

1 MICHAEL R. CROSNER (SBN 41299)
 mike@crosnerlegal.com
 2 ZACHARY M. CROSNER (SBN 272295)
 zach@crosnerlegal.com
 3 BLAKE R. JONES (SBN 211221)
 blake@crosnerlegal.com
 4 **CROSNER LEGAL, PC**
 5 9440 Santa Monica Blvd. Suite 301
 Beverly Hills, CA 90210
 6 Tel: (310) 496-5818
 Fax: (310) 510-6429

7 Attorneys for Plaintiff VIJAY SHETH
 8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 10 **COUNTY OF LOS ANGELES**
 11

12 VIJAY SHETH, as an individual and on
 behalf of all others similarly situated,
 13

14 Plaintiff,

15 v.
 16

17 ICON BURGER ACQUISITION LLC, a
 Delaware limited liability company;
 18 SMASHBURGER ACQUISITION-SO
 CAL LLC, a Delaware limited liability
 19 company; SMASHBURGER
 ACQUISITION - SAN FRANCISCO
 20 LLC, a Delaware limited liability
 company; SMASHBURGER
 21 ACQUISITION - SAN DIEGO LLC, a
 Delaware limited liability company;
 22 SMASHBURGER ACQUISITION -
 SACRAMENTO LLC, a Delaware limited
 23 liability company; and DOES 1-100,
 inclusive,
 24

25 Defendants.
 26
 27
 28

Case No.: **22STCV09093**

CLASS ACTION COMPLAINT FOR:

1. **Recovery of Unpaid Minimum Wages and Liquidated Damages**
2. **Recovery of Unpaid Overtime Wages**
3. **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
4. **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
5. **Failure to Furnish Accurate Itemized Wage Statements**
6. **Failure to Reimburse Business Expenses and**
7. **Unfair Competition**

DEMAND FOR JURY TRIAL

1 Plaintiff, VIJAY SHETH (“PLAINTIFF”), as an individual and on behalf of all others
2 similarly situated, hereby files this Complaint against Defendants ICON BURGER ACQUISITION
3 LLC, a Delaware limited liability company; SMASHBURGER ACQUISITION-SO CAL LLC, a
4 Delaware limited liability company; SMASHBURGER ACQUISITION - SAN FRANCISCO LLC,
5 a Delaware limited liability company; SMASHBURGER ACQUISITION - SAN DIEGO LLC, a
6 Delaware limited liability company; SMASHBURGER ACQUISITION - SACRAMENTO LLC, a
7 Delaware limited liability company; and DOES 1-100, inclusive, (collectively referred to herein as
8 “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

9 **JURISDICTION AND VENUE**

10 1. This court possesses original subject matter jurisdiction over this matter. Venue is
11 proper in the County of Los Angeles, California, pursuant to California Code of Civil Procedure
12 section 395.5 because DEFENDANTS employed PLAINTIFF to work at DEFENDANTS’
13 restaurant/facility located in Redondo Beach, California, in the County of Los Angeles, and some
14 of the complained of conduct occurred in this judicial district.

15 **THE PARTIES**

16 2. PLAINTIFF resides in Los Angeles County, in the State of California. PLAINTIFF
17 worked for DEFENDANTS in the State of California as a non-exempt, hourly-paid employee at
18 DEFENDANTS’ Smashburger fast-food restaurants located in California, during the relevant
19 period. PLAINTIFF worked at multiple Smashburger restaurant/facilities owned and operated by
20 DEFENDANTS in California, including but not limited to, DEFENDANTS’ restaurants/facilities
21 in Carson, Manhattan Beach, Redondo Beach, and San Diego, but primarily worked at the Redondo
22 Beach and Carson restaurants/facilities.

23 3. DEFENDANTS are each a Delaware limited liability company that at all relevant
24 times, were authorized to do business within the State of California and are doing business within
25 the State of California. DEFENDANTS and their managing agents own, operate, or otherwise
26 manage Smashburger fast-food restaurants in California, which, based on information and belief,
27 include, but are not limited to, Smashburger restaurants/facilities in Carson, Manhattan Beach,
28 Redondo Beach, San Diego, San Jose, Sacramento, and San Francisco.

4. The true names and capacities of the DOE Defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Doe Defendants when such identities become known.

5. PLAINTIFF is further informed and believes that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, and that at all relevant times, each Defendant knew or should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

JOINT LIABILITY

6. Under California law, the definition of the term “to employ” is broadly construed under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to exercise control over the wages, hours or working conditions; (2) to suffer or permit to work; or (3) to engage, thereby creating a common law employment relationship. See *Martinez v. Combs*, 49 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control was to reach situations in which multiple entities control different aspects of the employment relationship. Supervision of the work, in the specific sense of exercising control over how services are properly performed, is properly viewed as one of the “working conditions” mentioned in the wage order. *Id.* at 76. A joint employer relationship exists when one entity hires and pays a worker, and the other entity supervises the work. *Id.*

7. During PLAINTIFF's employment with DEFENDANTS, PLAINTIFF and the Class

1 Members were jointly employed by these DEFENDANTS for purposes of the Wage Orders, under
2 the alternative definitions of “to employ” adopted by the California Supreme Court in *Martinez*,
3 *supra*. As discussed below, these DEFENDANTS (1) exercised control over wages, hours and
4 working conditions of PLAINTIFF and the Class Members (defined below); (2) suffered or
5 permitted PLAINTIFF and the Class Members to work for them; and (3) engaged PLAINTIFF and
6 the Class Members to work for them.

7 8. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
8 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
9 human resources as set forth herein. For example, DEFENDANTS, and each of them, maintain the
10 same headquarters/principal office in Denver, Colorado (3900 E. Mexico Ave, Suite 1100, Denver,
11 CO 80210), have the same California registered corporate Agent for Service of Process and/or the
12 same Director of Legal Administration (Linda McLellan). As a result, DEFENDANTS utilized the
13 same unlawful wage and hour policies and practices across all their California locations/facilities
14 and subjected all the Class Members to these same policies and practices regardless of the location(s)
15 or facilities where they worked in California.

16 9. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
17 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Class Members
18 upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
19 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Class Members’ wages,
20 hours and working conditions, and/or suffered or permitted PLAINTIFF and the Class Members to
21 work so as to be considered the joint employers of PLAINTIFF and the Class Members.
22 Specifically, upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
23 uniform set of policies, practices and/or procedures concerning, *inter alia*, hourly and overtime pay,
24 time-keeping practices, meal and rest and recovery periods, payment of wages, hours, background
25 check inquiries and practices, and working conditions that were distributed to, and/or applied to
26 PLAINTIFF and the Class Members, and further that DEFENDANTS uniformly compensated and
27 controlled the wages of Plaintiff and the Class Members in a uniform manner. DEFENDANTS
28 collectively represented to PLAINTIFF and the Class Members that each was an "at-will" employee

1 of DEFENDANTS, and that DEFENDANTS collectively retained the right to terminate
2 PLAINTIFF and the Class Members' employment with or without cause. Upon information and
3 belief, DEFENDANTS further collectively represented to PLAINTIFF and the Class Members in
4 writing the details of their compensation, and the manner in which they were to take meal and rest
5 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
6 and the policies applicable to PLAINTIFF and the Class Members by which DEFENDANTS
7 collectively would evaluate the wage rates of PLAINTIFF and the Class Members.

8 10. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
9 and working conditions of PLAINTIFF and the Class Members. As such, DEFENDANTS
10 collectively held the right to control virtually every aspect of PLAINTIFF's and the Class Members'
11 employment, including the instrumentality that resulted in the illegal conduct for which PLAINTIFF
12 seek relief in this Complaint.

13 **CLASS ALLEGATIONS**

14 11. PLAINTIFF brings this action on behalf of PLAINTIFF and all others similarly
15 situated as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF
16 seeks to represent are defined as follows and referred to as the "Class Members": "All current and
17 former non-exempt employees that worked directly or via a staffing agency for any of the
18 DEFENDANTS in California at any time within the four years prior to the filing of the initial
19 Complaint."

- 20 a. **Numerosity.** While the exact number of Class Members is unknown to
21 PLAINTIFF at this time, the class is so numerous that the individual joinder of
22 all members is impractical under the circumstances of this case.
- 23 b. **Common Questions of Law and Fact.** This lawsuit is suitable for class
24 treatment because common questions of law and fact predominate over
25 individual issues. Common questions include, but are not limited to, the
26 following: (1) whether DEFENDANTS understated hours worked and failed to
27 pay all amounts due to PLAINTIFF and the Class Members for wages earned,
28 including minimum and overtime wages, under California law; (2) whether

1 DEFENDANTS provided PLAINTIFF and the Class Members with all meal
2 periods or premium payments in lieu thereof, in compliance with California law;
3 (3) whether DEFENDANTS provided PLAINTIFF and the Class Members with
4 all rest periods or premium payments in lieu thereof, in compliance with
5 California law; (4) whether DEFENDANTS provided PLAINTIFF and the
6 Class Members with accurate, itemized wage statements in compliance with
7 California law, displaying, including but not limited to, the total hours worked
8 during the pay period; (5) whether DEFENDANTS failed to reimburse
9 PLAINTIFF and the Class Members for all business expenses; and (6) whether
10 DEFENDANTS violated California Business and Professions Code sections
11 17200, et seq.

- 12 c. **Ascertainable Class.** The proposed class is ascertainable as its members can
13 be identified and located using information in DEFENDANTS' business,
14 payroll and personnel records.
- 15 d. **Typicality.** PLAINTIFF's claims are typical of the claims of the Class
16 Members. PLAINTIFF suffered a similar injury as the other Class Members as
17 a result of DEFENDANTS' common practices regarding, *inter-alia*, failure to
18 calculate and pay all owed minimum and overtime wages, failure to provide
19 proper meal and rest periods or premium compensation in lieu thereof, failure
20 to provide accurate wage statements, and failure to reimburse business expenses.
- 21 e. **Adequacy.** PLAINTIFF will fairly and adequately protect the interests of the
22 Class Members. PLAINTIFF has no interests adverse to the interests of the other
23 Class Members. Counsel who represent PLAINTIFF are competent and
24 experienced in litigating similar class action cases and are California lawyers in
25 good standing. Counsel for PLAINTIFF have the experience and resources to
26 vigorously prosecute this case.
- 27 f. **Superiority.** A class action is superior to other available means for the fair and
28 efficient adjudication of this controversy since individual joinder of all members

1 of the class is impractical. Class action treatment will permit a large number of
2 similarly situated persons to prosecute their common claims in a single forum
3 simultaneously, efficiently, and without the unnecessary duplication of effort
4 and expense that numerous individual actions would engender. Furthermore, as
5 the damages suffered by each individual member of the class may be relatively
6 small, the expenses and burden of individual litigation would make it difficult
7 or impossible for individual members of the class to redress the wrongs done to
8 them, while an important public interest will be served by addressing the matter
9 as a class action. The cost to the court system of adjudication of such
10 individualized litigation would be substantial. Individualized litigation would
11 also present the potential for inconsistent or contradictory judgments. Finally,
12 the alternative of filing a claim with the California Labor Commissioner is not
13 superior, given the lack of discovery in such proceedings, the fact that there are
14 fewer available remedies, and the losing party has the right to a trial de novo in
15 the Superior Court.

16 **FACTUAL AND LEGAL ALLEGATIONS**

17 12. During the four-year period preceding filing of this complaint, PLAINTIFF, and each
18 of the Class Members, were employed by DEFENDANTS in the State of California as non-exempt
19 employees. At all times referenced herein, DEFENDANTS exercised control over PLAINTIFF and
20 each of the Class Members and suffered and/or permitted them to work.

21 13. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee during
22 the relevant period. PLAINTIFF began his employment with DEFENDANTS, on or about January
23 24, 2019, as a cook/other similar title, and was thereafter promoted to a shift manager/other similar
24 title, in or about March of 2020. PLAINTIFF worked primarily at DEFENDANTS' Smashburger
25 restaurants/facilities located in Redondo Beach and Carson. PLAINTIFF was typically scheduled
26 to work shifts that lasted at least eight (8) hours per day, at least five (5) days a week, but he often
27 worked an average of sixty hours per week during the relevant period.

28 14. **Denied Meal Periods.** During the relevant period, PLAINTIFF and the Class

1 Members regularly worked shifts of five and one half (5 ½) hours or more and were entitled to at
2 least one thirty-minute uninterrupted meal break per shift. However, DEFENDANTS failed to
3 provide PLAINTIFF and the Class Members with timely thirty-minute, uninterrupted meal breaks
4 and/or required PLAINTIFF and the Class Members to work through purported meal breaks, remain
5 on DEFENDANTS' premises during purported meal periods and/or remain tethered to
6 DEFENDANTS' communication devices. Based on information and belief, PLAINTIFF and other
7 Class Members were not adequately informed, authorized, instructed about, nor permitted an
8 opportunity to take lawful meal breaks per California law.

9 15. PLAINTIFF and other Class Members were consistently unable to take timely,
10 thirty-minute, off-duty, uninterrupted meal periods due to the nature and constraints of their job
11 duties, lack of coverage/relief workers available and/or commentary from supervisors pressuring
12 them to take non-compliant breaks or skip breaks completely. For example, PLAINTIFF estimates
13 his meal periods were interrupted, cut short or skipped completely approximately four out of every
14 five shifts he worked due to lack of coverage/relief workers available. PLAINTIFF and other Class
15 Members were directed by DEFENDANTS to clock out for meal periods but to continue working.
16 For example, PLAINTIFF's supervisor instructed PLAINTIFF not to leave the cooks, cashiers, or
17 servers working alone/unattended in the restaurant. Due to this, PLAINTIFF was rarely ever able
18 to take a timely, uninterrupted, thirty-minute meal break but was instructed by his supervisor to
19 always clock out for a full thirty minutes per shift before the end of the fifth hour of work. On
20 occasions PLAINTIFF did not clock himself out, PLAINTIFF's supervisor would clock
21 PLAINTIFF out and/or edit the time records so that it would appear as though PLAINTIFF had
22 taken a compliant meal period when PLAINTIFF had not. Based on information and belief,
23 DEFENDANTS applied these same policies and practices of time shaving/time-record manipulation
24 and automatic deductions for missed, interrupted, and/or on-duty meal periods to the other Class
25 Members that it applied to PLAINTIFF.

26 16. DEFENDANTS implemented policies and/or practices that failed to relieve
27 PLAINTIFF and other Class Members of all duties and DEFENDANTS' control during unpaid meal
28 breaks. Based on information and belief, DEFENDANTS had a uniform policy and practice of

1 requiring PLAINTIFF and other Class Members to remain tethered to their worksite and/or work
2 communication devices during meal periods.

3 17. Based on information and belief, DEFENDANTS implemented a policy and/or
4 practice of automatically deducting/requiring PLAINTIFF and other Class Members to clock out
5 for at least thirty minutes per shift for these missed or noncompliant meal periods, despite having
6 actual and/or constructive knowledge that PLAINTIFF and other Class Members did not receive
7 compliant meal periods.

8 18. Based on information and belief, DEFENDANTS rounded the start and end times of
9 Class Members' meal periods resulting in PLAINTIFF and other Class Members not being paid for
10 all time worked as well as late or shortened meal periods.

11 19. PLAINTIFF is further informed and believes and thereon alleges that
12 DEFENDANTS had actual and/or constructive knowledge that its time-rounding and auto-
13 deduction policies and practices resulted in the denial of legally compliant meal periods owed to
14 PLAINTIFF and other Class Members, in violation of California's meal period laws.

15 20. Moreover, DEFENDANTS failed to provide a second meal break to PLAINTIFF
16 and Class Members that worked shifts of more than ten hours. DEFENDANTS failed to provide
17 PLAINTIFF and Class Members with a second, duty-free, uninterrupted, thirty-minute meal period
18 even though PLAINTIFF and Class Members worked more than ten hours in a workday and thus
19 were entitled to a second duty-free, uninterrupted, thirty-minute meal period before the end of the
20 tenth hour of work. For example, PLAINTIFF often worked shifts lasting over ten hours, but was
21 only provided with one meal period, if any, and that single meal period was noncompliant.

22 21. Furthermore, based on information and belief, DEFENDANTS failed to pay
23 PLAINTIFF and other Class Members an additional hour of wages at their respective regular rates
24 of pay for each workday a compliant meal period was denied. DEFENDANTS either failed to pay
25 Class Members a meal period premium at all for each workday a compliant meal period was denied
26 or failed to pay the legally required meal period premium for failure to incorporate all non-
27 discretionary compensation, including but not limited to, non-discretionary bonuses/incentive pay
28 into the regular pay rate used to calculate the owed meal period premium.

1 22. **Denied Rest Periods.** DEFENDANTS did not authorize or permit PLAINTIFF and
2 other Class Members to take legally compliant rest periods at a rate of every four (4) hours worked
3 or major fraction thereof. PLAINTIFF and other Class Members were not adequately informed,
4 authorized, instructed about, nor permitted an opportunity to take legally compliant rest breaks.
5 PLAINTIFF and other Class Members were consistently unable to take a net, ten-minute, off-duty
6 rest period for every four (4) hours worked or major fraction thereof because of the nature and
7 constraints of their job duties and/or commentary from supervisors pressuring them to take non-
8 compliant rest breaks or skip rest breaks completely. PLAINTIFF and other Class Members were
9 instructed by their supervisors to work through their rest periods due to lack of coverage/lack of
10 relief workers available and/or understaffing. PLAINTIFF and other Class Members were pressured
11 to complete their work duties according to a designated schedule such that rest breaks were only
12 taken once jobs were completed/if time permitted. For example, PLAINTIFF was consistently
13 required to cut any rest breaks short or skip them completely when the restaurant was busy or simply
14 due to understaffing/lack of relief workers available. When PLAINTIFF complained about denied
15 breaks as a cook, PLAINTIFF's supervisor told PLAINTIFF he could not take his breaks because
16 there was no one to cover the kitchen. When PLAINTIFF worked as a non-exempt manager,
17 PLAINTIFF's supervisor told PLAINTIFF he was not entitled to take rest breaks because "managers
18 do not take 10s [i.e. ten-minute uninterrupted rest breaks]," or words to that effect.

19 23. Based on information and belief, DEFENDANTS did not have a lawful policy,
20 instruction, or practice as to the taking, timing or duty-free nature of rest periods.

21 24. Based on information and belief, DEFENDANTS implemented policies and
22 practices that failed to relieve the Class Members of all duties and employer control during any rest
23 periods. For example, based on information and belief, DEFENDANTS required PLAINTIFF and
24 other Class Members to remain on the restaurant premises during any rest periods. As such,
25 PLAINTIFF and other Class Members remained under DEFENDANTS' control during any rest
26 periods, rendering said rest periods on duty and therefore noncompliant with California rest period
27 law. Despite not providing PLAINTIFF and other Class Members with all owed legally compliant
28

1 rest periods, DEFENDANTS did not pay PLAINTIFF and other Class Members an additional hour
2 of wages at their respective regular rates of pay for any missed/non-compliant rest period.

3 25. **Unpaid Minimum Wages and Overtime Wages.** DEFENDANTS failed to
4 compensate all hours worked resulting in the underpayment of minimum and overtime wages owed
5 to PLAINTIFF and other Class Members. As described above, PLAINTIFF and other Class
6 Members were regularly required to perform off-the-clock work by virtue of DEFENDANTS'
7 automatic-deduction policy for meal periods. Based on information and belief, the work time
8 reported by Class Members was rounded and automatically deducted for at least 30 minutes of
9 wages every day they worked for DEFENDANTS for meal breaks not taken, interrupted, or during
10 which the Class Members were not relieved of all duties and employer control. Per DEFENDANTS'
11 uniform policies and practices, PLAINTIFF and other Class Members were required to clock out
12 for at least thirty minutes per shift for purported meal periods, despite DEFENDANTS' actual and/or
13 constructive knowledge that PLAINTIFF and other Class Members were working through part or
14 all these meal periods.

15 26. Based on further information and belief, DEFENDANTS rounded the start and end
16 times of Class Members' meal periods and shift start and end times resulting in PLAINTIFF and
17 other Class Members not being paid for all time worked.

18 27. Based on information and belief, DEFENDANTS adjusted PLAINTIFF's and
19 other Class Members' time entries and or instructed PLAINTIFF and other Class Members to record
20 only the scheduled beginning and end times of their shifts rather than the actual times PLAINTIFF
21 and other Class Members began and stopped working, resulting in understating actual time worked
22 and the underpayment of minimum and overtime wages owed to the Class Members.

23 28. Based on information and belief, DEFENDANTS had and continue to have
24 a policy and practice of paying Class Members according to scheduled hours rather than actual time
25 worked due to DEFENDANTS' mandated off-the-clock work policies and practices. For example,
26 prior to clocking in for their shifts each day, PLAINTIFF and other Class Members were required
27 to undergo a COVID-related temperature check, but this time spent under employer control
28 undergoing DEFENDANTS' mandated COVID-temperature screening was not recorded and not

1 compensated, resulting in unpaid minimum and overtime wages to PLAINTIFF and other Class
2 Members.

3 29. DEFENDANTS also did not compensate PLAINTIFF and other Class Members
4 for time spent donning and doffing personal protective equipment and/or uniforms during meal
5 periods, rest periods, before the start of a scheduled shift, and after completing a scheduled shift.
6 For example, upon arriving to work, PLAINTIFF and other Class Members were required to walk
7 to the back of the restaurant to retrieve a company-provided apron and hat. After changing into the
8 required uniform, PLAINTIFF and other Class Members clocked in. When working as a cook,
9 PLAINTIFF was also required to wash his hands and don gloves prior to clocking in for the start of
10 his shift each day. Similarly, PLAINTIFF and other Class Members were required to remove their
11 company-provided uniform after clocking out. Such time spent donning and doffing was not
12 recorded and not compensated, resulting in unpaid minimum and overtime wages to PLAINTIFF
13 and other Class Members.

14 30. DEFENDANTS also did not compensate PLAINTIFF and other Class Members
15 for pre-shift and post-shift off-the-clock work when opening or closing the restaurants. For
16 example, when PLAINTIFF opened the restaurant, he was required to first unlock the door and
17 disable the alarm before clocking in to work, resulting in at least several minutes of off-the-clock
18 work each shift he opened. When closing the restaurant, PLAINTIFF was required to first clock out,
19 then perform required closing duties such as, but not limited to, “grinding the system,” i.e.,
20 electronically submit that day’s restaurant/facility data to corporate and only after performing such
21 closing duties would PLAINTIFF then enable the alarm and then close the doors. This resulted in
22 at least an additional twenty minutes of post-shift off-the-clock work each time PLAINTIFF closed
23 the restaurant.

24 31. Based on information and belief, DEFENDANTS failed to compensate PLAINTIFF
25 and other Class Members for time they were required to spend completing training, orientation,
26 certification and/or the onboarding process. For example, based on information and belief,
27 DEFENDANTS required PLAINTIFF and other Class Members to perform online training through
28 DEFENDANTS’ online training platform, “Smashconnect,” review and sign various types of

1 policies and documents, including but not limited to, safety guidelines/safety awareness
2 certifications, acknowledgment(s) of receipt of employee handbook, confidentiality agreement,
3 among other documents, but they were not paid for all time spent reviewing and/or completing
4 certification as directed by DEFENDANTS. Based on information and belief, DEFENDANTS had
5 a uniform policy and practice of requiring Class Members to complete mandatory off-the-clock
6 administrative tasks, onboarding, training, certification, and/or other tasks without compensating for
7 all hours worked.

8 32. Based on further information and belief, DEFENDANTS required/requires
9 PLAINTIFF and other Class Members to undergo Covid testing outside of their scheduled shift
10 times without compensating PLAINTIFF and other Class Members for the travel time to/from the
11 testing sites, time spent waiting for the tests to be performed and/or time spent undergoing
12 testing/fulfilling DEFENDANTS' testing requirements, resulting in significant off-the-clock work
13 and unpaid minimum and overtime wages.

14 33. Based on information and belief, DEFENDANTS engaged in systemic time-record
15 manipulation to shave time worked off PLAINTIFF and other Class Members' workdays, by, for
16 example, manually editing electronic time records to delete portions of total hours worked or
17 otherwise understate actual hours worked by PLAINTIFF and other Class Members. For example,
18 PLAINTIFF reports he consistently worked an average of sixty hours per week, but DEFENDANTS
19 would only compensate PLAINTIFF for up to his scheduled forty hours per week. When
20 PLAINTIFF reported the underpayment of wages to management, he was told "not to worry about
21 it," or words to that effect, and that he would later be "reimbursed" for the uncompensated worktime,
22 which did not occur.

23 34. Further, as described above, DEFENDANTS had a uniform policy and/or
24 practice of failing to relieve PLAINTIFF and other Class Members of all duties and employer
25 control during unpaid meal breaks, which resulted in PLAINTIFF and other Class Members not
26 being compensated for all hours worked.

27 35. DEFENDANTS' automatic deduction and time rounding/time shaving policies and
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1 practices described herein resulted in a failure to account for all hours worked and deprived
2 PLAINTIFF and Class Members of all owed minimum and overtime wages for those that worked
3 more than eight (8) hours in a day or more than forty (40) hours in a week.

4 36. Based on information and belief, DEFENDANTS also failed to pay the correct
5 overtime rate to Class Members due to DEFENDANTS' failure to incorporate all forms of non-
6 discretionary compensation, including but not limited to, non-discretionary bonus/incentive pay,
7 into the regular rate of pay for purposes of calculating the owed overtime rate, resulting in the
8 underpayment of overtime wages owed. For example, DEFENDANTS compensated PLAINTIFF
9 with non-discretionary performance-based bonuses/incentive pay for training employees to meet
10 shift-leader requirements and or for meeting kitchen-time quotas in pay periods during which
11 PLAINTIFF worked overtime, yet DEFENDANT failed to include the non-discretionary incentive
12 pay in the regular pay rate used to calculate the owed overtime rate. Failing to include non-
13 discretionary compensation in the regular pay rate resulted in a miscalculation of the overtime wage
14 rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and other Class
15 Members.

16 37. Based on information and belief, DEFENDANTS failed to pay twice Class
17 Members' regular rate(s) of pay for time worked beyond twelve (12) hours per day and for time
18 worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation
19 of California's overtime law.

20 38. Based on information and belief, DEFENDANTS had actual and/or constructive
21 knowledge that its time-rounding, payment according to scheduled hours rather than actual time
22 worked, auto-deduction policies, policies and practices that failed to relieve Class Members of all
23 duties and employer control during unpaid meal periods, and other off-the-clock work policies and
24 practices described herein resulted in violations of California's minimum and overtime wage laws
25 and other violations described below.

26 39. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
27 provide PLAINTIFF and other Class Members with accurate wage statements that complied with
28 Labor Code section 226. DEFENDANTS provided wage statements that failed to indicate the total

1 wages earned (including meal and rest period premiums), and total hours worked by PLAINTIFF
2 and other Class Members (by virtue of the automatic deduction for meal periods and other off-the-
3 clock work described herein). Accordingly, DEFENDANTS violated Labor Code section 226 by
4 providing wage statements that were inaccurate and failed to include all of the statutorily required
5 information.

6 40. Moreover, based on information and belief, DEFENDANTS violated Labor Code
7 section 226(a)(8) because the wage statements issued by DEFENDANTS failed to list the correct
8 name and address of the legal entity that is the employer on wage statements provided by
9 DEFENDANTS.

10 41. As a result, PLAINTIFF and the Class Members have suffered injury as they could
11 not easily determine whether they received all wages owed to them and whether they were paid for
12 all hours worked. Moreover, as a result of DEFENDANTS' failure to list the correct legal entity
13 that is the employer, PLAINTIFF and the Class Members have suffered injury as there was
14 confusion as to which entity to contact regarding any question(s) they had about wages paid and
15 unpaid.

16 42. **Failure to Reimburse Business Expenses.** DEFENDANTS also failed to
17 compensate PLAINTIFF and the Class Members for business-related expenses incurred in direct
18 consequence of the discharge of their duties or of their obedience to the directions of the employer.
19 PLAINTIFF and the Class Members were improperly required to provide and maintain work tools
20 that are supposed to be the responsibility of the employer. DEFENDANTS shifted its costs of doing
21 business onto PLAINTIFF and other Class Members by requiring them to pay for its business
22 expenses, including but not limited to, use of PLAINTIFF's and Class Members' mobile phones,
23 personal computer devices, data plan usage and charges, and costs associated with the maintenance
24 and/or purchase of uniforms/ work clothing and shoes, and/or protective masks. For example,
25 PLAINTIFF received calls and text messages on his personal phone for work-related purposes,
26 including but not limited to, messages related to scheduling and assigning shifts. Based on
27 information and belief, Plaintiff and other Class Members also used personal devices, including but
28 not limited to, personal computers, to complete off-the-clock trainings as mandated by

1 DEFENDANTS. Based on information and belief, PLAINTIFF and other Class Members were not
2 compensated in any way for these business expenses.

3 43. Based on information and belief, PLAINTIFF and other Class Members were
4 required to use their personal vehicles in direct consequence of the performance of their job duties.
5 For example, at times, PLAINTIFF and other Class Members were required to use their personal
6 vehicles to deliver catering orders to customers at the direction of management, without being
7 reimbursed for vehicle-related expenses incurred (e.g., gas, mileage, vehicle wear and tear).

8 44. Moreover, based on information and belief, Class Members were not reimbursed for
9 the cost of undergoing Covid testing, including but not limited to purchasing the test, and/or the cost
10 of traveling and/or using a personal vehicle to travel to and from a testing site.

11 45. DEFENDANTS' failure to provide PLAINTIFF and other Class Members with full
12 reimbursement for all reasonable expenses associated with carrying out their duties required that
13 PLAINTIFF and other Class Members subsidize and/or carry the burden of business expenses in
14 violation of Labor Code section 2802.

15 46. **Untimely Payment of Final Wages.** DEFENDANTS failed to timely pay Class
16 Members all wages that were due and owing upon termination or resignation. Labor Code sections
17 201 and 202, together require employers to pay all wages immediately upon discharge and/or within
18 72 hours of an employees' resignation. Upon separation of employment, Class Members' final
19 paychecks were not timely provided. Based on information and belief, DEFENDANTS did not pay
20 final wages in accordance with the timing requirements set forth in Labor Code sections 201 and
21 202.

22 47. Moreover, upon separation of employment, Class Members' final paychecks, once
23 provided, did not include all wages owed as they were devoid of, including but not limited to, all
24 owed minimum wages, all owed overtime wages, all owed double time wages, and all owed
25 premium wages for unlawful meal and rest breaks, and/or all owed vacation pay. DEFENDANTS
26 also willfully failed to timely pay all wages upon separation of employment because it was not
27 paying sick pay at the appropriate rates due to, including but not limited to, failing to incorporate all
28 non-discretionary compensation into sick pay calculation.

48. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS engaged in these same herein described unlawful practices with regard to all of the Class Members, and that DEFENDANTS applied these same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

FIRST CAUSE OF ACTION

Recovery of Unpaid Minimum Wages and Liquidated Damages (Against All Defendants)

49. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

50. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage Commission (“IWC”) Wage Orders, an employer must pay its employees for all hours worked, up to forty per week or eight (8) per day, at a regular time rate no less than the mandated minimum wage. Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

51. DEFENDANTS violated California's minimum wage laws by, including but not limited to, failing to compensate PLAINTIFF and the Class Members for all hours worked by virtue of, among other things, DEFENDANTS' failure to relieve employees of all duties and employer control during unpaid meal periods and DEFENDANTS' policies and practices requiring, suffering, and/or permitting the Class Members to perform work prior to clocking in for their scheduled shifts and/or after clocking out for their scheduled shifts, without compensating them for this compensable work time.

52. Based on information and belief, DEFENDANTS had and continue to have a policy and practice of paying Class Members according to scheduled hours rather than actual time worked due to DEFENDANTS' mandated off-the-clock work policies and practices. For example, prior to clocking in for their shifts each day, PLAINTIFF and other Class Members were required to undergo a COVID-related temperature check, but this time spent under employer control undergoing DEFENDANTS' mandated COVID-temperature screening was not recorded and not compensated, resulting in unpaid minimum and overtime wages to PLAINTIFF and other Class Members.

53. DEFENDANTS also did not compensate PLAINTIFF and other Class Members

1 for time spent donning and doffing personal protective equipment and/or uniforms during meal
2 periods, rest periods, before the start of a scheduled shift, and after completing a scheduled shift.
3 For example, upon arriving to work, PLAINTIFF and other Class Members were required to walk
4 to the back of the restaurant to retrieve a company-provided apron and hat. After changing into the
5 required uniform, PLAINTIFF and other Class Members clocked in. When working as a cook,
6 PLAINTIFF was also required to wash his hands and don gloves prior to clocking in for the start of
7 his shift each day. Similarly, PLAINTIFF and other Class Members were required to remove their
8 company-provided uniform after clocking out. Such time spent donning and doffing was not
9 recorded and not compensated, resulting in unpaid minimum and overtime wages to PLAINTIFF
10 and other Class Members.

11 54. DEFENDANTS also did not compensate PLAINTIFF and other Class Members
12 for pre-shift and post-shift off-the-clock work when opening or closing the restaurants. For
13 example, when PLAINTIFF opened the restaurant, he was required to first unlock the door and
14 disable the alarm before clocking in to work, resulting in at least a few minutes of off-the-clock
15 work each shift he opened. When closing the restaurant, PLAINTIFF was required to first clock out,
16 then perform required closing duties such as, but not limited to, “grinding the system,” i.e.,
17 electronically submit that day’s restaurant/facility data to corporate and only after performing such
18 closing duties would PLAINTIFF then enable the alarm and then close the doors, resulting in at
19 least an additional twenty minutes of post-shift off-the-clock work each time he closed the
20 restaurant.

21 55. Based on information and belief, DEFENDANTS failed to compensate PLAINTIFF
22 and other Class Members for time they were required to spend completing training, orientation,
23 certification and/or the onboarding process. For example, based on information and belief,
24 DEFENDANTS required PLAINTIFF and other Class Members to perform online training through
25 DEFENDANTS’ online training platform, “Smashconnect,” review and sign various types of
26 policies and documents, including but not limited to, safety guidelines/safety awareness
27 certifications, acknowledgment(s) of receipt of employee handbook, confidentiality agreement,
28 among other documents, but they were not paid for all time spent reviewing and/or completing

1 certification as directed by DEFENDANTS. Based on information and belief, DEFENDANTS had
2 a uniform policy and practice of requiring Class Members to complete mandatory off-the-clock
3 administrative tasks, onboarding, training, certification, and/or other tasks without compensating for
4 all hours worked.

5 56. Based on further information and belief, DEFENDANTS required/requires
6 PLAINTIFF and other Class Members to undergo Covid testing outside of their scheduled shift
7 times without compensating PLAINTIFF and other Class Members for the travel time to/from the
8 testing sites, time spent waiting for the tests to be performed and/or time spent undergoing
9 testing/fulfilling DEFENDANTS' testing requirements, resulting in significant off-the-clock work
10 and unpaid minimum wages.

11 57. DEFENDANTS had and continue to have a continuous policy of clocking out
12 PLAINTIFF and Class Members/requiring PLAINTIFF and Class Members clock out for meal
13 periods even though PLAINTIFF and Class Members were not relieved of all duties and employer
14 control during said meal periods, rendering the unpaid time compensable under California law.

15 58. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFF and the Class
16 Members are entitled to recover all unpaid minimum time wages and liquidated damages thereon,
17 plus attorney's fees and costs, in an amount to be proved at trial.

18 59. Class Members that are no longer employed by DEFENDANTS have an additional
19 claim for waiting time penalties pursuant to Labor Code sections 201-203 for up to 30 days of
20 waiting time penalties on account of DEFENDANTS' ongoing willful failure to pay them all
21 minimum wages that are due and owing, together with interest thereon, attorneys' fees and costs.

22 **SECOND CAUSE OF ACTION**
23 **Recovery of Unpaid Overtime Wages**
24 **(Against All Defendants)**

25 60. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

26 61. Employees in California must be paid overtime, equal to one and one-half times the
27 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
28 twelve hours in any workday, and for the first eight (8) hours worked on the seventh consecutive
day of work in a workweek, and they must be paid double the regular rate of pay for all hours worked

1 in excess of twelve hours in any workday and for all hours worked in excess of eight (8) on the
2 seventh consecutive day of work in a workweek, unless they are exempt.

3 62. PLAINTIFF and the Class Members worked overtime hours for which they were not
4 compensated by DEFENDANTS by virtue of, including but not limited to, DEFENDANTS'
5 policies and practices mandating, suffering and/or permitting the performance of uncompensated
6 off-the-clock work described above. Based on information and belief, DEFENDANTS also failed
7 to pay the correct overtime rate(s) to Class Members due to DEFENDANTS' failure to incorporate
8 all forms of non-discretionary compensation, including but not limited to, non-discretionary
9 bonuses/incentive pay and or other non-discretionary compensation, into the regular pay rate used
10 to calculate the owed overtime rate(s). Failure to include all non-discretionary compensation in the
11 overtime pay rate calculation resulted in the underpayment of earned overtime wages to Class
12 Members.

13 63. Based on information and belief, DEFENDANTS' policies and practices described
14 herein, including but not limited to, DEFENDANTS' failure to pay Class Members for all hours
15 worked and failure to incorporate all non-discretionary compensation into the regular pay rate(s)
16 used to calculate premium wage rates, DEFENDANTS failed to pay twice PLAINTIFF and the
17 Class Members' regular rate(s) of pay for time worked beyond twelve (12) hours per day and for
18 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in
19 violation of California's overtime laws.

20 64. DEFENDANTS' conduct described above is in violation of California Labor Code
21 sections 510 and 1194 and all applicable Industrial Wage Commission Wage Orders.

22 65. PLAINTIFF and the Class Members are entitled to recover all unpaid overtime
23 wages, plus attorney's fees and costs, in an amount to be proved.

24 66. Class Members that are no longer employed by DEFENDANTS have an additional
25 claim for waiting time penalties pursuant to Labor Code sections 201-203 for up to 30 days of
26 waiting time penalties on account of DEFENDANTS' ongoing willful failure to pay them all
27 overtime and double time wages that are due and owing, together with interest thereon, attorneys'
28 fees and costs.

THIRD CAUSE OF ACTION
Failure to Provide Meal Periods or Compensation in Lieu Thereof
(Against All Defendants)

67. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

68. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders, DEFENDANTS were required to provide PLAINTIFF and the Class Members with one thirty-minute meal period free from all duties and employer control for all shifts longer than five (5) hours, and a second thirty-minute meal period free from all duties for all shifts longer than ten hours. Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed no meal period was provided.

69. PLAINTIFF and the Class Members were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods and/or work through part or all of their meal periods due to the nature and constraints of their job duties, DEFENDANTS' policies and practices that failed to relieve PLAINTIFF and other Class Members of all duties and employer control during meal breaks and or commentary from DEFENDANTS pressuring the Class Members to take non-compliant breaks or skip breaks completely.

70. Per DEFENDANTS' unlawful policies and practices pertaining to meal periods, DEFENDANTS also failed to provide PLAINTIFF and the Class Members with duty-free, uninterrupted, thirty-minute, second meal periods before the end of the tenth hour of work when working more than ten hours.

71. DEFENDANTS have and continue to have a continuous policy of clocking out

1 PLAINTIFF and Class Members/requiring PLAINTIFF and the Class Members clock out for meal
2 periods, even though PLAINTIFF and Class Members were not relieved of all duties and employer
3 control during said meal periods, rendering the unpaid time compensable under California law.

4 72. PLAINTIFF is further informed and believes and thereon alleges that
5 DEFENDANTS had actual or constructive knowledge that its policies and practices that failed to
6 relieve its employees of all duties and employer control during meal periods resulted in the denial
7 of meal periods owed to PLAINTIFF and the Class Members, in violation of California's meal
8 period laws.

9 73. DEFENDANTS did not pay PLAINTIFF and the Class Members an additional
10 hour of wages at their respective regular rates of pay for each workday a proper meal period was
11 not provided. DEFENDANTS either failed to pay a meal period premium at all for each workday a
12 legally compliant meal period was not provided or failed to pay the proper meal period premium for
13 failure to incorporate all non-discretionary remuneration, including but not limited to, non-
14 discretionary bonus compensation/incentive pay, multiple regular pay rates earned during the pay
15 period, and/or shift differential compensation into the regular pay rate(s) used to calculate the owed
16 meal period premiums.

17 74. DEFENDANTS failed to provide PLAINTIFF and the Class Members with all
18 required meal periods, or with proper compensation in lieu thereof. As a result, under Labor Code
19 section 226.7, PLAINTIFF and the Class Members are entitled to one additional hour's pay at the
20 proper premium pay rate for each day a meal period was missed, late or interrupted, all in an amount
21 to be proved at trial.

22 **FOURTH CAUSE OF ACTION**
23 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
24 **(Against All Defendants)**

25 75. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

26 76. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
27 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
28 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
"insofar as practicable." The rest period requirement obligates employers to permit and authorize

1 employees to take off-duty rest periods, meaning employers must relieve employees of all duties
2 and relinquish control over how employees spend their time. *Augustus v. ABM Security Services,*
3 *Inc.*, (2016) 5 Cal.5th 257. If the employer fails to provide any required rest period, the employer
4 must pay the employee one hour of pay at the employee's regular rate of compensation for each
5 workday the employer did not provide at least one legally required rest period, pursuant to Labor
6 Code section 226.7.

7 77. PLAINTIFF and the Class Members did not receive compliant, timely, net, ten-
8 minute rest periods every four (4) hours worked or major fraction thereof. PLAINTIFF and the
9 Class Members were consistently unable to take a net, ten-minute, off-duty rest period for every
10 four (4) hours worked or major fraction thereof due to, including but not limited to, having to attend
11 to work duties requiring immediate attention, lack of relief workers available, and/or commentary
12 from supervisors pressuring PLAINTIFF and other Class Members to take non-compliant rest
13 periods or skip rest periods. DEFENDANTS implemented policies and practices that failed to
14 relieve the Class Members of all duties and employer control during any rest periods. For example,
15 based on information and belief, PLAINTIFF and other Class Members were prohibited from
16 leaving the worksite during any rest periods and required to monitor work communication devices,
17 as well as attend to work tasks as needed, including during any purportedly duty-free rest periods
18 and thus remained under employer control during any rest periods, rendering said rest periods on
19 duty and thus noncompliant with California rest period law. PLAINTIFF and other Class Members
20 did not receive legally compliant first, second, or third rest periods. Based on information and belief,
21 DEFENDANTS never paid PLAINTIFF and other Class Members any rest period premium for any
22 missed/non-compliant rest period.

23 78. DEFENDANTS did not pay PLAINTIFF and the Class Members an additional hour
24 of wages at their regular rate(s) of pay for each workday a proper rest period was not provided.

25 79. DEFENDANTS are therefore liable to PLAINTIFF and the Class Members for one
26 hour of additional pay at the regular rate of compensation for each workday that a required rest
27 period was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage
28 Order, plus pre-judgment interest.

FIFTH CAUSE OF ACTION
Failure to Furnish Accurate Itemized Wage Statements
(Against All Defendants)

80. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

81. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFF and the Class Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized wage statement accurately stating the following:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

82. During the relevant time period, DEFENDANTS intentionally failed to provide PLAINTIFF and the Class Members with complete and accurate wage statements in compliance with Labor Code section 226, because they do not accurately reflect the total number of hours worked.

83. Notably, due to DEFENDANTS' unlawful policies of automatically deducting meal periods, payment according to scheduled hours rather than actual time worked and other uncompensated off-the-clock work, wage statements provided by DEFENDANTS fail to reflect the true total hours PLAINTIFF and the Class Members worked, a requirement of Labor Code section 226.

84. Moreover, as DEFENDANTS failed to provide lawful meal and rest periods to PLAINTIFF and Class Members, the wage statements issued by DEFENDANTS failed to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in

1 violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the
2 pay period and the corresponding number of hours worked at each hourly rate by the employee in
3 violation of Labor Code section 226(a)(9).

4 85. DEFENDANTS knowingly and intentionally failed to provide PLAINTIFF and the
5 Class Members with proper, itemized wage statements as the wage statements provided by
6 DEFENDANTS did not accurately reflect the total hours worked per pay period due to
7 DEFENDANTS' automatic deduction policy and/or practice for unlawful meal periods and off-the-
8 clock work policies and practices.

9 86. Moreover, based on information and belief, DEFENDANTS failed to provide the
10 Class Members with wage statements that listed the correct name and address of the legal entity that
11 is the employer.

12 87. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Class
13 Members have suffered injury. The absence of accurate information on their wage statements has
14 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
15 mathematical computations to determine the amount of wages owed, and will cause difficulty and
16 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
17 submission of inaccurate information about wages and amounts deducted from wages to state and
18 federal government agencies. As a result, PLAINTIFF and the Class Members are required to
19 participate in this lawsuit and create more difficulty and expense for PLAINTIFF and the Class
20 Members from having to reconstruct time and pay records than if DEFENDANTS have complied
21 with its legal obligations.

22 88. Pursuant to California Labor Code section 226(e), PLAINTIFF and the Class
23 Members are entitled to recover fifty dollars per employee for the initial pay period in which a
24 Section 226 violation occurred and one hundred dollars per employee per violation for each
25 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars per employee.

26 89. Pursuant to California Labor Code section 226(h), PLAINTIFF and the Class
27 Members are entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance
28 with California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS

1 continue to provide currently employed Class Members with inaccurate wage statements in violation
2 of California Labor Code § 226(a). Currently employed Class Members have no adequate legal
3 remedy for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing
4 unlawful conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS'
5 compliance with California Labor Code § 226(a).

6 90. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFF and the Class
7 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable
8 attorneys' fees, and costs of suit.

9 **SIXTH CAUSE OF ACTION**
10 **Failure to Reimburse Business Expenses**
11 **(Against All Defendants)**

12 91. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

13 92. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members
14 were entitled to be reimbursed for all reasonable expenses associated with carrying out orders by
15 their employer and/or carrying out the duties assigned by their employers.

16 93. Among other things, under California law, when employees must use their personal
17 cellphones for work-related purposes, the employer must reimburse them for a reasonable
18 percentage of their cell phone bills. See *Cochran v. Schwan's Home Services, Inc.* (2014) 228
19 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
20 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
21 Id. 1144-1145.

22 94. PLAINTIFF and the Class Members were improperly required to pay for business
23 expenses that are legally the responsibility of the employer, including but not limited to, data plan
24 charges incurred due to DEFENDANTS' requirement they use their personal cellphones/other
25 personal mobile communication devices as well as personal computers, in the discharge of their job
26 duties, such as but not limited to, for communicating with management about work scheduling/tasks
27 and for completing online training, as well as expenses associated with the purchase, provision and
28 or maintenance of work tools, uniforms/work clothing and/or personal protective equipment
DEFENDANTS required. DEFENDANTS also required PLAINTIFF and other Class Members to

1 use their personal vehicles in the performance of their job duties, such as but not limited to, to make
2 deliveries on behalf of DEFENDANTS. PLAINTIFF and other Class Members were not
3 reimbursed for the business use of their personal vehicles/expenses incurred in connection therewith,
4 including but not limited to, gas, mileage, and the wear and tear on their personal vehicles.

5 95. Based on information and belief, PLAINTIFF and other Class Members were not
6 reimbursed for the cost of undergoing DEFENDANTS' mandated Covid testing, including but not
7 limited to purchasing the test, and/or the cost of traveling and/or using a personal vehicle to travel
8 to and from a testing site.

9 96. DEFENDANTS did not reimburse PLAINTIFF and the Class Members in any way
10 for these business expenses incurred as a direct consequence of the discharge of their job duties or
11 any amount of reimbursement offered fell far below the amount paid out of pocket and or expenses
12 incurred by PLAINTIFF and the Class Members.

13 97. DEFENDANTS' failure to provide PLAINTIFF and the Class Members with full
14 reimbursement for all reasonable expenses associated with carrying out their duties required that
15 PLAINTIFF and the Class Members subsidize and/or carry the burden of business expenses in
16 violation of Labor Code section 2802.

17 98. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Class
18 Members have suffered injury in that they were not completely reimbursed as mandated by
19 California law.

20 99. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members
21 are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable
22 attorneys' fees, and costs of suit.

23 **SEVENTH CAUSE OF ACTION**

24 **Unfair Competition (Against All Defendants)**

25 100. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

26 101. The unlawful conduct of DEFENDANTS alleged herein constitutes unfair
27 competition within the meaning of California Business and Professions Code section 17200. This
28 unfair conduct includes all unlawful conduct alleged herein, including but not limited to:

1 DEFENDANTS' failure to pay minimum and overtime wages by virtue of its illegal policies and
2 practices; DEFENDANTS' failure to authorize or permit, or provide, all required meal and rest or
3 pay proper premiums in lieu thereof; DEFENDANTS' failure to furnish complete and accurate
4 itemized wage statements; DEFENDANTS' failure to provide paid sick leave/all paid time off
5 provided in lieu thereof at the properly accrued rates due to, including but not limited to,
6 DEFENDANTS' failure to base the accrued sick leave on the correct number of hours worked and/or
7 incorporate all non-discretionary compensation, including but not limited to, non-discretionary
8 bonus/incentive pay, into the sick pay calculation; and DEFENDANTS' failure to reimburse
9 business expenses.

10 102. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
11 California Labor Code, DEFENDANTS have gained a competitive advantage over other
12 comparable companies doing business in the State of California that comply with their obligations
13 to authorize or permit rest and meal periods or pay proper meal and rest period premiums in lieu
14 thereof, to provide proper notice and properly accrue and pay sick time benefits, to provide complete
15 and accurate itemized wage statements, to reimburse employees for all business expenses, and to
16 pay all owed minimum and overtime wages.

17 103. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFF
18 and the Class Members have suffered injury in fact and lost money or property, as described in more
19 detail above. Pursuant to California Business and Professions Code section 17200, et seq.,
20 PLAINTIFF and Class Members are entitled to restitution of all wages and other monies rightfully
21 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of its
22 unlawful and unfair business practices.

23 104. PLAINTIFF also seeks an injunction against DEFENDANTS on behalf of the Class
24 Members, enjoining DEFENDANTS and any and all persons acting in concert with it from engaging
25 in each of the unlawful practices and policies set forth herein.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, PLAINTIFF prays for relief and judgment, on behalf of PLAINTIFF and
28 the Class Members:

1. For an order that the action be certified as a class action;
2. For an order that PLAINTIFF be appointed class representative;
3. For an order that counsel for PLAINTIFF be appointed class counsel;
4. For compensatory damages according to proof;
5. For liquidated damages according to proof;
6. For penalties according to proof;
7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully withheld from PLAINTIFF and the Class Members;
8. For an order finding DEFENDANTS have engaged in unfair competition in violation of section 17200, et seq. of the California Business and Professions Code;
9. For an order enjoining DEFENDANTS from further acts of unfair competition;
10. For pre-judgment interest as permitted by law;
11. For attorney's fees and costs reasonably incurred; and
12. For such other and further relief that the Court deems just and proper.

Dated: March 14, 2022

CROSNER LEGAL, PC

By: 

Michael R. Crosner, Esq.
Zachary M. Crosner, Esq.
Blake R. Jones, Esq.
Attorneys for Plaintiff,
VIJAY SHETH

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Dated: March 14, 2022

By: 
 Michael R. Crosner, Esq.
 Zachary M. Crosner, Esq.
 Blake R. Jones, Esq.
 Attorneys for Plaintiff,
 VIJAY SHETH