessary expenditures and/or losses incurred in discharging their duties,
11 failure to provide accurate itemized wage statements, failure to maintain required records, and
12 interest, attorneys' fees, costs, and expenses.

13 **DEFENDANTS**

14 11. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT
15 CUROGRAM, INC. is, and at all times relevant hereto was, a California corporation organized and
16 existing under the laws of the State of California. PLAINTIFF is further informed and believes,
17 and thereon alleges, that DEFENDANT CUROGRAM, INC. is authorized to conduct business in
18 the State of California, and does conduct business in the State of California. Specifically,
19 DEFENDANT CUROGRAM, INC. maintains offices and facilities and conducts business in, and
20 engages in illegal payroll practices or policies in, the County of Los Angeles, State of California.

21 12. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
22 PLAINTIFF at this time, and PLAINTIFF therefore sues such DOE Defendants under fictitious
23 names. PLAINTIFF is informed and believes, and thereon alleges, that each Defendant designated
24 as a DOE is in some manner highly responsible for the occurrences alleged herein, and that
25 PLAINTIFF and CLASS MEMBERS' injuries and damages, as alleged herein, were proximately
26 caused by the conduct of such DOE Defendants. PLAINTIFF will seek leave of the court to amend
27 this Complaint to allege their true names and capacities of such DOE Defendants when ascertained.

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1 13. At all relevant times herein, DEFENDANTS were the joint employers of
2 PLAINTIFF and CLASS MEMBERS. PLAINTIFF is informed and believes, and thereon allege,
3 that at all times material to this complaint DEFENDANTS were the alter egos, divisions, affiliates,
4 integrated enterprises, joint employers, subsidiaries, parents, principals, related entities, co-
5 conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible, of
6 each other. Each Defendant was completely dominated by his, her or its co-Defendant, and each
7 was the alter ego of the other.

8 14. At all relevant times herein, PLAINTIFF and CLASS MEMBERS were employed
9 by DEFENDANTS under employment agreements that were partly written, partly oral, and partly
10 implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and each of them,
11 acted pursuant to, and in furtherance of, their policies and practices of not paying PLAINTIFF and
12 CLASS MEMBERS all wages earned and due, through methods and schemes which include, but
13 are not limited to, misclassifying employees as independent contractors; failing to properly pay
14 required overtime premiums; failing to provide rest and meal periods; failing to properly maintain
15 records; failing to provide accurate itemized statements for each pay period; failing to properly
16 compensate PLAINTIFF and CLASS MEMBERS for necessary expenditures; and requiring,
17 permitting or suffering the employees to work off the clock, in violation of the California Labor
18 Code and the applicable Welfare Commission ("IWC") Orders.

19 15. PLAINTIFF is informed and believes, and thereon allege, that each and every one
20 of the acts and omissions alleged herein were performed by, and/or attributable to, all
21 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control of,
22 each of the other DEFENDANTS, and that said acts and failures to act were within the course and
23 scope of said agency, employment and/or direction and control.

24 16. As a direct and proximate result of the unlawful actions of DEFENDANTS,
25 PLAINTIFF and CLASS MEMBERS have suffered, and continue to suffer, damages, including
26 unpaid wages, loss of earnings, attorney's fees, interests and costs, in amounts as yet unascertained,
27 but subject to proof at trial, and within the jurisdiction of this Court.

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1 **CLASS ACTION DESIGNATION**

2 17. This action is appropriately suited for a Class Action because:

3 a. The potential class is a significant number. Joinder of all current and former
4 employees individually would be impractical.

5 b. This action involves common questions of law and fact to the potential class
6 because the action focuses on DEFENDANTS' systematic course of illegal payroll practices and
7 policies, which was applied to all drivers in California in violation of the Labor Code, the applicable
8 IWC wage orders, and the Business and Professions Code which prohibits unfair business practices
9 arising from such violations.

10 c. The claims of PLAINTIFF are typical of the class because DEFENDANTS
11 subjected all drivers in the State of California to identical violations of the Labor Code, the
12 applicable IWC wage order, and the Business and Professions Code.

13 d. PLAINTIFF is able to fairly and adequately protect the interests of all
14 members of the class because it is in his best interests to prosecute the claims alleged herein to
15 obtain full compensation due to them for all services rendered and hours worked.

16 **FIRST CAUSE OF ACTION**

17 **Failure to Provide Required Meal Periods**

18 **[Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Orders Nos. 4-2001 & 9-001, § 11]**

19 **(Against all DEFENDANTS)**

20 18. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
21 allegations in the foregoing paragraphs.

22 19. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies and
23 practices to deprive PLAINTIFF and CLASS MEMBERS all wages earned and due,
24 DEFENDANTS required, permitted or otherwise suffered PLAINTIFF and CLASS MEMBERS
25 to take less than the 30-minute meal period, or to work through them, and have failed to otherwise
26 provide the required meal periods to PLAINTIFF and CLASS MEMBERS pursuant to California
27 Labor Code § 226.7, 512 and IWC Order Nos. 4-2001 and 9-2001, § 11.

28 ///

1 20. DEFENDANTS further violated California Labor Code §§ 226.7 and IWC Wage
2 Order Nos. 4-2001 and 9-2001, § 11 by failing to compensate PLAINTIFF and CLASS MEMBERS
3 who were not provided with a meal period, in accordance with the applicable wage order, one
4 additional hour of compensation at each employee's regular rate of pay for each workday that a
5 meal period was not provided.

6 21. DEFENDANTS further violated California Labor Code §§ 226.7, 510, 1194, 1197,
7 and IWC Wage Order Nos. 4-2001 and 9-2001 by failing to compensate PLAINTIFF and CLASS
8 MEMBERS for all hours worked during their meal periods.

9 22. As a proximate result of the aforementioned violations, PLAINTIFF and CLASS
10 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages earned
11 and due, interest, penalties, expenses, and costs of suit.

12 **SECOND CAUSE OF ACTION**

13 **Failure to Provide Required Rest Periods**

14 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order Nos. 4-2001 and 9-2001, § 12]**

15 **(Against all DEFENDANTS)**

16 23. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
17 allegations in the foregoing paragraphs.

18 24. At all times relevant herein, as part of DEFENDANTS' illegal payroll policies and
19 practices to deprive PLAINTIFF and CLASS MEMBERS all wages earned and due,
20 DEFENDANTS failed to provide rest periods to PLAINTIFF and CLASS MEMBERS as required
21 under California Labor Code §§ 226.7 and 512, and IWC Wage Order Nos. 4-2001 and 9-2001, §
22 12.

23 25. DEFENDANTS further violated California Labor Code § 226.7 and IWC Wage
24 Order Nos. 4-2001 and 9-2001, § 12 by failing to pay PLAINTIFF and CLASS MEMBERS who
25 were not provided with a rest period, in accordance with the applicable wage order, one additional
26 hour of compensation at each employee's regular rate of pay for each workday that a rest period
27 was not provided.

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1 26. As a proximate result of the aforementioned violations, PLAINTIFF and CLASS
2 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages earned
3 and due, interest, penalties, expenses, and costs of suit.

4 **THIRD CAUSE OF ACTION**

5 **Failure to Pay Overtime Wages**

6 **[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order Nos. 4-2001 and 9-2001, § 3]**

7 **(Against all DEFENDANTS)**

8 27. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
9 allegations in the foregoing paragraphs.

10 28. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order Nos. 4-2001
11 and 9-2001, § 3, DEFENDANTS are required to compensate PLAINTIFF and CLASS MEMBERS
12 for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all
13 hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first
14 eight (8) hours on the seventh consecutive workday, with double time for all hours worked in excess
15 of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the
16 seventh consecutive day of work in any workweek.

17 29. PLAINTIFF and CLASS MEMBERS are current and former employees entitled to
18 the protections of California Labor Code §§ 510, 1194, and IWC Wage Order Nos. 4-2001 and 9-
19 2001. During the CLASS PERIOD, DEFENDANTS failed to compensate PLAINTIFF and
20 CLASS MEMBERS for all overtime hours worked as required under the foregoing provisions of
21 the California Labor Code and IWC Wage Order by, among other things: failing to pay for all time
22 spent subject to DEFENDANTS' control; failing to pay overtime at one and one-half (1 ½) or
23 double the regular rate of pay as provided by California Labor Code §§ 510, 1194, and IWC Wage
24 Order Nos. 4-2001 and 9-2001, § 3; requiring, permitting or suffering PLAINTIFF and CLASS
25 MEMBERS to work off the clock; requiring, permitting or suffering PLAINTIFF and CLASS
26 MEMBERS to work through meal and rest breaks; illegally and inaccurately recording time in
27 which PLAINTIFF and CLASS MEMBERS worked; failing to properly maintain PLAINTIFF's
28 and CLASS MEMBERS' records; failing to provide accurate itemized wage statements to

1 PLAINTIFF for each pay period; and other methods to be discovered.

2 30. In violation of California law, DEFENDANTS have knowingly and willfully
3 refused to perform their obligations to compensate PLAINTIFF and CLASS MEMBERS for all
4 wages earned and all hours worked. As a proximate result, PLAINTIFF and CLASS MEMBERS
5 have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such
6 wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel
7 DEFENDANTS to fully perform their obligations under state law, all to their respective damages
8 in amounts according to proof at time of trial, and within the jurisdiction of this Court.

9 31. DEFENDANTS' conduct described herein violates California Labor Code §§ 510,
10 1194, 1198 and IWC Wage Order Nos. 4-2001 and 9-2001, § 3. Therefore, pursuant to California
11 Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the
12 California Labor Code and IWC Wage Orders, PLAINTIFF and CLASS MEMBERS are entitled
13 to recover the unpaid balance of wages owed to them by DEFENDANTS, plus interest, penalties,
14 attorneys' fees, expenses, and costs of suit.

15 **FOURTH CAUSE OF ACTION**

16 **Failure to Pay Minimum Wages**

17 **[Cal Labor Code §§ 1194, 1197; IWC Wage Order Nos. 4-2001 and 9-2001, § 4]**

18 **(Against all DEFENDANTS)**

19 32. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
20 allegations in the foregoing paragraphs.

21 33. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Order Nos. 4-
22 2001 and 9-2001, § 4, payment to an employee of less than the applicable minimum wage for all
23 hours worked in a payroll period is unlawful.

24 34. During the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFF and
25 CLASS MEMBERS minimum wages for all hours worked by, among other things: requiring,
26 permitting or suffering PLAINTIFF and CLASS MEMBERS to work off the clock; requiring,
27 permitting or suffering PLAINTIFF and CLASS MEMBERS to work through meal and rest breaks;
28 illegally and inaccurately recording time in which PLAINTIFF and CLASS MEMBERS worked;

1 failing to properly maintain PLAINTIFF's and CLASS MEMBERS' records; failing to provide
2 accurate itemized wage statements to PLAINTIFF and CLASS MEMBERS for each pay period;
3 and other methods to be discovered.

4 35. DEFENDANTS' conduct described herein violates California Labor Code §§ 1194,
5 1197, and IWC Wage Order Nos. 4-2001 and 9-2001, § 4. As a proximate result of the
6 aforementioned violations, PLAINTIFF and CLASS MEMBERS have been damaged in an amount
7 according to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558,
8 1194, 1197.1, and other applicable provisions under the Labor Code and IWC Wage Orders,
9 PLAINTIFF and CLASS MEMBERS are entitled to recover the unpaid balance of wages owed to
10 them by DEFENDANTS, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

11 **FIFTH CAUSE OF ACTION**

12 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

13 **[Cal. Labor Code §§ 201, 202, 203]**

14 **(Against all DEFENDANTS)**

15 36. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
16 allegations in the foregoing paragraphs.

17 37. Pursuant to California Labor Code § 201, 202, and 203, DEFENDANTS are
18 required to pay all earned and unpaid wages to an employee who is discharged. California Labor
19 Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued
20 and unpaid at the time of discharge are due and payable immediately.

21 38. Furthermore, pursuant to California Labor Code § 202, DEFENDANTS are required
22 to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or
23 her employment, unless the employee provided 72 hours previous notice of his or her intention to
24 quit, in which case the employee is entitled to his or her wages at the time of quitting.

25 39. California Labor Code § 203 provides that if an employer willfully fails to pay, in
26 accordance with California Labor Code §§ 201 and 202, any wages of an employee who is
27 discharged or who quits, the employer is liable for waiting time penalties in the form of continued
28 compensation to the employee at the same rate for up to 30 workdays.

1 40. During the CLASS PERIOD, DEFENDANTS have willfully failed to pay accrued
2 wages and other compensation to PLAINTIFF and CLASS MEMBERS in accordance with
3 California Labor Code §§ 201 and 202.

4 41. As a result, PLAINTIFF and CLASS MEMBERS are entitled to all available
5 statutory penalties, including the waiting time penalties provided in California Labor Code § 203,
6 together with interest thereon, as well as other available remedies.

7 42. As a proximate result of DEFENDANTS' unlawful actions and omissions,
8 PLAINTIFF and CLASS MEMBERS have been deprived of compensation in an amount according
9 to proof at the time of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery
10 of such amounts, plus interest thereon, and attorneys' fees and costs, pursuant to California Labor
11 Code §§ 1194 and 2699.

12 **SIXTH CAUSE OF ACTION**

13 **Failure to Maintain Required Records**

14 **[Cal. Labor Code §§ 226; IWC Wage Order Nos. 4-2001 and 9-2001, § 7]**

15 **(Against all DEFENDANTS)**

16 43. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
17 allegations in the foregoing paragraphs.

18 44. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies and
19 practices to deprive PLAINTIFF and CLASS MEMBERS of all wages earned and due,
20 DEFENDANTS knowingly and intentionally failed to maintain records as required under
21 California Labor Code §§ 226, 1174, and IWC Wage Order Nos. 4-2001 and 9-2001, § 7, including
22 but not limited to the following records: total daily hours worked by each employee; applicable
23 rates of pay; all deductions; meal periods; time records showing when each employee begins and
24 ends each work period; and accurate itemized statements.

25 45. As a proximate result of DEFENDANTS' unlawful actions and omissions,
26 PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at trial,
27 and are entitled to all wages earned and due, plus interest thereon. Additionally, PLAINTIFF and
28 CLASS MEMBERS are entitled to all available statutory penalties, including but not limited to

1 civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of
2 costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in
3 California Labor Code § 226(e), as well as other available remedies.

4 **SEVENTH CAUSE OF ACTION**

5 **Failure to Furnish Accurate Itemized Wage Statements**

6 **[Cal. Labor Code §§ 226, 1174; IWC Wage Order Nos. 4-2001 and 9-2001, § 7]**

7 **(Against all DEFENDANTS)**

8 46. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
9 allegations in the foregoing paragraphs.

10 47. During the CLASS PERIOD, DEFENDANTS routinely failed to provide
11 PLAINTIFF and CLASS MEMBERS with timely, accurate, and itemized wage statements in
12 writing showing each employee's gross wages earned, total hours worked, all deductions made, net
13 wages earned, the name and address of the legal entity or entities employing PLAINTIFF and
14 CLASS MEMBERS, and all applicable hourly rates in effect during each pay period and the
15 corresponding number of hours worked at each hourly rate, in violation of California Labor Code
16 § 226 and IWC Wage Order Nos. 4-2001 and 9-2001, § 7.

17 48. During the CLASS PERIOD, DEFENDANTS knowingly and intentionally failed to
18 provide PLAINTIFF and CLASS MEMBERS with timely, accurate, and itemized wage statements
19 in accordance with California Labor Code § 226(a).

20 49. As a proximate result of DEFENDANTS' unlawful actions and omissions,
21 PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at trial,
22 and seek all wages earned and due, plus interest thereon. Additionally, PLAINTIFF and CLASS
23 MEMBERS are entitled to all available statutory penalties, including but not limited to civil
24 penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs,
25 expenses, and reasonable attorneys' fees, including but not limited to those provided in California
26 Labor Code § 226(e), as well as other available remedies.

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1 **EIGHTH CAUSE OF ACTION**

2 **Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge**
3 **of Duties**

4 **[Cal. Labor Code § 2802]**

5 **(Against all DEFENDANTS)**

6 50. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
7 allegations in the foregoing paragraphs.

8 51. California Labor Code § 2802(a) requires an employer to indemnify an employee
9 for all necessary expenditures or losses incurred by the employee in direct consequence of the
10 discharge of his or her duties, or of his or her obedience to the directions of the employer.

11 52. During the CLASS PERIOD, DEFENDANTS knowingly and willfully failed to
12 indemnify PLAINTIFF and CLASS MEMBERS for all business expenses and/or losses incurred
13 in direct consequence of the discharge of their duties while working under the direction of
14 DEFENDANTS, including but not limited to expenses for mileage, travel expenses, cell phone
15 usage, and other employment-related expenses, in violation of California Labor Code § 2802.

16 53. As a proximate result of DEFENDANTS' unlawful actions and omissions,
17 PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at trial,
18 and seek reimbursement of all necessary expenditures, plus interest thereon pursuant to California
19 Labor Code § 2802(b). Additionally, PLAINTIFF and CLASS MEMBERS are entitled to all
20 available statutory penalties and an award of costs, expenses, and reasonable attorneys' fees,
21 including those provided in California Labor Code § 2802(c), as well as other available remedies.

22 **NINTH CAUSE OF ACTION**

23 **Unfair and Unlawful Business Practices**

24 **[Cal. Bus. & Prof. Code §§ 17200 et. seq.]**

25 **(Against all DEFENDANTS)**

26 54. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
27 allegations in the foregoing paragraphs.

28 55. Each and every one of DEFENDANTS' acts and omissions in violation of the

1 California Labor Code and/or the applicable IWC Wage Order as alleged herein, including but not
2 limited to DEFENDANTS' failure and refusal to provide required meal periods, DEFENDANTS'
3 failure and refusal to provide required rest periods, DEFENDANTS' failure and refusal to pay
4 overtime compensation, DEFENDANTS' failure and refusal to pay minimum wages,
5 DEFENDANTS' failure and refusal to pay all wages due to discharged or quitting employees,
6 DEFENDANTS' failure and refusal to furnish accurate itemized wage statements;
7 DEFENDANTS' failure and refusal to maintain required records, DEFENDANTS' failure and
8 refusal to indemnify PLAINTIFF and CLASS MEMBERS for necessary expenditures and/or losses
9 incurring in discharging their duties, constitutes an unfair and unlawful business practice under
10 California Business and Professions Code § 17200 et seq.

11 56. Labor Code § 226.8(a) makes it unlawful for any person or employer to engage in
12 any of the following activities: (1) willful misclassification of an individual as an independent
13 contractor, and (2) charging an individual who has been willfully misclassified as an independent
14 contractor a fee, or making any deductions from compensation, for any purpose, including for
15 goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or
16 fines arising from the individual's employment where any of the acts described in this paragraph
17 would have violated the law if the individual had not been misclassified. DEFENDANTS willfully
18 misclassified PLAINTIFF and other employees as independent contractors in order to evade
19 DEFENDANTS' responsibilities and obligations to provide certain benefits and protections under
20 the Labor Code, IWC Wage Orders, and other laws and regulations, including paying federal Social
21 Security and payroll taxes, unemployment insurance taxes and state employment taxes, providing
22 worker's compensation insurance, and complying with numerous state and federal statutes and
23 regulations governing the wages, hours, and working conditions of employees, and charging
24 employees who were and are willfully misclassified as independent contractors a fee, or making
25 any deductions from compensation, for any purpose, including for goods, materials, space rental,
26 services, government licenses, repairs, equipment maintenance, or fines arising from those
27 individuals' employment, where any of said acts would have violated the law if the individuals had
28 not been misclassified, in violation of Labor Code § 226.8

1 57. In addition to the unfair and unlawful business acts and practices alleged herein,
2 DEFENDANTS willfully misclassified PLAINTIFF as an independent contractor in violation of
3 Labor Code section 226.8. DEFENDANTS further charged PLAINTIFF fees, and made deductions
4 from compensation, including for goods, materials, space rental, services, government licenses,
5 repairs, equipment maintenance, and fines arising from PLAINTIFF'S employment which were in
6 violation of the law given the individual was misclassified, and which would have violated the law
7 if the individual had not been misclassified.

8 58. DEFENDANTS' violations of California wage and hour laws constitute a business
9 practice because DEFENDANTS' aforementioned acts and omissions were done repeatedly over a
10 significant period of time, and in a systematic manner, to the detriment of PLAINTIFF and CLASS
11 MEMBERS.

12 59. DEFENDANTS have avoided payment of wages, overtime wages, meal periods,
13 rest periods, and other benefits as required by the California Labor Code, the California Code of
14 Regulations, and the applicable IWC Wage Order. Further, DEFENDANTS have failed to record,
15 report, and pay the correct sums of assessment to the state authorities under the California Labor
16 Code and other applicable regulations.

17 60. As a result of DEFENDANTS' unfair and unlawful business practices,
18 DEFENDANTS have reaped unfair and illegal profits during the CLASS PERIOD at the expense
19 of PLAINTIFF, CLASS MEMBERS, and members of the public. DEFENDANTS should be made
20 to disgorge their ill-gotten gains and to restore them to PLAINTIFF and CLASS MEMBERS.

21 61. DEFENDANTS' unfair and unlawful business practices entitle PLAINTIFF and
22 CLASS MEMBERS to seek preliminary and permanent injunctive relief, including but not limited
23 to orders that DEFENDANTS account for, disgorge, and restore to PLAINTIFF and CLASS
24 MEMBERS the wages and other compensation unlawfully withheld from them. PLAINTIFF and
25 CLASS MEMBERS are entitled to restitution of all monies to be disgorged from DEFENDANTS
26 in an amount according to proof at the time of trial, but in excess of the jurisdiction of this Court.

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1 **TENTH CAUSE OF ACTION**

2 **Representative Action for Civil Penalties**

3 **[Cal. Labor Code §§ 2698–2699.5]**

4 **(Against All DEFENDANTS)**

5 62. PLAINTIFF incorporates herein by specific reference as though fully set forth the
6 allegations in all preceding paragraphs, with exception of the allegations in paragraph 12 and the
7 subparagraphs thereto.

8 63. PLAINTIFF is an “aggrieved employee” within the meaning of California Labor
9 Code § 2699(c), and a proper representative to bring a civil action on behalf of himself and other
10 current and former employees of DEFENDANTS pursuant to the procedures specified in California
11 Labor Code § 2699.3, because PLAINTIFF and CLASS MEMBERS were employed by
12 DEFENDANTS and the alleged violations of the California Labor Code were committed against
13 PLAINTIFF and CLASS MEMBERS.

14 64. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor
15 Code §§ 2698–2699.5, PLAINTIFF and CLASS MEMBERS seeks to recover civil penalties,
16 including but not limited to penalties under California Labor Code §§ 2699, 210, 226.3, 558,
17 1174.5, 1197.1, and IWC Wage Order Nos. 4-2001 and 9-2001, § 20, from DEFENDANTS in a
18 representative action for the violations set forth above, including but not limited to violations of
19 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and
20 2802. PLAINTIFF and CLASS MEMBERS are also entitled to an award of reasonable attorneys’
21 fees and costs pursuant to California Labor Code § 2699(g)(1).

22 65. Pursuant to California Labor Code §§ 2699.3, PLAINTIFF gave written notice on
23 January 12, 2022 by online filing to the California Labor and Workforce Development Agency
24 (“LWDA”) and by certified mail to DEFENDANTS of the specific provisions of the California
25 Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories
26 to support the alleged violations. More than sixty-five (65) days have passed and the LWDA has
27 not provided notice to PLAINTIFF that it intends to investigate the alleged violations.

28 66. Therefore, PLAINTIFF has complied with all of the requirements set forth in

1 California Labor Code § 2699.3 to commence a representative action under PAGA.

2 **PRAYER FOR RELIEF**

3 **WHEREFORE**, PLAINTIFF, individually and on behalf of all other persons similarly
4 situated, respectfully prays for relief against DEFENDANTS and DOES 1 through 50, inclusive,
5 and each of them, as follows:

- 6 1. For unpaid wages and compensatory damages in an amount to be ascertained at trial;
- 7 2. For restitution of all monies due to PLAINTIFF and CLASS MEMBERS, as well
8 as disgorged profits from DEFENDANTS' unfair and unlawful business practices;
- 9 3. For meal and rest period compensation pursuant to California Labor Code § 226.7
10 and IWC Wage Orders Nos. 4-2001 and 9-2001;
- 11 4. For liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
- 12 5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from
13 violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and from
14 engaging in the unlawful business practices complained of herein;
- 15 6. For waiting time penalties pursuant to California Labor Code § 203;
- 16 7. For statutory and civil penalties according to proof, including but not limited to all
17 penalties authorized by the California Labor Code §§ 226(e) and §§ 2698–2699.5;
- 18 8. For interest on the unpaid wages at 10% per annum pursuant to California Labor
19 Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable
20 provision providing for pre-judgment interest;
- 21 9. For reasonable attorneys' fees and costs pursuant to California Labor Code §§ 1194,
22 2699, 2802, California Civil Code § 1021.5, and any other applicable provisions providing for
23 attorneys' fees and costs;
- 24 10. For declaratory relief;
- 25 11. For an order requiring and certifying the First, Second, Third, Fourth, Fifth, Sixth,
26 Seventh, Eighth, and Ninth Causes of Action as a class action;

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1 12. For an order appointing PLAINTIFF as class representative, and PLAINTIFF's
2 counsel as class counsel; and

3 13. For such further relief that the Court may deem just and proper.

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5 DATED: October 31, 2022

Respectfully submitted,

6 **MATERN LAW GROUP, PC**

7
8 By: _____

9 Matthew J. Matern
10 Julia Z. Wells
11 Attorneys for Plaintiff
12 RENE HERNANDEZ, individually, and on
13 behalf of other persons similarly situated
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DEMAND FOR JURY TRIAL

PLAINTIFF hereby demands a jury trial with respect to all issues triable of right by jury.

DATED: October 31, 2022

Respectfully submitted,

MATERN LAW GROUP, PC

By:



Matthew J. Matern

Julia Z. Wells

Attorneys for Plaintiff

RENE HERNANDEZ, individually, and on
behalf of other persons similarly situated