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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JEROME BURWELL, an individual, on
behalf of himself and all other aggrieved
employees,

Plaintiff,

vs.

GRAVITY HILL LOGISTICS LLC, a
California limited liability company;
JERMAINE LEE, an individual; and DOES
1 through 10 inclusive,

Defendants.

CASE NO.: 22PSCV00654

COMPLAINT FOR:

- 1. Failure to Pay All Wages;**
- 2. Meal Period Violations;**
- 3. Rest Period Violations;**
- 4. Failure to Reimburse Business Expenses;**
- 5. Wage Statement Violations;**
- 6. Waiting Time Penalties;**
- 7. Unfair Business Practices;**
- 8. PAGA Civil Penalties (Labor Code § 2698
et seq.).**

DEMAND FOR JURY TRIAL

1 Plaintiff JEROME BURWELL (“Plaintiff”), as an individual and as a representative under
2 the Private Attorneys General Act (“PAGA”), hereby brings this Complaint against Defendants
3 GRAVITY HILL LOGISTICS LLC (“GRAVITY HILL”), a California limited liability company;
4 JERMAINE LEE, an individual (“LEE”); and DOES 1-10 inclusive (collectively, “Defendants”),
5 and hereby alleges with knowledge with respect to his own acts and on information and belief as
6 to other matters as follows:

7 **NATURE OF ACTION**

8 1. Plaintiff brings individual claims to recover unpaid wages, liquidated and statutory
9 damages, treble damages, restitution, interest, reasonable attorneys’ fees, costs and other sums
10 that Defendants owe to him under the California Labor Code (“Labor Code”), the Industrial
11 Welfare Commission (“IWC”) Wage Orders and the California Business and Professions Code
12 (“Business and Professions Code”).

13 2. Plaintiff further brings a claim under the Private Attorneys General Act of 2004,
14 codified as Labor Code § 2698 *et seq.*, to recover civil penalties, reasonable attorneys’ fees, costs,
15 wages and other recoverable sums in his representative capacity as an “aggrieved employee” on
16 behalf of all other current and former aggrieved employees of Defendants GRAVITY HILL and
17 LEE.

18 **JURISDICTION AND VENUE**

19 3. This Court has jurisdiction over all causes of action asserted in this Complaint
20 pursuant to the California Constitution, Article VI, Section 10, which grants the Superior Court
21 original jurisdiction in all cases except those given to other trial courts.

22 4. This Court has general personal jurisdiction over GRAVITY HILL because it is a
23 California limited liability company. This Court has general personal jurisdiction over LEE
24 because he resides in California.

25 5. Pursuant to California Code of Civil Procedure §§ 395 and 395.5, venue is proper
26 in this judicial district because all Defendants reside and maintain their principal place of business
27 in Los Angeles County, and/or the acts and omissions alleged in this Complaint occurred in this
28 County.

6. The purported arbitration agreement between Plaintiff and the other Aggrieved Employees, on the one hand, and Defendants, on the other hand (which expressly provides the Federal Arbitration Act [“FAA”] and federal common law applicable to arbitration governs the interpretation and enforcement of the arbitration agreement), is expressly exempt from the FAA because Plaintiff worked for Defendants as a last mile delivery driver transporting goods shipped from across the United States and abroad for Amazon and therefore was at all times relevant to this Complaint part of a “class of workers engaged in foreign or interstate commerce.” 9 U.S.C. § 1; *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904, 909 (2020) (last mile delivery drivers transporting packages for Amazon fall within transportation exemption to FAA).

PARTIES

7. Plaintiff JEROME BURWELL is an individual residing in Los Angeles County, California. Plaintiff worked for Defendants as a last mile delivery driver transporting goods shipped from across the United States and abroad for Amazon. Plaintiff worked from Defendants' location in Chatsworth, California.

8. Plaintiff is an “aggrieved employee” within the meaning of the PAGA since he suffered one or more of the violations alleged in this Complaint. Plaintiff brings a claim for civil penalties and other recoverable sums under the PAGA as a representative aggrieved employee on behalf of all current and former employees of Defendants during the PAGA Period. The PAGA Period is defined as commencing from one year prior to Plaintiff’s notice of Labor Code violations to the Labor Workforce and Development Agency (“LWDA”) and certified mailing of said notice to Defendants GRAVITY HILL and LEE until resolution of this action.

9. Defendants employed Plaintiff as a non-exempt hourly employee during the PAGA Period and Plaintiff's employment with Defendants ended within one (1) year of the filing of this action.

10. The “Aggrieved Employees” for purposes of the representative claim for PAGA penalties include all current and former non-exempt employees of Defendants during the PAGA Period.

1 11. Defendant GRAVITY HILL is a California limited liability company doing
2 business throughout the state of California with its principal place of business located in Los
3 Angeles County, California. GRAVITY HILL is, and at all relevant times was, an employer
4 subject to California state wage and hour laws. Plaintiff is informed, believes, and thereon alleges
5 that the practices and policies of GRAVITY HILL that are complained of by way of this
6 Complaint were implemented during the PAGA Period.

7 12. Defendant LEE is a member and manager of GRAVITY HILL and operates the
8 GRAVITY HILL. LEE is, and at all relevant times was, an employer subject to California state
9 wage and hour laws. Plaintiff is informed, believes, and thereon alleges that the practices and
10 policies of LEE that are complained of by way of this Complaint were implemented during the
11 four years preceding the filing of this Complaint and during the PAGA Period in violation of
12 Labor Code Sections 203, 226, 2267, 1194, and 2802 and is therefore directly liable under Labor
13 Code Sections 558 and 558.1.

14 13. Defendants continue to employ non-exempt employees within California.

15 14. Plaintiff is informed, believes and on that basis alleges, that at all relevant times
16 mentioned in this Complaint, Defendants were and are employers and/or joint employers of
17 Plaintiff and the other Aggrieved Employees as defined in and subject to the Labor Code and
18 IWC Wage Orders.

19 15. Defendant Does 1 through 10, are sued under fictitious names pursuant to Code of
20 Civil Procedure Section 474. Plaintiff will seek leave of court to amend this Complaint in the
21 event such names and identities are ascertained. Plaintiff is informed and believes, and on that
22 basis alleges, that each of the fictitiously named defendants is and/or was responsible in some
23 manner for, gave consent to, ratified, and/or authorized the conduct alleged herein, thereby
24 causing damage to Plaintiff and the other Aggrieved Employees. At all relevant times mentioned
25 in this Complaint, all defendants acted as agents of all other defendants in committing the acts
26 alleged in this Complaint.

27 16. On information and belief, Plaintiff alleges that each defendant directly or
28 indirectly, through agents or other persons or entities, employed and/or exercised control over the

1 wages, hours and working conditions of Plaintiff and the other Aggrieved Employees. Plaintiff
2 further alleges that each defendant acted in all respects pertinent to this action as the agent of the
3 other defendants, carried out in a joint scheme, plan or policy, such that that the acts of each
4 defendant are legally attributable to all other defendants. Plaintiff is informed and believes, and
5 on that basis alleges, that Defendants GRAVITY HILL and LEE are alter egos of each other and
6 in all respects acted as the employers and/or joint employers of Plaintiff and the other Aggrieved
7 Employees.

8 17. At all relevant times herein, Defendants were agents of each other and acting
9 within the course and scope of their agency.

10 **FACTUAL ALLEGATIONS**

11 18. Plaintiff was employed by Defendants as a non-exempt employee.

12 19. Plaintiff began working for Defendants in approximately September 2020 as a
13 non-exempt hourly employee at Defendants' location in Chatsworth, California. Defendants
14 employed Plaintiff and the other Aggrieved Employees as last mile delivery drivers transporting
15 goods shipped from across the United States and abroad for Amazon. By the end of his
16 employment, Defendants paid Plaintiff approximately \$17.50 per hour.

17 20. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
18 herein, Defendants were advised by skilled lawyers, employees and other professionals who were
19 knowledgeable about California wage and hour law, employment and personnel practices, and the
20 requirements under California law.

21 21. Plaintiff is informed and believe, and thereon allege, that at all times mentioned
22 herein, Defendants knew or should have known that they had a duty to compensate Plaintiff and
23 other Aggrieved Employees, and that Defendants had the financial ability to pay such
24 compensation but willfully, knowingly and intentionally failed to do so, all in order to increase
25 Defendants' profits.

26 22. Through this action, Plaintiff alleges that Defendants have engaged in a systematic
27 pattern of wage and hour violations under the Labor Code and IWC Wage Orders.
28

1 23. Defendants committed the violations set forth in this Complaint against all
2 Aggrieved Employees, continuing through the present date. Defendants maintained non-
3 compliant employment policies and practices which were applied to Plaintiff and all other
4 Aggrieved Employees.

5 **Unpaid Overtime and Minimum Wages**

6 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and other Aggrieved Employees were entitled to receive at least
8 minimum wages, wages at their regular rate of pay, overtime wages, and double time wages, and
9 that they were not receiving minimum, regular, overtime, and double time wages for all work that
10 was required to be performed.

11 25. Plaintiff is informed and believes, and thereon alleges, Plaintiff and other
12 Aggrieved Employees regularly worked in excess of eight (8), 10, and/or 12 hours per workday
13 and/or 40 hours per workweek. In violation of the Labor Code, Defendants failed to pay the
14 minimum, regular, overtime, and double time rate of pay to Plaintiff and other Aggrieved
15 Employees for all hours worked. Defendants failed to pay the minimum, regular, overtime, and/or
16 double time wages when Plaintiff and Aggrieved Employees were on call or worked off-the-clock
17 (e.g., time spent working before and after their scheduled shifts performing work-related tasks).
18 Specifically, Defendants required Plaintiff and other Aggrieved Employees to complete work-
19 related tasks before clocking in and after clocking out. For example, Defendants did not
20 compensate Plaintiff for all hours worked while he was delivering packages because Plaintiff and
21 other Aggrieved Employees were regularly on-duty during their meal periods and were expected
22 to eat meals while driving to meet the demands of Defendants' fast-paced environment. In
23 addition, Defendants' management regularly called Plaintiff off the clock to, among other things,
24 coordinate deliveries and transport the company's vehicles to other locations to facilitate
25 Defendants' next-day business.

26 26. As a result of Defendants' failure to properly compensate Plaintiff and the other
27 Aggrieved Employees, they were underpaid wages owed (including overtime and/or double time)
28 and, in certain pay periods, compensated at a rate less than the lawful minimum wage for all

1 hours worked.

2 **Meal Period Violations**

3 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and the other Aggrieved Employees were entitled to receive a
5 timely, off-duty, uninterrupted 30-minute meal period for every five hours of work, or payment of
6 one additional hour of pay at their regular rate of pay when they did not receive a compliant meal
7 period.

8 28. In violation of the Labor Code and IWC Wage Orders, Plaintiff and the other
9 Aggrieved Employees did not receive compliant meal periods due to Defendants' policies,
10 workload, and understaffing, among other things. Specifically, Plaintiff and the other Aggrieved
11 Employees were on-duty during their meal periods and had their meal periods regularly
12 interrupted. For example, due to understaffing and Defendants' fast-paced environment which
13 required Plaintiff and the other Aggrieved Employees to deliver hundreds of packages per day for
14 Defendants' benefit, Plaintiff and the other Aggrieved Employees would often be required to
15 work through their meal periods. Specifically, Plaintiff worked through his meal periods while
16 delivering packages for Defendants' benefit. In addition, Defendants implemented a practice and
17 policy of prohibiting Plaintiff and the other Aggrieved Employees from using public restrooms
18 during their shifts, including during meal periods. As such, Plaintiff and the other Aggrieved
19 Employees regularly had their meal periods interrupted and were restricted to the Defendants'
20 company vehicles during their meal periods. Further, Defendants failed to provide second meal
21 periods when Plaintiff and the other Aggrieved Employees worked over 10 hours.

22 29. Defendants also failed to pay Plaintiff and the other Aggrieved Employees one
23 additional hour of pay at their regular rate of pay when Plaintiff and the other Aggrieved
24 Employees did not receive a compliant meal period. Plaintiff is informed and believes, and
25 thereon alleges, that Defendants maintained no mechanism for the payment of meal period
26 premiums in the event a lawful meal period was not provided.

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1 **Rest Period Violations**

2 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and Aggrieved Employees were entitled to receive a 10-minute,
4 off-duty, uninterrupted rest period for every four (4) hours worked, or major fraction thereof, or
5 payment of one additional hour of pay at their regular rate of pay when they were not permitted to
6 take a compliant rest period. Specifically, Defendants failed to implement a rest break policy
7 and/or practice, and failed to provide uninterrupted, off-duty 10-minute rest breaks. For example,
8 rest breaks were simply not provided to Plaintiff and the other Aggrieved Employees due to
9 understaffing and Employer's fast-paced environment which required Plaintiff and the other
10 Aggrieved Employees to deliver hundreds of packages per day for Defendants' benefit. In
11 addition, Employer implemented a practice and policy of prohibiting Plaintiff and the other
12 Aggrieved Employees from using public restrooms during their shifts, including during rest
13 periods. As such, Plaintiff and the other Aggrieved Employees regularly missed their rest breaks
14 or had them interrupted or governed by Defendants' practices and policies.

15 31. Despite these violations, Defendants failed to pay Plaintiff and Aggrieved
16 Employees one additional hour of pay at their regular rate of pay when they did not receive a
17 compliant rest break. Plaintiff is informed and believes, and thereon alleges, that Defendants
18 maintained no mechanism for the payment of meal period premiums in the event a lawful rest
19 period was not provided.

20 **Unreimbursed Business Expenses:**

21 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and the other Aggrieved Employees were entitled to
23 reimbursement for their necessary work-related business expenses.

24 33. In violation of the Labor Code and IWC Wage Orders, Plaintiff and the other
25 Aggrieved Employees were required and/or forced to use their personal cell phones, without
26 reimbursement, to carry out their jobs, including to communicate with Defendants. In addition,
27 Plaintiff and other Aggrieved Employees were also required to clean, wash, and iron their
28 uniforms, which were the Defendants' property, without any reimbursement for the costs of

1 cleaning, washing, and ironing.

2 **Waiting Time Penalties**

3 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and the other Aggrieved Employees who separated from their
5 employment with Defendants during the statutory period were entitled to timely payment of all
6 wages due. In violation of the Labor Code, Plaintiff and the other Aggrieved Employees did not
7 receive payment of all wages owed upon separation within the permissible time period due to,
8 *inter alia*, Defendants' failure to pay all wages, meal and rest period premiums, and reimburse
9 expenses.

10 **Wage Statement Violations**

11 35. Plaintiff is informed and believes, and thereon alleges that Defendants knew or
12 should have known that Plaintiff and the other Aggrieved Employees were entitled to receive
13 complete and accurate wage statements. In violation of the Labor Code and IWC Wage Orders,
14 Plaintiff and the other Aggrieved Employees were not furnished with complete and accurate wage
15 statements that show all of the information required by Labor Code Section 226, including, but
16 not limited to, the gross and net wages earned, the total hours worked, all applicable hourly rates
17 in effect during the pay period, the corresponding number of hours worked at each hourly rate,
18 and the entity name(s).

19 **Failure to Keep Accurate Records**

20 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Defendants were required to keep accurate records of the hours worked
22 by Plaintiff and the other Aggrieved Employees. In violation of the Labor Code, Defendants
23 failed to maintain accurate records of hours worked by Plaintiff and the other Aggrieved
24 Employees due to the unlawful practices described above.

25 37. Plaintiff is informed, believes, and thereon alleges that Defendants' actions as
26 described throughout this Complaint were willful.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL WAGES**

3 **(Against All Defendants)**

4 38. Plaintiff incorporates by reference the allegations in all paragraphs in this
5 Complaint as though fully set forth herein.

6 39. At all relevant times, Defendants had a duty to comply with Labor Code Sections
7 204, 206, 510, 1182.12, 1194, 1194.2, 1197, 1198, and the applicable IWC Wage Orders and
8 California Code of Regulations.

9 40. Labor Code Section 204 and the IWC Wage Orders require timely payment of all
10 wages owed on regularly scheduled paydays at least twice during each calendar month, on days
11 designated in advance by the Defendants as the regular paydays. All wages earned in excess of
12 the normal work period must be paid no later than the payday for the next regular payroll period.

13 41. Labor Code Section 206 provides that in case of a dispute over wages, the
14 Defendants shall pay, without condition and promptly under the Labor Code all wages conceded
15 due, leaving to the employee all remedies he/she is otherwise entitled to as to any balance
16 claimed.

17 42. At all times relevant, Labor Code Section 510, and applicable sections of the
18 California Code of Regulations and the IWC Wage Orders applied to Plaintiff's work with
19 Defendants and continued to apply to her employment with Defendants. Labor Code Section 510
20 and applicable provisions of the California Code of Regulations and IWC Wage Orders state that
21 any work performed in excess of eight hours in a workday and/or 40 hours in a workweek must
22 be paid at one and one-half times the employee's regular rate of pay. Any work performed in
23 excess of 12 hours in a workday must be compensated at the rate of no less than twice the regular
24 rate of pay for an employee.

25 43. Labor Code Section 1182.12 sets forth the minimum hourly wage that must be
26 paid to all employees in California for all hours worked. Local minimum wage ordinances, may
27 provide for higher minimum wage rates that must be paid to employees for all hours worked in
28 those locales where each local ordinance is in effect. Labor Code Section 1197 affirms that it is

1 unlawful to pay less than the state or local minimum wage, whichever is higher, for any hour of
2 work.

3 44. Labor Code Section 1194 provides that any employee receiving less than the legal
4 minimum wage or the legal overtime compensation applicable to the employee is entitled to
5 recover in a civil action the unpaid balance of the full amount of the minimum wage or overtime
6 compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

7 45. Labor Code Section 1194.2 authorizes the recovery of liquidated damages in an
8 amount equal to the wages unlawfully unpaid and interest thereon for unpaid wage violations.

9 46. Labor Code Section 1198 prohibits Defendants from employing for longer hours
10 or less favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as
11 otherwise set by the Labor Commissioner.

12 47. Plaintiff is informed, believes, and thereon alleges that at all relevant times,
13 Plaintiff regularly worked more than eight (8) hours, 10, and/or 12 hours per workday, more than
14 40 hours per workweek, and/or more than eight (8) hours on the seventh consecutive day of work.

15 48. Plaintiff is informed, believes, and thereon alleges that at all relevant times,
16 Defendants failed to pay Plaintiff all wages for hours worked (including minimum, regular,
17 overtime, and double time wages), failed to pay overtime and double time wages at the proper
18 rates of pay, auto-deducted and rounded meal periods, unlawfully deducted wages, and required
19 off-the-clock work without compensation, among other things.

20 49. As a direct and proximate result of Defendants' unlawful conduct, as set forth
21 herein, Plaintiff has sustained and continues to sustain damages, including loss of earnings
22 including minimum, regular, overtime, and double time compensation due, in an amount to be
23 established at trial, plus prejudgment interest, attorneys' fees, and costs pursuant to statute.

24 50. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
25 conduct described herein, have committed an "intentional theft of wages in an amount greater
26 than nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred
27 fifty dollars (\$2,350) in the aggregate from two or more employees...in any consecutive 12-
28 month period" within the meaning of California Penal Code Section 487m. Specifically,

1 Defendants have intentionally deprived Plaintiff of wages, as defined in Section 200 of the Labor
2 Code, gratuities, as defined in Section 350 of the Labor Code, benefits, or other compensation, by
3 unlawful means, with the knowledge that the wages, gratuities, benefits, or other compensation is
4 due to the employee under the law. Plaintiff is thus entitled to recover from Defendants treble
5 damages and costs, including reasonable attorneys' fees, pursuant to California Penal Code
6 Section 496(c).

7 51. WHEREFORE, Plaintiff requests relief as described herein and below.

8 **SECOND CAUSE OF ACTION**

9 **MEAL PERIOD VIOLATIONS**

10 **(Against All Defendants)**

11 52. Plaintiff incorporates by reference the allegations in all paragraphs in this
12 Complaint as though fully set forth herein.

13 53. Labor Code § 512(a) prohibits employers from employing any person for a work
14 period of more than five (5) hours without a meal period of not less than thirty (30) uninterrupted
15 minutes. Further, employers may not employ an employee for a work period of more than ten
16 (10) hours per day without providing the employee with a second meal period of not less than
17 thirty (30) minutes.

18 54. At all relevant times, Plaintiff regularly worked more than five (5) hours and 10
19 hours per workday without being provided an uninterrupted, off-duty 30-minute meal period
20 since Plaintiff's meal periods were late, interrupted, short, and/or on-duty.

21 55. During the relevant time period, Defendants failed to pay Plaintiff meal period
22 premiums for noncompliant meal periods pursuant to Labor Code Section 226.7(b) and the
23 applicable IWC Wage Order.

24 56. Defendants have willfully, unfairly, fraudulently or unlawfully failed to allow
25 Plaintiff to take meal breaks pursuant to Labor Code § 512(a). As a result, Defendants are liable
26 to Plaintiff for premium compensation of one hour of pay at the employee's regular rate for each
27 workday that the meal period was not provided pursuant to Labor Code § 226.7, in an amount to
28 be established at trial.

1 57. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
2 conduct described herein, have committed an “intentional theft of wages in an amount greater
3 than nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred
4 fifty dollars (\$2,350) in the aggregate from two or more employees...in any consecutive 12-
5 month period” within the meaning of California Penal Code Section 487m. Specifically,
6 Defendants have intentionally deprived Plaintiff of wages, as defined in Section 200 of the Labor
7 Code, gratuities, as defined in Section 350 of the Labor Code, benefits, or other compensation, by
8 unlawful means, with the knowledge that the wages, gratuities, benefits, or other compensation is
9 due to the employee under the law. Plaintiff is informed, believes, and thereon alleges that meal
10 period premiums are wages, gratuities, benefits, or other compensation within the meaning of
11 California Penal Code Section 487m. Plaintiff is thus entitled to recover from Defendants treble
12 damages and costs, including reasonable attorneys’ fees, pursuant to California Penal Code
13 Section 496(c).

14 **THIRD CAUSE OF ACTION**

15 **REST PERIOD VIOLATIONS**

16 **(Against All Defendants)**

17 58. Plaintiff incorporates by reference the allegations in all paragraphs in this
18 Complaint as though fully set forth herein.

19 59. California law and applicable Wage Orders require employers to authorize and
20 permit all employees to take uninterrupted rest periods. The rest period time shall be based on
21 the total hours worked daily at the rate of 10 minutes net rest time per four hours or major
22 fraction thereof.

23 60. During the relevant time period, Defendants failed to provide compliant rest
24 breaks. Specifically, Plaintiff had her rest breaks on-duty, interrupted, missed, or shortened.
25 Consequently, Plaintiff did not receive a 10-minute rest period for every four (4) hours worked
26 or major fraction thereof.

27 61. During the relevant time period, Defendants failed to pay Plaintiff rest period
28 premiums for noncompliant rest periods pursuant to Labor Code Section 226.7(b) and the

1 applicable IWC Wage Order.

2 62. Defendants have willfully, unfairly, fraudulently or unlawfully failed to allow
3 Plaintiff to take rest periods pursuant to California law. As a result, Defendants are liable to
4 Plaintiff for premium compensation of one hour of pay at the employee's regular rate for each
5 workday that the rest period was not provided pursuant to Labor Code § 226.7, in an amount to be
6 established at trial.

7 63. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
8 conduct described herein, have committed an "intentional theft of wages in an amount greater
9 than nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred
10 fifty dollars (\$2,350) in the aggregate from two or more employees...in any consecutive 12-
11 month period" within the meaning of California Penal Code Section 487m. Specifically,
12 Defendants have intentionally deprived Plaintiff of wages, as defined in Section 200 of the Labor
13 Code, gratuities, as defined in Section 350 of the Labor Code, benefits, or other compensation, by
14 unlawful means, with the knowledge that the wages, gratuities, benefits, or other compensation is
15 due to the employee under the law. Plaintiff is informed, believes, and thereon alleges that rest
16 period premiums are wages, gratuities, benefits, or other compensation within the meaning of
17 California Penal Code Section 487m. Plaintiff is thus entitled to recover from Defendants treble
18 damages and costs, including reasonable attorneys' fees, pursuant to California Penal Code
19 Section 496(c).

20 **FOURTH CAUSE OF ACTION**

21 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

22 **(Against All Defendants)**

23 64. Plaintiff hereby re-alleges and incorporates by reference the allegations in all
24 paragraphs in this Complaint as though fully set forth herein.

25 65. At all relevant times, Defendants had a duty to comply with Labor Code Sections
26 2800 and 2802. Defendants failed to comply with these indemnification and reimbursement
27 requirements with respect to Plaintiff.

28 66. Labor Code Section 2800 requires employers to indemnify employees for losses

1 caused by the employer's want of ordinary care. To the extent Defendants claim that Plaintiff
2 failed to request, demand, notify or otherwise seek reimbursement for their expenses and losses,
3 Defendants were obligated to nevertheless indemnify Plaintiff due to their own negligence.

4 67. Labor Code Section 2802(a) requires that employers indemnify and reimburse
5 employees for all business expenses, which are defined as all necessary expenditures or losses
6 incurred by the employee in direct consequence of the discharge of the employee's duties or
7 otherwise incurred based on the employee's obedience to the employer's directions. Labor Code
8 Section 2802(b) authorizes employees to recover in a court action interest which shall accrue
9 from the date on which the employee incurred the necessary expenditure or loss. Labor Code
10 Section 2802(c) authorizes employees, who to enforce their right to reimbursements under Labor
11 Code Section 2802, to also recover attorneys' fees and costs.

12 68. During the relevant time period, Defendants required Plaintiff to incur out-of-
13 pocket expenses without reimbursement, such as, using his personal cell phone and the costs of
14 cleaning, washing, and ironing his uniforms, which were the Defendants' property, without any
15 reimbursement for the costs of cleaning, washing, and ironing.

16 69. As a result of Defendants' failure to indemnify and reimburse Plaintiff for all
17 business and work-related costs, expenditures, losses and expenses in accordance with Labor
18 Code Sections 2800 and 2802, Plaintiff is entitled to recover the full unreimbursed balance of
19 reimbursements, expenditures and losses, prejudgment interest, and statutory penalties, along
20 with attorneys' fees and costs in amounts that will be established at trial.

21 **FIFTH CAUSE OF ACTION**

22 **WAGE STATEMENT VIOLATIONS**

23 **(Against All Defendants)**

24 70. Plaintiff incorporates by reference the allegations in all paragraphs in this
25 Complaint as though fully set forth herein.

26 71. Labor Code § 226(a) requires employers, at the time of each payment of wages, to
27 furnish each employee with an accurate statement itemizing, among other things: (1) gross wages
28 earned; (2) the total hours worked by the employee; (3) all deductions; (4) net wages earned; (5)

1 the inclusive dates of the period for which the employee is paid; (6) the name of the employee
2 and his or her social security number (last four digits); (7) the name and address of the legal entity
3 that is the employer; and (8) all applicable hourly rates in effect during the pay period and the
4 corresponding number of hours worked at each hourly rate by the employee. Labor Code § 1174
5 further requires that such payroll records be kept in a central location.

6 72. Labor Code § 226(e) further provides that if an employer knowingly and
7 intentionally fails to provide a statement itemizing, among other things, the total hours worked by
8 the employee, then the employee is entitled to recover the greater of all actual damages or fifty
9 dollars (\$50) for the initial violation and one hundred dollars (\$100) for each subsequent
10 violation, up to four thousand dollars (\$4,000).

11 73. As alleged herein, Defendants failed to pay all wages, reimbursements, and
12 premiums. Thus, Defendants have knowingly and intentionally failed to comply with the Labor
13 Code on each and every wage statement that should have been provided to Plaintiff by failing to
14 provide itemized wage statements to Plaintiff that accurately reported, among other things, the
15 gross and net wages earned, the total hours worked, all applicable hourly rates in effect during the
16 pay period, and the corresponding number of hours worked at each hourly rate.

17 74. By failing to keep accurate records and provide such records to Plaintiff as
18 required by Labor Code §§ 226(a) and 1174, Defendants have injured Plaintiff and made it
19 difficult to calculate the unpaid wages earned and due to Plaintiff. Moreover, Defendants' failure
20 to comply with Labor Code § 1174 is unlawful pursuant to Labor Code § 1175.

21 75. Because of Defendants' willful failure to provide Plaintiff with accurate records as
22 required by Labor Code § 226(a), Plaintiff is entitled to damages pursuant to Labor Code § 226(e)
23 in an amount to be established at trial.

24 **SIXTH CAUSE OF ACTION**

25 **WAITING TIME PENALTIES**

26 **(Against All Defendants)**

27 76. Plaintiff incorporates by reference the allegations in all paragraphs in this
28 Complaint as though fully set forth herein.

77. Labor Code § 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge as required pursuant to Labor Code § 201, the employer is liable to the employee for penalties.

78. At the time of Plaintiff's termination of employment, Plaintiff had unpaid wages, reimbursements, and premium pay for missed meal and rest periods outstanding.

79. Defendants have willfully, unfairly, fraudulently, or unlawfully failed to pay Plaintiff compensation owed upon termination of employment pursuant to Labor Code § 201. Plaintiff's employment with Defendants terminated but Defendants failed to pay her any of the unpaid wages, reimbursements, and premiums due and owing to her at the time of her termination. As a result, Defendants are liable to Plaintiff for waiting time penalties pursuant to Labor Code § 203 in an amount to be determined at trial, according to proof.

SEVENTH CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES

(Against All Defendants)

80. Plaintiff incorporates by reference the allegations in all paragraphs in this Complaint as though fully set forth herein.

81. The Unfair Competition Law as codified in California Business and Professions Code §17200, *et seq.* (“UCL”) defines unfair business competition to include any “unlawful, unfair or fraudulent” act or practice.

82. A business act or practice is “illegal” under the UCL if it violates any statute, regulation, or ordinance

83. A business practice is “unfair” under the UCL if the reasons, justifications, and motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims.

84. A business act or practice is “fraudulent” under the UCL if it is “likely to deceive” members of the general public.

85. Plaintiff is informed and believes that Defendants' unlawful failure to timely pay wages, meal and rest periods or compensation, provide accurate itemized wage statements, reimburse expenses, among other things, constitute violations of the UCL.

86. Defendants' failure to pay Plaintiff in a lawful manner as set forth above and below is fraudulent and deceptive and constitutes an ongoing and continuous unfair business practice within the meaning of the UCL. Members of the public have been deceived in the past, and will be in the future continue to be deceived, by these continuous unfair business practices.

87. The illegal conduct alleged in this Complaint is continuing, and there is no indication that Defendants will not continue such activity in the future. Plaintiff alleges that if Defendants are not enjoined from their illegal conduct, they will continue to fail to provide rest periods and meal breaks or provide appropriate compensation in-lieu thereof.

88. A request for injunctive relief, restitution and for the disgorgement of unlawfully earned profits is specifically authorized by the UCL. Thus, on behalf of himself and the general public, Plaintiff seeks injunctive relief, restitution, and the disgorgement of all unlawfully earned profits as a result of Defendants' alleged acts or omissions described in this Complaint. Furthermore, Plaintiff requests attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5.

89. Plaintiff is informed and believes, and thereon allege, that unless restrained and ordered to pay restitution and disgorge profits derived from said unfair and unlawful business practices, Defendants will continue to engage in the alleged acts and/or omissions described in this Complaint.

EIGHTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004

(Against All Defendants)

90. Plaintiff incorporates by reference all previous paragraphs of this Complaint as though fully set forth herein.

91. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions,

1 commissions, boards, agencies or employees for violation of the code may, as an alternative, can
2 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
3 herself and other current or former employees pursuant to the procedures specified in Labor Code
4 Section 2699.3.

5 92. Under Labor Code Section 2699.3(a), a plaintiff may bring a cause of action under
6 PAGA only after giving the LWDA and the employer notice of the Labor Code Sections alleged
7 to have been violated, and after receiving notice from the LWDA of its intention not to
8 investigate or after 65 days have passed without notice from the LWDA.

9 93. On April 20, 2022, Plaintiff gave written notice of the specified provisions alleged
10 to have been violated, including the facts and theories to support the alleged violations, as
11 required by Labor Code Section 2699.3. This written notice was provided via certified mail to
12 Defendants GRAVITY HILL and LEE and to the LWDA by electronically filing the notice via
13 the Department of Industrial Relations' website. More than 65 days have passed since Plaintiff
14 submitted his PAGA notice to the LWDA without notice from the LWDA. Accordingly, Plaintiff
15 has exhausted the procedural requirements under Labor Code Section 2699.3 as to Defendants
16 GRAVITY HILL and LEE and is therefore able to pursue a claim for penalties on behalf of
17 himself and all other Aggrieved Employees under PAGA.

18 94. For all provisions of the Labor Code except those for which a civil penalty is
19 specifically provided, Labor Code Section 2699(f) imposes upon Defendants GRAVITY HILL
20 and LEE a penalty of one hundred dollars (\$100.00) for each Aggrieved Employee per pay period
21 for the initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
22 period for each subsequent pay period in which Defendants GRAVITY HILL and LEE violated
23 these provisions of the Labor Code.

24 95. Pursuant to Labor Code Sections 2699.3 and 2699.5, Plaintiff may seek civil
25 penalties for any alleged violation of the following provisions: subdivision (k) of Section 96,
26 Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2,
27 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222,
28 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section

226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 7 51.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 17 00.26, 1700.31, 1700.32, 1700.40, and 1700.47, Sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, 6399.7, 6400, 6401, 6401.7, 6402, and 6403.

96. Labor Code Section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802 [of the Labor Code], shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid.”

97. Labor Code Section 1197.1 provides “[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty . . . as follows: (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid . . . (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each

1 pay period for which the employee is underpaid regardless of whether the initial violation is
2 intentionally committed.”

3 98. Labor Code Section 226.3 provides: “[a]ny employer who violates subdivision (a)
4 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
5 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
6 for each violation in a subsequent citation, for which the employer fails to provide the employee a
7 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.
8 The civil penalties provided for in this section are in addition to any other penalty provided by
9 law.”

10 99. Labor Code Section 1174.5 provides a \$500 penalty for an employer’s failure to
11 maintain accurate and complete payroll records showing the hours worked daily by and the wages
12 paid to employees.

13 100. Defendants GRAVITY HILL and LEE’s conduct with respect to Plaintiff and the
14 other Aggrieved Employees violates numerous Labor Code Sections including, but not limited to,
15 the following:

- 16 a. Violation of Labor Code Sections 201-204, 206, 210, 510, 558, 1194, 1197,
17 1197.1, and 1198 for failure to timely pay all earned wages (including minimum,
18 regular, and overtime wages) owed to Plaintiff and the other Aggrieved Employees
19 during employment and upon separation of employment as herein alleged;
- 20 b. Violation of Labor Code Sections 226.7 and 512 for failure to provide meal
21 periods to Plaintiff and the other Aggrieved Employees and failure to pay premium
22 wages for missed meal periods as herein alleged;
- 23 c. Violation of Labor Code Sections 226.7 for failure to permit rest breaks to Plaintiff
24 and the other Aggrieved Employees and failure to pay premium wages for missed
25 rest periods as herein alleged;
- 26 d. Violation of Labor Code Sections 226 and 226.3 for failure to provide accurate
27 itemized wage statements to Plaintiff and the other Aggrieved Employees as herein
28 alleged;

1 e. Violation of Labor Code Sections 1174 and 1174.5 for failure to maintain accurate
2 records regarding the employment of Plaintiff and the other Aggrieved Employees
3 as herein alleged; and

4 f. Violation of Labor Code Sections 2800 and 2802 for failure to reimburse business
5 expenses to Plaintiff and the other Aggrieved Employees as herein alleged.

6 101. As set forth above, Defendants GRAVITY HILL and LEE have violated numerous
7 provisions of the Labor Code regulating hours and days of work as well as the IWC Wage Orders.
8 Accordingly, Plaintiff also seeks the civil penalties set forth in Labor Code Sections 558 and
9 1197.1 for himself, the underpaid employees, and the State of California.

10 102. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the
11 alleged violators and had one or more of the alleged violations committed against him, and
12 therefore is properly suited to represent the interests of all other Aggrieved Employees.

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

16 104. Plaintiff is also entitled to attorneys’ fees and costs.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and severally, as
19 follows:

20 1. For compensatory damages and general damages according to proof with interest
21 thereon;

22 2. For economic and/or special damages, and/or liquidated damages according to
23 proof with interest thereon;

24 3. For other damages, monetary relief, wages, premiums, reimbursements, benefits
25 and penalties, including interest thereon;

26 4. For prejudgment interest on all sums recovered pursuant to other compensatory
27 damages at the legal rate from the date of injury or pursuant to California Code of Civil Procedure
28 Sections 3287 and 3289, and Labor Code Section 218.6;

5. For all damages and penalties available for violations of the Labor Code;
6. For waiting time penalties pursuant to Labor Code Section 203;
7. For liquidated damages pursuant to Labor Code Section 1194.2;
8. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;
9. For treble damages pursuant to Penal Code Section 496(c);
10. For injunctive relief, disgorgement, and restitution of all money and property unlawfully acquired by Defendants through unfair or unlawful business practices pursuant to Business and Professions Code Sections 17200 *et seq.*;
11. For attorneys' fees pursuant to Labor Code Sections 226, 1194, 2802, Code of Civil Procedure Section 1021.5, Penal Code Section 496(c), and any other applicable provisions of law;
12. For costs of suit incurred; and
13. For any other and further relief as the Court deems just and proper.

WHEREFORE, Plaintiff, on behalf of himself and the Aggrieved Employees, prays for judgment against Defendants, jointly and severally, as follows:

14. For civil penalties against Defendants on behalf of all Aggrieved Employees pursuant to, *inter alia*, Labor Code Sections 210, 226.3, 558, 1174.5, 1197.1, and 2698, *et seq.*;
15. For reasonable attorneys' fees and costs of suit to the extent permitted by law, including pursuant to Labor Code Sections 2699(g), 2802(c) and California Code of Civil Procedure Section 1021.5; and

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

Dated: June 28, 2022

ALAMI LAW GROUP

By 

David Alami
Attorney for Plaintiff JEROME BURWELL

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

Dated: June 28, 2022

ALAMI LAW GROUP

By 

David Alami
Attorney for Plaintiff JEROME BURWELL