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

CARLOS FERNANDO ECUTE, individually
 and on behalf of others similarly situated, and as
 an aggrieved employee and Private Attorney
 General,

Plaintiff,

vs.

SH&H INC., a Wyoming corporation; and
 DOES 1 through 50, inclusive,

Defendants.

Case No.: **22STCV17849**

**CLASS ACTION AND REPRESENTATIVE
 ACTION COMPLAINT**

DEMAND FOR TRIAL BY JURY

- (1) Violation of Cal. Labor Code §§ 510 and 1198 (Unpaid Overtime)
- (2) Violation of Cal. Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums)
- (3) Violation of Cal. Labor Code § 226.7 (Unpaid Rest Period Premiums)
- (4) Violation of Cal. Labor Code §§ 1194, 1197, 1197.1, and 226.2 (Unpaid Minimum Wages)
- (5) Violation of Cal. Labor Code §§ 201, 202 and 203 (Final Wages Not Timely Paid)
- (6) Violation of Cal. Labor Code § 226(a) (Failure to Provide Accurate Wage Statements)
- (7) Violation of Cal. Labor Code §§ 2800 and 2802 (Failure to Reimburse Necessary Business Expenses)
- (8) Violation of Cal. Labor Code § 212 and 221 (Unlawful Deduction and Withholding of Wages)
- (9) Violation of Cal. Business & Professions Code § 17200, et seq.
- (10) Violation of Cal. Labor Code § 2699, (Private Attorneys General Act)

1 Plaintiff CARLOS FERNANDO ECUTE (“Plaintiff”), individually and on behalf of other
2 members of the general public similarly situated, and as a private attorney general, based upon facts
3 that either have evidentiary support or are likely to have evidentiary support after a reasonable
4 opportunity for further investigation and discovery, alleges as follows:

5 **JURISDICTION AND VENUE**

6 1. Plaintiff brings this action against Defendants SH&H INC. and DOES 1 THROUGH
7 50 (hereinafter also collectively referred to as “Defendants”) for California Labor Code violations,
8 unfair business practices, and civil penalties stemming from Defendants’ intentional misclassification
9 of its truck drivers as independent contractors, as well as Defendants’ failure to pay overtime
10 compensation, failure to provide meal periods, failure to authorize and permit rest periods, failure to
11 pay minimum wage, failure to timely pay wages, failure to provide accurate wage statements, failure
12 to maintain accurate time and payroll records, failure to reimburse necessary business-related
13 expenses, and unlawful withholding and deduction of wages. By this action, Plaintiff seeks to put an
14 end to this illegal and oppressive conduct.

15 2. Plaintiff’s First through Ninth Causes of Action are brought as a class action on behalf
16 of himself and similarly situated individuals who worked for Defendants as truck drivers within the
17 State of California and who were classified as independent contractors (hereinafter collectively
18 referred to as the “Class” or “Class Members,” as defined more fully in paragraph 13, below) pursuant
19 to California Code of Civil Procedure section 382. The monetary damages and restitution sought by
20 Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established
21 according to proof at trial.

22 3. Plaintiff’s Tenth Cause of Action is brought as a representative action on behalf of
23 himself and individuals who worked for Defendants as truck drivers within the State of California and
24 who were classified as independent contractors at any time since March 18, 2021 (hereinafter
25 collectively referred to as the “Aggrieved Employees”) pursuant to California Labor Code sections
26 2698, *et seq.* Plaintiff is an aggrieved employee against whom one or more of the alleged violations
27 occurred. The civil penalties sought by Plaintiff exceed the minimal jurisdiction limits of the Superior
28 Court and will be established according to proof at trial.

4. The Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

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

6. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, County of Los Angeles.

PARTIES

7. Plaintiff CARLOS FERNANDO ECUTE is an individual residing in the State of California, County of Los Angeles.

8. Defendant SH&H INC. is and at all times herein mentioned was, a corporation organized and existing under the laws of the State of Wyoming, and registered to do business in the state of California.

9. Plaintiff is ignorant of the identities of defendants Does 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. The Doe defendants may be individuals, partnerships, or corporations. Plaintiff is informed and believes, and thereon alleges, that, at all times mentioned herein, each of the Doe defendants was the parent, subsidiary, agent, servant, employee, co-venturer, and/or co-conspirator of each of the other defendants, and was at all times mentioned acting within the scope, purpose, consent, knowledge, ratification and authorization of such agency, employment, joint venture and conspiracy. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Doe defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged were proximately caused by their conduct. Defendant SH&H INC. and Doe Defendants 1 through 50 are collectively referred to herein

as “Defendants.”

10. Defendants are and at all times herein mentioned were, (a) conducting business in the County of Los Angeles, State of California, and (b) the employer of Plaintiff consistent with the California Labor Code and Industrial Welfare Commission Wage Orders (“Wage Orders”).

11. Plaintiff further alleges that Defendants, directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiff, the Class, and the Aggrieved Employees so as to make each of said Defendants employers and employers jointly liable under the statutory provisions set forth herein.

CLASS ACTION ALLEGATIONS

12. Plaintiff brings the First through Ninth Causes of Action as a class action on his own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under Code of Civil Procedure section 382.

13. The proposed class is defined as follows: All persons who worked as truck drivers for any of the Defendants within the State of California and who were classified as independent contractors at any time commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice of the certified class action is provided to the class (hereinafter referred to as the “Class” or “Class Members.”).

14. Plaintiff reserves the right to establish other subclasses as appropriate.

15. The Class is ascertainable and there is a well-defined community of interest in the litigation:

a. Numerosity: The Class Members are so numerous that joinder of all Class Members is impracticable. The membership of the entire Class is unknown to Plaintiff at this time; however, the Class is estimated to be over fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendants’ employment records.

b. Typicality: Plaintiff's claims are typical of all other Class Members demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other Class Members with whom he has a well-defined community of interest.

- 1 c. Adequacy: Plaintiff will fairly and adequately protect the interests of each Class
2 Member, with whom he has a well-defined community of interest and typicality of
3 claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to the other
4 Class Members. Plaintiff's attorneys, the proposed class counsel, are versed in the rules
5 governing class action discovery, certification, and settlement. Plaintiff has incurred,
6 and during the pendency of this action will continue to incur, costs and attorneys' fees,
7 which have been, are, and will be necessarily expended for the prosecution of this
8 action for the substantial benefit of each Class Member.
- 9 d. Superiority: A class action is superior to other available methods for the fair and
10 efficient adjudication of this litigation because individual joinder of all Class Members
11 is impractical.
- 12 e. Public Policy Considerations: Certification of this lawsuit as a class action will
13 advance public policy objectives. Employers of this great state violate employment
14 and labor laws every day. Current employees are often afraid to assert their rights out
15 of fear of direct or indirect retaliation. However, class actions provide the Class
16 Members who are not named in the complaint anonymity that allows for the
17 vindication of their rights.

18 16. There are common questions of law and fact as to the Class that predominate over
19 questions affecting only individual members. The following common questions of law or fact, among
20 others, exist as to the members of the Class:

- 21 a. Whether Defendants unlawfully misclassified Plaintiffs and other Class Members as
22 independent contractors rather than employees;
- 23 b. Whether Defendants' failure to pay wages, without abatement, or reduction, in
24 accordance with the California Labor Code was willful;
- 25 c. Whether Defendants had a corporate policy and practice of failing to pay Plaintiff and
26 the other Class Members for all hours worked, and missed, short, late or interrupted
27 meal periods and rest breaks in violation of California law;
- 28 d. Whether Defendants required Plaintiff and the other Class Members to work more than

- 1 eight (8) hours per day and/or more than forty (40) hours per week and failed to pay
2 the legally required overtime compensation to Plaintiff and the other Class Members;
3 e. Whether Defendants deprived Plaintiff and the other Class Members of meal and/or
4 rest periods or required Plaintiff and the other Class Members to work during meal
5 and/or rest periods without compensation;
6 f. Whether Defendants failed to pay meal period premium wages to Class Members
7 when they were not provided with a legally compliant meal period;
8 g. Whether Defendants failed to pay rest period premium wages to Class Members when
9 they were not authorized and permitted to take legally compliant rest periods;
10 h. Whether Defendants failed to pay minimum wages to Plaintiff and the other Class
11 Members for all hours worked;
12 i. Whether Defendants failed to pay Plaintiff and the other Class Members the required
13 minimum wage pursuant to California law;
14 j. Whether Defendants failed to pay Plaintiff and the other Class Members proper
15 overtime compensation pursuant to California law;
16 k. Whether Defendants failed to pay Plaintiff and the other Class Members wages for rest
17 and recovery periods and nonproductive time;
18 l. Whether Defendants failed to pay all wages due to Plaintiff and the other Class
19 Members within the time required upon their discharge or resignation from
20 employment;
21 m. Whether Defendants complied with wage reporting as required by the California Labor
22 Code, including section 226;
23 n. Whether Defendants' conduct was with malice, fraud or oppression;
24 o. Whether Defendants' conduct was willful or reckless;
25 p. Whether Defendants engaged in unfair business practices in violation of California
26 Business & Professions Code section 17200, *et seq.* based on their improper
27 withholding of compensation and deduction of wages;
28 q. The appropriate amount of damages, restitution, and/or monetary penalties resulting

1 from Defendants' violation of California law; and
2 r. Whether Plaintiff and the other Class Members are entitled to compensatory damages
3 pursuant to the California Labor Code.

4 **GENERAL ALLEGATIONS**

5 17. Defendants are a provider of general freight trucking services.

6 18. From approximately January 2014 to April 2021, Defendants employed Plaintiff as a
7 truck driver, but willfully misclassified Plaintiff as an independent contractor.

8 19. At all relevant times set forth herein, Defendants unlawfully misclassified Plaintiff, the
9 Class, and the Aggrieved Employees as independent contractors, rather than as employees, in violation
10 of Labor Code sections 226.8 and 2775 and the Industrial Welfare Commission Wage Orders.

11 20. At all relevant times set forth herein, Defendants exercised sufficient authority over
12 the terms and conditions of Plaintiff's employment for them to be joint employers of Plaintiff.

13 21. At all relevant times set forth herein, Defendants had the authority to hire and terminate
14 Plaintiff, the Class, and the Aggrieved Employees; to directly or indirectly control work rules, working
15 conditions, wages, working hours, and conditions of employment of Plaintiff, the Class, and the
16 Aggrieved Employees; and to hire and terminate the employment of Plaintiff, the Class, and the
17 Aggrieved Employees.

18 22. At all relevant times set forth herein, Plaintiff, the Class, and the Aggrieved Employees
19 were not free from the control and direction of Defendants in the performance of their work. To the
20 contrary, Defendants exercised a substantial level of control over Plaintiff, the Class, and the
21 Aggrieved Employees in connection with the performance of their work. For example, Defendants
22 controlled Plaintiff's, the Class', and the Aggrieved Employees' schedules, assignments,
23 compensation rates, and nearly all aspects of their working conditions. Plaintiff, the Class, and the
24 Aggrieved Employees had no choice as to the assignments they were given and were required to
25 complete such assignments based on the schedule set by Defendants.

26 23. At all relevant times set forth herein, Defendants dictated by and maintained the right
27 to terminate Plaintiff, the Class, and the Aggrieved Employees for any reason.

28 24. At all relevant times set forth herein, the work performed by Plaintiff, the Class, and

1 the Aggrieved Employees was an integral part of Defendants' usual course of business and was not
2 an independently established trade or profession. Plaintiff, the Class, and the Aggrieved Employees
3 have no distinct, independent business from Defendants. Defendants solicited and obtained customers
4 in need of trucking services, negotiated the rates for those services, and set up the pickup and delivery
5 times for its customers' freight. Plaintiff, the Class, and the Aggrieved Employees had no clients of
6 their own, and instead exclusively served Defendants' clients. Plaintiff, the Class, and the Aggrieved
7 Employees had no contact with Defendants' clients, other than superficial interactions involved in the
8 loading and unloading of freight. Indeed, Plaintiff's, the Class', and the Aggrieved Employees'
9 responsibilities were strictly limited to activities related to driving trucks and making deliveries based
10 on Defendants' instructions.

11 25. Throughout the time period involved in this case, Defendants have implemented
12 policies and practices which failed to provide Plaintiff, the Class, and the Aggrieved Employees with
13 timely and duty-free meal periods. Defendants routinely failed to relieve Plaintiff, the Class, and the
14 Aggrieved Employees of all duties during their meal periods, regularly failed to relinquish control
15 over Plaintiff, the Class, and the Aggrieved Employees during their meal periods, regularly failed to
16 permit Plaintiff, the Class, and the Aggrieved Employees a reasonable opportunity to take their meal
17 periods, and regularly impeded or discouraged Plaintiff, the Class, and the Aggrieved Employees from
18 taking thirty (30) minute uninterrupted meal breaks no later than the end of their fifth hour of work
19 and/or from taking a second thirty (30) minute uninterrupted meal break no later than their tenth hour
20 of work for shifts lasting more than ten (10) hours. Defendants also failed to maintain accurate records
21 of meal periods taken by Plaintiff, the Class, and the Aggrieved Employees.

22 26. Throughout the time period involved in this case, Defendants did not adequately inform
23 Plaintiff, the Class, and the Aggrieved Employees of their right to take meal periods under California
24 law. Moreover, Defendants often disregarded their own written policies regarding the provision and
25 timing of meal periods for Plaintiff, the Class, and the Aggrieved Employees. Instead, Defendants'
26 actual policy and practice was to schedule Plaintiff, the Class, and the Aggrieved Employees in a way
27 Plaintiff that prohibited them from taking timely and duty-free meal periods, and to require Plaintiff,
28 the Class, and the Aggrieved Employees to work through their meal periods, for which they were not

1 compensated.

2 27. Throughout the time period involved in this case, Defendants failed to pay Plaintiff,
3 the Class, and the Aggrieved Employees premium wages for meal periods that were missed, late,
4 interrupted, or shortened in violation of California law. Defendants knew or should have known that
5 Plaintiff, the Class, and the Aggrieved Employees were entitled to receive all meal periods or payment
6 of one additional hour of pay at their regular rate of pay when a meal period was missed, short, late,
7 and/or interrupted. Notwithstanding this knowledge, Defendants routinely failed to provide legally
8 compliant meal periods to Plaintiff, the Class, and the Aggrieved Employees, and routinely failed to
9 pay one additional hour of pay to Plaintiff, the Class, and the Aggrieved Employees at their regular
10 rate of pay when a meal period was missed, short, late, and/or interrupted.

11 28. Throughout the time period involved in this case, Defendants have implemented
12 policies and practices which prohibited Plaintiff, the Class, and the Aggrieved Employees from taking
13 timely and duty-free rest periods. Defendants regularly failed to provide, authorize, and permit
14 Plaintiff, the Class, and the Aggrieved Employees to take full, uninterrupted, off-duty rest periods for
15 every shift lasting three and one-half (3.5) to six (6) hours and/or two full, uninterrupted, off-duty rest
16 periods for every shift lasting six (6) to ten (10) hours, and failed to make a good faith effort to
17 authorize, permit, and provide such rest breaks in the middle of each work period.

18 29. Throughout the time period involved in this case, Defendants did not adequately inform
19 Plaintiff, the Class, and the Aggrieved Employees of their right to take rest periods under California
20 law. Moreover, Defendants often disregarded their own written policies regarding the provision and
21 timing of rest periods for Plaintiff, the Class, and the Aggrieved Employees. Instead, Defendants'
22 actual policy and practice was to schedule Plaintiff, the Class, and the Aggrieved Employees in a way
23 that regularly prohibited them from taking timely and duty-free rest periods, and to regularly require
24 Plaintiff, the Class, and the Aggrieved Employees to work through their rest periods.

25 30. Throughout the time period involved in this case, Defendants failed to pay Plaintiff,
26 the Class, and the Aggrieved Employees premium wages for rest periods that were missed, late,
27 interrupted, or shortened in violation of California law. Defendants knew or should have known that
28 Plaintiff, the Class, and the Aggrieved Employees were entitled to receive all rest periods or payment

1 of one additional hour of pay at their regular rate of pay when a rest period was missed, short, late,
2 and/or interrupted. Notwithstanding this knowledge, Defendants routinely failed to authorize and
3 permit Plaintiff, the Class, and the Aggrieved Employees to take duty-free rest periods, and failed to
4 pay one additional hour of pay to Plaintiff, the Class, and the Aggrieved Employees at their regular
5 rate of pay when a rest period was missed, short, late and/or interrupted.

6 31. Throughout the time period involved in this case, Defendants regularly required
7 Plaintiff, the Class, and the Aggrieved Employees to perform work off the clock. Although Defendants
8 prohibited overtime, Defendants still regularly required that Plaintiff, the Class, and the Aggrieved
9 Employees complete all of their assigned duties. To do so, Plaintiff, the Class, and the Aggrieved
10 Employees were regularly required to perform work off the clock for which they were not compensated.

11 32. Throughout the time period involved in this case, Defendants implemented policies that
12 prohibited Plaintiff, the Class, and the Aggrieved Employees from accurately recording the actual time
13 worked, resulting in a failure to pay Plaintiff, the Class, and the Aggrieved Employees all wages owed.

14 33. Throughout the time period involved in this case, Plaintiff, the Class, and the
15 Aggrieved Employees worked more than eight (8) hours in a day, and/or forty (40) hours in a week.

16 34. Throughout the time period involved in this case, Defendants regularly failed to pay
17 all overtime compensation owed to Plaintiff, the Class, and the Aggrieved Employees when they
18 worked in excess of eight (8) hours in a single workday and/or forty (40) hours in a single work week,
19 or in excess of twelve (12) hours in a single workday and/or eighty (80) hours in a single work week.
20 Defendants knew or should have known that Plaintiff, the Class, and the Aggrieved Employees were
21 entitled to receive certain wages for overtime compensation and that they were not receiving wages
22 for overtime compensation.

23 35. Throughout the time period involved in this case, Defendants failed to pay overtime to
24 Plaintiff, the Class, and the Aggrieved Employees for all overtime hours worked based on regular
25 rates of pay correctly calculated to include all applicable remuneration.

26 36. Throughout the time period involved in this case, Defendants regularly failed to pay
27 Plaintiff, the Class, and the Aggrieved Employees at least minimum wages for all hours worked.
28 Defendants knew or should have known that Plaintiff, the Class, and the Aggrieved Employees were

entitled to receive at least minimum wages for all hours worked and that they were not receiving at least minimum wages for all hours worked.

37. Throughout the time period involved in this case, Defendants paid Plaintiff, the Class, and the Aggrieved Employees a flat rate based on the number of containers transported. This rate remained fixed, regardless of the total number of hours worked, resulting in a chronic failure to compensate Plaintiff, the Class, and the Aggrieved Employees for all time worked. In addition, Defendants failed to separately compensate Plaintiff, the Class, and the Aggrieved Employees for any rest and recovery periods and nonproductive time.

38. Throughout the time period involved in this case, Defendants at times required Plaintiff, the Class, and the Aggrieved Employees to perform work “off-the-clock” for which they received no compensation including, but not limited to, filling in log books, reports and other paper work, performing truck inspections, and loading and unloading freight, for which they received no compensation.

39. Throughout the time period involved in this case, Defendants regularly failed to pay Plaintiff, the Class, and the Aggrieved Employees all wages owed to them upon discharge or resignation. Defendants knew or should have known that Plaintiff, the Class, and the Aggrieved Employees were entitled to receive all wages owed to them upon termination within the time permissible under California Labor Code section 202. Plaintiff, the Class, and the Aggrieved Employees did not receive payment of all final wages owed to them upon discharge or resignation, including overtime compensation, minimum wages, and meal and rest period premiums, within any time permissible under California Labor Code section 202.

40. Throughout the time period involved in this case, Defendants regularly failed to pay Plaintiff, the Class, and the Aggrieved Employees all wages within any time permissible under California law, including, *inter alia*, California Labor Code section 204. Defendants knew or should have known that Plaintiff, the Class, and the Aggrieved Employees were entitled to receive all wages owed to them during their employment. Plaintiff, the Class, and the Aggrieved Employees did not receive payment of all wages, including overtime compensation, minimum wages, and meal and rest period premiums.

1 41. Throughout the time period involved in this case, Defendants regularly failed to
2 provide complete or accurate wage statements to Plaintiff, the Class, and the Aggrieved Employees.
3 Defendants knew or should have known that Plaintiff, the Class, and the Aggrieved Employees were
4 entitled to receive complete and accurate wage statements in accordance with California law, but, in
5 fact, they did not receive wage statements from Defendants.

6 42. Throughout the time period involved in this case, Defendants regularly failed to keep
7 complete or accurate payroll records for Plaintiff, the Class, and the Aggrieved Employees.
8 Defendants knew or should have known that Defendants were required to keep complete and accurate
9 payroll records for Plaintiff, the Class, and the Aggrieved Employees in accordance with California
10 law, but, in fact, did not keep complete and accurate payroll records.

11 43. Throughout the time period involved in this case, Defendants regularly failed to
12 maintain accurate records relating to Plaintiff's, the Class's, and the Aggrieved Employees' work
13 periods, meal periods, total daily hours, hours per pay period, and applicable pay rates.

14 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
15 or should have known that Defendants were required to produce employee records for inspection
16 upon request pursuant to California Labor Code sections 226, 432, and 1198.5, but failed to do so.
17 Plaintiff requested his records pursuant to these Labor Code provisions on February 25, 2022, and
18 March 28, 2022, but Defendants failed to ever produce the requested records to Plaintiff.

19 45. Throughout the time period involved in this case, Defendants paid wages owed to
20 Plaintiff, the Class, and the Aggrieved Employees by way of a payroll card issued through Comdata.
21 In order to access wages paid through the Comdata payroll card, Plaintiff, the Class, and the Aggrieved
22 Employees were required to incur fees, which effectively reduced the wages actually paid to Plaintiff,
23 the Class, and the Aggrieved Employees. Moreover, upon termination of employment, the Comdata
24 payroll data cards issued to Plaintiff, the Class, and the Aggrieved Employees were locked, making it
25 impossible for Plaintiff, the Class, and the Aggrieved Employees to access wages remaining on their
26 payroll cards.

27 46. Throughout the time period involved in this case, Defendants failed to reimburse
28 Plaintiff, the Class, and the Aggrieved Employees for all necessary business-related expenses,

1 including but not limited to tools, gas, use of personal cell phones, and costs associated with
2 maintenances of their trucks. Defendants knew or should have known that Defendants were required
3 to reimburse Plaintiff, the Class, and the Aggrieved Employees for all necessary business-related
4 expenses and costs, but, in fact, failed to do so in violation of California law.

5 47. Throughout the time period involved in this case, Defendants knew or should have
6 known that they had a duty to compensate Plaintiff, the Class, and the Aggrieved Employees pursuant
7 to California law. Defendants had the financial ability to pay such compensation, but willfully,
8 knowingly, and intentionally failed to do so, and falsely represented to Plaintiff, the Class, and the
9 Aggrieved Employees that they paid all wages owed to them, to increase Defendants' profits.

10 48. California Labor Code section 218 states that nothing in Article 1 of the Labor Code
11 shall limit the right of any wage claimant to "sue directly ... for any wages or penalty due to him [or
12 her] under this article."

13 **FIRST CAUSE OF ACTION**

14 **(Violation of California Labor Code §§ 510 and 1198)**

15 **(Against All Defendants)**

16 49. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every
17 allegation set forth above.

18 50. California Labor Code section 1198 and the applicable Industrial Welfare Commission
19 ("IWC") Wage Order provide that it is unlawful to employ persons without compensating them at a
20 rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the
21 number of hours worked by the person on a daily or weekly basis.

22 51. Specifically, the applicable IWC Wage Order provides that Defendants are and were
23 required to pay Plaintiff and the other Class Members employed by Defendants, and working more
24 than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-one-
25 half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
26 workweek.

27 52. The applicable IWC Wage Order further provides that Defendants are and were
28 required to pay Plaintiff and the Class overtime compensation at a rate of two times their regular rate

1 of pay for all hours worked in excess of twelve (12) hours in a day and for all hours worked in excess
2 of eight (8) hours on the seventh day of work in a workweek.

3 53. California Labor Code section 510 codifies the right to overtime compensation at one-
4 and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or
5 forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and no
6 overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12)
7 hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

8 54. During the relevant time period, Plaintiff and the other Class Members regularly
9 worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

10 55. During the relevant time period, Defendants intentionally and willfully failed to pay
11 overtime wages owed to Plaintiff and the other Class Members.

12 56. Defendants' failure to pay Plaintiff and the other Class Members the unpaid balance of
13 overtime compensation, as required by California laws, violates the provisions of California Labor
14 Code sections 510 and 1198, and is therefore unlawful.

15 57. Pursuant to California Labor Code section 1194, Plaintiff and the other Class Members
16 are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

17 **SECOND CAUSE OF ACTION**

18 **(Violation of California Labor Code §§ 226.7 and 512(a))**

19 **(Against All Defendants)**

20 58. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every
21 allegation set forth above.

22 59. At all relevant times, the relevant IWC Order and California Labor Code sections 226.7
23 and 512(a) were applicable to Plaintiff and the other Class Members' employment by Defendants.

24 60. At all relevant times, California Labor Code section 226.7 provides that no employer
25 shall require an employee to work during any meal or rest period mandated by an applicable order of
26 the California IWC.

27 61. At all relevant times, the applicable IWC Wage Order and California Labor Code
28 section 512(a) provide that an employer may not require, cause or permit an employee to work for a

1 work period of more than five (5) hours per day without providing the employee with a meal period
2 of not less than thirty (30) minutes, except that if the total work period per day of the employee is no
3 more than six (6) hours, the meal period may be waived by mutual consent of both the employer and
4 employee.

5 62. At all relevant times, California Labor Code section 512(a) further provides that an
6 employer may not require, cause or permit an employee to work for a work period of more than ten
7 (10) hours per day without providing the employee with a second uninterrupted meal period of not
8 less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours,
9 the second meal period may be waived by mutual consent of the employer and the employee only if
10 the first meal period was not waived.

11 63. During the relevant time period, Plaintiff and the other Class Members who were
12 scheduled to work for a period of time longer than six (6) hours, and who did not waive their legally-
13 mandated meal periods by mutual consent, were required to work for periods longer than five (5)
14 hours without an uninterrupted meal period of not less than thirty (30) minutes.

15 64. During the relevant time period, Plaintiff and the other Class Members who were
16 scheduled to work for a period of time in excess of ten (10) hours were required to work for periods
17 longer than ten (10) hours without a second uninterrupted meal period of not less than thirty (30)
18 minutes.

19 65. During the relevant time period, Defendants intentionally and willfully required
20 Plaintiff and the other Class Members to miss their meal periods and to take meal periods that were
21 late, shortened, or interrupted, and failed to compensate Plaintiff and the other Class Members the full
22 meal period premium for missed, shortened, late, or interrupted meal periods.

23 66. During the relevant time period, Defendants failed to pay Plaintiff and the other Class
24 Members the full meal period premiums due pursuant to California Labor Code section 226.7.

25 67. Defendants' conduct violates the applicable IWC Wage Order and California Labor
26 Code sections 226.7 and 512(a).

27 68. Pursuant to the applicable IWC Wage Order and California Labor Code section
28 226.7(b), Plaintiff and the other Class Members are entitled to recover from Defendants one additional

1 hour of pay at the employee's regular rate of compensation for each workday that the meal period was
2 not provided.

3 **THIRD CAUSE OF ACTION**

4 **(Violation of California Labor Code § 226.7)**

5 **(Against All Defendants)**

6 69. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every
7 allegation set forth above.

8 70. At all times herein set forth, the applicable IWC Wage Order and California Labor
9 Code section 226.7 were applicable to Plaintiff and the other Class Members' employment by
10 Defendants.

11 71. At all relevant times, California Labor Code section 226.7 provides that no employer
12 shall require an employee to work during any rest period mandated by an applicable order of the
13 California IWC.

14 72. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer
15 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in
16 the middle of each work period" and that the "rest period time shall be based on the total hours worked
17 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof unless the
18 total daily work time is less than three and one-half (3.5) hours."

19 73. During the relevant time period, Defendants required Plaintiff and other Class
20 Members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest
21 period per each four (4) hour period worked.

22 74. During the relevant time period, Defendants willfully required Plaintiff and the other
23 Class Members to work during rest periods, failed to allow Plaintiff and the other Class Member to
24 take any rest period and/or failed to authorize and permit Plaintiff and the other Class Members to
25 take uninterrupted, duty-free rest breaks.

26 75. During the relevant time period, Defendants failed to pay Plaintiff and the other Class
27 Members the full rest period premium due pursuant to California Labor Code section 226.7 for work
28 performed during rest periods, and/or for failure to authorize and permit Plaintiff and other Class

1 Members from taking uninterrupted rest periods.

2 76. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code
3 section 226.7.

4 77. Pursuant to the applicable IWC Wage Orders and California Labor Code section
5 226.7(b), Plaintiff and the other Class Members are entitled to recover from Defendants one additional
6 hour of pay at the employees' regular hourly rate of compensation for each workday that the rest
7 period was not provided.

8 **FOURTH CAUSE OF ACTION**

9 **(Violation of California Labor Code §§ 1194, 1197, 1197.1, 226.2)**

10 **(Against All Defendants)**

11 78. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every
12 allegation set forth above.

13 79. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide
14 that the minimum wage to be paid to employees and the payment of a lesser wage than the minimum
15 so fixed is unlawful.

16 80. At all relevant times, California Labor Code section 226.2 requires that employees who
17 work on a piece rate basis be compensated for rest and recovery periods and nonproductive time
18 separately from any piece rate compensation.

19 81. During the relevant time period, Defendants regularly failed to pay minimum wage to
20 Plaintiff and the other Class Members as required pursuant to California Labor Code sections 1194,
21 1197, and 1197.1.

22 82. During the relevant time period, Defendants paid Plaintiff and the other Class Members
23 on a piece rate basis, but failed to compensate Plaintiff and the other Class Members rest and recovery
24 periods and nonproductive time separately from their piece rate compensation.

25 83. Defendants' failure to pay Plaintiff and the other Class Members the minimum wage
26 as required violates California Labor Code sections 1194, 1197, and 1197.1. In addition, Defendant's
27 failure to separately pay Plaintiff and the other Class Members for rest and recovery periods and
28 nonproductive time violates California Labor Code section 226.2 Pursuant to those sections, Plaintiff

1 and the other Class Members are entitled to recover the unpaid balance of their wages as well as
2 interest, costs, and attorneys' fees, and liquidated damages in an amount equal to the wages unlawfully
3 unpaid and interest thereon.

4 84. Pursuant to California Labor Code section 1194.2, Plaintiff and the other Class
5 Members are entitled to recover liquidated damages in an amount equal to the wages unlawfully
6 unpaid and interest thereon.

7 **FIFTH CAUSE OF ACTION**

8 **(Violation of California Labor Code §§ 201, 202, 203)**

9 **(Against All Defendants)**

10 85. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every
11 allegation set forth above.

12 86. At all relevant times herein set forth, California Labor Code sections 201 and 202
13 provide that if an employer discharges an employee, the wages earned and unpaid at the time of
14 discharge are due and payable immediately, and if an employee quits his or her employment, his or
15 her wages shall become due and payable not later seventy-two (72) hours thereafter, unless the
16 employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the
17 employee is entitled to his or her wages at the time of quitting.

18 87. During the relevant time period, the employment of Plaintiff and many other Class
19 Members with Defendants ended, *i.e.* was terminated by quitting or discharge. Defendants
20 intentionally and willfully failed to pay Plaintiff and other Class Members who are no longer employed
21 by Defendants all of their wages, earned and unpaid, including but not limited to minimum wages,
22 straight time wages, and overtime wages, within seventy-two (72) hours of their leaving Defendants'
23 employ.

24 88. Defendants' failure to pay Plaintiff and other Class Members who are no longer
25 employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their
26 leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

27 89. California Labor Code section 203 provides that if an employer willfully fails to pay
28 wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue

1 as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but
2 the wages shall not continue for more than thirty (30) days.

3 90. Plaintiff and other Class Members who are no longer employed by Defendants are
4 entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up
5 to a thirty (30) day maximum pursuant to California Labor Code section 203.

6 **SIXTH CAUSE OF ACTION**

7 **(Violation of California Labor Code § 226(a))**

8 **(Against All Defendants)**

9 91. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every
10 allegation set forth above.

11 92. At all material times set forth herein, California Labor Code section 226(a) provides
12 that every employer shall furnish each of his or her employees an accurate itemized statement in
13 writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of
14 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4)
15 all deductions, provided that all deductions made on written orders of the employee may be aggregated
16 and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the
17 employee is paid, (7) the name of the employee and his or her social security number, (8) the name
18 and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during
19 the pay period and the corresponding number of hours worked at each hourly rate by the employee.
20 The deductions made from payments of wages shall be recorded in ink or other indelible form,
21 properly dated, showing the month, day, and year, and a copy of the statement or a record of the
22 deductions shall be kept on file by the employer for at least three years at the place of employment or
23 at a central location within the State of California.

24 93. Throughout the time period involved in this case, Defendants have intentionally and
25 willfully failed to provide Plaintiff and the Class with itemized wage statements, as required by Labor
26 Code section 226.

27 94. Because of Defendants' violation of California Labor Code section 226(a), Plaintiff
28 and the Class have suffered injury and damage to their statutorily-protected rights.

95. More specifically, Plaintiff and the Class have been injured by Defendants' intentional and willful violation of California Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate and itemized wage statements pursuant to California Labor Code section 226(a).

96. Plaintiff and the Class are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

97. Plaintiff and the Class are also entitled to injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(g).

SEVENTH CAUSE OF ACTION

(Violation of California Labor Code §§ 2800 and 2802)

(Against All Defendants)

98. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

99. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

100. Plaintiff and the Class incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants. Defendants' failure to reimburse for all necessary business-related expenses and costs included their failure to reimburse Plaintiff and the Class for costs incurred as a result of, including but not limited to, simple negligence.

101. Defendants have intentionally and willfully failed to reimburse Plaintiff and the Class for all necessary business-related expenses and costs. Plaintiff and the Class are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

///

EIGHTH CAUSE OF ACTION

(Violation of California Labor Code § 221)

(Against All Defendants)

102. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

103. California Labor Code section 221 provides that “[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employer.”

104. Throughout the time period involved in this case, Plaintiff and the other Class Members were required to pay fees in order to access wages paid through Defendants’ Comdata payroll cards. Moreover, upon termination of employment, the Comdata payroll data cards issued to Plaintiff and the other Class Members were locked, making it impossible for Plaintiff and the other Class Members to access wages remaining on their payroll cards. These practices constitute an unlawful deduction and withholding of wages paid, in violation of California Labor Code section 221.

105. As a direct and proximate result of Defendants’ conduct, Plaintiff and similarly situated Class Members have suffered substantial losses. Plaintiff and the Class are entitled to recover amounts improperly and illegally deducted or withheld from their wages, as well as pre-judgment interest, costs, and attorneys’ fees pursuant to statute and applicable law.

NINTH CAUSE OF ACTION

(Violation of Cal. Business & Professions Code §§ 17200, et seq.)

(Against All Defendants)

106. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

107. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff and the Class, to the general public, and Defendants’ competitors. Accordingly, Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

108. Defendants’ activities as alleged herein are violations of California law, and constitute

1 unlawful business acts and practices in violation of California Business & Professions Code section
2 17200, *et seq.*

3 109. A violation of California Business & Professions Code section 17200, *et seq.* may be
4 predicated on the violation of any state or federal law. In this instant case, Defendants' policy and
5 practice of misclassifying Plaintiff and the Class as independent contractors violate California Labor
6 Code sections 226.8 and 2775. Defendants' policies and practices of requiring employees, including
7 Plaintiff and the Class, to work overtime without paying them proper compensation violate California
8 Labor Code sections 510 and 1198. Additionally, Defendants' policies and practices of requiring
9 employees, including Plaintiff and the Class, to work through their meal and rest periods without
10 paying them proper compensation violate California Labor Code sections 226.7 and 512(a). Moreover,
11 Defendants' policies and practices of failing to timely pay wages to Plaintiff and the Class violate
12 California Labor Code sections 201, 202, 203 and 204.

13 110. Defendants also violated California Labor Code sections 221, 226(a), 226.2, 1194,
14 1197, 1197.1, 510, 1174(d), 2800, and 2802

15 111. As a result of the herein described violations of California law, Defendants unlawfully
16 gained an unfair advantage over other businesses.

17 112. Plaintiff and the Class have personally been injured by Defendants' unlawful business
18 acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or
19 property.

20 113. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff
21 and the Class are entitled to restitution of the wages withheld and retained by Defendants during a
22 period that commences four years prior to the filing of this Complaint; an award of attorneys' fees
23 pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award
24 of costs.

25 **TENTH CAUSE OF ACTION**

26 **(Violation of California Labor Code § 2699, Et Seq.)**

27 **(Against All Defendants)**

28 114. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every

1 allegation set forth above.

2 115. Plaintiff brings his tenth cause of action as a representative action on behalf of himself
3 and similarly Aggrieved Employees in the capacity as a private attorney general pursuant to the Private
4 Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”).

5 116. PAGA specifically provides for a private right of action to recover civil penalties for
6 violations of the Labor Code as follows: “Notwithstanding any other provision of law, any provision
7 of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce
8 Development Agency or any of its departments, divisions, commissions, boards, agencies, or
9 employees, for a violation of this code, may, as an alternative, be recovered through a civil action
10 brought by an aggrieved employee on behalf of himself or herself and other current or former
11 employees pursuant to the procedures specified in Section 2699.3.” Cal. Lab. Code § 2699(a).

12 117. Plaintiff was employed by Defendants and the Labor Code violations alleged above
13 were committed against him during his time of employment. Plaintiff is therefore an “aggrieved
14 employee” under PAGA.

15 118. As set forth in detail above, during all times relevant to this Action, Defendants have
16 routinely subjected Plaintiff and the Aggrieved Employees to violations of California Labor Codes
17 by:

- 18 a. Misclassifying Plaintiff and the Aggrieved Employees as independent contractors in
19 violation of Labor Code §§ 226.8 and 2775.
- 20 b. Failing to pay Plaintiff and the Aggrieved Employees all earned minimum wage
21 compensation in violation of Labor Code §§ 1194 and 1198 *et seq.*
- 22 c. Failing to pay Plaintiff and the Aggrieved Employees all earned overtime
23 compensation in violation of Labor Code §§ 204, 510, 1194, and 1198 *et seq.*
- 24 d. Failing to pay Plaintiff and the Aggrieved Employees for rest and recovery periods and
25 nonproductive time in violation of Labor Code § 226.2.
- 26 e. Failing to provide legally required meal periods to Plaintiff and the Aggrieved
27 Employees, and failing to pay Plaintiff and the Aggrieved Employees an additional
28 hour of premium pay for meal period violations in violation of Labor Code §§ 226.7

and 512.

- f. Failing to provide authorize and permit Plaintiff and the Aggrieved Employees to take duty-free rest periods, and failing to pay Plaintiff and the Aggrieved Employees an additional hour of premium pay for rest period violations in violation of Labor Code §§ 226.7 and 512.
- g. Failing to timely pay Plaintiff and the Aggrieved Employees all wages at the end of their employment in violation of Labor Code § 203.
- h. Failing to timely pay Plaintiff and the Aggrieved Employees all wages owed during employment in violation of Labor Code § 204.
- i. Failing to furnish Plaintiff and the Aggrieved Employees with itemized wage statements in violation of Labor Code § 226.
- j. Failing to maintain accurate records relating to Plaintiff and the Aggrieved Employees' work periods, meal periods, total daily hours, hours per pay period, total wages and compensation, and applicable pay rates in violation of Labor Code § 1174(d) and the applicable IWC Wage Order.
- k. Failing to reimburse Plaintiff and the Aggrieved Employees for necessary business-related expenses in violation of Labor Code §§ 2800 and 2802.
- l. Unlawfully deducting and withholding wages from Plaintiff and the Aggrieved Employees in violation of Labor Code § 221.

119. Pursuant to California Labor Code sections 2699 and 2699.5, Plaintiff, individually and on behalf of the Aggrieved Employees and the State of California, requests and is entitled to recover penalties against Defendants for the Labor Code violations described above, including penalties under California Labor Code sections 2699, 558, 210, 1197.1, 226, 226.3, 1174.5, 226.8, and 1197.1, penalties under the applicable IWC Wage Order, and any and all additional penalties and sums as provided by the California Labor Code and/or other statutes. The exact amount of the applicable penalties, in all, is in an amount to be shown according to proof at trial.

120. Plaintiff has exhausted his administrative remedies pursuant to Labor Code § 2699.3. On March 18, 2022, Plaintiff, through his counsel of record, by online filing with the Labor and

1 Workforce Development Agency (“LWDA”) and by certified mail to the Defendants, notified
2 Defendants and the LWDA of the specific provisions of the Labor Code and IWC Wage Orders that
3 Defendants have violated, including the facts and theories to support the violations, and of Plaintiff’s
4 intent to bring a claim for civil penalties under PAGA. Plaintiff also paid the filing fee required under
5 Labor Code § 2699.3. As of the filing of this Complaint, more than sixty-five (65) days have elapsed
6 since the mailing of Plaintiff’s March 18, 2022 notice, and the Labor and Workforce Development
7 Agency has not indicated that it intends to investigate the violations discussed in the notice.
8 Accordingly, Plaintiff may commence a civil action to recover penalties for himself and other
9 Aggrieved Employees pursuant to Labor Code § 2699.3.

10 121. Plaintiff was compelled to retain the services of counsel to file this court action to
11 protect his interests and the Aggrieved Employees, and to assess and collect the civil penalties owed
12 by Defendants. Plaintiff therefore seeks an award of reasonable attorneys’ fees and costs pursuant to
13 Labor Code § 2699(g)(1), and any other applicable statute.

14 122. Plaintiff may amend this complaint as a matter of right pursuant to California Labor
15 Code § 2699.3 as this complaint has been filed within sixty days of the time periods specified in Labor
16 Code §2699.3.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff, individually and on behalf of all other members of the general public
19 similarly situated, and as a private attorney general, prays for relief and judgment against Defendants,
20 jointly and severally, as follows:

21 **Class Certification**

- 22 1. That this action be certified as a class action;
- 23 2. That Plaintiff be appointed as the representative of the Class;
- 24 3. That counsel for Plaintiff be appointed as Class Counsel; and
- 25 4. That Defendants provide to Class Counsel immediately the names and most current/last
26 known contact information (address, e-mail and telephone numbers) of all class members.

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

- 28 5. That the Court declare, adjudge and decree that Defendants violated California Labor

Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and other Class Members;

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194; and

9. For such other and further relief as the Court may deem just and proper.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiff and the Class;

11. That the Court make an award to Plaintiff and the Class of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

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

13. For premium wages pursuant to California Labor Code section 226.7;

14. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

15. For such other and further relief as the Court may deem just and proper.

As to the Third Cause of Action

16. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the Class;

17. That the Court make an award to Plaintiff and the Class of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

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

19. For premium wages pursuant to California Labor Code section 226.7;

20. For pre-judgment interest on any unpaid wages from the date such amounts were due;
and

21. For such other and further relief as the Court may deem just and proper.

As to the Fourth Cause of Action

22. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194, 1197, 1197.1, and 226.2 by willfully failing to pay all such wages to Plaintiff and the Class;

23. For general unpaid wages and such general and special damages as may be appropriate;

24. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiff and the Class in the amount as may be established according to proof at trial;

25. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

26. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194(a);

27. For liquidated damages pursuant to California Labor Code section 1194.2; and

28. For such other and further relief as the Court may deem just and proper.

As to the Fifth Cause of Action

29. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and other Class Members;

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

31. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff and other Class Members who have left Defendants' employ;

32. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

33. For such other and further relief as the Court may deem just and proper.

As to the Sixth Cause of Action

34. That the Court declare, adjudge and decree that Defendants violated the record keeping

provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and the Class, and willfully failed to provide accurate itemized wage statements thereto;

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

36. For statutory penalties pursuant to California Labor Code section 226(e); and

37. For such other and further relief as the Court may deem just and proper.

As to the Seventh Cause of Action

38. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the Class for all necessary business-related expenses as required by California Labor Code sections 2800 and 2802;

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

40. For the imposition of civil penalties and/or statutory penalties;

41. For reasonable attorneys' fees and costs of suit incurred herein; and

42. For such other and further relief as the Court may deem just and proper.

As to the Eighth Cause of Action

43. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 227.3, 201, 202, and 203 by failing to pay Plaintiff and the other class members for all vested and unpaid vacation wages;

44. For vested unpaid vacation wages and penalties according to proof;

45. For all interest on wages owed;

46. For all reasonably attorneys' fees and costs recoverable by law; and

47. For such other and further relief as the Court may deem just and proper.

As to the Ninth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California Business and Professions Code sections 17200, *et seq.* by failing to provide Plaintiff and the Class all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiff and the Class, failing to pay at least minimum wages to Plaintiff and the Class, failing to pay Plaintiff's and other Class Members' wages timely as required by California Labor Code section 201, 202 and 204 and by violating California Labor Code sections 226(a), 227.3, 1174(d), 2800, and 2802;

49. For restitution of unpaid wages to Plaintiff and the Class and all pre-judgment interest from the day such amounts were due and payable;

50. 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 violation of California Business and Professions Code sections 17200, *et seq.*;

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

52. For injunctive relief to ensure compliance with this section, pursuant to California Business and Professions Code sections 17200, *et seq.*; and

53. For such other and further relief as the Court may deem just and proper.

As to the Tenth Cause of Action

54. For statutory attorneys' fees and costs pursuant to 2699(g)(1) of California Labor Code;

55. For the imposition of civil penalties pursuant to California Labor Code §§ 2699, 210, 558, 226, 226.3, 1174.5, 1197.1, and all other penalties allowed by the California Labor Code and/or other applicable statutes; and

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

Dated: May 27, 2022

BLACKSTONE LAW, APC

By:

Jonathan M. Genish
Attorneys for Plaintiff
CARLOS FERNANDO ECUTE

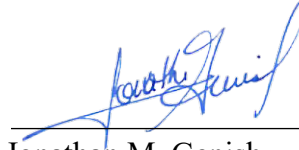
DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury as to all causes of action triable by a jury.

Dated: May 27, 2022

BLACKSTONE LAW, APC

By: _____



Jonathan M. Genish
Attorneys for Plaintiff
CARLOS FERNANDO ECUTE