

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAY 26 2022


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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

GILBERTO GOMEZ, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

VETERAN ALLIANCE CONSTRUCTION
GROUP INC., a California Corporation; and
DOES 1 through 20, inclusive;

Defendants.

Case No.: **CIV SB 2209681**

**CLASS AND REPRESENTATIVE
COMPLAINT**

CLASS ACTION CLAIMS

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Meal Periods;
- (4) Failure to Provide Rest Breaks;
- (5) Failure to Reimburse Bus. Expenses
- (6) Failure to Timely Pay Final Wages;
- (7) Failure to Provide Accurate Itemized
Wage Statements;
- (8) Unfair and Unlawful Competition;

PAGA CLAIMS

- (9) Failure to Pay Minimum Wages;
- (10) Failure to Pay Overtime Wages;
- (11) Failure to Provide Meal Periods;
- (12) Failure to Provide Rest Breaks;
- (13) Failure to Reimburse Bus. Expense;
- (14) Failure to Timely Pay Wages;
- (15) Failure to Timely Pay Final Wages;
- (16) Failure to Provide Accurate Itemized
Wage Statements; and
- (17) Willful Misclassification

By Fax

1 Plaintiff Gilberto Gomez (“Plaintiff”) on behalf of himself, on a representative basis, and
2 on behalf of others similarly situated, complains and alleges as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against his former employer(s), Veteran Alliance
5 Construction Group Inc., and DOES 1 through 20, inclusive, (collectively, “Defendants”) on
6 behalf of all current and former nonexempt employees employed by Defendants in California
7 (the “Class” or “Represented Employees”), for Labor Code violations stemming from
8 Defendants’ failure to pay all wages owed, including minimum, regular, and overtime wages,
9 failure to provide meal periods, failure to provide rest breaks, failure to reimburse business
10 expenses, failure to timely pay wages each period and upon separation of employment, failure to
11 provide accurate itemized wage statements, and willful misclassification.

12 2. Plaintiff was employed by Defendants from approximately October 2021 through
13 March 2022.

14 3. Plaintiff alleges on information and belief that the Represented Employees were
15 subjected to the same policies, working conditions, and corresponding wage and hour violations
16 to which Plaintiff was subjected during employment.

17 4. Plaintiff and the Represented Employees were not provided all minimum, regular,
18 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
19 worked. As one specific example, Plaintiff and the Represented Employees were frequently
20 required to travel between job sites during the workday, yet Defendants did not provide any
21 compensation for this time spent under Defendants’ control. This violates California law and
22 leads to minimum and overtime wage violations. See *Troester v. Starbucks Corporation* (2018)
23 5 Cal.5th 829 (California law “do[es] not allow employers to require employees to routinely
24 work for minutes off the clock without compensation”).

25 5. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the
26 Represented Employees. For example, Plaintiff and the Represented Employees frequently
27 worked in excess of 8 hours per day and 40 hours per week. However, on such occasions,
28 Defendants did not pay any overtime compensation and instead merely paid all hours at straight

1 time. Thus, Defendants failed to pay proper overtime wages to the Represented Employees for
2 hours worked in excess of 8 and/or 12 per day and/or 40 per week, in violation of California law.

3 6. Plaintiff and the Represented Employees were also denied 30-minute off-duty
4 meal periods, as mandated by California law. As a result of Defendants' policies and practices,
5 the Represented Employees were subjected to meal period violations when they were: (1) unable
6 to take a meal period due to workload, (2) forced to take an on-duty meal period while under the
7 control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal
8 period after the 5th hour of work, and (5) not provided mandated second meal periods for shifts
9 in excess of 10 hours.

10 7. Defendants also failed to provide Plaintiff and the Represented Employees with
11 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
12 mandated by California law. Defendants did not schedule rest breaks for Plaintiff and the
13 Represented Employees, the Represented Employees were unable to leave the premises for
14 breaks, and the Represented Employees were often not authorized and/or permitted to take
15 mandated rest breaks due to being overwhelmed by their hectic workload. Furthermore, on
16 occasions when Plaintiff and the Represented Employees worked longer shifts, Defendants failed
17 to authorize and/or permit mandated third or fourth rest breaks.

18 8. Moreover, at all relevant times, Defendants required Plaintiff and the Represented
19 Employees to incur necessary business-related expenses and costs without reimbursement. For
20 example, Plaintiff was required to acquire and maintain a smart phone and monthly data plan to
21 communicate with the Company via phone, text message, and e-mail, without reimbursement.

22 9. Plaintiff also alleges that he and the Represented Employees were not paid all
23 wages due and owing each pay period (Labor Code § 204) and upon separation of employment
24 within the time required by Labor Code §§ 201 – 203. Plaintiff further alleges that Defendants
25 engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Represented
26 Employees at the time their employment ended with Defendants, including, but not limited to
27 minimum, regular, and overtime wages, sick pay wages, wage premiums, among others.

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1 10. Plaintiff further alleges that Defendants failed to provide accurate itemized wage
2 statements that fully complied with the requirements of Labor Code § 226(a).

3 11. Additionally, during the applicable period, Defendants engaged in a practice of
4 willfully misclassifying the Represented Employees as independent contractors despite that,
5 under applicable and controlling law, the Represented Employees were Defendants' employees.

6 12. Plaintiff alleges that Defendants' violations of the wage and hour components of
7 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their
8 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
9 its competitors.

10 13. At all material times, Defendants and DOES 1 through 20 were and/or are the
11 Represented Employees' employers or persons acting on behalf of the Represented Employees'
12 employer, within the meaning of California Labor Code § 558, who violated or caused to be
13 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
14 hours and days of work in an IWC Wage Order and, as such, are subject to penalties for each
15 underpaid employee as set forth in Labor Code § 558 and under California law.

16 14. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
17 monetary relief against Defendants and each of them, on behalf of himself and the Represented
18 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
19 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
20 210, 218.6, 226, 226.3, 226.7, 226.8, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and
21 2802, among possibly other sections inadvertently omitted. Plaintiff also reserves the right to
22 name additional representatives throughout the State of California.

23 **II. JURISDICTION**

24 15. This Court has jurisdiction over the claims for relief of Plaintiff and the
25 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

26 **III. VENUE**

27 16. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
28 Procedure § 395(a). Defendants transact business in San Bernardino County and the unlawful

1 acts alleged herein have a direct effect on Plaintiff and the Represented Employees in San
2 Bernardino County. Furthermore, Defendants employed or employ Plaintiff and Represented
3 Employees in San Bernardino County.

4 **IV. PARTIES**

5 **Plaintiff**

6 17. Plaintiff and Class Representative Gilberto Gomez was employed by Defendants
7 from approximately October 2021 through March 2022 and performed work for Defendants in
8 San Bernardino County.

9 **Defendants**

10 18. Plaintiff is informed and believes and thereon alleges that Defendant Veteran
11 Alliance Construction Group Inc. is a California corporation authorized to and doing business in
12 San Bernardino County, California. Plaintiff is also informed and believes that Defendant
13 Patriot Paving, Inc. is and/or was the legal employer of Plaintiff and the Represented Employees
14 during the applicable statutory periods.

15 19. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
16 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
17 inclusive, but on information and belief alleges that those Defendants are legally responsible for
18 the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of
19 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
20 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
21 Defendants when ascertained.

22 20. Plaintiff is informed and believes and thereon alleges that he and the Represented
23 Employees worked under the joint direction and control of Defendants and that Defendants, and
24 each of them, acted in all respects pertinent to this action as the agent of the other Defendants,
25 carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of
26 each Defendant are legally attributable to the other Defendants. On information and belief, a
27 unity of interest and ownership between each Defendant exists such that all Defendants acted as
28 a single employer of Plaintiff and other Represented Employees.

1 21. Furthermore, Plaintiff is informed and believes and thereon alleges that
2 Defendants, and each of them, are an integrated enterprise and should be treated as a single
3 employer because these entities share an interrelation of operations, with common human
4 resources and personnel policies and shared common offices and facilities. Additionally,
5 Defendants also have a shared website, common management, a centralized control of labor
6 operations, and common ownership or financial control.

7 22. Plaintiff is informed and believes and thereon alleges that, in conducting
8 themselves in the manner described herein, Defendants, and each of them, were acting in active
9 concert with one another such that the acts of each were and are fully attributable to the others in
10 all material respects. Plaintiff is further informed and believes that at all relevant times
11 Defendants and each of them are now, and at all material times herein mentioned were, the
12 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining
13 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and
14 purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of
15 their remaining co-Defendants.

16 23. Plaintiff is further informed and believes that at all relevant times, Defendants
17 have been inadequately capitalized to conduct business, have failed to follow appropriate
18 corporate formalities, and have simply been a shell and instrumentality through which
19 Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly,
20 the corporate veil should be pierced, and any liability attached to Defendants should be imposed
21 jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the
22 separate existence of these corporate entities would permit abuse of the corporate privilege,
23 thereby sanctioning fraud and promoting injustice.

24 **V. CLASS ACTION ALLEGATIONS**

25 24. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
26 alleged herein.

27 25. Plaintiff brings this action on behalf of himself and all others similarly situated as
28 a class action, pursuant to Code of Civil Procedure § 382.

1 26. The relevant time period for this class action is defined as the period beginning
2 four years prior to the filing of this action until class certification (the “Relevant Time Period”).

3 27. The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to
4 represent is defined as follows:

5 All current and former nonexempt employees employed by
6 Defendants in California during the Relevant Time Period.

7 28. Plaintiff also seeks to represent the following subclasses:

8 **Meal Break Subclass**

9 All Represented Employees who worked a shift in excess of
10 5 hours during the Relevant Time Period.

11 **Rest Break Subclass**

12 All Represented Employees who worked a shift of at least
13 3.5 hours during the Relevant Time Period.

14 **Unreimbursed Expense Subclass**

15 All Represented Employees who were required to incur
16 expenses to discharge their duties for Defendants without
17 reimbursement during the Relevant Time Period.

18 **Waiting Time Penalties Subclass**

19 All Represented Employees who separated from their
20 employment with Defendants during the period three years
21 before the filing of this action and ending when final
22 judgment is entered.

23 **Wage Statement Penalties Subclass**

24 All Represented Employees during the period one year
25 before the filing of this action and ending when final
26 judgment is entered.

27 29. Plaintiff reserves the right to amend or modify the class description with greater
28 specificity or further division into subclasses or limitation to particular issues as appropriate.

1 30. Plaintiff, as Class Representative, is a member of the class and subclasses that he
2 seeks to represent.

3 31. This action has been brought and may properly be maintained as a class action
4 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
5 litigation and the proposed class is easily ascertainable from Defendants' records.

6 32. **Numerosity:** The potential members of the Class as defined are so numerous that
7 a joinder of all Represented Employees is impracticable. Although the exact number is currently
8 unknown to Plaintiff, this information is easily ascertainable from Defendants' records.

9 33. **Commonality:** There are questions of law and fact common to the class which
10 predominate over any questions affecting only individual members of the class, including
11 without limitation:

12 i. Whether Defendants violated the California Labor Code and applicable
13 IWC Wage Order by failing to pay wages to Plaintiff and the Represented Employees for all
14 hours worked;

15 ii. Whether Defendants violated the California Labor Code and applicable
16 IWC Wage Order by failing to pay proper overtime wages to Plaintiff and the Represented
17 Employees for hours above 8 and/or 12 per day and/or 40 per week;

18 iii. Whether Defendants violated the California Labor Code and applicable
19 IWC Wage Order by failing to provide compliant meal periods to Plaintiff and the Meal Break
20 Subclass and whether Defendants failed to compensate Plaintiff and the Meal Break Subclass
21 with one additional hour of wages at the regular rate of pay for each instance when a compliant
22 meal period was not provided;

23 iv. Whether Defendants violated the California Labor Code and applicable
24 IWC Wage Order by failing to provide compliant rest breaks to Plaintiff and the Rest Break
25 Subclass and whether Defendants failed to compensate Plaintiff and the Rest Break Subclass
26 with one additional hour of wages at the regular rate of pay for each instance when a paid rest
27 break was not provided;

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1 v. Whether Defendants violated the Labor Code and applicable IWC Wage
2 Order by failing to reimburse Plaintiff and the Unreimbursed Expense Subclass for business
3 expenses incurred discharging their duties or in obedience to the directions of their employer;

4 vi. Whether Defendants violated the California Labor Code by failing to
5 timely pay all wages due upon separation of employment between Defendants and Plaintiff and
6 the Waiting Time Penalties Subclass, whether such separation was voluntary or involuntary;

7 vii. Whether Defendants violated the California Labor Code by failing to
8 provide Plaintiff and the Wage Statement Penalties Subclass with complete, accurate, itemized
9 wage statements;

10 viii. Whether Defendants violated California Business & Professions Code §§
11 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest
12 breaks, failure to provide mandated meal periods, failure to reimburse business expenses, and
13 failure to timely pay final wages; and

14 ix. Whether Plaintiff and Represented Employees are entitled to equitable
15 relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

16 34. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the
17 claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants'
18 ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all
19 wages owed, failure to provide mandated meal periods, failure to provide mandated paid rest
20 breaks, failure to reimburse business expenses, failure to timely pay wages upon separation of
21 employment, and failure to provide accurate itemized wage statements.

22 35. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly
23 and adequately represent and protect the interests of the Class. Plaintiff's interests are not in
24 conflict with those of the Class. Class Representative's counsel are competent and experienced in
25 litigating large employment class actions and other complex litigation matters, including cases
26 like this case.

27 36. **Superiority of Class Action.** Class certification is appropriate because a class
28 action is superior to other available means for the fair and efficient adjudication of this

1 controversy. Individual joinder of all Represented Employees is not practicable, and questions of
2 law and fact common to the Class predominate over any questions affecting only individual
3 members of the Class. Each Represented Employee has been damaged and is entitled to
4 recovery by reason of Defendants' illegal policies and practices set forth above. Class action
5 treatment will allow those similarly situated persons to litigate their claims in the manner that is
6 most efficient and economical for the parties and the judicial system.

7 **FIRST CAUSE OF ACTION**

8 **FAILURE TO PAY MINIMUM WAGES**

9 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

10 *Plaintiff and the Represented Employees Against All Defendants*

11 37. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
12 alleged herein.

13 38. Plaintiff and the Represented Employees were not exempt from the requirement
14 to be paid at least the applicable California minimum wage throughout the statutory period for
15 each hour worked.

16 39. Plaintiff and the Represented Employees were not provided proper minimum and
17 regular wages due to Defendants' failure to accurately record and compensate for all hours
18 worked. As a result of this policy and practice, Plaintiff and the Represented Employees were
19 required to perform off-the-clock work that Defendants either knew or should have known they
20 were performing.

21 40. As one specific example, Plaintiff and the Represented Employees were
22 frequently required to travel between job sites during the workday, yet Defendants did not
23 provide any compensation for this time spent under Defendants' control. This violates California
24 law and leads to minimum and overtime wage violations. See *Troester v. Starbucks Corporation*
25 (2018) 5 Cal.5th 829 (California law "do[es] not allow employers to require employees to
26 routinely work for minutes off the clock without compensation").

27 41. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
28 Represented Employees for all hours worked.

42. Consequently, Defendants violated California Labor Code laws and minimum wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

43. Plaintiff is informed and believes and thereon alleges that Defendants intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Represented Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

44. Defendants' conduct was willful, as Defendants knew that Plaintiff and the Represented Employees were entitled to be paid wages throughout the statutory period for each hour worked, including proper minimum and regular wages, yet Defendants chose not to pay them in accordance thereto.

45. At all material times, Defendants DOES 1 through 20 were and/or are the employer of Plaintiff and the Represented Employees or were persons acting on behalf of said employer(s), within the meaning of California Labor Code § 558, who violated or caused to be violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California Labor Code regulating hours and days of work respectively.

46. During employment of Plaintiff and the Represented Employees, Defendants failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

47. As a result of the Defendants' wrongful conduct, Plaintiff and the Represented Employees have been damaged in amounts to be proven at trial.

48. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of all unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs of suit, pursuant to Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be proven at trial.

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FAILURE TO PAY OVERTIME WAGES

Plaintiff and the Represented Employees Against All Defendants

50. Plaintiff and the Represented Employees were employees of Defendants who did not receive proper protections and benefits of the laws governing payment of overtime wages.

52. At all relevant times, Plaintiff and the Represented Employees were required by Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to Defendants' failure to accurately record and compensate for all hours worked Plaintiff and the Represented Employees did not receive proper overtime compensation.

54. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the Represented Employees. For example, Plaintiff and the Represented Employees frequently worked in excess of 8 hours per day and 40 hours per week. However, on such occasions, Defendants did not pay any overtime compensation and instead merely paid all hours at straight

1 time. Thus, Defendants failed to pay proper overtime wages to the Represented Employees for
2 hours worked in excess of 8 and/or 12 per day and/or 40 per week, in violation of California law

3 55. As a result of these policies and practices, Defendants failed to pay Plaintiff and
4 the Represented Employees for all overtime hours worked.

5 56. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
6 Order § 3(A) every pay period with respect to Plaintiff and the Represented Employees because
7 Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per
8 week without proper overtime compensation.

9 57. Plaintiff is informed and believes and thereon alleges that Defendants
10 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the
11 Represented Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

12 58. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
13 Represented Employees were entitled to be paid proper overtime wages throughout the statutory
14 period, yet Defendants chose not to pay them in accordance thereto.

15 59. At all material times, Defendants DOES 1 through 20 were and/or are the
16 employer of Plaintiff and the Represented Employees or were persons acting on behalf of said
17 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be
18 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
19 Labor Code regulating hours and days of work respectively.

20 60. During the employment of Plaintiff and the Represented Employees, Defendants
21 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

22 61. As a result of Defendants' wrongful conduct, Plaintiff and the Represented
23 Employees have been damaged in amounts to be proven at trial.

24 62. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of
25 all unpaid overtime wages, penalties, interest, attorneys' fees, and costs of suit against
26 Defendants in an amount to be proven at trial.

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1 69. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
2 Order every pay period because Plaintiff and the Meal Break Subclass were not provided with all
3 mandatory meal periods and Defendants failed to pay Plaintiff and the Meal Break Subclass one
4 additional hour of compensation at the regular rate of pay in lieu thereof.

5 70. At all relevant times herein, Defendants failed to provide Plaintiff and the Meal
6 Break Subclass all mandated meal periods and failed to pay wage premiums in lieu of mandated
7 meal or rest periods, thereby receiving an economic benefit.

8 71. On information and belief, Plaintiff and the Meal Break Subclass did not
9 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
10 obtained from Plaintiff and the Meal Break Subclass were not willfully obtained, were not
11 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
12 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Meal Break Subclass
13 to take meal periods in accordance with California law.

14 72. By their failure to provide Plaintiff and the Meal Break Subclass with meal
15 periods as required by California law, and failing to pay one hour of additional wages in lieu of
16 each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and
17 IWC Wage Order § 11. Accordingly, Defendants are liable for one hour of additional wages at
18 the employee's regular rate of compensation for each work day that a meal period was not
19 lawfully provided in an amount to be proven at time of trial.

20 73. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
21 and IWC Wage Order § 11, Defendants, and each of them, are liable to Plaintiff and the Meal
22 Break Subclass for unpaid wage premiums, penalties, costs, and interest.

23 **FOURTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE REST BREAKS**

25 (Labor Code §§ 226.7 and 512; IWC Wage Order § 12)

26 *Plaintiff and the Rest Break Subclass Against All Defendants*

27 74. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
28 alleged herein.

1 75. Plaintiff and the Rest Break Subclass are and/or were employees of Defendants
2 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

3 76. Labor Code § 226.7 requires employers, including Defendants, to provide rest
4 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

5 77. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
6 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
7 each work period. Employees shall receive a 10-minute rest period every four hours or major
8 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
9 hours worked, for which there shall be no deduction from wages.

10 78. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
11 Order, Defendants shall pay Plaintiff and the Represented Employees one additional hour of pay
12 at his regular rate of compensation for each day that the rest period is not provided.

13 79. At all relevant times, Defendants also failed to provide Plaintiff and the Rest
14 Break Subclass with 10 minutes of net rest break time for every 4 hours worked, or major
15 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks for the
16 Rest Break Subclass, the Rest Break Subclass were unable to leave the premises for breaks, and
17 the Rest Break Subclass were often not authorized and/or permitted to take mandated rest breaks
18 due to being overwhelmed by their hectic workload. Furthermore, on occasions when the Rest
19 Break Subclass worked longer shifts, Defendants failed to authorize and/or permit mandated
20 third or fourth rest breaks.

21 80. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
22 Order every pay period because Plaintiff and the Rest Break Subclass were not provided with all
23 mandatory rest periods and Defendants failed to pay Plaintiff and the Represented Employees
24 one additional hour of compensation in lieu thereof.

25 81. At all relevant times herein, Defendants failed to provide Plaintiff and the Rest
26 Break Subclass all mandated rest breaks and failed to pay wage premiums in lieu of mandated
27 rest periods, thereby receiving an economic benefit.

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1 82. By their failure to provide Plaintiff and the Rest Break Subclass with rest breaks
2 as required by California law, and failing to pay one hour of additional wages in lieu of each rest
3 break not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage
4 Order § 12. Accordingly, Defendants are liable for one hour of additional wages at the
5 employee's regular rate of compensation for each workday that a paid rest break was not
6 lawfully provided in an amount to be proven at time of trial.

7 83. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
8 and IWC Wage Order § 12, Defendants, and each of them, are liable to Plaintiff and the Rest
9 Break Subclass for unpaid wage premiums, penalties, costs, and interest.

10 **FIFTH CAUSE OF ACTION**

11 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

12 (Labor Code § 2802)

13 *Plaintiff and the Unreimbursed Expense Subclass Against All Defendants*

14 84. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
15 alleged herein.

16 85. Plaintiff and the Unreimbursed Expense Subclass are and/or were employees of
17 Defendants who did not receive proper protections and benefits of the laws governing
18 reimbursement of business expenses.

19 86. Labor Code § 2802(a) requires that the employer indemnify its employees for
20 expenses and losses incurred while discharging their duties or in obedience to the directions of
21 their employer.

22 87. At all relevant times herein mentioned, as a condition of employment, Defendants
23 required Plaintiff and the Unreimbursed Expense Subclass to incur necessary business-related
24 expenses and costs without reimbursement, including acquiring and maintaining a smart phone
25 and monthly data plan to communicate with the Company via phone, text message, and e-mail.

26 88. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
27 failed to reimburse Plaintiff and the Unreimbursed Expense Subclass for expenses incurred as a
28 direct consequence of employment with Defendants and/or under the direction of Defendants.

89. At all relevant times herein, Defendants failed to reimburse the Unreimbursed Expense Subclass, including Plaintiff, for expenses incurred while discharging duties to Defendants, thereby receiving an economic benefit.

90. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage Order § 9(B), Plaintiff and the Unreimbursed Expense Subclass have suffered, and continue to suffer, substantial losses related to such incurred expenses, expenses, and attorney's fees in seeking to compel Defendants to fully perform their obligations under the law, all in an amount to be proved at time of trial.

91. Labor Code § 2802(b) states that “[a]ll awards made by a Court for reimbursement of necessary expenditures” shall carry interest, at the same rate as judgments in civil actions, and said interest will accrue from the date on which the employee incurred the necessary expenditure or loss including, but not limited to, reasonable costs and attorney’s fees incurred by the employee enforcing the rights granted pursuant to Labor Code § 2802. The exact amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

92. Furthermore, Labor Code § 2802(c) states that “[f]or the purposes of this section, the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee in enforcing the rights granted by this section.” Therefore, Plaintiff and the Unreimbursed Expense Subclass seek to recover the unreimbursed expenses, interest on the unreimbursed expenses, and the costs and attorney’s fees necessarily incurred in pursuing same. The exact amount of reimbursements, interest, costs, and attorney’s fees will be in an amount to be proved at the time of trial.

SIXTH CAUSE OF ACTION

FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201 – 203)

Plaintiff and the Waiting Time Penalties Subclass against All Defendants

93. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

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1 94. Plaintiff and the Waiting Time Penalties Subclass are and/or were employees of
2 Defendants who did not receive proper protections and benefits of the laws governing the timing
3 and payment of wages.

4 95. Labor Code § 201 requires that the employer immediately pay any wages, without
5 abatement or reduction, to any employee who is discharged.

6 96. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
7 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
8 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

9 97. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
10 penalty from the due date thereof at the same rate until paid or until an action therefore is
11 commenced, but the wages shall not continue for more than thirty (30) days.

12 98. At all relevant times, Defendants employed a policy and practice whereby
13 Plaintiff and the Waiting Time Penalties Subclass were not paid all wages due and owing upon
14 separation of employment within the time required by Labor Code §§ 201 and 202.

15 99. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
16 wages due and owing to Plaintiff and the Waiting Time Penalties Subclass upon separation of
17 employment, including, but not limited to, minimum, regular, and overtime wages, as well as
18 meal and rest period premiums.

19 100. Plaintiff alleges that, at all times material to this action, Defendants had a planned
20 pattern and practice of failing to timely pay Plaintiff and the Waiting Time Penalties Subclass all
21 wages due and owing upon separation of employment as required by Labor Code §§ 201 and
22 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Waiting
23 Time Penalties Subclass the above-described waiting time penalty, all in an amount to be shown
24 according to proof at trial and within the jurisdiction of this Court.

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1 **SEVENTH CAUSE OF ACTION**

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

3 (Labor Code § 226)

4 *Plaintiff and the Wage Statement Penalties Subclass against All Defendants*

5 101. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
6 alleged herein.

7 102. Plaintiff and the Wage Statement Penalties Subclass are and/or were employees of
8 Defendants who did not receive proper protections and benefits of the laws governing the
9 provision of accurate itemized wage statements.

10 103. Labor Code § 226(a) requires an employer to provide its employees with itemized
11 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
12 inclusive dates of the pay period, the employee's name and the last four digits of his or her
13 Social Security number (or employee identification number), the name and address of the legal
14 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
15 corresponding number of hours worked at each hourly rate by the employee.

16 104. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
17 and the Wage Statement Penalties Subclass due to violations including: failure to accurately state
18 total hours worked (for example, the wage statements failed to accurately reflect the
19 compensable hours worked); failure to accurately state gross wages earned; failure to accurately
20 state all deductions; failure to accurately state net wages earned; failure to state the applicable
21 hourly rates (including the accurate overtime rate of pay); and failure to accurately state the
22 corresponding number of hours worked at each hourly rate.

23 105. Additionally, Defendants' wage statements directly violated Labor Code § 226(a)
24 each period due to the failure to pay and report premium wages for denied meal periods and rest
25 breaks under § 226.7.

26 106. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
27 to Plaintiff and the Wage Statement Penalties Subclass because Defendants failed to provide a
28 wage statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the

1 requirements of Labor Code § 226(a).

2 107. Defendants' failure to provide the required writing deprived Plaintiff and the
3 Wage Statement Penalties Subclass of the ability to know, understand, and question the
4 calculation and rate of pay and hours used to calculate the wages paid by Defendants. Therefore,
5 Plaintiff and the Wage Statement Penalties Subclass had no way to dispute the resulting
6 miscalculation of wages, all of which resulted in an unjustified economic enrichment to said
7 Defendants. As a direct result, Plaintiff and the Wage Statement Penalties Subclass have suffered
8 and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost
9 interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully
10 perform its obligation under state law, all to their respective damages in amounts according to
11 proof at trial.

12 108. As a result of Defendants' knowing and intentional failure to comply with Labor
13 Code § 226(a), Plaintiff and the Wage Statement Penalties Subclass have suffered an injury in
14 that each was prevented from knowing, understanding and disputing the wage payments paid to
15 them. Furthermore, Plaintiff and the Wage Statement Penalties Subclass have each suffered an
16 injury in that the failure to show all wages earned on the itemized wage statements resulted in
17 Plaintiff and the Represented Employees being denied all necessary deductions, payments, and
18 withholdings owed by the employer, including, but not limited to, the failure to make all
19 necessary contributions for unemployment benefits, social security benefits, proper payment of
20 taxes and withholdings, and other mandated state and federal benefits.

21 109. Plaintiff has also been injured as a result of having to bring this action to attempt
22 to obtain correct wage information following Defendants' refusal to comply with many of the
23 mandates of California's Labor Code and related laws and regulations.

24 110. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
25 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and
26 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
27 attorney's fees and costs, to Plaintiff and the Wage Statement Penalties Subclass who were
28 injured by Defendants' failure to comply with Labor Code § 226(a). The exact amount of the

1 applicable penalty is all in an amount to be shown according to proof at trial.

2 **EIGHTH CAUSE OF ACTION**

3 **UNFAIR AND UNLAWFUL COMPETITION**

4 (Business and Professions Code § 17200 *et seq.*)

5 *Plaintiff and the Represented Employees against All Defendants*

6 111. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
7 alleged herein.

8 112. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
9 competition, which includes any “unlawful, unfair or fraudulent business act or practice.” The
10 Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact,
11 due to the unfair and unlawful business practices of Defendants as alleged herein.

12 113. Defendants, and each of them, are “persons” as defined under Business &
13 Professions Code § 17021.

14 114. As alleged herein, Defendants engaged in conduct that violated California’s wage
15 and hour laws, including failure to pay minimum, regular, and overtime wages, failure to provide
16 mandated meal periods and rest breaks, failure to reimburse business expenses, and failure to
17 timely pay wages upon separation of employment, all to decrease their costs and increase profits.

18 115. At all times relevant herein, Defendants did not pay Plaintiff and the Represented
19 Employees wages and monies and other financial obligations to which they were entitled.

20 116. As a result of Defendants’ failure to comply with the Labor Code and IWC
21 Orders, Represented Employees, including Plaintiff, suffered a loss of wages and monies, all in
22 an amount to be shown according to proof at trial. Defendants’ ongoing violations of the
23 foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

24 117. Defendants’ violations of the California Labor Code and IWC Wage Orders and
25 its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business
26 practices because it was done in a systematic manner over a period of time to the detriment of the
27 Plaintiff and all others similarly-situated.

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1 118. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
2 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
3 Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code
4 of Civil Procedure § 1021.5.

5 119. A violation of California Business & Professions Code § 17200, et seq. may be
6 predicated on the violation of any state or federal law. All of the acts described herein as
7 violations of, among other things, the California Labor Code and IWC Wage Orders, are
8 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,
9 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
10 practices in violation of California Business and Professions Code §§ 17200, et seq.

11 120. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
12 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
13 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
14 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
15 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
16 harm unless Defendants, and each of them, are restrained from continuing to engage in said
17 unfair, unlawful and/or fraudulent business practices.

18 121. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
19 and does, seek such relief as may be necessary to disgorge the profits which Defendants have
20 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the
21 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
22 Represented Employees are not obligated to establish individual knowledge of the unfair
23 practices of Defendants in order to recover restitution.

24 122. Plaintiff, individually, and on behalf of the Represented Employees, is further
25 entitled to and do seek a declaration that the above described business practices are unfair,
26 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
27 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
28 the future.

1 123. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and
2 Represented Employees are entitled to restitution of the wages withheld and retained by
3 Defendants during a period that commences four years prior to the filing of this complaint; a
4 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
5 Represented Employees; an award of attorneys’ fees pursuant to California Code of Civil
6 Procedure § 1021.5 and other applicable laws; and an award of costs.

7 **VI. LABOR CODE PRIVATE ATTORNEYS GENERAL ACT CAUSES OF ACTION**
8 **(Cal. Lab. Code. §§ 2698 – 2699.5)**

9 124. Plaintiff is an “aggrieved employee” under the PAGA as he was employed by
10 Defendants during the applicable statutory period and suffered one or more of the Labor Code
11 violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil
12 action filed on behalf of himself and all other similarly situated current and former aggrieved
13 employees in California against whom one or more of the alleged violations was committed
14 (hereinafter the “Aggrieved Employees”).

15 125. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to
16 Labor Code § 2699, as well as attorneys’ fees, costs, and/or other damages as permitted by
17 PAGA through a representative action pursuant to the PAGA and the California Supreme Court
18 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor
19 does she, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

20 126. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing
21 to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to
22 Defendants of the specific provisions of the Labor Code alleged to have been violated, including
23 the facts and theories to support the alleged violations. Once more than sixty-five (65) days have
24 passed since the date gave notice, Plaintiff will have fully satisfied the administrative
25 prerequisites to suit under the PAGA and this Complaint will be deemed amended to include the
26 PAGA allegations enumerated below.

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1 **NINTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES**

3 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 127. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
6 alleged herein.

7 128. Plaintiff and the Aggrieved Employees were not exempt from the requirement to
8 be paid at least the applicable California minimum wage throughout the statutory period for each
9 hour worked.

10 129. Plaintiff and the Aggrieved Employees were not provided proper minimum and
11 regular wages due to Defendants' failure to accurately record and compensate for all hours
12 worked.

13 130. As one specific example, Plaintiff and the Aggrieved Employees were frequently
14 required to travel between job sites during the workday, yet Defendants did not provide any
15 compensation for this time spent under Defendants' control. This violates California law and
16 leads to minimum wage violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829
17 (California law "do[es] not allow employers to require employees to routinely work for minutes
18 off the clock without compensation"). And, as a result of this policy and practice, Defendants
19 failed to pay Plaintiff and the Aggrieved Employees for all hours worked.

20 131. Consequently, Defendants violated California Labor Code laws and minimum
21 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
22 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

23 132. Plaintiff is informed and believes and thereon alleges that Defendants
24 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved
25 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

26 133. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
27 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
28 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES

PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES

(Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

Plaintiff and the Aggrieved Employees against All Defendants

134. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

135. Plaintiff and the Aggrieved Employees were employees of Defendants who did not receive proper protections and benefits of the laws governing payment of overtime wages.

136. Labor Code § 204 requires that the employer timely pay all overtime wages to its employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12) in one workday shall be compensated at twice the regular rate of pay for an employee.

137. At all relevant times, Plaintiff and the Aggrieved Employees were required by Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to Defendants' failure to accurately record and compensate for all hours worked Plaintiff and the Aggrieved Employees did not receive proper overtime compensation.

138. As one specific example, Plaintiff and the Aggrieved Employees were frequently required to travel between job sites during the workday, yet Defendants did not provide any compensation for this time spent under Defendants' control. This violates California law and leads to overtime violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law "do[es] not allow employers to require employees to routinely work for minutes off the clock without compensation").

139. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the Aggrieved Employees. For example, Plaintiff and the Represented Employees frequently worked in excess of 8 hours per day and 40 hours per week. However, on such occasions, Defendants did not pay any overtime compensation and instead merely paid all hours at straight time. Thus,

1 Defendants failed to pay proper overtime wages to the Represented Employees for hours worked
2 in excess of 8 and/or 12 per day and/or 40 per week, in violation of California law

3 140. As a result of these policies and practices, Defendants failed to pay Plaintiff and
4 the Aggrieved Employees for all overtime hours worked.

5 141. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
6 Order § 3(A) every pay period with respect to Plaintiff and the Aggrieved Employees because
7 Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per
8 week without proper overtime compensation.

9 142. Plaintiff is informed and believes and thereon alleges that Defendants
10 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the
11 Aggrieved Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

12 143. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
13 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
14 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

15 **ELEVENTH CAUSE OF ACTION**

16 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS**

17 (Labor Code § 226.7 and 512; IWC Wage Order § 11, 12)

18 *Plaintiff and the Aggrieved Employees against All Defendants*

19 144. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
20 alleged herein.

21 145. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
22 who did not receive proper protections and benefits of the laws governing mandatory meal
23 periods.

24 146. Labor Code § 226.7 requires employers, including Defendants, to provide
25 employees with meal periods as mandated by the Industrial Welfare Commission.

26 147. Labor Code § 512(a), in part, provides that employers, including Defendants, may
27 not employ an employee for a work period of more than five hours per day without providing an
28 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,

1 except that if the total work period per day of the employee is no more than six hours, the meal
2 period may be waived by mutual consent of both the employer and the employee. Employers
3 may not employ an employee for a work period more than 10 hours per day without providing
4 the employee with a second meal period of not less than 30 minutes.

5 148. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
6 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
7 pay for each meal period that is missed.

8 149. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied
9 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
10 practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when
11 they were: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal
12 period while under the control of the Company, (3) forced to take a shortened meal period, (4)
13 forced to take a meal period after the 5th hour of work, and (5) not provided mandated second
14 meal periods for shifts in excess of 10 hours.

15 150. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
16 Order every pay period because Plaintiff and the Aggrieved Employees were not provided with
17 all mandatory meal periods and Defendants failed to pay Plaintiff and the Aggrieved Employees
18 one additional hour of compensation at the regular rate of pay in lieu thereof.

19 151. On information and belief, Plaintiff and the Aggrieved Employees did not
20 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
21 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not
22 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
23 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved
24 Employees to take meal periods in accordance with California law.

25 152. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
26 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
27 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

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1 **TWELFTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS**

3 (Labor Code § 226.7 and 512; IWC Wage Order § 12)

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 153. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
6 alleged herein.

7 154. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
8 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

9 155. Labor Code § 226.7 requires employers, including Defendants, to provide rest
10 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

11 156. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
12 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
13 each work period. Employees shall receive a 10-minute rest period every four hours or major
14 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
15 hours worked, for which there shall be no deduction from wages.

16 157. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
17 Order, Defendants shall pay Plaintiff and the Represented Employees one additional hour of pay
18 at his regular rate of compensation for each day that the rest period is not provided.

19 158. At all relevant times, Defendants also failed to provide Plaintiff and the
20 Aggrieved Employees with 10 minutes of net rest break time for every 4 hours worked, or major
21 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks for the
22 Aggrieved Employees, the Aggrieved Employees were unable to leave the premises for breaks,
23 and the Aggrieved Employees were often not authorized and/or permitted to take mandated rest
24 breaks due to being overwhelmed by their hectic workload. Furthermore, on occasions when the
25 Aggrieved Employees worked longer shifts, Defendants failed to authorize and/or permit
26 mandated third or fourth rest breaks.

27 159. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
28 Order every pay period because Plaintiff and the Aggrieved Employees were not provided with

1 all mandatory rest periods and Defendants failed to pay Plaintiff and the Aggrieved Employees
2 one additional hour of compensation in lieu thereof.

3 160. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
4 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
5 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

6 **THIRTEENTH CAUSE OF ACTION**

7 **PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES**

8 (Labor Code § 2802)

9 *Plaintiff and the Unreimbursed Expense Subclass Against All Defendants*

10 161. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
11 alleged herein.

12 162. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
13 who did not receive proper protections and benefits of the laws governing reimbursement of
14 business expenses.

15 163. Labor Code § 2802(a) requires that the employer indemnify its employees for
16 expenses and losses incurred while discharging their duties or in obedience to the directions of
17 their employer.

18 164. At all relevant times herein mentioned, as a condition of employment, Defendants
19 required Plaintiff and the Aggrieved Employees to incur necessary business-related expenses and
20 costs without reimbursement, including acquiring and maintaining a smart phone and related
21 monthly data plan to communicate with the Company via phone, text message, and e-mail.

22 165. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
23 failed to reimburse Plaintiff and the Aggrieved Employees for expenses incurred as a direct
24 consequence of employment with Defendants and/or under the direction of Defendants.

25 166. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
26 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
27 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

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1 **FOURTEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD**

3 (Labor Code § 204)

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 167. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
6 alleged herein.

7 168. Plaintiff and the Aggrieved Employees are and/or were “nonexempt” employees
8 of Defendants who did not receive proper protections and benefits of the laws regarding the
9 timing of payment of wages each period.

10 169. Labor Code § 204(a) states that all wages earned by a person are due and payable
11 twice during each calendar month, and further states that wages earned during the first through
12 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
13 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
14 the following month.

15 170. Furthermore, Labor Code § 204(d) states “[t]he requirements of this section shall
16 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
17 the wages are paid not more than seven calendar days following the close of the payroll period.”

18 171. At all relevant times herein, Defendants did not provide Plaintiff and the
19 Aggrieved Employees with all wages due and owing each period within the time required by
20 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Aggrieved
21 Employees with all wages due and owing each pay period, including, but not limited to,
22 minimum, regular, and overtime wages, sick pay, as well as meal and rest period premiums,
23 within the time specified by Labor Code § 204.

24 172. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
25 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
26 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

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1 **FIFTEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES**

3 (Labor Code §§ 201 – 203 and 256)

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 173. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
6 alleged herein.

7 174. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees
8 of Defendants who did not receive proper protections and benefits of the laws governing the
9 timing and payment of final wages.

10 175. Labor Code § 201 requires that the employer immediately pay any wages, without
11 abatement or reduction, to any employee who is discharged.

12 176. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
13 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
14 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

15 177. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
16 penalty from the due date thereof at the same rate until paid or until an action therefore is
17 commenced, but the wages shall not continue for more than thirty (30) days.

18 178. At all relevant times here, Defendants did not provide Plaintiff and the Aggrieved
19 Employees with all wages due and owing upon separation of employment, including, but not
20 limited to, minimum, regular, and overtime wages, as well as meal and rest period premiums,
21 within the time specified by Labor Code §§ 201 – 203.

22 179. Plaintiff alleges that, at all times material to this action, Defendants had a planned
23 pattern and practice of failing to timely pay to Plaintiff and the Aggrieved Employees all wages
24 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.

25 180. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
26 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
27 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

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1 **SIXTEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR**

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

4 (Labor Code § 226)

5 *Plaintiff and the Aggrieved Employees against All Defendants*

6 181. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
7 alleged herein.

8 182. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
9 who did not receive proper protections and benefits of the laws governing the provision of
10 accurate itemized wage statements.

11 183. Labor Code § 226(a) requires an employer to provide its employees with itemized
12 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
13 inclusive dates of the pay period, the employee's name and the last four digits of his or her
14 Social Security number (or employee identification number), the name and address of the legal
15 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate by the employee.

17 184. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
18 and the Aggrieved Employees because due to violations including: failure to accurately state
19 total hours worked (for example, the wage statements failed to accurately reflect the
20 compensable hours worked); failure to accurately state gross wages earned; failure to accurately
21 state all deductions; failure to accurately state net wages earned; failure to state the applicable
22 hourly rates (including the accurate overtime rate of pay); and failure to accurately state the
23 corresponding number of hours worked at each hourly rate.

24 185. Additionally, Defendants' wage statements directly violated Labor Code § 226(a)
25 each period due to the failure to pay and report premium wages for denied meal periods and rest
26 breaks under § 226.7.

27 186. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
28 to Plaintiff and the Aggrieved Employees because Defendants failed to provide a wage statement

1 to Plaintiff and the Aggrieved Employees that complied with the requirements of Labor Code §
2 226(a).

3 187. As a result of the Defendants' violations of Labor Code § 226(a), Plaintiff seeks
4 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
5 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.
6 See *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 675 ("Section
7 226.3 provides the civil penalty for failure to comply" with Labor Code § 226).

8 **SEVENTEENTH CAUSE OF ACTION**

9 **PAGA ASSESSMENT FOR WILLFUL MISCLASSIFICATION**

10 (Labor Code § 226.8)

11 *Plaintiff and the Aggrieved Employees Against All Defendants*

12 188. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
13 alleged herein.

14 189. At all relevant times, Plaintiff and the Aggrieved Employees performed various
15 duties for Defendants as nonexempt employees. However, Defendants have maintained policies
16 and practices based on or including the willful misclassification of Plaintiff and the Aggrieved
17 Employees as independent contractors despite that, under applicable standards of law, Plaintiff
18 and all Aggrieved Employees are/were employees, and not independent contractors.

19 190. Defendants engaged in a practice of willfully misclassifying Plaintiff and the
20 Aggrieved Employees as independent contractors despite that Plaintiff and the Aggrieved
21 Employees are/were employees of Defendants because they (A) are/were subject to the control
22 and direction of Defendants in connection with the performance of their work, both under
23 contract and in fact, (B) performed work that was the core business of Defendants (e.g.,
24 contractor services), and therefore the Aggrieved Employees' tasks were not outside the usual
25 course of the Company's business, and (C) were not customarily engaged in an independently
26 established trade, occupation, or business of the same nature as the work performed by
27 Defendants.

28 ///

1 191. Also, Plaintiff and the Aggrieved Employees were subject to the direction and
2 control of Defendants in regard to work assignments, scheduling requirements, and days of work.
3 Furthermore, Defendants directly and indirectly exercised control over the wages, hours, and
4 working conditions of Plaintiff and the Aggrieved Employees. At all relevant times, the daily
5 schedule for Plaintiff and the Aggrieved Employees was controlled solely by Defendants, and
6 Defendants told them the exact time and location for all daily work. Furthermore, through the
7 performance of their job duties, Plaintiff and the Aggrieved Employees performed an integral
8 and entirely essential aspect of Defendants' business. In fact, Plaintiff and the Aggrieved
9 Employees were tasked to perform the one and only service that Defendants provided: contractor
10 services. Additionally, the customers are and/or were Defendants' customers, not those of
11 Plaintiff or the Aggrieved Employees. Plaintiff and the Aggrieved Employees were also
12 prohibited from performing similar services for other companies and, thus, were not engaged in
13 an independently established trade, occupation or business of the same nature as the work
14 performed by Defendants. And, perhaps most importantly, Defendants retained the right to
15 terminate Plaintiff and the Aggrieved Employees' working relationship without cause and at its
16 discretion. Despite these facts, Defendants misclassified Plaintiff and the Aggrieved Employees
17 as independent contractors.

18 192. Despite the facts discussed herein, Defendants misclassified Plaintiff and the
19 Aggrieved Employees as independent contractors.

20 193. Labor Code § 226.8(a) states "It is unlawful for any person or employer to engage
21 in any of the following activities: (1) Willful misclassification of an individual as an independent
22 contractor."

23 194. Labor Code § 226.8(b) states that if "a person or employer has engaged in any of
24 the enumerated violations of subdivision (a), the person or employer shall be subject to a civil
25 penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars
26 (\$15,000) for each violation, in addition to any other penalties or fines permitted by law."

27 195. Labor Code § 226.8(c) further states that if "a person or employer has engaged in
28 any of the enumerated violations of subdivision (a) and the person or employer has engaged in or

1 is engaging in a pattern or practice of these violations, the person or employer shall be subject to
2 a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five
3 thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines
4 permitted by law.

5 196. At all relevant times herein, Defendants engaged in a pattern and practice of
6 willfully and knowingly misclassifying Plaintiff and the Aggrieved Employees as independent
7 contractors. Therefore, Plaintiff and the Aggrieved Employees are entitled to the stepped-up
8 penalties as set forth in Labor Code § 226.8(c).

9 197. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
10 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
11 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA

12 **VII. PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, on behalf of himself, on a representative basis, and all others
14 similarly situated, prays for judgment and relief against Defendants, jointly and severally, as
15 follows:

- 16 1. That the First through Eighth Causes of Action be certified as a class action;
- 17 2. That Plaintiff be appointed as Class Representative;
- 18 3. That counsel for Plaintiff be appointed Class Counsel;
- 19 4. For all applicable statutory penalties recoverable under the First through Eighth
20 Causes of Action to the extent permitted by law, including those pursuant to Labor Code and
21 Orders of the Industrial Welfare Commission;
- 22 5. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by
23 law, including those pursuant to the Labor Code;
- 24 6. For injunctive relief and/or restitution as provided by the Labor Code and
25 Business and Professions Code § 17200, *et seq.*;
- 26 7. As to the Ninth through Seventeenth Causes of Action, the assessment of all
27 applicable and available remedies under the PAGA;
- 28 8. For reasonable attorneys' fees and costs as permitted under the PAGA;

1 9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
2 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 226.8, 510, 512, 558, 1194, 1197,
3 1198, 1199, and 2802, among other sections inadvertently omitted;

4 10. For an award of damages in the amount of unpaid compensation including, but
5 not limited to, unpaid wages, benefits, and penalties according to proof, including interest
6 thereon;

7 11. For pre- and post-judgment interest; and

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

9 **DEMAND FOR JURY TRIAL**

10 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, hereby
11 demands a jury trial as to the First through Eighth Causes of Action pled herein.

12
13 Dated: May 25, 2022

LAUBY, MANKIN & LAUBY LLP

14
15 BY:



16 Brian J. Mankin, Esq.
17 Peter J. Carlson, Esq.
18 Attorneys for Plaintiff
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