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VANARA PHOK
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10 VANARA PHOK, individually and on
behalf of others similarly situated, and as an
11 aggrieved employee and Private Attorney
General,
12

13 Plaintiff,

14 vs.

15 BEST PERFORMANCE TIRE AND
COMPLETE SERVICE LLC, a California
limited liability company; BEST
16 PERFORMANCE TIRE AND ELITE
AUTO SERVICE LLC, a California limited
17 liability company; BEST PERFORMANCE
TIRE AND PREMIUM AUTO SERVICE
18 LLC, a California limited liability company;
BEST PERFORMANCE TIRE AND
19 SERVICE LLC, a California limited liability
company; BEST PERFORMANCE TIRE
20 WORLD & COMPLETE AUTO SERVICE
LLC, a California limited liability company;
21 and DOES 1 through 100, inclusive,

22 Defendants.
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Case No.: 22STCV16444

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

DEMAND FOR TRIAL BY JURY

- (1) Violation of Cal. Labor Code §§ 510 and 1198 (Unpaid Overtime)
- (2) Violation of Cal. Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums)
- (3) Violation of Cal. Labor Code § 226.7 (Unpaid Rest Period Premiums)
- (4) Violation of Cal. Labor Code §§ 1194, 1197 and 1197.1 (Unpaid Minimum Wages)
- (5) Violation of Cal. Labor Code §§ 201, 202 and 203 (Final Wages Not Timely Paid)
- (6) Violation of Labor Code §§ 204 and 210 (Wages Not Timely Paid During Employment)
- (7) Violation of Labor Code §§ 226 and 246(i) (Failure to Provide Written Notice of Paid Sick Leave and Supplemental Paid Sick Leave)
- (8) Violation of Cal. Labor Code § 226(a) (Failure to Provide Accurate Wage Statements)
- (9) Violation of Cal. Labor Code §§ 2800 and 2802 (Failure to Reimburse Necessary Business Expenses)
- (10) Violation of Cal. Business & Professions Code § 17200, et seq.

**(11) Violation of Cal. Labor Code § 2699
(Private Attorneys' General Act)**

Plaintiff Vanara Phok ("Plaintiff"), individually and on behalf of other members of the general public similarly situated, and as a private attorney general, based upon facts that either have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery, alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff brings this action against Defendants (defined below) and Does 1 through 100 for California Labor Code violations, unfair business practices, and civil penalties stemming from Defendants' failure to pay overtime compensation, failure to provide meal periods, failure to authorize and permit rest periods, failure to pay minimum wage, failure to timely pay wages, failure to provide written notice of paid sick leave and supplemental paid sick leave, failure to provide accurate wage statements, failure to maintain accurate time and payroll records, and failure to reimburse necessary business-related expenses.

2. Plaintiff's First through Tenth Causes of Action are brought as a class action on behalf of himself and similarly situated current and former employees of Defendants (hereinafter collectively referred to as the "Class" or "Class Members," as defined more fully in paragraph 12, below) pursuant to California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

3. Plaintiff's Eleventh Cause of Action is brought as a representative action on behalf of himself and certain other current and former employees of Defendants against whom one or more of the alleged violations was committed (hereinafter collectively referred to as the "Aggrieved Employees") pursuant to California Labor Code sections 2698, *et seq.* Plaintiff is an aggrieved employee against whom one or more of the alleged violations occurred. The civil penalties sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial

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4. The Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

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

6. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, County of Los Angeles.

PARTIES

7. Plaintiff is an individual residing in the County of Los Angeles, State of California.

8. Plaintiff is informed and believes that Defendants Best Performance Tire and Complete Service LLC (“Best Performance”) is, and was, a California limited liability company, authorized to transact, and transacting, business in the State of California and County of Los Angeles. Plaintiff is informed and believes, and thereon alleges that, at all relevant times herein, Best Performance had its headquarters and principal place of business at 10081 Chapman Avenue, Garden Grove, County of Los Angeles, State of California. Plaintiff is informed and believed, and thereon alleges that, at all times relevant herein, Best Performance employed more than five (5) employees for each working day during each of twenty (20) or more calendar weeks in each relevant calendar year.

9. Plaintiff is informed and believes that Defendants Best Performance Tire and Elite Auto Service LLC (“Best Performance Elite Auto”) is, and was, a California limited liability company, authorized to transact, and transacting, business in the State of California and County of Los Angeles. Plaintiff is informed and believes, and thereon alleges that, at all relevant times herein, Best Performance Elite Auto had its headquarters and principal place of business at 10081 Chapman Avenue, Garden Grove, County of Los Angeles, State of California. Plaintiff is informed and

1 believed, and thereon alleges that, at all times relevant herein, Best Performance Elite Auto employed
2 more than five (5) employees for each working day during each of twenty (20) or more calendar
3 weeks in each relevant calendar year.

4 10. Plaintiff is informed and believes that Defendants Best Performance Tire and Premium
5 Auto Service LLC (“Best Performance Premium Auto”) is, and was, a California limited liability
6 company, authorized to transact, and transacting, business in the State of California and County of
7 Los Angeles. Plaintiff is informed and believes, and thereon alleges that, at all relevant times herein,
8 Best Performance Premium Auto had its headquarters and principal place of business at 10081
9 Chapman Avenue, Garden Grove, County of Los Angeles, State of California. Plaintiff is informed
10 and believed, and thereon alleges that, at all times relevant herein, Best Performance Premium Auto
11 employed more than five (5) employees for each working day during each of twenty (20) or more
12 calendar weeks in each relevant calendar year.

13 11. Plaintiff is informed and believes that Defendants Best Performance Tire and Service
14 LLC (“Best Performance Tire”) is, and was, a California limited liability company, authorized to
15 transact, and transacting, business in the State of California and County of Los Angeles. Plaintiff is
16 informed and believes, and thereon alleges that, at all relevant times herein, Best Performance Tire
17 had its headquarters and principal place of business at 10081 Chapman Avenue, Garden Grove,
18 County of Los Angeles, State of California. Plaintiff is informed and believed, and thereon alleges
19 that, at all times relevant herein, Best Performance Tire employed more than five (5) employees for
20 each working day during each of twenty (20) or more calendar weeks in each relevant calendar year.

21 12. Plaintiff is informed and believes that Defendants Best Performance Tire World &
22 Complete Auto Service LLC (“Best Performance Tire World”) is, and was, a California limited
23 liability company, authorized to transact, and transacting, business in the State of California and
24 County of Los Angeles. Plaintiff is informed and believes, and thereon alleges that, at all relevant
25 times herein, Best Performance Tire World had its headquarters and principal place of business at
26 10081 Chapman Avenue, Garden Grove, County of Los Angeles, State of California. Plaintiff is
27 informed and believed, and thereon alleges that, at all times relevant herein, Best Performance Tire
28 World employed more than five (5) employees for each working day during each of twenty (20) or

1 more calendar weeks in each relevant calendar year.

2 13. Defendants Best Performance, Best Performance Elite Auto, Best Performance
3 Premium Auto, Best Performance Tire, Best Performance Tire World are collectively known as
4 “Defendants.”

5 14. The true names and capacities of the defendants named herein as Does 1 through 100,
6 inclusive, whether individual, corporate, associate or otherwise, are unknown to Plaintiff who
7 therefore sues such defendants by fictitious names pursuant to California Code of Civil Procedure
8 section 474. Plaintiff is informed and believes that all of the Doe defendants are California residents.
9 Plaintiff will amend this Complaint to show such true names and capacities when they have been
10 determined

11 15. Plaintiff is informed and believes that at all times relevant herein, each Defendants
12 designated, including Defendants, and Does 1 through 100, was the agent, managing agent, principal,
13 owner, partner, joint venturer, representative, manager, servant, employee and/or co-conspirator of
14 each of the other defendants, and was at all times mentioned herein acting within the course and scope
15 of said agency and employment, and that all acts or omissions alleged herein were duly committed
16 with the ratification, knowledge, permission, encouragement, authorization and consent of each
17 Defendants designated herein. Defendants, if not separately noted, are collectively liable under either
18 a joint employer or a single enterprise theory, or in the alternative that each is an alter ego of one
19 another.

20 16. Defendants are, and at all times herein mentioned were, (a) conducting business in the
21 County of Los Angeles, State of California, and (b) the employer of Plaintiff consistent with the
22 California Labor Code and Industrial Welfare Commission Wage Orders (“Wage Orders”).

23 17. Plaintiff further alleges that Defendants, directly or indirectly controlled or affected
24 the working conditions, wages, working hours, and conditions of employment of Plaintiff and the
25 Class, and the Aggrieved Employees, so as to make each of said Defendants employers jointly liable
26 under the statutory provisions set forth herein.

27 **CLASS ACTION ALLEGATIONS**

28 18. Plaintiff brings the First through Tenth Causes of Action as a class action on his own

1 behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks
2 class certification under Code of Civil Procedure section 382.

3 19. The proposed class is defined as follows: All current and former non-exempt
4 employees of any of Defendants within the State of California at any time commencing four (4) years
5 preceding the filing of Plaintiff's complaint up until the time that notice of the certified class action
6 is provided to the class (hereinafter referred to as the "Class" or "Class Members.").

7 20. Plaintiff reserves the right to establish other subclasses as appropriate.

8 21. The Class is ascertainable and there is a well-defined community of interest in the
9 litigation:

- 10 a. Numerosity: The Class Members are so numerous that joinder of all Class Members
11 is impracticable. The membership of the entire Class is unknown to Plaintiff at this
12 time; however, the Class is estimated to be over fifty (50) individuals and the
13 identity of such membership is readily ascertainable by inspection of Defendants'
14 employment records.
- 15 b. Typicality: Plaintiff's claims are typical of all other Class Members demonstrated
16 herein. Plaintiff will fairly and adequately protect the interests of the other Class
17 Members with whom he has a well-defined community of interest.
- 18 c. Adequacy: Plaintiff will fairly and adequately protect the interests of each Class
19 Member, with whom he has a well-defined community of interest and typicality of
20 claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to the other
21 Class Members. Plaintiff's attorneys, the proposed class counsel, are versed in the
22 rules governing class action discovery, certification, and settlement. Plaintiff has
23 incurred, and during the pendency of this action will continue to incur, costs and
24 attorneys' fees, that have been, are, and will be necessarily expended for the
25 prosecution of this action for the substantial benefit of each Class Member.
- 26 d. Superiority: A class action is superior to other available methods for the fair and
27 efficient adjudication of this litigation because individual joinder of all Class
28 Members is impractical.

1 e. Public Policy Considerations: Certification of this lawsuit as a class action will
2 advance public policy objectives. Employers of this great state violate employment
3 and labor laws every day. Current employees are often afraid to assert their rights out
4 of fear of direct or indirect retaliation. However, class actions provide the Class
5 Members who are not named in the complaint anonymity that allows for the
6 vindication of their rights.

7 22. There are common questions of law and fact as to the Class that predominate over
8 questions affecting only individual members. The following common questions of law or fact, among
9 others, exist as to the members of the Class:

- 10 a. Whether Defendants' failure to pay wages, without abatement, or reduction, in
11 accordance with the California Labor Code was willful;
- 12 b. Whether Defendants had a corporate policy and practice of failing to pay Plaintiff and
13 the other Class Members for all hours worked, and missed, short, late or interrupted
14 meal periods and rest breaks in violation of California law;
- 15 c. Whether Defendants required Plaintiff and the other Class Members to work more
16 than eight (8) hours per day and/or more than forty (40) hours per week and failed to
17 pay the legally required overtime compensation to Plaintiff and the other Class
18 Members;
- 19 d. Whether Defendants deprived Plaintiff and the other Class Members of meal and/or
20 rest periods or required Plaintiff and the other Class Members to work during meal
21 and/or rest periods without compensation;
- 22 e. Whether Defendants failed to pay meal period premium wages to Class Members
23 when they were not provided with a legally compliant meal period;
- 24 f. Whether Defendants failed to pay rest period premium wages to Class Members when
25 they were not authorized and permitted to take legally compliant rest periods;
- 26 g. Whether Defendants failed to pay minimum wages to Plaintiff and the other Class
27 Members for all hours worked;
- 28 h. Whether Defendants failed to pay Plaintiff and the other Class Members the required

- 1 minimum wage pursuant to California law;
- 2 i. Whether Defendants failed to pay Plaintiff and the other Class Members proper
- 3 overtime compensation pursuant to California law;
- 4 j. Whether Defendants failed to pay all wages due to Plaintiff and the other Class
- 5 Members within the time required upon their discharge or resignation from
- 6 employment;
- 7 k. Whether Defendants failed to reimburse Plaintiff and the other Class Members for all
- 8 necessary business-related expenses and costs in violation of California Labor Code
- 9 section 2802;
- 10 l. Whether Defendants failed to pay reporting time wages in violation of the applicable
- 11 IWC Wage Order;
- 12 m. Whether Defendants failed to timely pay all wages due to Plaintiff and the other Class
- 13 Members during their employment;
- 14 n. Whether Defendants complied with wage reporting as required by the California
- 15 Labor Code, including section 226;
- 16 o. Whether Defendants' conduct was with malice, fraud or oppression;
- 17 p. Whether Defendants' conduct was willful or reckless;
- 18 q. Whether Defendants engaged in unfair business practices in violation of California
- 19 Business & Professions Code section 17200, *et seq.* based on their improper
- 20 withholding of compensation and deduction of wages;
- 21 r. The appropriate amount of damages, restitution, and/or monetary penalties resulting
- 22 from Defendants' violation of California law; and
- 23 s. Whether Plaintiff and the other Class Members are entitled to compensatory damages
- 24 pursuant to the California Labor Code.

25 **GENERAL ALLEGATIONS**

26 23. Defendants are engaged in the business of providing auto and tire care services.

27 24. At all relevant times set forth herein, Defendants employed Plaintiff and the Class,

28 and the Aggrieved Employees, as hourly-paid or non-exempt employees.

1 25. Throughout the time period involved in this case, Defendants had the authority to hire
2 and terminate Plaintiff and the Class and the Aggrieved Employees; to directly or indirectly control
3 work rules, working conditions, wages, working hours, and conditions of employment of Plaintiff
4 and the Class and the Aggrieved Employees; and to hire and terminate the employment of Plaintiff
5 and the Class and the Aggrieved Employees.

6 26. At all times herein mentioned, Defendants were subject to the Labor Code of the State
7 of California and the applicable Industrial Welfare Commission Orders.

8 27. Plaintiff is informed and believes, and thereon alleges that Defendants engaged in an
9 ongoing and systematic scheme of wage abuse against their hourly-paid or non-exempt employees.
10 As set forth in more detail below, this scheme involved, *inter alia*, regularly requiring Plaintiff and
11 the Class and the Aggrieved Employees to work without compensation and/or without timely
12 compensation, thereby failing to pay them for all hours worked, including minimum and overtime
13 wages. In addition, Defendants routinely failed to permit Plaintiff and the Class and the Aggrieved
14 Employees to take timely and duty-free meal periods and rest periods in violation of California law.
15 Defendants also failed to reimburse Plaintiff and the Class and the Aggrieved Employees for all
16 necessary business-related expenses.

17 28. Throughout the time period involved in this case, Defendants implemented policies
18 and/or practices which failed to provide Plaintiff and the Class and the Aggrieved Employees with
19 timely and duty-free meal periods. Defendants routinely failed to relieve Plaintiff and the Class and
20 the Aggrieved Employees of all duties during their meal periods, regularly failed to relinquish control
21 over Plaintiff and the Class and the Aggrieved Employees during their meal periods, regularly failed
22 to permit Plaintiff and the Class and the Aggrieved Employees with a reasonable opportunity to take
23 their meal periods, and regularly impeded or discouraged Plaintiff and the Class and the Aggrieved
24 Employees from taking thirty (30) minute uninterrupted meal breaks no later than the end of their
25 fifth hour of work and/or from taking a second thirty (30) minute uninterrupted meal break no later
26 than their tenth hour of work for shifts lasting more than ten (10) hours. Defendants also failed to
27 maintain accurate records of meal periods taken by Plaintiff and the Class.

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1 29. Throughout the time period involved in this case, Defendants did not adequately
2 inform Plaintiff and the Class and the Aggrieved Employees of their right to take meal periods under
3 California law. Moreover, Defendants systematically disregarded their own written policies regarding
4 the provision and timing of meal periods for Plaintiff and the Class and the Aggrieved Employees.
5 Instead, Defendants' actual policy and practice was to schedule Plaintiff and the Class and the
6 Aggrieved Employees in a way that prohibited them from taking timely and duty-free meal periods,
7 and to require Plaintiff and the Class and the Aggrieved Employees to work through their meal
8 periods, for which they were not compensated.

9 30. Throughout the time period involved in this case, Defendants failed to pay Plaintiff
10 and the Class and the Aggrieved Employees premium wages for meal periods that were missed, late,
11 interrupted, or shortened in violation of California law. Defendants knew or should have known that
12 Plaintiff and the Class and the Aggrieved Employees were entitled to receive all meal periods or
13 payment of one additional hour of pay at their regular rate of pay when a meal period was missed,
14 short, late, and/or interrupted. Notwithstanding this knowledge, Defendants routinely failed to
15 provide legally compliant meal periods to Plaintiff and the Class and the Aggrieved Employees, and
16 routinely failed to pay one additional hour of pay to Plaintiff and the Class and the Aggrieved
17 Employees at their regular rate of pay when a meal period was missed, short, late, and/or interrupted.

18 31. Throughout the time period involved in this case, Defendants have implemented
19 policies and practices which prohibited Plaintiff and the Class and the Aggrieved Employees from
20 taking timely and duty-free rest periods. Defendants regularly failed to provide, authorize, and permit
21 Plaintiff and the Class and the Aggrieved Employees to take full, uninterrupted, off-duty rest periods
22 for every shift lasting three and one-half (3.5) to six (6) hours and/or two full, uninterrupted, off-duty
23 rest periods for every shift lasting six (6) to ten (10) hours, and failed to make a good faith effort to
24 authorize, permit, and provide such rest breaks in the middle of each work period.

25 32. Throughout the time period involved in this case, Defendants did not adequately
26 inform Plaintiff and the Class and the Aggrieved Employees of their right to take rest periods under
27 California law. Moreover, Defendants systematically disregarded their own written policies regarding
28 the provision and timing of rest periods for Plaintiff and the Class and the Aggrieved Employees.

1 Instead, Defendants' actual policy and practice was to schedule Plaintiff and the Class and the
2 Aggrieved Employees in a way that regularly prohibited them from taking timely and duty free rest
3 periods, and to regularly require Plaintiff and the Class and the Aggrieved Employees to work through
4 their rest periods.

5 33. Throughout the time period involved in this case, Defendants failed to pay Plaintiff
6 and the Class and the Aggrieved Employees premium wages for rest periods that were missed, late,
7 interrupted, or shortened in violation of California law. Defendants knew or should have known that
8 Plaintiff and the Class and the Aggrieved Employees were entitled to receive all rest periods or
9 payment of one additional hour of pay at their regular rate of pay when a rest period was missed,
10 short, late, and/or interrupted. Notwithstanding this knowledge, Defendants routinely failed to
11 authorize and permit Plaintiff and the Class and the Aggrieved Employees to take duty-free rest
12 periods, and failed to pay one additional hour of pay to Plaintiff and the Class and the Aggrieved
13 Employees at their regular rate of pay when a rest period was missed, short, late and/or interrupted.

14 34. Throughout the time period involved in this case, Defendants paid Plaintiff and the
15 Class and the Aggrieved Employees with paychecks that would bounce, or delay the issuance of
16 payments, so that payment would not be received by Plaintiff and the Class and the Aggrieved
17 Employees until after the time period designated and required by the California Labor Code.

18 35. Throughout the time period involved in this case, Defendants implemented policies that
19 prohibited Plaintiff and the Class and the Aggrieved Employees from accurately recording the actual
20 time worked, resulting in a failure to pay Plaintiff and the Class and the Aggrieved Employees all
21 wages owed.

22 36. Throughout the time period involved in this case, Plaintiff and the Class and the
23 Aggrieved Employees worked more than eight (8) hours in a day, and/or forty (40) hours in a week.

24 37. Throughout the time period involved in this case, Defendants regularly failed to pay
25 all overtime compensation owed to Plaintiff and the Class and the Aggrieved Employees when they
26 worked in excess of eight (8) hours in a single work day and/or forty (40) hours in a single work
27 week, or in excess of twelve (12) hours in a single work day and/or eighty (80) hours in a single work
28 week. Defendants knew or should have known that Plaintiff and the Class and the Aggrieved

1 Employees were entitled to receive certain wages for overtime compensation and that they were not
2 receiving wages for overtime compensation.

3 38. Throughout the time period involved in this case, Defendants failed to pay overtime
4 to Plaintiff and the Class and the Aggrieved Employees for all overtime hours worked based on
5 regular rates of pay correctly calculated to include all applicable remuneration.

6 39. Throughout the time period involved in this case, Defendants regularly failed to pay
7 Plaintiff and the Class and the Aggrieved Employees at least minimum wages for all hours worked.
8 Defendants knew or should have known that Plaintiff and the Class and the Aggrieved Employees
9 were entitled to receive at least minimum wages for all hours worked and that they were not receiving
10 at least minimum wages for all hours worked. Defendants' failure to pay minimum wages included,
11 *inter alia*, failing to pay Plaintiff and the Class and the Aggrieved Employees at the required
12 minimum wage pursuant to California law.

13 40. Throughout the time period involved in this case, Defendants regularly failed to pay
14 Plaintiff and the Class and the Aggrieved Employees all wages owed to them upon discharge or
15 resignation. Defendants knew or should have known that Plaintiff and the Class and the Aggrieved
16 Employees were entitled to receive all wages owed to them upon termination within the time
17 permissible under California Labor Code section 202. Plaintiff and the Class and the Aggrieved
18 Employees did not receive payment of all final wages owed to them upon discharge or resignation,
19 including overtime compensation and minimum wages within any time permissible under California
20 Labor Code section 202.

21 41. Throughout the time period involved in this case, Defendants regularly failed to pay
22 Plaintiff and the Class and the Aggrieved Employees all wages within any time permissible under
23 California law, including, *inter alia*, California Labor Code section 204. Defendants knew or should
24 have known that Plaintiff and the Class and the Aggrieved Employees were entitled to receive all
25 wages owed to them during their employment. Plaintiff and the Class and the Aggrieved Employees
26 did not receive payment of all wages, including overtime compensation, minimum wages, and meal
27 and rest period premiums.

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1 42. Throughout the time period involved in this case, Defendants regularly failed to
2 provide complete or accurate wage statements to Plaintiff and the Class and the Aggrieved
3 Employees. Defendants knew or should have known that Plaintiff and the Class and the Aggrieved
4 Employees were entitled to receive complete and accurate wage statements in accordance with
5 California law, but, in fact, they did not receive complete and accurate wage statements from
6 Defendant. The deficiencies included, *inter alia*, the failure to include the total number of hours
7 worked, the actual gross wages earned, the correct rates of pay, and the address of the legal entity of
8 the employer.

9 43. California Labor Code section 246(I) states that an “employer shall provide an
10 employee with written notice that sets forth the amount of paid sick leave available, or paid time off
11 leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage
12 statement as described in Section 226 or in a separate writing provided on the designated pay date
13 with the employee's payment of wages.” Defendants’ knowingly and intentionally failed to provide
14 timely, accurate, itemized wage statements to Plaintiff and the Class and the Aggrieved Employees
15 in accordance with Labor Code sections 226(a) and 246(i), and to keep accurate records as required
16 by § 1174(d). The wage statements provided to Plaintiff and the Class and the Aggrieved Employees,
17 and the records maintained by Defendants, have not accurately reflected the amounts of available
18 paid sick leave, vacation, or paid time off. Such failures caused injury to Plaintiff and the Class and
19 the Aggrieved Employees, by, among other things, depriving them of the rights afforded them by the
20 2021 COVID-19 Supplemental Paid Sick Leave law, and by impeding them from knowing the
21 accurate amounts of available paid sick leave, vacation, or paid time off.

22 44. Throughout the time period involved in this case, Defendants regularly failed to keep
23 complete or accurate payroll records for Plaintiff and the Class and the Aggrieved Employees.
24 Defendants knew or should have known that Defendants was required to keep complete and accurate
25 payroll records for Plaintiff and the Class and the Aggrieved Employees in accordance with California
26 law, but, in fact, did not keep complete and accurate payroll records.

27 45. Throughout the time period involved in this case, Defendants regularly failed to
28 maintain accurate records relating to Plaintiff’s and the Class’ work periods, meal periods, total daily

1 hours, hours per pay period, and applicable pay rates.

2 46. Throughout the time period involved in this case, Defendants failed to reimburse
3 Plaintiff and the Class and the Aggrieved Employees for all necessary business-related expenses,
4 including but not limited to cell phone usage. Defendants knew or should have known that Defendants
5 was required to reimburse Plaintiff and the Class and the Aggrieved Employees for all necessary
6 business-related expenses and costs, but, in fact, failed to do so in violation of California law.

7 47. Throughout the time period involved in this case, Defendants knew or should have
8 known that they had a duty to compensate Plaintiff and the Class and the Aggrieved Employees
9 pursuant to California law. Defendants had the financial ability to pay such compensation, but
10 willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and the
11 Class and the Aggrieved Employees that they paid all wages owed to them, all in order to increase
12 Defendants' profits.

13 48. California Labor Code section 218 states that nothing in Article 1 of the Labor Code
14 shall limit the right of any wage claimant to "sue directly ... for any wages or penalty due to him [or
15 her] under this article."

16 **FIRST CAUSE OF ACTION**

17 **(Violation of California Labor Code §§ 510 and 1198)**

18 **(Against All Defendants)**

19 49. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
20 every allegation set forth above.

21 50. California Labor Code section 1198 and the applicable Industrial Welfare
22 Commission ("IWC") Wage Order provide that it is unlawful to employ persons without
23 compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate
24 of pay, depending on the number of hours worked by the person on a daily or weekly basis.

25 51. Specifically, the applicable IWC Wage Order provides that Defendants is and was
26 required to pay Plaintiff and the other Class Members employed by Defendant, and working more
27 than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-
28 one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a

1 workweek.

2 52. The applicable IWC Wage Order further provides that Defendants is and was required
3 to pay Plaintiff and the Class overtime compensation at a rate of two times their regular rate of pay
4 for all hours worked in excess of twelve (12) hours in a day and for all hours worked in excess of
5 eight (8) hours on the seventh day of work in a workweek.

6 53. California Labor Code section 510 codifies the right to overtime compensation at one-
7 and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or
8 forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and no
9 overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12)
10 hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

11 54. During the relevant time period, Plaintiff and the other Class Members regularly
12 worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

13 55. During the relevant time period, Defendants intentionally and willfully failed to
14 properly pay overtime wages owed to Plaintiff and the other Class Members.

15 56. Defendants' failure to properly pay Plaintiff and the other Class Members the unpaid
16 balance of overtime compensation, as required by California laws, violates the provisions of
17 California Labor Code sections 510 and 1198, and is therefore unlawful.

18 57. Pursuant to California Labor Code section 1194, Plaintiff and the other Class Members
19 are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

20 **SECOND CAUSE OF ACTION**

21 **(Violation of California Labor Code §§ 226.7 and 512(a))**

22 **(Against All Defendants)**

23 58. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
24 every allegation set forth above.

25 59. At all relevant times, the relevant IWC Order and California Labor Code sections
26 226.7 and 512(a) were applicable to Plaintiff and the other Class Members' employment by
27 Defendant.

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1 60. At all relevant times, California Labor Code section 226.7 provides that no employer
2 shall require an employee to work during any meal or rest period mandated by an applicable order of
3 the California IWC.

4 61. At all relevant times, the applicable IWC Wage Order and California Labor Code
5 section 512(a) provide that an employer may not require, cause or permit an employee to work for a
6 work period of more than five (5) hours per day without providing the employee with a meal period
7 of not less than thirty (30) minutes, except that if the total work period per day of the employee is no
8 more than six (6) hours, the meal period may be waived by mutual consent of both the employer and
9 employee.

10 62. At all relevant times, California Labor Code section 512(a) further provides that an
11 employer may not require, cause or permit an employee to work for a work period of more than ten
12 (10) hours per day without providing the employee with a second uninterrupted meal period of not
13 less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours,
14 the second meal period may be waived by mutual consent of the employer and the employee only if
15 the first meal period was not waived.

16 63. During the relevant time period, Plaintiff and the other Class Members who were
17 scheduled to work for a period of time longer than six (6) hours, and who did not waive their legally-
18 mandated meal periods by mutual consent, were required to work for periods longer than five (5)
19 hours without an uninterrupted meal period of not less than thirty (30) minutes.

20 64. During the relevant time period, Plaintiff and the other Class Members who were
21 scheduled to work for a period of time in excess of ten (10) hours were required to work for periods
22 longer than ten (10) hours without a second uninterrupted meal period of not less than thirty (30)
23 minutes.

24 65. During the relevant time period, Defendants intentionally and willfully required
25 Plaintiff and the other Class Members to miss their meal periods and to take meal periods that were
26 late, shortened, or interrupted, and failed to compensate Plaintiff and the other Class Members the
27 full meal period premium for missed, shortened, late, or interrupted meal periods.

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66. During the relevant time period, Defendants failed to pay Plaintiff and the other Class Members the full meal period premiums due pursuant to California Labor Code section 226.7.

67. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7 and 512(a).

68. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff and the other Class Members are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each work day that the meal period was not provided.

THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against All Defendants)

69. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

70. At all times herein set forth, the applicable IWC Wage Order and California Labor Code section 226.7 were applicable to Plaintiff and the other Class Members' employment by Defendant.

71. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

72. At all relevant times, the applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof unless the total daily work time is less than three and one-half (3.5) hours.”

73. During the relevant time period, Defendants required Plaintiff and other Class Members to work four (4) or more hours (or majority fraction thereof) without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked (or majority fraction thereof).

74. During the relevant time period, Defendants willfully required Plaintiff and the other Class Members to work during rest periods, failed to allow Plaintiff and the other Class Member to take any rest period and/or failed to authorize and permit Plaintiff and the other Class Members to take uninterrupted, duty-free rest breaks.

75. During the relevant time period, Defendants failed to pay Plaintiff and the other Class Members the full rest period premium due pursuant to California Labor Code section 226.7 for work performed during rest periods, and/or for failure to authorize and permit Plaintiff and other Class Members from taking uninterrupted rest periods.

76. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

77. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(b), Plaintiff and the other Class Members are entitled to recover from Defendants one additional hour of pay at the employees' regular hourly rate of compensation for each work day that the rest period was not provided.

FOURTH CAUSE OF ACTION

(Violation of California Labor Code §§ 1194, 1197, and 1197.1)

(Against All Defendants)

78. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

79. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide that the minimum wage to be paid to employees and the payment of a lesser wage than the minimum so fixed is unlawful.

80. During the relevant time period, Defendants regularly failed to properly pay minimum wage to Plaintiff and the other Class Members as required pursuant to California Labor Code sections 1194, 1197, and 1197.1.

81. Defendants' failure to pay Plaintiff and the other Class Members the minimum wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections, Plaintiff and the other Class Members are entitled to recover the unpaid balance of their

1 minimum wage compensation as well as interest, costs, and attorneys' fees, and liquidated damages
2 in an amount equal to the wages unlawfully unpaid and interest thereon.

3 82. Pursuant to California Labor Code section 1194.2, Plaintiff and the other Class
4 Members are entitled to recover liquidated damages in an amount equal to the wages unlawfully
5 unpaid and interest thereon.

6 **FIFTH CAUSE OF ACTION**

7 **(Violation of California Labor Code §§ 201, 202, 203)**

8 **(Against All Defendants)**

9 83. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
10 every allegation set forth above.

11 84. At all relevant times herein set forth, California Labor Code sections 201 and 202
12 provide that if an employer discharges an employee, the wages earned and unpaid at the time of
13 discharge are due and payable immediately, and if an employee quits his or her employment, his or
14 her wages shall become due and payable not later seventy-two (72) hours thereafter, unless the
15 employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the
16 employee is entitled to his or her wages at the time of quitting.

17 85. During the relevant time period, the employment of Plaintiff and many other Class
18 Members with Defendants ended, *i.e.* was terminated by quitting or discharge. Defendants
19 intentionally and willfully failed to pay Plaintiff and other Class Members who are no longer
20 employed by Defendants all of their wages, earned and unpaid, including but not limited to minimum
21 wages, straight time wages, and overtime wages, within seventy-two (72) hours of their leaving
22 Defendants' employ.

23 86. Defendants' failure to pay Plaintiff and other Class Members who are no longer
24 employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their
25 leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

26 87. California Labor Code section 203 provides that if an employer willfully fails to pay
27 wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue
28 as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but

1 the wages shall not continue for more than thirty (30) days.

2 88. Plaintiff and other Class Members who are no longer employed by Defendants are
3 entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up
4 to a thirty (30) day maximum pursuant to California Labor Code section 203.

5 **SIXTH CAUSE OF ACTION**

6 **(Violation of California Labor Code §§ 204 and 210)**

7 **(Against All Defendants)**

8 89. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
9 every allegation set forth above

10 90. At all times herein set forth, California Labor Code section 204 provides that all wages
11 earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar
12 month, other than those wages due upon termination of an employee, are due and payable between
13 the 16th and 26th day of the month during which the labor was performed.

14 91. At all times herein set forth, California Labor Code section 204 provides that all wages
15 earned by any person in any employment between the 16th and the last day, inclusive, of any calendar
16 month, other than those wages due upon termination of an employee, are due and payable between
17 the 1st and the 10th day of the following month.

18 92. At all times herein set forth, California Labor Code section 204 provides that all wages
19 earned for labor in excess of the normal work period shall be paid no later than the payday for the
20 next regular payroll period.

21 93. During the relevant time period, Defendants intentionally and willfully failed to pay
22 Plaintiff and other Class Members all wages due to them, within any time period permissible under
23 California Labor Code section 204.

24 94. Plaintiff and other Class Members are entitled to recover all available remedies for
25 Defendants' violations of California Labor Code section 204, including statutory penalties pursuant
26 to Labor Code section 210(b).

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1 **SEVENTH CAUSE OF ACTION**

2 **(Violation of Labor Code §§ 226 and 246(i) (Failure to Provide Written Notice of Paid Sick**
3 **Leave and Supplemental Paid Sick Leave)**
4 **(Against All Defendants)**

5 95. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
6 every allegation set forth above.

7 96. At all material times set forth herein, California Labor Code section 246(i) stated that
8 an “employer shall provide an employee with written notice that sets forth the amount of paid sick
9 leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the
10 employee's itemized wage statement as described in Section 226 or in a separate writing provided on
11 the designated pay date with the employee's payment of wages.”

12 97. Defendants knowingly and intentionally failed to provide timely, accurate, itemized
13 wage statements to Plaintiff and the Class in accordance with Labor Code sections 226(a) and 246(i),
14 and to keep accurate records as required by § 1174(d). The wage statements provided to Plaintiff and
15 the Class, and the records maintained by the Defendants, have not accurately reflected the amounts
16 of available paid sick leave, vacation, or paid time off. Such failures caused injury to Plaintiff and
17 the Class, by, among other things, depriving them of the rights afforded them by the 2021 COVID-
18 19 Supplemental Paid Sick Leave law, and by impeding them from knowing the accurate amounts of
19 available paid sick leave, vacation, or paid time off.

20 98. Defendants have intentionally and willfully failed to provide Plaintiff and the Class
21 with complete and accurate wage statements. The deficiencies include, but are not limited to failure
22 to provide paystubs, and/or the failure list the total number of hours worked, the actual gross wages
23 earned, the correct rates of pay, and the address of the legal entity of the employer.

24 99. Because of Defendants’ violation of California Labor Code section 226(a), Plaintiff
25 and the Class have suffered injury and damage to their statutorily protected rights.

26 100. More specifically, Plaintiff and the Class have been injured by Defendants’ intentional
27 and willful violation of California Labor Code section 226(a) because they were denied both their
28 legal right to receive, and their protected interest in receiving, accurate and itemized wage statements

1 pursuant to California Labor Code section 226(a).

2 101. Plaintiff and the Class are entitled to recover from Defendants the greater of their
3 actual damages caused by Defendants' failure to comply with California Labor Code section 226(a),
4 or an aggregate penalty not exceeding four thousand dollars per employee.

5 102. Plaintiff and the Class are also entitled to injunctive relief to ensure compliance with
6 this section, pursuant to California Labor Code section 226(g).

7 **EIGHTH CAUSE OF ACTION**
8 **(Violation of California Labor Code § 226(a))**
9 **(Against All Defendants)**

10 103. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
11 every allegation set forth above.

12 104. At all material times set forth herein, California Labor Code section 226(a) provides
13 that every employer shall furnish each of his or her employees an accurate itemized statement in
14 writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of
15 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4)
16 all deductions, provided that all deductions made on written orders of the employee may be
17 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
18 which the employee is paid, (7) the name of the employee and his or her social security number, (8)
19 the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in
20 effect during the pay period and the corresponding number of hours worked at each hourly rate by
21 the employee. The deductions made from payments of wages shall be recorded in ink or other
22 indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a
23 record of the deductions shall be kept on file by the employer for at least three years at the place of
24 employment or at a central location within the State of California.

25 105. Defendants have intentionally and willfully failed to provide Plaintiff and the Class
26 with complete and accurate wage statements. The deficiencies include, but are not limited to failure
27 to provide paystubs, and/or the failure list the total number of hours worked, the actual gross wages
28 earned, the correct rates of pay, and the address of the legal entity of the employer.

106. Because of Defendants' violation of California Labor Code section 226(a), Plaintiff and the Class have suffered injury and damage to their statutorily-protected rights.

107. More specifically, Plaintiff and the Class have been injured by Defendants' intentional and willful violation of California Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate and itemized wage statements pursuant to California Labor Code section 226(a).

108. Plaintiff and the Class are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

109. Plaintiff and the Class are also entitled to injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(g).

NINTH CAUSE OF ACTION

(Violation of California Labor Code §§ 2800 and 2802)

(Against All Defendants)

110. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

111. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

112. Plaintiff and the Class incurred necessary business-related expenses and costs that were not fully reimbursed by Defendant. Defendants' failure to reimburse for all necessary business-related expenses and costs included their failure to reimburse Plaintiff and the Class for costs incurred as a result of, including but not limited to, simple negligence.

113. Defendants have intentionally and willfully failed to reimburse Plaintiff and the Class for all necessary business-related expenses and costs. Plaintiff and the Class are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary

1 expenditures at the same rate as judgments in civil actions in the State of California.

2 **TENTH CAUSE OF ACTION**

3 **(Violation of Cal. Business & Professions Code §§ 17200, et seq.)**

4 **(Against All Defendants)**

5 114. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
6 every allegation set forth above.

7 115. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful
8 and harmful to Plaintiff and the Class, to the general public, and Defendants' competitors.
9 Accordingly, Plaintiff seeks to enforce important rights affecting the public interest within the
10 meaning of Code of Civil Procedure section 1021.5.

11 116. Defendants' activities as alleged herein are violations of California law, and constitute
12 unlawful business acts and practices in violation of California Business & Professions Code section
13 17200, *et seq.*

14 117. A violation of California Business & Professions Code section 17200, *et seq.* may be
15 predicated on the violation of any state or federal law. In this instant case, Defendants' policies and
16 practices of requiring employees, including Plaintiff and the Class, to work overtime without paying
17 them proper compensation violate California Labor Code sections 510 and 1198. Additionally,
18 Defendants' policies and practices of requiring employees, including Plaintiff and the Class, to work
19 through their meal and rest periods without paying them proper compensation violate California
20 Labor Code sections 226.7 and 512(a). Moreover, Defendants' policies and practices of failing to
21 timely pay wages to Plaintiff and the Class violate California Labor Code sections 201, 202, 203 and
22 204.

23 118. Defendants also violated California Labor Code sections 221, 226(a), 1194, 1197,
24 1197.1, 510, 1174(d), 2800, and 2802.

25 119. As a result of the herein described violations of California law, Defendants unlawfully
26 gained an unfair advantage over other businesses.

27 120. Plaintiff and the Class have been personally injured by Defendants' unlawful business
28 acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or

1 property.

2 121. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff
3 and the Class are entitled to restitution of the wages withheld and retained by Defendants during a
4 period that commences four years prior to the filing of this Complaint; an award of attorneys' fees
5 pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an
6 award of costs.

7 **ELEVENTH CAUSE OF ACTION**

8 **(Violation of California Labor Code § 2699, *et seq.*)**

9 **(Against All Defendants)**

10 122. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
11 every allegation set forth above.

12 123. Plaintiff brings his eleventh cause of action as a representative action on behalf of
13 himself and similarly Aggrieved Employees in the capacity as a private attorney general pursuant
14 to the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.*
15 ("PAGA").

16 124. PAGA specifically provides for a private right of action to recover civil penalties for
17 violations of the Labor Code as follows: "Notwithstanding any other provision of law, any
18 provision of this code that provides for a civil penalty to be assessed and collected by the Labor
19 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
20 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a
21 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
22 former employees pursuant to the procedures specified in Section 2699.3." Cal. Lab. Code §
23 2699(a).

24 125. Plaintiff was employed by Defendants and the Labor Code violations alleged above
25 were committed against him during his time of employment. Plaintiff is therefore, an "aggrieved
26 employee" under PAGA.

27 126. As set forth in detail above, during all times relevant to this Action, Defendants
28 have routinely subjected Plaintiff and the Aggrieved Employees to violations of California Labor

Codes by:

- a. Failing to pay Plaintiff and the Aggrieved Employees all earned minimum wage compensation in violation of Labor Code §§ 1194 and 1198 *et seq.*
- b. Failing to pay Plaintiff and the Aggrieved Employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 1194, and 1198 *et seq.*
- c. Failing to provide legally required meal periods to Plaintiff and the Aggrieved Employees, and failing to pay Plaintiff and the Aggrieved Employees an additional hour of premium pay for meal period violations in violation of Labor Code §§ 226.7 and 512.
- d. Failing to provide authorize and permit Plaintiff and the Aggrieved Employees to take duty-free rest periods, and failing to pay Plaintiff and the Aggrieved Employees an additional hour of premium pay for rest period violations in violation of Labor Code §§ 226.7 and 512.
- e. Failing to timely pay Plaintiff and the Aggrieved Employees all wages at the end of their employment in violation of Labor Code § 203.
- f. Failing to timely pay Plaintiff and the Aggrieved Employees all wages owed during employment in violation of Labor Code § 204.
- g. Failing to furnish Plaintiff and the Aggrieved Employees with complete, accurate, itemized wage statements in violation of Labor Code § 226.
- h. Failing to maintain accurate records relating to Plaintiff and the Aggrieved Employees' work periods, meal periods, total daily hours, hours per pay period, total wages and compensation, and applicable pay rates in violation of Labor Code § 1174(d) and the applicable IWC Wage Order.
- i. Failing to reimburse Plaintiff and the Aggrieved Employees for necessary business related expenses in violation of Labor Code §§ 2800 and 2802.

127. Pursuant to California Labor Code sections 2699 and 2699.5, Plaintiff, individually and on behalf of the Aggrieved Employees and the State of California, requests and is entitled to recover penalties against Defendants for the Labor Code violations described above, including but

1 not limited to penalties under California Code of Regulations Title 8 section 11010, penalties under
2 California Labor Code sections 2699, 558, 210, 1197.1, 226, 226.3 and 1174.5, and 1197.1, and
3 any and all additional penalties and sums as provided by the California Labor Code and/or other
4 statutes. The exact amount of the applicable penalties, in all, is in an amount to be shown according
5 to proof at trial.

6 128. Plaintiff has exhausted his administrative remedies pursuant to Labor Code § 2699.3.
7 On May 16, 2022 Plaintiff, through his counsel of record, by online filing with the Labor and
8 Workforce Development Agency (“LWDA”) and by certified mail to the Defendants, notified
9 Defendants and the LWDA of the specific provisions of the Labor Code and IWC Wage Orders
10 that Defendants have violated, including the facts and theories to support the violations, and of
11 Plaintiff’s intent to bring a claim for civil penalties under PAGA. Plaintiff also paid the filing fee
12 required under Labor Code § 2699.3. As of the filing of this Complaint, more than sixty-five (65)
13 days have elapsed since the mailing of Plaintiff’s May 16, 2022 notice, and the Labor and
14 Workforce Development Agency has not indicated that it intends to investigate the violations
15 discussed in the notice. Accordingly, Plaintiff may commence a civil action to recover penalties for
16 himself and other Aggrieved Employees pursuant to Labor Code § 2699.3.

17 129. Plaintiff was compelled to retain the services of counsel to file this court action to
18 protect his interests and the Aggrieved Employees, and to assess and collect the civil penalties owed
19 by Defendants. Plaintiff therefore seeks an award of reasonable attorneys’ fees and costs pursuant
20 to Labor Code § 2699(g)(1), and any other applicable statute.

21 130. Plaintiff may amend this complaint as a matter of right pursuant to California Labor
22 Code § 2699.3 as this complaint has been filed within sixty days of the time periods specified in
23 Labor Code §2699.3.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, individually and on behalf of all other members of the general
26 public similarly situated, prays for relief and judgment against Defendant, jointly and severally, as
27 follows:

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1 **Class Certification**

2 1. That this action be certified as a class action;

3 2. That Plaintiff be appointed as the representative of the Class;

4 3. That counsel for Plaintiff be appointed as Class Counsel; and

5 4. That Defendants provide to Class Counsel immediately the names and most
6 current/last known contact information (address, e-mail and telephone numbers) of all class members.

7 **As to the First Cause of Action**

8 5. That the Court declare, adjudge and decree that Defendants violated California Labor
9 Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime
10 wages due to Plaintiff and other Class Members;

11 6. For general unpaid wages at overtime wage rates and such general and special
12 damages as may be appropriate;

13 7. For pre-judgment interest on any unpaid overtime compensation commencing from
14 the date such amounts were due;

15 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
16 Labor Code section 1194; and

17 9. For such other and further relief as the Court may deem just and proper.

18 **As to the Second Cause of Action**

19 10. That the Court declare, adjudge and decree that Defendants violated California Labor
20 Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all
21 meal periods (including second meal periods) to Plaintiff and the Class;

22 11. That the Court make an award to Plaintiff and the Class of one (1) hour of pay at each
23 employee's regular rate of compensation for each workday that a meal period was not provided;

24 12. For all actual, consequential, and incidental losses and damages, according to proof;

25 13. For premium wages pursuant to California Labor Code section 226.7;

26 14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

27 15. For reasonable attorneys' fees and costs of suit incurred herein; and

28 16. For such other and further relief as the Court may deem just and proper.

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1 termination of the employment of Plaintiff and other Class Members no longer employed by
2 Defendant;

3 31. For all actual, consequential, and incidental losses and damages, according to proof;

4 32. For statutory wage penalties pursuant to California Labor Code section 203 for
5 Plaintiff and other Class Members who have left Defendants' employ;

6 33. For pre-judgment interest on any unpaid compensation from the date such amounts
7 were due; and

8 34. For such other and further relief as the Court may deem just and proper.

9 **As to the Sixth Cause of Action**

10 35. That the Court declare, adjudge and decree that Defendants violated California Labor
11 Code section 204 by willfully failing to pay all compensation owed at the time required by California
12 Labor Code section 204 to Plaintiff and the Class;

13 36. For statutory penalties pursuant to California Labor Code section 210;

14 37. For such other and further relief as the Court deems just and proper.

15 **As to the Seventh Cause of Action**

16 38. That the Court declare, adjudge and decree that Defendants violated the record
17 keeping provisions of California Labor Code sections 226(a) and 246(i), and applicable IWC Wage
18 Orders as to Plaintiff and the Class, and willfully failed to provide accurate itemized wage statements
19 thereto;

20 39. For actual, consequential and incidental losses and damages, according to proof;

21 40. For statutory penalties pursuant to California Labor Code sections 226(e) and 246; and

22 41. For such other and further relief as the Court may deem just and proper.

23 **As to the Eighth Cause of Action**

24 42. That the Court declare, adjudge and decree that Defendants violated the record
25 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to
26 Plaintiff and the Class, and willfully failed to provide accurate itemized wage statements thereto;

27 43. For actual, consequential and incidental losses and damages, according to proof;

28 44. For statutory penalties pursuant to California Labor Code section 226(e); and

1 45. For such other and further relief as the Court may deem just and proper.

2 **As to the Ninth Cause of Action**

3 46. That the Court declare, adjudge and decree that Defendants violated California Labor
4 Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the Class for all necessary
5 business-related expenses as required by California Labor Code sections 2800 and 2802;

6 47. For actual, consequential and incidental losses and damages, according to proof;

7 48. For the imposition of civil penalties and/or statutory penalties;

8 49. For reasonable attorneys' fees and costs of suit incurred herein; and

9 50. For such other and further relief as the Court may deem just and proper.

10 **As to the Tenth Cause of Action**

11 51. That the Court declare, adjudge and decree that Defendants violated California
12 Business and Professions Code sections 17200, *et seq.* by failing to provide Plaintiff and the Class all
13 overtime compensation due to them, failing to provide all meal and rest periods to Plaintiff and the
14 Class, failing to pay at least minimum wages to Plaintiff and the Class, failing to pay Plaintiff's and
15 other Class Members' wages timely as required by California Labor Code section 201, 202 and 204
16 and by violating California Labor Code sections 226(a), 1174(d), 2800, and 2802;

17 52. For restitution of unpaid wages to Plaintiff and the Class and all pre-judgment interest
18 from the day such amounts were due and payable;

19 53. For the appointment of a receiver to receive, manage and distribute any and all funds
20 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a
21 result of violation of California Business and Professions Code sections 17200, *et seq.*;

22 54. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
23 Code of Civil Procedure section 1021.5;

24 55. For injunctive relief to ensure compliance with this section, pursuant to California
25 Business and Professions Code sections 17200, *et seq.*; and

26 56. For such other and further relief as the Court may deem just and proper.

27 **As to the Eleventh Cause of Action**

28 57. For statutory attorneys' fees and costs pursuant to 2699(g)(1) of California Labor

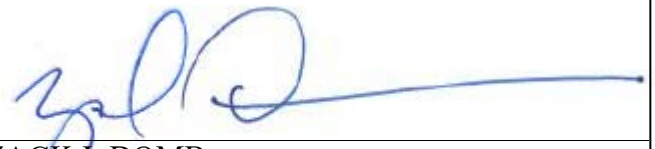
1 Code;

2 58. For the imposition of civil penalties pursuant to California Labor Code §§ 2699, 210,
3 558, 226, 226.3, 1174.5, 1197.1, and all other penalties allowed by the California Labor Code and/or
4 other applicable statutes; and

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

6
7 Dated: October 7, 2022

DOMB & RAUCHWERGER, LLP

8
9
10 By: 

ZACK I. DOMB
DEVIN RAUCHWERGER
Attorneys for Plaintiff
Vanara Phok

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Dated: October 7, 2022

By:


JACK I. DOMB

**PROOF OF SERVICE
(CCP § 1013(a) and 2015.5)**

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; am employed with Domb & Rauchwerger LLP and my business address is 1055 East Colorado Blvd., Fifth Floor, Pasadena, California 91106. My e-mail address is jessica@dombrauchwerger.com.

On October 7, 2022, I served the foregoing document entitled **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on all the appearing and/or interested parties in this action by placing ☐ *the original* ☒ *a true copy* thereof enclosed in sealed envelope(s) addressed as follows:

Richard Ingle, Esq.
INGLE LAW OFFICE, APC
500 N. State College Blvd, Ste 1100
Orange, CA 92868
Email: rfi@theinglelawoffice.com

Attorneys for Defendant, Best Performance
Tire and Complete Service, LLC

☐ **[by MAIL]** - I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.

☒ **[by ELECTRONIC SERVICE]** - Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification address listed above.

☐ **[by PERSONAL SERVICE]** - I caused to be delivered by messenger such envelope(s) by hand to the office of the addressee(s). Such messenger is over the age of eighteen years and not a party to the within action and employed with Express Network, whose business address is 1605 W. Olympic Boulevard, Suite 800, Los Angeles, CA 90015.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed October 7, 2022, at Sacramento, California.

Jessica Delgado

Print Name

By:

Jessica Delgado

Signature