

09/05/2024

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

JOSHUA F. HARDWICK, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

3D DATA COM; and DOES 1 through 20,
inclusive,

Defendants.

Case No. 34-2022-00316434-CU-OE-GDS

*Assigned for All Purposes to:
Hon. Kauri Damrell; Dept. 28*

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

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

1 Plaintiff Joshua F. Hardwick, individually and on behalf of others similarly situated, alleges
2 as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Joshua F. Hardwick (“Plaintiff”) brings this putative class action and
5 representative action pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code. §
6 2698 *et seq.*, against defendant 3D Data Com, and DOES 1 through 20, inclusive (collectively,
7 “Defendants”), on Plaintiff’s own behalf and on behalf of California citizens who are and were
8 employed by Defendants as non-exempt employees throughout California.

9 2. Defendants are in the data communication industry.

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

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

- 16 (a) failing to pay all wages (including minimum wages and overtime wages);
- 17 (b) failing to provide lawful meal periods or compensation in lieu thereof;
- 18 (c) failing to authorize or permit lawful rest breaks or provide compensation in
19 lieu thereof;
- 20 (d) making improper deductions from employees’ earned wages;
- 21 (e) failing to reimburse necessary business-related costs;
- 22 (f) failing to provide accurate itemized wage statements; and
- 23 (g) failing to pay all wages due upon separation of employment.

24 5. Plaintiff seeks monetary relief against Defendants on behalf of himself and all
25 others similarly situated in California to recover, among other things, unpaid wages, un-reimbursed
26 business expenses, benefits, interest, attorneys’ fees, costs and expenses, and penalties pursuant to
27 Labor Code §§ 201, 202, 203, 204, 210, 221, 223, 224, 225.5, 226, 226.3, 226.7, 246, 510, 512,
28

1 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1771, 1774, 1810, 2800, 2802,
2 2698, *et seq.*, and Code of Civil Procedure § 1021.5.

3 **JURISDICTION AND VENUE**

4 6. This is a class action pursuant to California Code of Civil Procedure § 382. The
5 monetary damages and restitution sought by Plaintiff exceed the minimal jurisdictional limits of
6 the Superior Court and will be established according to proof at trial.

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

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

16 9. Venue is proper in this Court because, upon information and belief, Defendants
17 reside, transact business, or have offices in this county, and/or the acts and omissions alleged herein
18 took place in this county.

19 **THE PARTIES**

20 10. Plaintiff was a citizen of California and worked for Defendants during the relevant
21 time periods as alleged herein.

22 11. Plaintiff is informed and believes, and thereon alleges that at all times hereinafter
23 mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as
24 employers, whose employees were and are engaged throughout this county and the State of
25 California.

26 12. Plaintiff is unaware of the true names or capacities of the defendants sued herein
27 under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this
28

1 Complaint and serve such fictitiously named defendants once their names and capacities become
2 known.

3 13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20 are
4 or were the partners, agents, owners, shareholders, managers, or employees of Defendants at all
5 relevant times.

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

11 15. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
12 and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES
13 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the other's
14 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
15 policy of Defendants.

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

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

23 **CLASS ACTION ALLEGATIONS**

24 18. Plaintiff brings this action under Code of Civil Procedure § 382 on Plaintiff's own
25 behalf and on behalf of all others similarly situated who were affected by Defendants' Labor Code,
26 Business and Professions Code §§ 17200, and IWC Wage Order violations.

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

1 20. Plaintiff's proposed class consists of and is defined as follows:

2 Class

3 All California citizens currently or formerly employed by Defendants as non-
4 exempt employees in the State of California at any time between September 7,
5 2017¹ and the date the class is certified ("Class").

6 21. Plaintiff also seeks to certify the following subclasses of employees:

7 Waiting Time Subclass

8 All members of the Class who separated their employment with Defendants at any
9 time between September 7, 2018 and the date the classes are certified ("Waiting
10 Time Subclass").

11 22. Plaintiff reserves the right to modify or re-define the Class, establish additional
12 subclasses, or modify or re-define any class or subclass definition as appropriate based on
13 investigation, discovery, and specific theories of liability.

14 23. Members of the Class and the Waiting Time Subclass described above will be
15 collectively referred to as "Class Members."

16 24. There are common questions of law and fact as to the Class Members that
17 predominate over any questions affecting only individual members including, but not limited to,
18 the following:

19 (a) Whether Defendants failed to pay Plaintiff and Class Members all wages
20 (including minimum wages and overtime wages) for all hours worked by
21 Plaintiff and Class Members.

22 (b) Whether Defendants required Plaintiff and Class Members to work over
23 eight (8) hours per day, over twelve (12) hours per day, and/or over forty
24 (40) hours per week and failed to pay them overtime compensation for all
25 overtime hours worked.

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

- 1 (c) Whether Defendants deprived Plaintiff and Class Members of timely meal
2 periods or required Plaintiff and Class Members to work through meal
3 periods without legal compensation.
- 4 (d) Whether Defendants deprived Plaintiff and Class Members of rest breaks or
5 required Plaintiff and Class Members to work through rest breaks.
- 6 (e) Whether Defendants made unlawful deductions from Plaintiff's and class
7 members' wages.
- 8 (f) Whether Defendants failed to reimburse Plaintiff and Class Members for
9 necessary business-related costs expended for the benefit of Defendants.
- 10 (g) Whether Defendants failed to provide Plaintiff and Class Members accurate
11 itemized wage statements.
- 12 (h) Whether Defendants failed to timely pay the Waiting Time Subclass all
13 wages due upon termination or within seventy-two (72) hours of
14 resignation.
- 15 (i) Whether Defendants' conduct was willful or reckless.
- 16 (j) Whether Defendants engaged in unfair business practices in violation of
17 Business and Professions Code §§ 17200, *et seq.*

18 25. There is a well-defined community of interest in this litigation and the proposed
19 Class and subclasses are readily ascertainable:

20 (a) Numerosity: The Class Members are so numerous that joinder of all
21 members is impractical. Although the members of the Class are unknown to Plaintiff at this time,
22 on information and belief, the Class is estimated to be greater than fifty (50) individuals. The
23 identities of the Class Members are readily ascertainable by inspection of Defendants' employment
24 and payroll records.

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

1 Class Members, because they arise out of and are caused by Defendants' common course of
2 conduct as alleged herein.

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

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

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

24 GENERAL ALLEGATIONS

25 26. At all relevant times mentioned herein, Defendants employed Plaintiff and other
26 California residents as non-exempt employees throughout California at Defendants' California
27 business location(s).

28 27. Defendants continue to employ non-exempt employees within California.

1 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
2 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who
3 were knowledgeable about California's wage and hour laws, employment and personnel practices,
4 and the requirements of California law.

5 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and Class Members were entitled to receive wages for all time
7 worked (including minimum wages and overtime wages) and that they were not receiving all
8 wages earned for work that was required to be performed. In violation of the Labor Code and IWC
9 Wage Orders, Plaintiff and Class Members were not paid all wages (including minimum wages
10 and overtime wages) for all hours worked at the correct rate of pay.

11 30. Defendants failed to pay Plaintiff and Class Members the prevailing wage rates and
12 corresponding overtime rates when working on public works projects subject to the payment of
13 prevailing wages. Defendants have within the relevant time period been awarded contracts for
14 public works that require the payment of prevailing wages. Defendants violated the Labor Code
15 for failing to pay prevailing wages for all hours worked and failing to pay overtime and doubletime
16 on public works projects. Defendants also did not pay prevailing wages when Plaintiff and Class
17 Members worked on public works projects by not paying for all hours, or not paying overtime
18 using the prevailing wage rate. This results in violation of the requirement to pay prevailing wage
19 rates for all hours worked and paying overtime and doubletime. Defendants failed to adjust the
20 regular rate to include prevailing wage rates when paying overtime and sick pay to Plaintiff and
21 Class Members during workweeks when working at least part of their time on public works
22 projects subject to the payment of prevailing wages.

23 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and Class Members were entitled to receive all required meal
25 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate
26 of pay when they did not receive a timely, uninterrupted meal period. In violation of the Labor
27 Code and IWC Wage Orders, Plaintiff and Class Members did not receive all meal periods or
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1 payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of pay
2 when they did not receive a timely, uninterrupted meal period.

3 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and Class Members were entitled to receive all rest breaks or
5 payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of pay
6 when a rest break was late, missed, or interrupted. In violation of the Labor Code and IWC Wage
7 Orders, Plaintiff and Class Members did not receive all rest breaks or payment of one (1) additional
8 hour of pay at Plaintiff's and Class Members' regular rate of pay when a rest break was missed,
9 late, or interrupted.

10 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and Class Members were entitled to all earned wages without
12 unlawful deductions. In violation of the California Labor Code, Defendants made unlawful
13 deductions from Plaintiff's and Class Members' wages or secretly paid them lower wages than
14 promised.

15 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and Class Members were entitled to reimbursement and/or
17 indemnification for all necessary business expenditures or losses as a direct consequence of the
18 discharge of their duties, or of their obedience to the directions of Defendants. In violation of the
19 Labor Code and IWC Wage Orders, Plaintiff and Class Members incurred necessary business
20 expenses or losses, but were not reimbursed nor indemnified of such expenses or losses that were
21 incurred as a direct consequence of the discharge of their duties, or of their obedience to the
22 directions of Defendants.

23 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and Class Members were entitled to receive itemized wage
25 statements that accurately showed the following information pursuant to the Labor Code: (1) gross
26 wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned
27 and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions,
28 provided that all deductions made on written orders of the employee may be aggregated and shown

1 as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is
2 paid; (7) the name of the employee and only the last four digits of his or her social security number
3 or an employee identification number other than a social security number; (8) the name and address
4 of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay
5 period and the corresponding number of hours worked at each hourly rate by the employee. In
6 violation of the Labor Code, Plaintiff and Class Members were not provided with accurate itemized
7 wage statements. Specifically, the wage statements included the wrong hours, rates, and pay, due
8 to the above violations, among other violations. For example, the wage statements included non-
9 working time in the total hours worked and the listed rate multiplied by the hours did not equal the
10 pay. Some wage statements also completely failed to list an employer name, employer address,
11 net wages, and deductions. Wage statements were also inaccurate because Defendant failed to list
12 the appropriate prevailing wage rates for work performed on public works jobs.

13 36. Defendants knew or should have known that the Waiting Time Subclass was
14 entitled to timely payment of wages due upon separation of employment. In violation of the Labor
15 Code, the Waiting Time Subclass did not receive payment of all wages within the permissible time
16 periods.

17 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known they had a duty to compensate Plaintiff and Class Members, and Defendants
19 had the financial ability to pay such compensation but willfully, knowingly, and intentionally
20 failed to do so in order to increase Defendants' profits.

21 38. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief
22 against Defendants on Plaintiff's own behalf and on behalf of all Class Members to recover, among
23 other things, unpaid wages (including minimum wages and overtime wages), unpaid meal period
24 premium payments, unpaid rest period premium payments, unreimbursed business expenditures,
25 interest, attorneys' fees, penalties, costs, and expenses.

26 **FIRST CAUSE OF ACTION**

27 **FAILURE TO PAY MINIMUM WAGES**

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

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

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

41. Plaintiff and Class Members were employees entitled to the protections of Labor Code §§ 1194 and 1197.

42. During the relevant time period, Defendants failed to pay Plaintiff and Class Members all wages owed when Defendants did not pay for all hours worked.

43. During the relevant time period, Defendants failed to pay at least minimum wage to Plaintiff and Class Members for all hours worked pursuant to Labor Code §§ 1194 and 1197.

44. Defendants' failure to pay Plaintiff and Class Members the required minimum wage violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and Class Members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorneys' fees.

45. Pursuant to Labor Code § 1194.2, Plaintiff and Class Members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued interest thereon.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME

(Violation of Labor Code §§ 510, 1194, 1198; 1771, 1774, 1810,

Violation of IWC Wage Order § 3)

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

47. Labor Code § 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either one and one-half (1½) or two (2) times the person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

1 48. Specifically, the applicable IWC Wage Orders provide that Defendants are and
2 were required to pay overtime compensation to Plaintiff and Class Members at the rate of one and
3 one-half times (1½) their regular rate of pay when working and for all hours worked in excess of
4 eight (8) hours in a day or more than forty (40) hours in a workweek and for the first eight (8)
5 hours of work on the seventh day of work in a workweek.

6 49. The applicable IWC Wage Orders further provide that Defendants are and were
7 required to pay overtime compensation to Plaintiff and Class Members at a rate of two times their
8 regular rate of pay when working and for all hours worked in excess of twelve (12) hours in a day
9 or in excess of eight (8) hours on the seventh day of work in a workweek.

10 50. California Labor Code § 510 codifies the right to overtime compensation at one and
11 one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a day
12 or forty (40) hours in a week and for the first eight (8) hours worked on the seventh consecutive
13 day of work, and overtime compensation at twice the regular hourly rate for hours worked in excess
14 of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work in
15 a workweek.

16 51. Labor Code § 510 and the applicable IWC Wage Orders provide that employment
17 of more than six days in a workweek is only permissible if the employer pays proper overtime
18 compensation as set forth herein.

19 52. Plaintiff and Class Members were employees entitled to the protections of
20 California Labor Code §§ 510 and 1194.

21 53. During the relevant time period, Defendants required Plaintiff and Class Members
22 to work in excess of eight (8) hours in a day, forty (40) hours in a week, and/or on a seventh
23 consecutive day of work, entitling them to overtime wages.

24 54. During the relevant time period, Defendants failed to pay Plaintiff and Class
25 Members overtime wages at the correct rate of pay for all overtime hours worked. To the extent
26 these hours qualify for the payment of overtime wages, Plaintiff and Class Members were not paid
27 proper overtime wages.

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55. In violation of California law, Defendants knowingly and willfully refused to perform their obligations and compensate Plaintiff and Class Members for all wages earned and all hours worked.

56. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of overtime compensation, as required by California law, violates the provisions of Labor Code §§ 510 and 1198, and is therefore unlawful.

57. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to recover their unpaid overtime and double time compensation as well as interest, costs, and attorneys' fees.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

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

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

60. Section 11 of the applicable IWC Wage Order states, “[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.”

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

62. Labor Code § 512(a) also provides that an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no

1 more than twelve (12) hours, the second meal period may be waived by mutual consent of the
2 employer and the employee only if the first meal period was not waived.

3 63. During the relevant time period, Plaintiff and Class Members did not receive
4 compliant meal periods for working more than five (5) and ten (10) hours per day because their
5 meal periods were missed, late, short, interrupted, and/or they were not permitted to take a second
6 meal period.

7 64. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
8 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of
9 compensation for each work day that a compliant meal period is not provided.

10 65. At all relevant times, Defendants failed to pay Plaintiff and Class Members meal
11 period premiums for missed, late, and/or short meal periods pursuant to Labor Code § 226.7(b)
12 and section 11 of the applicable IWC Wage Order.

13 66. As a result of Defendants' failure to pay Plaintiff and Class Members an additional
14 hour of pay for each day a compliant meal period was not provided, Plaintiff and Class Members
15 suffered and continue to suffer a loss of wages and compensation.

16 **FOURTH CAUSE OF ACTION**

17 **FAILURE TO PERMIT REST BREAKS**

18 (Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12)

19 67. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
20 though fully set forth herein.

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

23 69. Section 12 of the applicable IWC Wage Order states "[e]very employer shall
24 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
25 middle of each work period[.]" and the "[a]uthorized rest period time shall be based on the total
26 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
27 thereof[.]" unless the total daily work time is less than three and one-half (3½) hours.

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1 70. During the relevant time period, Plaintiff and Class Members did not receive a ten
2 (10) minute rest period for every four (4) hours or major fraction thereof worked, including
3 working in excess of ten (10) hours in a day, because they were required to work through their rest
4 periods and/or were not authorized to take their rest periods.

5 71. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires
6 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of
7 compensation for each work day that a compliant rest period is not provided.

8 72. At all relevant times, Defendants failed to pay Plaintiff and Class Members rest
9 period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code §
10 226.7(b) and section 12 of the applicable IWC Wage Order.

11 73. As a result of Defendants' failure to pay Plaintiff and Class Members an additional
12 hour of pay for each day a compliant rest period was not provided, Plaintiff and Class Members
13 suffered and continue to suffer a loss of wages and compensation.

14 **FIFTH CAUSE OF ACTION**

15 **UNLAWFUL DEDUCTIONS FROM EARNED WAGES**

16 (Violation of Labor Code § 221, 223, 224; Violation of IWC Wage Order)

17 74. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
18 though fully set forth herein.

19 75. Labor Code § 221 provides that employers may not collect or receive from an
20 employee any part of wages theretofore paid by said employer to said employee. Labor Code §
21 223 provides that where a contract requires an employer to maintain the designated wage scale, it
22 is unlawful to pay a lower wage while purporting to pay the wage designated by contract. Labor
23 Code § 224 prohibits employers from making deductions from an employee's wages not
24 authorized by the employee in writing or permitted by law.

25 76. During the relevant time period, Defendants had a policy and practice of making
26 unlawful deductions from earned wages of Plaintiff and Class Members or secretly paying them
27 less than the promised wages.

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77. As a result of Defendants' failure to refrain from making improper deductions from earned wages, Plaintiff and Class Members suffered and continue to suffer a loss of wages and compensation, the exact amount of damages and/or penalties is all in an amount to be shown according to proof at trial.

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(Violation of Labor Code §§ 2800, 2802)

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

79. Labor Code § 2800 states that “[a]n employer shall in all cases indemnify his employee for losses caused by the employer’s want of ordinary care.”

80. Labor Code § 2802(a) states that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer . . .”

81. Labor Code § 2802(b) states that “[a]ll awards made by a court . . . for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.”

82. Labor Code § 2802(c) states that “[f]or purposes of this section, the term “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

83. During the relevant time period, Plaintiff and Class Members incurred necessary business-related costs that were not fully reimbursed by Defendants, including, but not limited to, personal protective equipment and cell phone expenses.

84. In violation of Labor Code §§ 2800 and 2802, Defendants failed to reimburse or indemnify Plaintiff and Class Members for their expenses due to Defendants' knowing and

1 intentional failure to reimburse necessary business expenditures in connection with Plaintiff's and
2 Class Members' work and job duties.

3 85. As a direct result, Plaintiff and Class Members have suffered and continue to suffer
4 losses, and therefore seek complete reimbursement and indemnification of necessary business
5 expenditures or losses, interest thereon at the required rate, and all reasonable costs in enforcing
6 the rights under Labor Code § 2802, including, but not limited to attorneys' fees.

7 **SEVENTH CAUSE OF ACTION**

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

9 (Violation of Labor Code § 226)

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

12 87. Labor Code § 226(a) requires Defendants to provide each employee with an
13 accurate wage statement in writing showing nine pieces of information, including, the following:
14 (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units
15 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
16 provided that all deductions made on written orders of the employee may be aggregated and shown
17 as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
18 paid, (7) the name of the employee and the last four digits of his or her social security number or
19 an employee identification number other than a social security number, (8) the name and address
20 of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
21 period and the corresponding number of hours worked at each hourly rate by the employee.

22 88. During the relevant time period, Defendants have knowingly and intentionally
23 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff and
24 Class Members. The deficiencies include, among other things, the failure to correctly state the
25 employer name and address, gross and net wages earned, total hours worked, all applicable hourly
26 rates in effect, and the number of hours worked at each hourly rate by Plaintiff and Class Members.

27 89. As a result of Defendants' knowing and intentional failure to comply with Labor
28 Code § 226(a), Plaintiff and Class Members have suffered injury and damage to their statutorily-

1 protected rights. Specifically, Plaintiff and Class Members are deemed to suffer an injury pursuant
2 to Labor Code § 226(e) where, as here, Defendants intentionally violated Labor Code § 226(a).
3 Plaintiff and Class Members were denied both their legal right to receive, and their protected
4 interest in receiving, accurate itemized wage statements under Labor Code § 226(a). In addition,
5 because Defendants failed to provide the accurate rates of pay on wage statements, Defendants
6 prevented Plaintiff and Class Members from determining if all hours worked were paid at the
7 appropriate rate and the extent of the underpayment. Plaintiff had to file this lawsuit in order to
8 analyze the extent of the underpayment, thereby causing Plaintiff to incur expenses and lost time.
9 Plaintiff would not have had to engage in these efforts and incur these costs had Defendants
10 provided the accurate hours worked, wages earned, and rates of pay. This has also delayed
11 Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

12 90. Plaintiff and Class Members are entitled to recover from Defendants the greater of
13 all actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty
14 dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars
15 (\$100.00) per employee for each violation in subsequent pay periods in an amount not exceeding
16 four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

17 91. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff and
18 Class Members from knowing, understanding, and disputing the wages paid to them and resulted
19 in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
20 intentional failure to comply with California Labor Code § 226(a), Plaintiff and Class Members
21 have suffered an injury, in the exact amount of damages and/or penalties to be shown according to
22 proof at trial.

23 EIGHTH CAUSE OF ACTION

24 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

25 (Violation of Labor Code §§ 201, 202, and 203)

26 92. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
27 though fully set forth herein.

28 //

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

94. During the relevant time period, Defendants willfully failed to pay the Waiting Time Subclass all their earned wages upon termination, including, but not limited to, proper minimum wage and overtime compensation, meal period premiums, and rest period premiums either at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

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

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

97. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover from Defendants the statutory penalty, which is defined as the Waiting Time Subclass members' regular daily wages at their regular hourly rate of pay for each day they were not paid, up to a maximum of thirty (30) days.

NINTH CAUSE OF ACTION

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

(Violation of Business and Professions Code §§ 17200, *et seq.*)

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

//

1 99. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair
2 competition, which includes any “unlawful, unfair or fraudulent business act or practice...”

3 100. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be
4 predicated on a violation of any state or federal law. In the instant case, Defendants’ policies and
5 practices violated state law, causing Plaintiff and Class Members to suffer and continue to suffer
6 injuries-in-fact.

7 101. Defendants’ policies and practices violated state law in at least the following
8 respects:

- 9 (a) Failing to pay all wages earned (including minimum wage and overtime
10 wages) to Plaintiff and Class Members at the proper rate in violation of
11 Labor Code §§ 204, 246, 510, 1194, 1194.2, 1197, 1198, 1771, 1774, 1810.
- 12 (b) Failing to provide compliant meal periods without paying Plaintiff and
13 Class Members premium wages for every day said meal periods were not
14 provided in violation of Labor Code §§ 226.7 and 512.
- 15 (c) Failing to authorize or permit compliant rest breaks without paying Plaintiff
16 and Class Members premium wages for every day said rest breaks were not
17 authorized or permitted in violation of Labor Code § 226.7.
- 18 (d) Failing to refrain from making unlawful deductions from wages in violation
19 of Labor Code §§ 221, 223, and 224.
- 20 (e) Failing to reimburse Plaintiff and Class Members for necessary business-
21 related expenses in violation of Labor Code §§ 2800 and 2802.
- 22 (f) Failing to provide Plaintiff and Class Members with accurate itemized wage
23 statements in violation of Labor Code § 226.
- 24 (g) Failing to timely pay all earned wages to the members of the Waiting Time
25 Subclass upon separation of employment in violation of Labor Code §§ 201,
26 202, and 203.

27 102. As alleged herein, Defendants systematically engaged in unlawful conduct in
28 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages

1 (minimum and overtime wages), failing to provide meal periods and rest breaks or compensation
2 in lieu thereof, making unlawful deductions, failing to reimburse necessary business-related costs
3 and expenses, failing to furnish accurate wage statements, and failing to pay all wages due and
4 owing upon separation of employment in a timely manner to the Waiting Time Subclass, all in
5 order to decrease their costs of doing business and increase their profits.

6 103. At all relevant times herein, Defendants held themselves out to Plaintiff and Class
7 Members as being knowledgeable concerning the labor and employment laws of California.

8 104. At all times relevant herein, Defendants intentionally avoided paying Plaintiff and
9 Class Members wages and monies, thereby creating for Defendants an artificially lower cost of
10 doing business in order to undercut their competitors and establish and/or gain a greater foothold
11 in the marketplace.

12 105. By violating the foregoing statutes and regulations as herein alleged, Defendants'
13 acts constitute unfair and unlawful business practices under California Business and Professions
14 Code §§ 17200, *et seq.*

15 106. As a result of the unfair and unlawful business practices of Defendants as alleged
16 herein, Plaintiff and Class Members are entitled to injunctive relief, disgorgement, and restitution
17 in an amount to be shown according to proof at trial.

18 107. Plaintiff seeks to enforce important rights affecting the public interest within the
19 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged herein,
20 has been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members, and the
21 general public. Based on Defendants' conduct as alleged herein, Plaintiff and Class Members are
22 entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

23 TENTH CAUSE OF ACTION

24 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

25 108. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs as
26 though fully set forth herein.

27 109. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
28 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency

1 (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or employees for
2 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by
3 an aggrieved employee on behalf of himself or herself and other current or former employees
4 pursuant to the procedures specified in Labor Code § 2699.3.

5 110. For all provisions of the Labor Code except those for which a civil penalty is
6 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
7 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
8 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
9 period in which Defendants violated these provisions of the Labor Code.

10 111. Defendants’ conduct violates numerous Wage Order and Labor Code sections,
11 including, but not limited to, the following:

- 12 a. violation of Labor Code §§ 201, 202, 203, 204, 210, 246, 510, 1182.12,
13 1194, 1197, 1198, 1771, 1774, and 1810 for failure to timely pay all earned
14 wages (including minimum wage and overtime wages) owed to Plaintiff
15 and other aggrieved employees during employment and upon separation of
16 employment as herein alleged;
- 17 b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal
18 periods to Plaintiff and other aggrieved employees and failure to pay
19 premium wages for missed meal periods as herein alleged;
- 20 c. violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff
21 and other aggrieved employees and failure to pay premium wages for
22 missed rest periods as herein alleged;
- 23 d. violation of Labor Code § 226 for failure to provide accurate itemized
24 wage statements to Plaintiff and other aggrieved employees as herein
25 alleged;
- 26 e. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain
27 accurate and complete records showing, among other things, the hours
28 worked daily by and the wages paid to aggrieved employees;

1 f. violation of Labor Code §§ 221, 223, and 224 for failure to refrain from
2 making unlawful deductions from Plaintiff's and other aggrieved
3 employees' wages; and

4 g. violation of Labor Code §§ 2800 and 2802 for failure to reimburse Plaintiff
5 and other aggrieved employees for necessary business expenses as herein
6 alleged.

7 112. Plaintiff is an "aggrieved employee" because he was employed by the alleged
8 violator and had one or more of the violations committed against him, and therefore is properly
9 suited to represent the interests of all other aggrieved employees.

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

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

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

18 **PRAYER FOR RELIEF**

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

21 1. For certification under California Code of Civil Procedure § 382 of the proposed
22 Class and any other appropriate subclass;

23 2. For appointment of Joshua F. Hardwick as class representative;

24 3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;

25 4. For compensatory damages in an amount according to proof at trial;

26 5. For an award of damages in the amount of unpaid compensation including, but not
27 limited to, unpaid wages, unreimbursed expenses, benefits, and penalties;

28 6. For economic and/or special damages in an amount according to proof at trial;

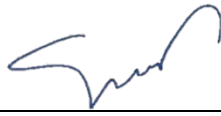
- 1 7. For liquidated damages pursuant to Labor Code § 1194.2;
- 2 8. For statutory penalties to the extent permitted by law, including those pursuant to
- 3 the Labor Code and IWC Wage Orders;
- 4 9. For injunctive relief as provided by the California Labor Code and California
- 5 Business and Professions Code §§ 17200, *et seq.*;
- 6 10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
- 7 11. For an order requiring Defendants to restore and disgorge all funds to each
- 8 employee acquired by means of any act or practice declared by this Court to be unlawful, unfair,
- 9 or fraudulent and, therefore, constituting unfair competition under Business and Professions Code
- 10 §§ 17200, *et seq.*;
- 11 12. For pre-judgment interest;
- 12 13. For civil penalties;
- 13 14. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by
- 14 law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§ 226(e),
- 15 1194, and 2698 *et seq.*; and
- 16 15. For such other relief as the Court deems just and proper.

17

18 Dated: September 5, 2024

AEGIS LAW FIRM, PC

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20 By: 

Elizabeth Robles

Attorneys for Plaintiff Joshua F. Hardwick

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