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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

ANTHONY MORRIS, on behalf of himself
and all others similarly situated and
aggrieved,

Plaintiff,

v.

THE LINCOLN NATIONAL LIFE
INSURANCE COMPANY, an Indiana
Corporation; LINCOLN NATIONAL
CORPORATION, an Indiana Corporation;
and DOES 1 Through 10, Inclusive,

Defendants.

Case No. 22STCV20426

**FIRST AMENDED CLASS ACTION
COMPLAINT AND REPRESENTATIVE
COMPLAINT FOR RECOVERY OF CIVIL
PENALTIES PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT ("PAGA")**

1. Failure to Reimburse Business Expenses

2. Failure to Pay All Wages

3. Failure to Pay Overtime Wages

4. Meal Period Violations

5. Rest Period Violations

6. Failure to Provide Accurate Itemized Wage
Statements

7. Failure to Provide Sick Pay

8. Waiting Time Penalties

9. Unfair Competition Law Violations

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10. PAGA Civil Penalties for Failure to Reimburse Business Expenses
11. PAGA Civil Penalties for Failure to Pay All Wages
12. PAGA Civil Penalties for Meal Period Violations
13. PAGA Civil Penalties for Rest Period Violations
14. PAGA Civil Penalties for Inaccurate Wage Statements
15. PAGA Civil Penalties for Failure to Provide Sick Pay
16. PAGA Civil Penalties for Failure to Pay Wages Due During Employment and Upon Separation from Employment
17. PAGA Civil Penalties for Failure to Maintain Accurate Records

DEMAND FOR JURY TRIAL

NATURE OF CLAIM

1
2 1. Plaintiff Anthony Morris (“Plaintiff”) brings this proposed class action against
3 The Lincoln National Life Insurance Company, Lincoln National Corporation, and DOES 1
4 through 10 (“Defendants”) on behalf of two classes. As to Class I—all persons employed by
5 Defendants in California who worked from home pursuant to Defendants’ policy or practice
6 requiring them to do so—Plaintiff alleges Defendants failed to reimburse business expenses,
7 including internet, wi-fi, cell phone, office supplies, desk, and work chair expenses. As to Class
8 II—all persons employed by Defendants in California as non-exempt employees—Plaintiff
9 alleges Defendants failed to: pay for all compensable time; pay correctly-calculated overtime
10 wages and sick pay; provide compliant meal and rest periods or premium wages; provide wage
11 statements showing the correct employer name, rates of pay, and total hours worked; and timely
12 pay all final wages owed. Plaintiff alleges Defendants’ failure to pay wages and provide expense
13 reimbursements also violates Business and Professions Code sections 17200, *et seq.* Plaintiff
14 seeks unpaid wages, liquidated damages, interest, attorneys’ fees, and costs.

15 2. Plaintiff also brings this representative action under the Private Attorneys General
16 Act of 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, on behalf of himself and all other
17 aggrieved employees against Defendants for Defendants’ failure to: reimburse business
18 expenses; pay for all compensable time; pay correctly-calculated overtime wages and sick pay;
19 provide compliant meal and rest periods or premium wages; provide wage statements showing
20 the correct employer name, rates of pay, and total hours worked; and timely pay all final wages
21 owed.

22 3. Plaintiff gave written notice of these claims to the California Labor and
23 Workforce Development Agency (“LWDA”) on April 29, 2022 per Labor Code section 2699.3,
24 and there has been no LWDA intervention within 65 days of this notice. Plaintiff seeks civil
25 penalties under the PAGA as a representative of the State of California and has standing as an
26 aggrieved employee. Plaintiff seeks to represent all Defendants’ non-exempt employees in the
27 State of California who suffered one or more of the violations alleged (“aggrieved employees”)
28 during the “PAGA Period” (from the date of the filing of this amended complaint until the start

1 of trial). Labor Code §§ 2698, *et seq.*, 2699.3(a)(2)(C).

2 **PARTIES**

3 4. Plaintiff is a Los Angeles County resident who worked for Defendants from
4 February 19, 2019 through November 2021, when he took a leave of absence. Plaintiff returned
5 from his leave of absence on February 4, 2022 and was terminated that day. From February 19,
6 2019 through July 5, 2020, Plaintiff worked in the exempt salaried position of “Specialist, Field
7 Operations Sales.” Beginning July 6, 2020, Plaintiff worked in the non-exempt salaried position
8 of “Sr. Adminr, GP Sales Support” until his termination on February 4, 2022. From
9 approximately March 2020 through November 2021, in light of the COVID-19 pandemic,
10 Defendants shut down their offices including the Glendale, California office at which Plaintiff
11 worked and required Plaintiff and Class Members to work from home.

12 5. Defendant Lincoln National Corporation (“LNC”) is an Indiana Corporation
13 headquartered in Radnor, Pennsylvania. LNC, through its subsidiaries, operates multiple
14 insurance and retirement businesses in the United States, including in California. Lincoln
15 National Corporation is the entity listed as Defendants on Plaintiff’s Form W-2 Wage and Tax
16 Statements.

17 6. Defendant The Lincoln National Life Insurance Company (“LNLIC”) is an
18 Indiana Corporation headquartered in Fort Wayne, Indiana with operations in California. LNLIC
19 is a subsidiary of LNC. LNLIC is a stock insurance company. Lincoln National Life Insurance
20 Co. is the entity listed as the employer on Plaintiff’s wage statements.

21 7. Lincoln Financial Group is the marketing name for Defendant LNC and its
22 affiliates, including Defendant LNLIC.

23 8. The true names and capacities, whether individual, corporate, associate, or
24 otherwise, of Defendants sued as DOES 1 through 10, inclusive, are unknown to Plaintiff, who
25 sues Defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is
26 informed and believes, and alleges, each DOE Defendant is legally responsible in some manner
27 for the unlawful acts alleged. Plaintiff will seek leave to amend this Complaint to reflect the true
28 names and capacities of DOE Defendants when they become known.

9. Plaintiff is informed and believes, and alleges, each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, plan or policy, and the acts of each Defendant are legally attributable to the other Defendants.

JURISDICTION AND VENUE

10. Venue as to each Defendant is proper in this judicial district. Code of Civil Procedure § 395. Defendants conduct business in Los Angeles County and each Defendant is within this Court's jurisdiction for service of process. The unlawful acts alleged directly affect Plaintiff and similarly situated and aggrieved employees within Los Angeles County and California. There is no federal question at issue for removal under 28 U.S.C. section 1331, as the issues are based solely on California law, including the Labor Code, Business and Professions Code, and the Code of Civil Procedure.

11. No federal question is raised and the Class Action Fairness Act ("CAFA"), 28 U.S.C. section 1332(d), does not apply, or in the alternative, local case or controversy exceptions apply and prohibit removal of this action. Based on his rate of pay, Plaintiff's individual claims do not meet the amount in controversy to implicate traditional diversity jurisdiction.

12. Further, as a representative action under the PAGA, the matter is not subject to removal under 28 U.S.C. sections 1332(a)-(d) as PAGA civil penalty actions are not subject to federal jurisdiction.

CLASS ACTION ALLEGATIONS

13. Plaintiff seeks to represent Classes defined as:

Class I

All persons employed by Defendants in California who worked from home pursuant to Defendants' policy or practice requiring them to do so any time from four years before the filing of this Complaint.

Class II

All persons employed by Defendants in California as non-exempt employees any time from four years before the filing of this Complaint.

14. Plaintiff seeks to certify a subclass of employees defined as:

Unpaid Wages Subclass

All Class II Members who were not paid for all time worked or subject to Defendants' control.

15. Plaintiff seeks to certify a subclass of employees defined as:

Rounding Subclass

All Class II Members whose time worked or subject to Defendants' control was rounded and who were paid based on these rounded times.

16. Plaintiff seeks to certify a subclass of employees defined as:

Overtime Wages Subclass

All Class II Members who worked one or more periods in excess of eight (8) hours per day or forty (40) hours per week.

17. Plaintiff seeks to certify a subclass of employees defined as:

First Meal Period Subclass

All Class II Members who worked one or more periods in excess of five (5) hours.

18. Plaintiff seeks to certify a subclass of employees defined as:

Second Meal Period Subclass

All Class II Members who worked one or more periods in excess of ten (10) hours.

19. Plaintiff seeks to certify a subclass of employees defined as:

First Rest Period Subclass

All Class II Members who worked one or more periods in excess of three and one-half (3.5) hours.

20. Plaintiff seeks to certify a subclass of employees defined as:

Second Rest Period Subclass

All Class II Members who worked one or more periods in excess of six (6) hours.

21. Plaintiff seeks to certify a subclass of employees defined as:

Third Rest Period Subclass

All Class II Members who worked one or more periods in excess of ten (10) hours.

22. Plaintiff seeks to certify a subclass of employees defined as:

Sick Pay Subclass

All Class II Members who were not paid sick pay at their regular rate.

23. Plaintiff seeks to certify a subclass of employees defined as:

Wage Statement Subclass

All Class II Members whose employment ended at any time during the one year preceding the filing of this Complaint.

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24. Plaintiff seeks to certify a subclass of employees defined as:

Waiting Time Subclass

All Class II Members whose employment ended at any time during the three years preceding the filing of this Complaint.

25. Plaintiff seeks to certify a subclass of employees defined as:

UCL Subclass

All Class I and Class II Members who lost earned wages or non-compensatory sums due to Defendants' unlawful or unfair business acts or practices.

26. Plaintiff reserves the right to amend or modify the Class descriptions, including by division into subclasses or limitation to particular issues. California Rule of Court 3.765(b).

27. **Commonality**: This action may be maintained as a class action because there is a well-defined common interest of many persons and it is impractical to bring them all before the court. Code of Civil Procedure § 382.

28. **Ascertainable Class**: The proposed Classes and Subclasses are ascertainable because they can be identified and located using Defendants' payroll and personnel records.

29. **Numerosity**: The potential members of the Classes are so numerous, joinder of all members would be impractical. The disposition of their claims through a class action will benefit the parties and this Court. The number of members of each Class is unknown to Plaintiff, but is estimated to be more than 100 individuals.

30. **Typicality**: The claims of Plaintiff are typical of the claims of all members of the Classes and Subclasses because all members of the Classes and Subclasses sustained similar injuries and damages caused by Defendants' common course of conduct in violation of law.

31. **Adequacy**: Plaintiff is an adequate representative of the Classes and Subclasses, will fairly protect the interests of Members of the Classes and Subclasses and has no interests antagonistic to them, and will vigorously pursue this suit. Plaintiff's attorneys are competent, skilled, and experienced in litigating large employment law class actions.

32. **Superiority**: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Classes predominate over questions

1 affecting only individual Class Members. A class action will allow those similarly situated to
2 litigate their claims in the most efficient and economical manner for the parties and the judicial
3 system. Plaintiff is unaware of any difficulties likely to be encountered in the management of
4 this action that precludes its maintenance as a class action.

5 33. **Predominance**: The predominating common questions of law and fact include,
6 as to Class I, whether Defendants have a policy and practice of failing to reimburse business
7 expenses to employees whom Defendants required to work from home, and as to Class II,
8 whether Defendants have a policy and practice of failing to: pay for all time actually worked;
9 pay overtime wages at the correct regular rate; provide compliant meal periods or premiums in
10 lieu thereof; authorize and permit compliant paid rest periods or pay premiums in lieu thereof;
11 provide complete and accurate itemized wage statements; pay sick pay at the correct rate; and,
12 as a result of failing to pay all wages owed, timely pay all final wages owed, entitling Class II
13 Members to waiting time penalties. Additionally, whether Defendants' common policies and
14 practices violate sections 17200, *et seq.* of the Business and Professions Code and whether each
15 Class is therefore entitled to equitable relief is a common predominating question.

16 **FACTUAL ALLEGATIONS**

17 34. During the Class and PAGA Periods, Plaintiff, Class I and Class II Members, and
18 other aggrieved employees were employed by Defendants in California, and Defendants
19 conducted business in California.

20 35. Defendants required Plaintiff, Class I Members, and other aggrieved employees
21 to work from home in light of the COVID-19 pandemic. To accomplish their work from home,
22 Plaintiff, Class I Members, and other aggrieved employees reasonably used internet, wi-fi, cell
23 phones, office supplies, desks, and work chairs. Defendants knew or had reason to know that
24 Plaintiff, Class I Members, and other aggrieved employees would reasonably use these items to
25 accomplish their work from home. Despite this, Defendants did not inform Plaintiff, Class I
26 Members, and other aggrieved employees of their right to seek reimbursement for these
27 reasonable and necessary work expenses and did not reimburse Plaintiff, Class I Members, and
28 other aggrieved employees for the costs of these items.

1 36. Defendants failed to pay Plaintiff, Class II Members, and other aggrieved
2 employees for all time spent working or under Defendants' control. Defendants did not
3 accurately track Plaintiff, Class II Members, and other aggrieved employees' time worked and
4 did not provide these employees a means to clock in and out despite classifying these employees
5 as non-exempt. Rather, Plaintiff, Class II Members, and other aggrieved employees periodically
6 reported their hours worked, but were discouraged from reporting overtime hours worked.
7 Further, in Plaintiff's pay records, Plaintiff's "regular" hours worked routinely end in .00, and
8 his "overtime" hours worked routinely ends in .00 or .25, suggesting Defendants either paid
9 Plaintiff based on scheduled or expected hours worked or non-neutrally rounded Plaintiff's time
10 worked, rather than paying for all time Plaintiff actually worked. Additionally, Plaintiff, Class
11 II Members, and other aggrieved employees were required to set up company-provided
12 computers when they began to work from home and to package and return these computers after
13 separation but were not compensated for the time it took to do so.

14 37. Defendants did not pay overtime at the correct regular rate of pay. Plaintiff, Class
15 II Members, and other aggrieved employees earned overtime pay in the same workweek that
16 they earned multiple rates of regular pay and non-discretionary bonuses, including
17 "Gift/Awards" and "Annual income plan bonuses." However, all remuneration was not properly
18 calculated into the regular rate of pay and as a result overtime wages were not calculated using
19 the correct regular rate of pay. Accordingly, Defendants failed to pay all overtime wages owed
20 to Plaintiff, Class II Members, and other aggrieved employees. In the same fashion, Defendants
21 failed to calculate the correct regular rate of pay in accordance with Labor Code section 246 for
22 purposes of calculating and paying sick pay, instead paying sick pay at these employees' base
23 hourly rates of pay.

24 38. As to Plaintiff, Class II Members, and other aggrieved employees, Defendants
25 did not maintain a meal and rest period policy, did not provide any means to record meal periods,
26 did not authorize and permit lawful meal and rest periods, did not inform them of their right to
27 receive premium wages on days on which they did not receive a compliant meal or rest period,
28 and did not pay premium wages on such days. Additionally, in practice, Plaintiff, Class II

1 Members, and other aggrieved employees were not provided an opportunity for each shift to take
2 off-duty, timely, uninterrupted meal periods lasting at least 30 minutes before their fifth and
3 tenth hour of work. Instead, meal periods were often short, missed entirely, or late due to job
4 demands and the requirement to respond quickly to time-sensitive work matters. For the same
5 reasons, Plaintiff, Class II Members, and other aggrieved employees were not able to take ten-
6 minute, uninterrupted rest periods for every four hours or major fraction thereof worked.

7 39. Defendants failed to provide wage statements to Plaintiff, Class II Members, and
8 other aggrieved employees. The paystubs provided to Plaintiff, Class II Members, and other
9 aggrieved employees did not contain all accurate information as required by Labor Code section
10 226(a). Because, as described above, Defendants failed to pay all minimum, regular, and
11 overtime wages, sick pay, and meal and rest period premium wages, Defendants failed to
12 accurately set forth the total gross wages earned, net wages earned, total hours worked, and all
13 applicable hourly rates and the total number of hours worked at each rate. Additionally,
14 independently of the claims for derivate violations of Labor Code section 226, the wage
15 statements were non-compliant and did not contain all the required information because they did
16 not list the total hours worked, rates of pay, and the number of hours worked at each rate. The
17 wage statements also did not include the correct employer name because they listed “Lincoln
18 National Life Insurance Co.” instead the of the actual name as reflected in the California
19 Secretary of State’s records: “The Lincoln National Life Insurance Company.”

20 40. Defendants failed to timely pay Plaintiff, Class II Members, and other aggrieved
21 employees all final wages owed upon separation, because they did not pay all wages earned as
22 set forth herein. Defendants also did not pay a day’s wages for every day final wages were not
23 paid through the date final wages were paid as required by Labor Code section 203.

24 41. Plaintiff, on behalf of himself and Class I and II Members, seeks injunctive relief,
25 restitution, and disgorgement of all benefits obtained by Defendants as a result of violations
26 alleged. Business and Professions Code §§ 17200, *et seq.*

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FIRST CAUSE OF ACTION

**Failure to Reimburse Business Expenses—Labor Code §§ 2802, 2804
(By Plaintiff and each Class I Member)**

42. Plaintiff incorporates the preceding paragraphs of this Complaint.

43. By failing to reimburse Plaintiff and Class I Members for reasonably necessary business expenses they incurred in the discharge of their duties while working from home, Defendants violated Labor Code section 2802. This right to reimbursement was not waivable. Labor Code § 2804.

44. Defendants' unlawful acts deprived Plaintiff and Class I Members of expense reimbursements in amounts to be determined at trial, and they are entitled to recover these amounts, along with interest, attorneys' fees, and costs.

SECOND CAUSE OF ACTION

**Failure to Pay All Wages—Labor Code §§ 1194, 1194.2, 510
(By Plaintiff and each Unpaid Wages and Rounding Subclass Member)**

45. Plaintiff incorporates the preceding paragraphs of this Complaint.

46. By their failure to record all time under their control and to pay all wages for hours worked or under their control, Defendants failed to pay minimum, regular, and overtime wages, and violated Labor Code sections 1194 and 510.

47. Defendants' unlawful acts deprived Plaintiff and Unpaid Wages and Rounding Subclass Members of minimum, regular, and overtime wages in amounts to be determined at trial, and they are entitled to recover these amounts, along with liquidated damages for unpaid minimum wages under Labor Code section 1194.2, and interest, attorneys' fees, and costs.

THIRD CAUSE OF ACTION

**Failure to Pay Overtime Wages—Labor Code §§ 1194, 510
(By Plaintiff and each Overtime Wages Subclass Member)**

48. Plaintiff incorporates the preceding paragraphs of this Complaint.

49. By their failure to correctly calculate regular rates of pay, Defendants failed to pay all overtime wages earned for hours worked over eight in one day or forty in one week and violated Labor Code sections 1194 and 510.

50. Defendants' unlawful acts deprived Plaintiff and Overtime Wages Subclass members of overtime wages in amounts to be determined at trial, and they are entitled to recover

1 these amounts, along with interest, attorneys' fees, and costs.

2 **FOURTH CAUSE OF ACTION**

3 **Meal Period Violations—Labor Code §§ 512, 226.7**

4 **(By Plaintiff and each First and Second Meal Period Subclass Member)**

5 51. Plaintiff incorporates the preceding paragraphs of this Complaint.

6 52. By failing to provide duty-free meal periods of at least thirty minutes for shifts of
7 five hours or more and 10 hours or more, starting before the end of the fifth and tenth hour of
8 work, and failing to pay Plaintiff and all Meal Period Subclass Members one hour of pay at their
9 regular rate for each day a meal period was not provided, Defendants willfully violated Labor
10 Code sections 226.7 and 512. Further, if Defendants did pay any meal period premium wages,
11 by failing to correctly calculate the regular rate of pay, Defendants failed to pay such premium
12 wages at the correct rate.

13 53. Defendants' unlawful acts deprived Plaintiff and First and Second Meal Period
14 Subclass members of premium wages in amounts to be determined at trial, and they are entitled
15 to recover such amounts, plus interest, attorneys' fees, and costs.

16 **FIFTH CAUSE OF ACTION**

17 **Rest Period Violations—Labor Code § 226.7**

18 **(By Plaintiff and each First, Second, and Third Rest Period Subclass Member)**

19 54. Plaintiff incorporates the preceding paragraphs of this Complaint.

20 55. By failing to authorize and permit Plaintiff and all Rest Period Subclass Members
21 to receive a rest period of at least 10 minutes for every four (4) hours or major fraction thereof
22 worked per day, and by failing to provide premium wages at the regular rate of pay when these
23 periods were not permitted or authorized, Defendants willfully violated the provisions of Labor
24 Code section 226.7. Further, if Defendants did pay any rest period premium wages, by failing to
25 correctly calculate the regular rate of pay, Defendants failed to pay such premium wages at the
26 correct rate.

27 56. Defendants' unlawful acts deprived Plaintiff and First, Second, and Third Rest
28 Period Subclass Members of premium wages in amounts to be determined at trial, and they are
entitled to recover such amounts, plus interest, attorneys' fees, and costs.

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SIXTH CAUSE OF ACTION

**Failure to Provide Accurate Itemized Wage Statements—Labor Code § 226
(By Plaintiff and each Wage Statement Subclass Member)**

57. Plaintiff incorporates the preceding paragraphs of this Complaint.

58. Section 226(a) of the California Labor Code requires Defendants to itemize in wage statements, among other things, the name of the legal entity that is the employer, the total hours worked and all hourly wage rates earned for those hours. Defendants knowingly and intentionally failed to comply with Labor Code section 226(a) on wage statements provided to Plaintiff and members of the Wage Statement Subclass because, among other reasons, the wage statements failed to include the correct employer name, all hours worked, and all hourly rates earned. Wage statements were also derivatively inaccurate, as explained herein.

59. As a consequence of Defendants' knowing and intentional failure to comply with Labor Code section 226(a), Plaintiff and Wage Statement Subclass Members are entitled to actual damages or penalties not to exceed \$4,000 for each employee pursuant to Labor Code section 226(b), together with interest, attorneys' fees, and costs.

SEVENTH CAUSE OF ACTION

**Failure to Provide Sick Pay—Labor Code § 246
(By Plaintiff and each Sick Pay Subclass Member)**

60. Plaintiff incorporates the preceding paragraphs of this Complaint.

61. Sick pay must be compensated at the employee's regular rate of pay, for the workweek in which the paid leave was taken, or at a rate determined by averaging over 90 days. Labor Code § 246(l). By failing to pay sick pay at the correct rate, Defendants willfully violated Labor Code section 246.

62. Defendants' unlawful acts deprived Plaintiff and Sick Pay Subclass Members of sick pay in amounts to be determined at trial, and they are entitled to recover these amounts, with interest, attorneys' fees, and costs.

EIGHTH CAUSE OF ACTION

**Waiting Time Penalties— Labor Code §§ 201-203
(By Plaintiff and each Waiting Time Subclass Member)**

63. Plaintiff incorporates the preceding paragraphs of this Complaint.

64. Defendants had a consistent and uniform policy, practice, and procedure of

1 willfully failing to pay the earned wages of Defendants' former employees. Labor Code sections
2 201 and 202 require Defendants to pay their employees all wages due within the time required
3 by law. If an employer willfully fails to timely pay such wages the employer must, as a penalty,
4 continue to pay the subject employee's wages until the back wages are paid in full or an action
5 is commenced, though the penalty cannot exceed 30 days' wages. Labor Code § 203.

6 65. Members of the Waiting Time Subclass are no longer employed by Defendants.

7 66. Defendants willfully failed to pay Plaintiff and Waiting Time Subclass Members
8 the sum due at the time of their termination or within seventy-two (72) hours of their resignation,
9 and failed to pay those sums for thirty (30) days thereafter.

10 67. Defendants' willful failure to pay wages to the Waiting Time Subclass Members
11 violates Labor Code section 203 because Defendants knew wages were due to the Waiting Time
12 Subclass Members but failed to pay them.

13 **NINTH CAUSE OF ACTION**

14 **Unfair Competition Law Violations—Bus. & Prof. Code §§ 17200, *et seq.***
15 **(By Plaintiff and each UCL Subclass Member)**

16 68. Plaintiff incorporates the preceding paragraphs of this Complaint.

17 69. Unfair competition includes any "unlawful," "unfair," or "fraudulent" business
18 act or practice. Cal. Bus. & Prof. Code § 17200.

19 70. Defendants' conduct as described above constitutes unlawful business practices
20 because Defendants violated Labor Code sections 201-203, 246, 1194 and 510, 226.7, and 2802,
21 and as a result, Plaintiff and UCL Subclass Members lost earned wages and/or non-compensatory
22 sums.

23 71. Defendants' conduct as described above constitutes unfair business practices
24 because their denial of lawfully earned wages and non-compensatory sums outweighs any utility
25 of such practices.

26 72. As a result of Defendants' unlawful and unfair conduct, Plaintiff and UCL
27 Subclass Members suffered injury in fact.

28 73. Plaintiff and UCL Subclass Members seek injunctive relief, restitution, and other
appropriate equitable relief. Cal. Bus. & Prof. Code §§ 17203, 17204.

74. Pursuant to California Code of Civil Procedure section 1021.5, Plaintiff and UCL Subclass Members are entitled to recover reasonable attorneys' fees, costs, and expenses incurred in bringing this action.

75. This cause of action is brought as a cumulative remedy and is intended as an alternative remedy for restitution for Plaintiff, and each UCL Subclass Member, for the four (4)-year period before the filing of this Complaint, and as the primary remedy during the fourth year before the filing of this Complaint. Business and Professions Code § 17205.

TENTH CAUSE OF ACTION

PAGA Civil Penalties for Failure to Reimburse Business-Related Expenses (By Plaintiff and Aggrieved Employees against Each Defendant)

76. Plaintiff incorporates the preceding paragraphs of this Complaint.

77. By failing to reimburse Plaintiff and other aggrieved employees for their business-related expenses, including internet, wi-fi, cell phone, office supplies, desk, and work chair expenses, Defendants willfully violation Labor Code section 2802.

78. Labor Code § 2699(a) provides: "[A]ny provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3."

79. Labor Code § 2699(f)(2) provides: "For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions [] (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation."

80. During the applicable statutory period, Defendants failed to reimburse business-related expenses. Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation. Labor Code § 2699(f)(2). Funds recovered

1 will be distributed in accordance with the PAGA, with 75% of the civil penalties provided to the
2 LWDA on behalf of the State of California. The amount of the applicable penalty will be proven
3 at trial.

4 **ELEVENTH CAUSE OF ACTION**
5 **PAGA Civil Penalties for Failure to Pay All Wages**
6 **(By Plaintiff and Aggrieved Employees against Each Defendant)**

8 81. Plaintiff incorporates the preceding paragraphs of this Complaint.

9 82. "Notwithstanding any agreement to work for a lesser wage, any employee
10 receiving less than the legal minimum wage or the legal overtime compensation applicable to
11 the employee is entitled to recover in a civil action the unpaid balance of the full amount of this
12 minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees,
13 and costs of suit." Labor Code § 1194(a).

14 83. Labor Code sections 510 and 1194 require employers to pay overtime wages for
15 hours worked over eight per day or forty per week at one and one-half times the employee's
16 regular rate of pay, and double-time wages for hours worked over twelve in one day or for the
17 first eight hours of work on the seventh consecutive day of work at two times the employee's
18 regular rate of pay.

19 84. By their failure to record all time under their control and to pay all wages for
20 hours worked or under their control, Defendants failed to pay minimum, regular, and overtime
21 wages, and violated Labor Code sections 1194 and 510.

22 85. Defendants failed to pay overtime wages for hours worked in excess of eight (8)
23 in one day or forty (40) in one week. By failing to pay overtime wages at the correct rate,
24 Defendants violated Labor Code sections 510 and 1194, and section 3 of applicable IWC Wage
25 Order(s).

26 86. Plaintiff will seek \$100 for the initial pay period an employee was underpaid, and
27 \$200 for each subsequent violation. Funds recovered will be distributed in accordance with the
28 PAGA, with 75% of the civil penalties provided to the LWDA on behalf of the State of
California. The amount of the applicable penalty will be proven at trial.

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TWELFTH CAUSE OF ACTION
PAGA Civil Penalties for Meal Period Violations
(By Plaintiff and Aggrieved Employees against Each Defendant)

87. Plaintiff incorporates the preceding paragraphs of this Complaint.

88. Labor Code section 512(a) provides in pertinent part: “An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. . . An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes. . . .” The Meal Period section of the applicable Wage Order provides in pertinent part: “Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked...” IWC Wage Order(s), § 11(C). If an employer fails to provide an employee a meal period in accordance with California law, the employer must pay the employee one hour of pay at the employee’s regular rate for each work day a meal period is not provided. IWC Wage Order(s), § 11(D); Lab. Code § 226.7(c).

89. By failing to: provide duty-free uninterrupted meal periods of at least thirty (30) minutes for shifts of five hours or more, which began before the end of the fifth hour of work; provide second duty-free uninterrupted meal periods of at least thirty (30) minutes for shifts of ten hours or more, which began before the tenth hour of work; and pay premium wages of one (1) hour of pay at employees’ regular rate of compensation for each workday a meal period was not provided, Defendants willfully violated the provisions of Labor Code sections 226.7 and 512 and the “Meal Periods” section of the applicable IWC Wage Order as to Plaintiff and other aggrieved employees.

90. Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation. Labor Code § 2699(f)(2). Funds recovered will be distributed in accordance with the PAGA, with 75% of the civil penalties provided to the LWDA on behalf of the State of California. The amount of the applicable penalty will be proven at trial.

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THIRTEENTH CAUSE OF ACTION
PAGA Civil Penalties for Rest Period Violations
(By Plaintiff and Aggrieved Employees against Each Defendant)

91. Plaintiff incorporates the preceding paragraphs of this Complaint.

92. The Rest Period section of the applicable Wage Order provides: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” IWC Wage Order(s), § 12(A). A first rest period must be authorized and permitted when 3.5 hours are worked, a second when 6 hours are worked, and a third when 10 hours are worked.

93. “Employees forced to remain on call during a 10-minute rest period must fulfill certain duties: carrying a device or otherwise making arrangements so the employer can reach the employee during a break, responding when the employer seeks contact with the employee, and performing other work if the employer so requests. These obligations are irreconcilable with employees’ retention of freedom to use rest periods for their own purposes.” *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 270 (2016) (citing *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 586).

94. “The conclusion that on-call rest periods are impermissible is not only the most logical in light of our construction of Wage Order 4, subdivision 12(A), but is the most consistent with the protective purpose of the Labor Code and wage orders...A different result would undermine the rationale underlying the provision of rest periods during the workday.” *Augustus v. ABM Sec. Servs., Inc.*, *supra*, at 2 Cal. 5th at pp. 270-271. Wage Order 4, subdivision 12(A) is identical to Wage Order 1, subdivision 12(A).

95. If an employer fails to provide an employee a rest period in accordance with California law, the employer must pay the employee one hour of pay at the employee’s regular rate for each work day a rest period is not provided. IWC Wage Order(s), § 12(B); Lab. Code § 226.7(c).

96. By failing to authorize and permit Plaintiff and other aggrieved employees a paid

1 rest period of at least 10 minutes for every four hours or major fraction worked per day, and by
2 failing to provide premium wages at the regular rate of pay when not permitted or authorized,
3 Defendants willfully violated the provisions of Labor Code section 226.7 and the “Rest Periods”
4 section of the applicable IWC Wage Order.

5 97. Plaintiff will seek penalties of \$100 for the initial pay period an employee was
6 underpaid, and \$200 for each subsequent violation. Labor Code § 2699(f)(2). Funds recovered
7 will be distributed in accordance with the PAGA, with 75% of the civil penalties provided to the
8 LWDA on behalf of the State of California. The amount of the applicable penalty will be proven
9 at trial.

10 **FOURTEENTH CAUSE OF ACTION**
11 **PAGA Civil Penalties for Inaccurate Wage Statements**
12 **(By Plaintiff and Aggrieved Employees against Each Defendant)**

13 98. Plaintiff incorporates the preceding paragraphs of this Complaint.

14 99. California employers are required to provide itemized wage statements showing,
15 among other things, “gross wages earned,” “total hours worked by the employee,” “net wages
16 earned,” and “all applicable hourly rates in effect during the pay period and the corresponding
17 number of hours worked at each hourly rate by the employee.” Labor Code §§ 226(a)(1), (2),
18 (5), (9).

19 100. By failing to provide accurate itemized wage statements showing the total gross
20 wages earned, net wages earned, total hours worked, and all applicable hourly rates and the total
21 number of hours worked at each rate, Defendants intentionally and willfully violated Labor Code
22 section 226. Further, because Defendants failed to compensate Plaintiff and other aggrieved
23 employees for overtime hours worked and for any non-compliant meal or rest periods, the
24 itemized wage statements provided by Defendants to Plaintiff and other aggrieved employees
25 were inaccurate.

26 101. Labor Code section 226.3 provides for civil penalties for violations of Section
27 226.

28 102. Plaintiff will seek civil penalties of \$250 for the initial violation and \$1,000 for
each subsequent violation. Labor Code § 226.3. Funds recovered will be distributed in

1 accordance with the PAGA, with 75% of the civil penalties provided to the LWDA on behalf of
2 the State of California. The amount of the applicable penalty will be proven at trial.

3 **FIFTHTEENTH CAUSE OF ACTION**

4 **PAGA Civil Penalties for Failure to Provide Sick Pay**
5 **(By Plaintiff and Aggrieved Employees against Each Defendant)**

6 103. Plaintiff incorporates the preceding paragraphs of this Complaint.

7 104. Employers must calculate paid sick leave for non-exempt employees in one of
8 two ways (Labor Code § 246 (1)):

9 (1) Paid sick time for nonexempt employees shall be calculated in the same
10 manner as the regular rate of pay for the workweek in which the employee
11 uses paid sick time, whether or not the employee actually works overtime
12 in that workweek.

13 (2) Paid sick time for nonexempt employees shall be calculated by dividing
14 the employee's total wages, not including overtime premium pay, by the
15 employee's total hours worked in the full pay periods of the prior 90 days
16 of employment.

17 105. Defendants failed to correctly calculate the regular rate of pay when paying sick
18 pay during the PAGA Period.

19 106. Plaintiff will seek \$100 for the initial pay period an employee was underpaid, and
20 \$200 for each subsequent violation. Funds recovered will be distributed in accordance with the
21 PAGA, with 75% of the civil penalties provided to the LWDA on behalf of the State of
22 California. The amount of the applicable penalty will be proven at trial.

23 **SIXTHTEENTH CAUSE OF ACTION**

24 **PAGA Civil Penalties for Failure to Pay Wages During Employment and Upon**
25 **Separation from Employment**
26 **(By Plaintiff and Aggrieved Employees against Each Defendant)**

27 107. Plaintiff incorporates the preceding paragraphs of this Complaint.

28 108. An employer must pay "[a]ll wages, other than those mentioned in Section 201,
201.3, 202, 204.1, or 204.2, earned by any person in any employment...twice during each
29 calendar month, on days designated in advance by the employer as the regular paydays." Labor
30 Code § 204.

31 109. An employer must pay all wages owed to terminated employees at the time of
32 termination, or within 72 hours to employees who quit. Labor Code §§ 201-202. If an employer

1 willfully fails to timely pay all wages to separated employees, the wages continue at the same
2 rate for up to 30 days, until paid. Cal. Labor Code § 203.

3 110. By failing to pay Plaintiff and other aggrieved employees all earned overtime
4 wages, Defendants failed to pay these employees all wages due during their employment, in
5 violation of Labor Code section 204. Because Defendants failed to pay these earned wages,
6 Defendants also failed to timely pay all final wages owed to Plaintiff and other aggrieved
7 employees in violation of Labor Code sections 201 and 202. Defendants did not pay waiting time
8 penalties to Plaintiff and other aggrieved employees for each day any portion of their final wages
9 went unpaid, in violation of Labor Code section 203.

10 111. Plaintiff will seek penalties of \$100 for the initial pay period an employee was
11 not reimbursed, and \$200 for each subsequent violation. Labor Code § 2699(f)(2). Funds
12 recovered will be distributed in accordance with the PAGA, with 75% of the civil penalties
13 provided to the LWDA on behalf of the State of California. The amount of the applicable penalty
14 will be proven at trial.

15 **SEVENTEENTH CAUSE OF ACTION**
16 **PAGA Civil Penalties for Failure to Maintain Accurate Records**
17 **(By Plaintiff and Aggrieved Employees against Each Defendant)**

18 112. Plaintiff incorporates the preceding paragraphs of this Complaint.

19 113. An employer must maintain payroll records showing hours worked daily by, and
20 wages paid to, its employees, in accordance with rules established by the Industrial Welfare
21 Commission. Labor Code § 1174. An employer must also maintain time records showing when
22 each work period, and meal period, begins and ends. IWC Wage Order(s), § 7.

23 114. Labor Code section 1174.5 imposes a \$500 civil penalty for any failure to
24 maintain records required by Section 1174(d).

25 115. By failing to maintain accurate records of when the employees began and ended
26 each work period and meal period, Defendants violated Labor Code section 1174.

27 116. Plaintiff will seek penalties of \$100 for the initial pay period an employee was
28 underpaid, and \$200 for each subsequent violation under Labor Code § 2699(f)(2) and/or
penalties provided for in Labor Code § 1174.5. Funds recovered will be distributed in accordance

1 with the PAGA, with 75% of the civil penalties provided to the LWDA on behalf of the State of
2 California. The amount of the applicable penalty will be proven at trial.

3 **PRAYER FOR RELIEF**

4 Plaintiff prays for the following relief on behalf of himself, the Classes, and other
5 aggrieved employees:

- 6 A. For certification of this action as a class action;
- 7 B. For appointment of Plaintiff as the representative of the Classes;
- 8 C. For appointment of Plaintiff's counsel as Class Counsel;
- 9 D. For injunctive relief;
- 10 E. For compensatory damages for violations alleged in amounts according to proof;
- 11 F. For expense reimbursements in amounts according to proof;
- 12 G. For all interest accrued;
- 13 H. For disgorgement of all amounts wrongfully obtained;
- 14 I. That this action be maintained as a PAGA Representative Action, and Plaintiff
15 and his counsel be provided with enforcement capability as if the action were
16 brought by the DLSE;
- 17 J. For recovery of all civil penalties as permitted by Labor Code section 2699, for
18 failing to reimburse all necessary business-related expenses incurred, pursuant to
19 Labor Code section 2802, according to proof;
- 20 K. For recovery of all civil penalties as permitted by Labor Code section 2699, for
21 unpaid wages owed pursuant to Labor Code sections 204, 510, and 1194,
22 according to proof;
- 23 L. For recovery of civil penalties as permitted by Labor Code section 2699, for
24 unpaid meal period premiums pursuant to Labor Code section 226.7, according
25 to proof;
- 26 M. For recovery of civil penalties as permitted by Labor Code section 2699 for
27 unpaid rest period premiums pursuant to Labor Code section 226.7, according to
28 proof;

- 1 N. For recovery of civil penalties as permitted by Labor Code section 2699, for
2 inaccurate itemized wage statements pursuant to Labor Code sections 226 and
3 226.3, according to proof;
- 4 O. For recovery of civil penalties under Labor Code section 2699 for failure to pay
5 all sick leave wages owed pursuant to Labor Code § 246 (l), according to proof;
- 6 P. For recovery of civil penalties as permitted by Labor Code section 210 for failing
7 to timely pay wages due during employment, according to proof;
- 8 Q. For recovery of civil penalties under Labor Code section 2699- for failing to pay
9 final wages and statutory waiting time penalties due pursuant to Labor Code
10 sections 201-203, according to proof;
- 11 R. For recovery of civil penalties as permitted by Labor Code section 2699 and/or
12 1174.5, for failing to maintain accurate records pursuant to Labor Code section
13 1174, according to proof;
- 14 S. For all civil penalties to be distributed 75% to the LWDA and 25% to the
15 aggrieved employees, pursuant to Labor Code section 2699(i);
- 16 T. For the Plaintiff to be recognized as a Representative of the LWDA and an
17 “aggrieved employee,” and that he be awarded enhanced compensation for
18 bringing this action should he prevail and provide benefit to California or other
19 “aggrieved employees”;
- 20 U. For reasonable attorneys’ fees and costs pursuant to statute, including, Labor
21 Code sections 218.5, 226(e), 1194, 1197, the PAGA, and Code of Civil Procedure section
22 1021.5; and
- 23 V. For such other relief the Court deems just and proper.

24 COHELAN KHOURY & SINGER
25 MAJARIAN LAW GROUP, APC

26 Dated: July 27, 2022

27 By: 
28 Michael D. Singer, Esq.
Isam C. Khoury, Esq.
Rosemary C. Khoury, Esq.

Attorneys for Plaintiff Anthony Morris, on
behalf of himself and all others similarly situated
and aggrieved

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial of all claims triable as of right by jury.

COHELAN KHOURY & SINGER
MAJARIAN LAW GROUP, APC

Dated: July 27, 2022

By:



Isam C. Khoury, Esq.

Michael D. Singer, Esq.

Rosemary C. Khoury, Esq.

Attorneys for Plaintiff Anthony Morris, on behalf
of himself and all others similarly situated and
aggrieved