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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MARIO GUTIERREZ, an individual, on
 behalf himself and all others similarly
 situated,

Plaintiff,

v.

SINGER 67, LLC dba Singer Vehicle
 Design, a California Limited Liability
 Company; and DOES 1 TO 50,
 Defendants.

Case Number:

Class Action Complaint For:

1. Failure to Pay All Minimum Wages,
2. Failure to Pay All Overtime Wages,
3. Failure to Provide Rest Periods and Pay Missed Rest Period Premiums,
4. Failure to Provide Meal Periods and Pay Missed Meal Period Premiums,
5. Failure to Maintain Accurate Employment Records,
6. Failure to Pay Wages Timely during Employment,
7. Failure to Pay All Wages Earned and Unpaid at Separation,
8. Failure to Indemnify All Necessary Business Expenditures,
9. Failure to Furnish Accurate Itemized Wage Statements,
10. Failure To Pay Accrued Vacation Wages (Labor Code § 227.3),
11. Violations of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210),

12. PAGA penalties (Labor Code § 2698 et seq.) and

DEMAND FOR JURY TRIAL

Plaintiff Mario Gutierrez (“Plaintiff”), on behalf of himself and all other similarly situated employees within the State of California, complains and alleges of defendants SINGER 67, LLC dba Singer Vehicle Design, and Does 1 to 50 (collectively, “Defendants”), and each of them, as follows:

I. INTRODUCTION

1. This is a class action complaint brought pursuant to California Code of Civil Procedure section 382 on behalf of himself and the following class: *All individuals who are or were employed by Defendants as non-exempt employees in California during the Class Period* (the “Class Members”). (Code Civ. Proc., § 382.)

2. The “Class Period” as used herein, is defined as the period from four years prior to the filing of this action and continuing into the present and ongoing. Defendants’ violations of California’s wage and hour laws and unfair competition laws as described more fully below have been ongoing throughout the Class Period and are still ongoing.

3. Plaintiff brings this action on behalf of himself and all others similarly situated, as a class action, against Defendants for:

- A. Failure to pay all minimum wages,
- B. Failure to pay all overtime wages,
- C. Failure to provide rest periods and pay missed rest period premiums,
- D. Failure to provide meal periods and pay missed meal period premiums,
- E. Failure to maintain accurate employment records,
- F. Failure to pay wages timely during employment,
- G. Failure to pay all wages earned and unpaid at separation,
- H. Failure to indemnify all necessary business expenditures,
- I. Failure to furnish accurate itemized wage statements,
- J. Failure to pay accrued vacation wages,

1 K. Violations of California's Unfair Competition Law ("UCL") (Bus. & Prof.
2 Code, §§ 17200–17210), and

3 L. Violation of California's Private Attorneys' General Act ("PAGA") (Labor
4 Code § 2698 et seq.).

5 4. Plaintiff is informed and believes and thereon alleges that the California Industrial
6 Welfare Commission ("IWC") Wage Order applicable to the facts of this case is IWC Wage Order
7 4-2001 (the "Applicable Wage Order") and possibly others that may be applicable. (Cal. Code of
8 Regs., tit. 8, § 11070.) Plaintiff reserves the right to amend or modify the definition of "Applicable
9 Wage Order" with greater specificity or add additional IWC Wage Orders if additional applicable
10 wage orders are discovered in litigation.

11 **II. JURISDICTION & VENUE**

12 5. This court has subject matter jurisdiction over all causes of action asserted herein
13 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure
14 section 410.10 because this is a civil action in which the matter in controversy, exclusive of
15 interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the
16 State of California or is subject to adjudication in the courts of the State of California.

17 6. This court has personal jurisdiction over Defendants because Defendants have
18 caused injuries in the County of Los Angeles and the State of California through their acts, and by
19 their violation of the California Labor Code and California state common law. Defendants transact
20 millions of dollars of business within the State of California. Defendants own, maintain offices,
21 transact business, have an agent or agents within the County of Los Angeles, and/or otherwise are
22 found within the County of Los Angeles, and Defendants are within the jurisdiction of this court
23 for purposes of service of process.

24 7. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of
25 the Code of Civil Procedure. Defendants operate within California and do business within Los
26 Angeles County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and
27 all of Defendants' employees within Los Angeles County and surrounding counties where
28 Defendants may remotely operate.

1 8. This matter is not appropriate for removal under the Class Action Fairness Act (28
2 U.S.C. § 1332) as the amount in controversy for Plaintiff's and the Class Members' claims, in
3 aggregate, is less than \$5 million. Additionally, all the allegations herein occurred in the State of
4 California. As such, even if the amount in controversy did exceed \$5 million this matter would
5 still not be appropriate for removal under the "local controversy" exception to the Class Action
6 Fairness Act. (28 U.S.C. § 1332, subd. (d)(4)(A).)

7 **III. THE PARTIES**

8 **A. PLAINTIFF**

9 9. At all relevant times, Plaintiff, who is over the age of 18, was and currently is a
10 citizen of California residing in the State of California. Defendants employed Plaintiff as a non-
11 exempt hourly employee in the County of Los Angeles.

12 10. Plaintiff brings this action on behalf of himself and the following class pursuant to
13 section 382 of the Code of Civil Procedure as follows: *All individuals who are or were employed*
14 *by Defendants as non-exempt employees in California during the Class Period* (the "Class
15 Members").

16 11. The Class Members, at all times pertinent hereto, are or were employees of
17 Defendants during the relevant statutory period.

18 **B. DEFENDANTS**

19 12. Plaintiff is informed and believes and thereon alleges that Defendants were
20 authorized to and doing business in Los Angeles County and is and/or was the legal employer of
21 Plaintiff and the other Class Members during the applicable statutory periods. Plaintiff and the
22 other Class Members were, and are, subject to Defendants' policies and/or practices complained
23 of herein and have been deprived of the rights guaranteed to them by, inter alia: California Labor
24 Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 510, 512, 1174, 1185, 1194,
25 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2084, and others that may be applicable;
26 California Business and Professions Code sections 17200 through 17210 ("UCL"); and the
27 Applicable Wage Order (Cal. Code of Regs., tit. 8, § 11070).
28

1 13. Plaintiff is informed and believes, and based thereon alleges, that during the Class
2 Period, Defendants did (and continue to do) business in the State of California, County of Los
3 Angeles.

4 14. Plaintiff does not know the true names or capacities, whether individual, partner,
5 or corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said
6 defendants are sued under such fictitious names, and Plaintiff will seek leave from this court to
7 amend this complaint when such true names and capacities are discovered. Plaintiff is informed,
8 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
9 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
10 and proximately caused Plaintiff and the other Class Members to be subject to the unlawful
11 employment practices, wrongs, injuries, and damages complained of herein.

12 15. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
13 herein, Defendants were and/or are the employers of Plaintiff and the other Class Members. At all
14 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
15 alleged to have been done by the named Defendants. Furthermore, the Defendants, and each of
16 them, were the agents, servants, and employees of each and every one of the other Defendants, as
17 well as the agents of all Defendants, and at all times herein mentioned were acting within the
18 course and scope of said agency and employment. Defendants, and each of them, approved of,
19 condoned, or otherwise ratified every one of the acts or omissions complained of herein.

20 16. At all relevant times, Defendants, and each of them, were members of and engaged
21 in a joint venture, partnership, and common enterprise, and acting within the course and scope of
22 and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff is
23 informed, and believes, and thereon alleges, that all Defendants were joint employers for all
24 purposes of Plaintiff and the other Class Members.

25 **IV. COMMON FACTS & ALLEGATIONS**

26 17. Plaintiff and the other Class Members (collectively, the “Class Members”) are, and
27 were at all relevant times, employed by the Defendants within the State of California.
28

1 18. The Class Members are, and were, at all relevant times, non-exempt employees for
2 the purposes of minimum wages, overtime, rest breaks, meal periods, and the other claims alleged
3 in this complaint.

4 19. Specifically, Plaintiff was employed by Defendants within the statutory Class
5 Period, working as an hourly, non-exempt associate for Defendants. Plaintiff's duties included
6 provide customer service regarding goods and sales.

7 **A. MINIMUM WAGE VIOLATIONS**

8 20. Labor Code section 1197 requires employees to be paid at least the minimum wage
9 fixed by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor
10 Code section 1194 entitles "any employee receiving less than the legal minimum wage . . . to
11 recover in a civil action the unpaid balance of the full amount of this minimum wage." Likewise,
12 the Applicable Wage Order also obligates employers to pay each employee minimum wages for
13 all hours worked. (Cal. Code of Regs., tit. 8, § 11070.) Labor Code section 1198 makes unlawful
14 the employment of an employee under conditions that the IWC Wage Orders prohibit.

15 21. These minimum wage standards apply to each hour that employees work.
16 Therefore, an employer's failure to pay for any particular time worked by an employee is unlawful,
17 even if averaging an employee's total pay over all hours worked, paid or not, results in an average
18 hourly wage above minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

19 22. Here, Defendants failed to fully conform their pay practices to the requirements of
20 the law during the relevant statutory periods. The Class Members were not compensated for all
21 hours worked including, but not limited to, all hours they were subject to the control of Defendants
22 and/or suffered or permitted to work under the California Labor Code and the Applicable Wage
23 Order. Among other violations, the Class Members were subject to the control of Defendants
24 while off-the-clock and did not receive minimum wage for each hour worked.

25 23. Additionally, the Class Members were not paid all wages for all hours worked due
26 to Defendants' uniform payroll policies and practices that unfairly rounded employees' wages to
27 the detriment of the Class Members. This rounding policy routinely failed to capture the entirety
28 of the hours the Class Members worked and was structured in a way that in favored underpayment.

1 (See *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 907.) As a result,
2 the Class Members suffered periodic shortages in the hours for which they were compensated.
3 This uncompensated time violated California's requirement that employees be compensated for
4 all hours worked. As a result of this practice, the Class Members were not compensated their
5 minimum wages for all hours worked.

6 24. Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide
7 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
8 those employees the unpaid balance of the unpaid wages as well as liquidated damages in an
9 amount equal to the wages due and interest thereon.

10 25. When employees, such as the Class Members, are not paid for all hours worked
11 under Labor Code section 1194, they are entitled to recover minimum wages for the time which
12 they received no compensation. (See *Sillah v. Command International Security Services* (N.D.
13 Cal. 2015) 154 F.Supp.3d 891 [employees suing for failure to pay overtime could recover
14 liquidated damages under Labor Code section 1194.2 if they also showed they were paid less than
15 minimum wage].)

16 26. Labor Code section 1197.1 authorizes employees who are paid less than the
17 minimum wage fixed by an applicable state or local law, or by an order of the IWC, a civil penalty,
18 among other damages, as follows:

19 (1) "For any initial violation that is intentionally committed, one
20 hundred dollars (\$100) for each underpaid employee for each pay
21 period for which the employee is underpaid."

22 (2) "For each subsequent violation for the same specific offense,
23 two hundred fifty dollars (\$250) for each underpaid employee for
24 each pay period for which the employee is underpaid regardless of
25 whether the initial violation is intentionally committed." (Lab.
26 Code, § 1197.1, subd. (a).)
27
28

1 27. As set forth above, Defendants failed to fully compensate the Class Members for
2 all minimum wages. Accordingly, the Class Members are entitled to recover liquidated damages
3 for violations of Labor Code section 1197.1.

4 28. Based upon these same factual allegations, the Class Members are likewise entitled
5 to penalties under Labor Code sections 1199.

6 **B. OVERTIME VIOLATIONS**

7 29. Labor Code section 510 requires employers to compensate employees who work
8 more than eight hours in one workday, forty hours in a workweek, and for the first eight hours
9 worked on the seventh consecutive day no less than one and one-half times the regular rate of pay
10 for an employee. (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates
11 employers to compensate employees at no less than twice the regular rate of pay when an employee
12 works more than twelve hours in a day or more than eight hours on the seventh consecutive day
13 of work. (Lab. Code, § 510, subd. (a).) These rules are also reflected in the Applicable Wage
14 Order.

15 30. In accordance with Labor Code section 1194 and the Applicable Wage Order, the
16 Class Members could not then agree and cannot now agree to work for a lesser wage than the
17 amount provided by Labor Code sections 510 or the Applicable Wage Order.

18 31. Here, Defendants violated their duty to accurately and completely compensate the
19 Class Members for all overtime worked. The Class Members periodically worked hours that
20 entitled them to overtime compensation under the law but were not fully compensated for those
21 hours.

22 32. Defendants also had a policy and practice of denying the Class Members their meal
23 breaks, but nevertheless deducting meal break time from the Class Members' pay. As a result, the
24 Class Members' on-the-clock hours were unlawfully reduced below what was actually worked
25 and, by extension, their overtime hours were also reduced below what was actually worked. The
26 Class Members were thus periodically shorted the full amount of overtime pay they were lawfully
27 owed.
28

1 33. Moreover, during the relevant statutory periods, Defendants had a policy and
2 practice of failing to pay overtime wages at the proper rate when it actually paid overtime.
3 Specifically, when Defendants paid overtime wages to the Class Members, Defendants failed to
4 include all compensation when calculating the regular rate of pay used in overtime calculations
5 and when paying overtime.

6 34. For instance, the Class Members would receive, along with their hourly rates of pay
7 for their working hours, additional remuneration and/or non-discretionary bonus pay. Defendants,
8 however, calculated the regular rate of pay for the Class Members without factoring into the regular
9 rate of pay all other non-hourly pay earnings received during the pay period. As a result, the Class
10 Members were underpaid overtime wages when they worked in excess of eight hours in any
11 workday and/or forty hours in a workweek when such additional forms of remuneration were
12 earned. By its practice of periodically requiring the Class Members to work in excess of eight
13 hours in a workday and/or forty hours in a workweek without compensating them at the rate of
14 one and one-half (1½) their regular rate of pay, Defendants willfully violated the provisions of
15 Labor Code sections 510, 1194, and 1199.

16 35. These actions were and are in clear violation of California's overtime laws as set
17 forth in Labor Code sections 510, 1194, 1199, and the Applicable Wage Order (Cal. Code of Regs.,
18 tit. 8, § 11070.) As a result of Defendants' faulty policies and practices, the Class Members were
19 not compensated for all hours worked or paid accurate overtime compensation.

20 **C. REST BREAK VIOLATIONS**

21 36. Pursuant to Labor Code section 226.7 and the Applicable Wage Order, Defendants
22 were and are required to provide the Class Members with compensated, duty-free rest periods of
23 not less than ten minutes for every major fraction of four hours worked. Under the Applicable
24 Wage Order, an employer must authorize and permit all employees to take ten minute duty free
25 rest periods for every major fraction of four hours worked. (Cal. Code of Regs., tit. 8, § 11070.)

26 37. Likewise, Labor Code section 226.7 provides that "[a]n employer shall not require
27 an employee to work during a meal or rest or recovery period mandated pursuant to an applicable
28 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission"

1 (Lab. Code, § 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay
2 their employees one additional hour of pay at the employee’s regular rate for each workday that a
3 “meal or rest or recovery period is not provided.” (Lab. Code, § 226.7, subd. (c).) Thus, the Wage
4 Orders set when and for how long the rest period must take place and the Labor Code establishes
5 that violations of the IWC Wage Orders are unlawful and sets forth the premium pay employer
6 must pay their employees when employers fail to provide rest periods.

7 38. The California Supreme Court has held that, during required rest periods,
8 “employers must relieve their employees of all duties and relinquish any control over how
9 employees spend their break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th
10 257, 260.) Relinquishing control over employees during rest periods requires that employees be
11 “free to leave the employer’s premises” and be “permitted to attend to personal business.” (*Id.* at
12 p. 275.) The *Brinker* Court explained in the context of rest breaks that employer liability attaches
13 from adopting an unlawful policy:

14 “An employer is required to authorize and permit the amount of rest break time
15 called for under the wage order for its industry. If it does not—if, for example, it
16 adopts a uniform policy authorizing and permitting only one rest break for
17 employees working a seven-hour shift when two are required—it has violated the
18 wage order and is liable.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th
19 1004, 1033.)
20

21 39. Here, Defendants periodically did not permit the Class Members to take compliant
22 duty-free rest breaks, free from Defendants’ control as required by Labor Code section 226.7, the
23 Applicable Wage Order, and applicable precedent. (See *Augustus v. ABM Security Services, Inc.*
24 (2016) 2 Cal.5th 257, 269 [concluding that “during rest periods employers must relieve employees
25 of all duties and relinquish control over how employees spend their time.”].) At all relevant times,
26 the Class Members were periodically not provided with legally-complaint and timely rest periods
27 of at least ten minutes for each four hour work period, or major fraction thereof due to Defendants’
28 unlawful rest period policies/practices. The Class Members were often expected and required to

1 continue working through rest periods to meet the expectations Defendants and finish the workday.
2 In some cases when the Class Members worked more than ten hours in a shift, Defendants failed
3 to authorize and/or permit a third mandated rest period. As a result, the Class Members were
4 periodically unable to take compliant rest periods.

5 40. In such cases where Defendants did not offer the Class Members the opportunity to
6 receive a compliant off-duty rest period, “the court may not conclude employees voluntarily chose
7 to skip those breaks.” (*Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal.App.4th 388,
8 410 (2015) [“If an employer fails to provide legally compliant meal or rest breaks, the court may
9 not conclude employees voluntarily chose to skip those breaks.”]; *Brinker Rest. Corp. v. Superior*
10 *Court, supra*, 53 Cal.4th at p. 1033 [“No issue of waiver ever arises for a rest break that was
11 required by law but never authorized; if a break is not authorized, an employee has no opportunity
12 to decline to take it.”].)

13 41. In addition to failing to authorize and permit compliant rest periods, the Class
14 Members were not compensated with one hour’s worth of pay at his regular rate of compensation
15 when he were not provided with a compliant rest period in accordance with Labor Code section
16 226.7, subdivision (c). Thus, Defendants have violated Labor Code section 226.7 and the
17 Applicable Wage Order.

18 42. Based on the foregoing, Plaintiff seeks to recover, on behalf of himself and other
19 non-exempt employees, rest period premiums and penalties.

20 **D. MEAL BREAK VIOLATIONS**

21 43. Labor Code section 512 and the Applicable Wage Order require employers to
22 provide employees with a thirty-minute uninterrupted and duty-free meal period within the first
23 five hours of work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for
24 a work period of more than five hours per day without providing the employee with a meal period
25 of not less than 30 minutes”]; Cal. Code of Regs., tit. 8, § 11070 [“No employer shall employ
26 any person for a work period of more than five (5) hours without a meal period of not less than 30
27 minutes”].) Additionally, an employee who works more than ten hours per day is entitled to
28 receive a second thirty-minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd.

1 (a) [“An employer shall not employ an employee for a work period of more than 10 hours per day
2 without providing the employee with a second meal period of not less than 30 minutes”].)

3 44. “An on-duty meal period is permitted only when the nature of the work prevents an
4 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal
5 break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement
6 must include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the
7 California Department of Industrial Relations, Division of Labor Standards Enforcement
8 (“DLSE”) and courts have “found that the nature of the work exception applies: (1) where the
9 work has some particular external force that requires the employee to be on duty at all times, and
10 (2) where the employee is the sole employee of a particular employer.” (*Id.* at p. 945, internal
11 quotation marks omitted; *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952,
12 958–959.) “[I]t is the employer’s obligation to determine whether the nature of the work prevents
13 an employee from being relieved before requiring an employee to take an on-duty meal period.”
14 (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 946.)

15 45. Here, the Class Members were never asked to sign any enforceable document
16 agreeing to an on-duty meal period. Moreover, nothing in the nature of their work involved the
17 kind of “external force” that might justify on-duty meal breaks. (*Lubin v. The Wackenhut Corp.*,
18 *supra*, 5 Cal.App.5th at p. 945.) Nevertheless, Defendants periodically did not provide compliant
19 off-duty meal periods within the first five hours of work for the Class Members.

20 46. As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v.*
21 *Superior Court*, *supra*, 53 Cal.4th at p. 1035 [“The IWC’s wage orders have long made a meal
22 period’s duty-free nature its defining characteristic.”].) Relinquishing control over employees
23 during meal periods requires that employees be “free to leave the employer’s premises” and be
24 “permitted to attend to personal business.” (*Augustus v. ABM Security Services, Inc.*, *supra*, 2
25 Cal.5th at p. 275.) Under Labor Code section 512, if an employer maintains a uniform policy that
26 does not authorize and permit the amount of meal time called for under the law (as specified in the
27 Labor Code and/or applicable IWC Wage Order), “it has violated the wage order and is liable.”
28 (*Brinker Restaurant Corp. v. Superior Court*, *supra*, 53 Cal.4th at p. 1033.)

1 47. During the applicable statutory periods here, the Class Members were periodically
2 denied legally-complaint and timely off-duty meal periods of at least thirty (30) minutes due to
3 Defendants' unlawful meal period policy and practices. As a result of Defendants' uniform meal
4 period policies and practices, the Class Members were often not permitted to take complaint first
5 meal periods before the end of the fifth hour of work. The Class Members were also periodically
6 not permitted to take second meal periods for shifts in excess of ten hours. Defendants thus
7 violated Labor Code section 512 and the Applicable Wage Order by failing to advise, authorize,
8 or permit the Class Members to receive thirty-minute, off-duty meal periods within the first five
9 hours of their shifts.

10 48. Labor Code section 226.7 provides that "[a]n employer shall not require an
11 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
12 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission." (Lab.
13 Code, § 226.7, subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage
14 Order further obligate employers to pay employees one additional hour of pay at the employee's
15 regular rate of compensation for each workday that the meal period is not provided. (Lab. Code,
16 § 226.7, subd. (c); Cal. Code of Regs., tit. 8, § 11070 ["If an employer fails to provide an employee
17 a meal period in accordance with the applicable provisions of this order, the employer shall pay
18 the employee one (1) hour of pay at the employee's regular rate of compensation for each workday
19 that the meal period is not provided."].)

20 49. Accordingly, for each day that the Class Members did not receive compliant meal
21 periods, they were and are entitled to receive meal period premiums pursuant to Labor Code
22 section 226.7 and the Applicable Wage Order. Defendants, however, failed to pay the Class
23 Members applicable meal period premiums for many workdays that the employees did not receive
24 a compliant meal period. Thus, Defendants have violated Labor Code section 226.7 and the
25 Applicable Wage Order.

26 50. Based on the foregoing, Plaintiff seeks to recover, on behalf of himself and other
27 non-exempt employees, meal period premiums and penalties.
28

1 **E. UNTIMELY WAGES DURING EMPLOYMENT**

2 51. Labor Code section 204 expressly requires employers who pay employees on a
3 weekly, biweekly, or semimonthly basis to pay all wages “not more than seven calendar days
4 following the close of the payroll period.” Labor Code section 210, subdivision (a), makes
5 employers who violate Labor Code section 204 subject to a penalty of:

6 “(1) For any initial violation, one hundred dollars (\$100) for each
7 failure to pay each employee.

8 “(2) For each subsequent violation, or any willful or intentional
9 violation, two hundred dollars (\$200) for each failure to pay each
10 employee, plus 25 percent of the amount unlawfully withheld.”

11 (Lab. Code, § 210, subd. (a).)

12 52. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and
13 entirely independent and apart from, any other penalty provided in this article” (Lab. Code,
14 § 210, subd. (a).)

15 53. Due to Defendants’ failure to pay the Class Members the wages described above,
16 along with rest and meal break premiums, Defendants failed to timely pay the Class Members
17 within seven calendar days following the close of payroll in accordance with Labor Code section
18 204 on a regular and consistent basis. (See *Parson v. Golden State FC, LLC* (N.D. Cal., May 2,
19 2016, No. 16-CV-00405-JST) 2016 WL 1734010, at p. *3–5, 2016 U.S. Dist. LEXIS 58299
20 [finding that a failure to pay rest period premiums can support claims under Labor Code sections
21 203 and 204].)

22 54. For Plaintiff and class members who do not opt for direct deposit, Defendants
23 deliver checks weeks after the close of the pay period via U.S. Mail.

24 **F. UNTIMELY WAGES AT SEPARATION**

25 55. Labor Code section 203 provides “if an employer willfully fails to pay . . . any
26 wages of an employee who is discharged or who quits, the wages of the employee shall continue
27 as a penalty” for up to 30 days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487,
28 492.) As a result of Defendants’ failure to pay the Class Members for the wages described above,

1 along with rest and meal break premiums, Defendants violated and continue to violate Labor Code
2 section 203.

3 56. Due to Defendants' faulty pay policies, those former Class Members whose
4 employment with Defendants concluded were not compensated for each and every hour worked
5 at the appropriate rate. Defendants have failed to pay former Class Members whose sums were
6 certain at the time of termination within seventy-two hours of their resignation and have failed to
7 pay those sums for thirty days thereafter.

8 **G. FAILURE TO REIMBURSE BUSINESS EXPENSES**

9 57. At all relevant times herein, Defendants were subject to Labor Code section 2802,
10 which states that "an employer shall indemnify his or her employees for all necessary expenditures
11 or losses incurred by the employee in direct consequence of the discharge of his or her duties, or
12 of his or her obedience to the directions of the employer." The purpose of this section is to "prevent
13 employers from passing along their operating expenses onto their employees." (*Gattuso v. Harte-*
14 *Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 562.)

15 58. At all relevant times herein, Defendants were subject to Labor Code section 2804,
16 which states that "any contract or agreement, express or implied, made by any employee to waive
17 the benefits of this article or any part thereof, is null and void, and this article shall not deprive any
18 employee or his personal representative of any right or remedy to which he is entitled under the
19 laws of this State."

20 59. Thus, the Class Members were and are entitled to reimbursement for the expenses
21 they incurred during the course of their duties. The duty to reimburse even extends to the use of
22 equipment the employee may already own and would be required to pay for anyway. (*Cochran v.*
23 *Schwan's Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 ["The threshold question in this
24 case is this: Does an employer always have to reimburse an employee for the reasonable expense
25 of the mandatory use of a personal cell phone, or is the reimbursement obligation limited to the
26 situation in which the employee incurred an extra expense that he or she would not have otherwise
27 incurred absent the job? The answer is that reimbursement is always required. Otherwise, the
28

1 employer would receive a windfall because it would be passing its operating expenses on to the
2 employee.”].)

3 60. There is an exception to the general rule under Labor Code §§ 2802-2804 regarding
4 employers that are permitted to require employees to use their own tools under certain trades,
5 however, these employees must earn at least twice minimum wage. See e.g., Section 9(b) of
6 various IWC Wage Orders 4, 5, etc. Here, regardless of whether or not the auto mechanic trade
7 permits the requirement that employees use their personal tools, Plaintiff and class members did
8 not earn twice minimum wage at all pertinent times during the class period.

9 61. Here, Defendants failed to fully reimburse the Class Members for necessary
10 expenditures incurred as a direct consequence and requirement of performing their job duties,
11 including the costs associated with their personal cell phone they required to perform their work
12 and to download Cronos. Consequently, Defendants failed to comply with Labor Code section
13 2802.

14 **H. WAGE STATEMENT VIOLATIONS**

15 62. Defendants also failed to provide accurate itemized wage statements in accordance
16 with Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226,
17 subdivision (a), obligates employers, semi-monthly or at the time of each payment to furnish an
18 itemized wage statement in writing showing:

- 19 (1) The gross wages earned;
- 20 (2) The total hours worked by the employee;
- 21 (3) The number of piece-rate units earned and any applicable
22 piece rate if the employee is paid on a piece rate basis;
- 23 (4) All deductions, provided that all deductions made on written
24 orders of the employee may be aggregated and shown as one item;
- 25 (5) The net wages earned;
- 26 (6) The inclusive dates of the period for which the employee is
27 paid;
- 28

1 (7) The name of the employee and only the last four digits of his
2 or her social security number or an employee identification number
3 other than a social security number;

4 (8) The name and address of the legal entity that is the employer;
5 and

6 (9) All applicable hourly rates in effect during the pay period
7 and the corresponding number of hours worked at each hourly rate
8 by the employee.

9 63. Due to Defendants' failure to pay the Class Members properly as described above,
10 the wage statements issued do not indicate the correct amount of gross wages earned, total hours
11 worked, or the net wages earned, or the applicable hourly rates in effect during the pay period and
12 the corresponding number of hours worked at each hourly rate. In addition, on information and
13 belief, the wage statements at various times during the Class Period failed to display the balance
14 of the categories of information required under Labor Code section 226, Thus, Defendants have
15 violated Labor Code section 226, subdivisions (a)(1-9).

16 64. In addition to Labor Code section 226, subdivision (a), Defendants also knowingly
17 and intentionally failed to provide the Class Members with accurate itemized wage statements in
18 violation of Labor Code section 226, subdivision (e). Defendants knew that they were not
19 providing the Class Members with wage statements required by California law but nevertheless
20 failed to correct their unlawful practices and policies. (See *Garnett v. ADT LLC* (E.D. Cal. 2015)
21 139 F.Supp.3d 1121, 1134 [finding the defendant knowingly and intentionally violated Labor Code
22 section 226 because the “[d]efendant knew that it was not providing total hours worked to plaintiff
23 or other employees paid on commission” even though it believed that employees paid solely on
24 commission or commission and salary “are exempt and therefore we do not record hours on a wage
25 statement.”].)

1 **I. RECORDKEEPING VIOLATIONS**

2 65. Labor Code section 226, subdivision (a), requires employers to keep an accurate
3 record of, among other things, all hours worked by employees. Labor Code section 226.3 provides,
4 in pertinent part, as follows:

5 “Any employer who violates subdivision (a) of Section 226 shall be subject to a
6 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per
7 violation in an initial citation and one thousand dollars (\$1,000) per employee for
8 each violation in a subsequent citation, for which the employer fails to provide the
9 employee a wage deduction statement or fails to keep the records required in
10 subdivision (a) of Section 226. The civil penalties provided for in this section are
11 in addition to any other penalty provided by law.” (Lab. Code, § 226.3, emphasis
12 added.)
13

14 66. Likewise, Labor Code section 1174, subdivision (d), requires every employer,
15 including Defendants, to:

16 “Keep, at a central location in the state or at the plants or establishments at which
17 employees are employed, payroll records showing the hours worked daily by and
18 the wages paid to, and the number of piece-rate units earned by and any applicable
19 piece rate paid to, employees employed at the respective plants or establishments.
20 These records shall be kept in accordance with rules established for this purpose by
21 the commission, but in any case shall be kept on file for not less than three years.
22 An employer shall not prohibit an employee from maintaining a personal record of
23 hours worked, or, if paid on a piece-rate basis, piece-rate units earned.” (Lab. Code,
24 § 1174, subd. (d), emphasis added.)
25

26 67. As explained in detail above, Defendants failed to provide the Class Members with
27 accurate itemized wage statements. Defendants did so, in part, because they failed to accurately
28 track hours worked by the Class Members. Defendants have thus failed to keep accurate records

1 of the “total hours worked by the employee[s]” in violation of Labor Code section 226, subdivision
2 (a), and are therefore subject to the penalties provided by Labor Code section 226.3. These
3 penalties are “in addition to any other penalty provided by law.” (Lab. Code, § 226.3.)

4 68. The failure to accurately track hours worked also resulted in a failure of Defendants
5 to keep a record of all “payroll records showing the hours worked daily by” Defendants’
6 employees, including Plaintiff and the other Class Members, in violation of Labor Code section
7 1174, subdivision (d).

8 **J. VACATION POLICY VIOLATIONS**

9 69. California Labor Code § 227.3 states that:

10
11 Unless otherwise provided by a collective-bargaining agreement, whenever a
12 contract of employment or employer policy provides for paid vacations, and an
13 employee is terminated without having taken off his vested vacation time, all vested
14 vacation shall be paid to him as wages at his final rate in accordance with such
15 contract of employment or employer policy respecting eligibility or time served;
provided, however, that an employment contract or employer policy shall not
provide for forfeiture of vested vacation time upon termination. The Labor
Commissioner or a designated representative, in the resolution of any dispute with
regard to vested vacation time, shall apply the principles of equity and fairness.

16 70. Thus, in the event that an employer has a vacation policy, it must pay out all accrued
17 but unused vacation time upon termination. Here, Defendant had a vacation pay policy, Plaintiff
18 and the Class Members had completed all necessary limitations of service required by Defendants’
19 vacation policy. Despite that fact, Plaintiff and the Class Members were denied all accrued but
20 unused vacation time from year to year and upon termination.

21 71. Defendants’ written policy states that “Vacation not taken during the calendar year
22 is not paid out and is lost.” Defendants’ use-it-or-lose-it paid time off policy is impermissible as it
23 requires Plaintiff and the Class Members to forfeit accrued but unused paid time off. It follows
24 that the Plaintiff and Class Members were not paid all vacation wages at termination of
25 employment, as required by California law.
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27
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1 **K. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

2 72. Plaintiff has fully and completely exhausted and/or will have fully and completed
3 and exhausted his administrative remedies under PAGA prior to proceeding with the PAGA claim.
4 Plaintiff filed his PAGA Notice online with the Labor Workforce Development Agency
5 (“LWDA”) and sent a letter by certified mail to Defendants setting forth the facts and theories of
6 the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* As required
7 by PAGA, Plaintiff submitted the \$75.00 filing fee with the LWDA by regular mail.

8 **V. CLASS ACTION ALLEGATIONS**

9 73. As mentioned above, Plaintiff brings this action on behalf of himself and the Class
10 Members pursuant to section 382 of the Code of Civil Procedure.

11 74. **Numerosity/Ascertainability:** The Class Members are so numerous that joinder of
12 all members would be unfeasible and not practicable. The membership of the class is unknown to
13 Plaintiff at this time; however, it is estimated that the number of Class Members is greater than
14 100 individuals. The identity of such membership is readily ascertainable via inspection of
15 Defendants’ employment records.

16 75. **Common Questions of Law and Fact Predominate/Well Defined Community**
17 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
18 situated non-exempt employees, which predominate over questions affecting only individual
19 members including, without limitation to:

20 A. Whether Defendants’ pay policies/practices resulted in a failure to pay the
21 Class Members for all hours worked, including all minimum wages;

22 B. Whether Defendants’ pay policies/practices resulted in a failure to pay the
23 Class Members for all required overtime wages at the Class Members’ regular rate of pay;

24 C. Whether Defendants’ rest period policies and practices afforded legally
25 compliant rest periods or compensation in lieu thereof;

26 D. Whether Defendants’ meal period policies and practices afforded legally
27 compliant meal periods or compensation in lieu thereof;

28 E. Whether Defendants maintained accurate employment records;

- 1 F. Whether Defendants timely paid all wages during employment;
- 2 G. Whether Defendants timely paid all wages earned and unpaid at separation;
- 3 H. Whether Defendants indemnified their employees for all necessary business
- 4 expenditures;
- 5 I. Whether Defendants paid their employees at least twice minimum wage
- 6 when requiring them to use their own tools for work;
- 7 J. Whether Defendants' policy required employees to forfeit unused vacation
- 8 each year;
- 9 K. Whether Defendants furnished legally-compliant wage statements to the
- 10 Class Members pursuant to Labor Code section 226; and
- 11 L. Whether Defendants' violations of the Labor Code and the Applicable
- 12 Wage Order amounted to a violation of California's UCL.

13 76. **Predominance of Common Questions:** Common questions of law and fact

14 predominate over questions that affect only individual Class Members. The common questions of

15 law set forth above are numerous and substantial and stem from Defendants' uniform policies and

16 practices applicable to each individual class member, such as Defendants' uniform policy and

17 practice of failing to pay for all hours worked, Defendants' uniform policies and practices which

18 failed to provide complaint rest periods, Defendants' uniform policies and practices which failed

19 to provide complaint meal periods, Defendants' failure to provide accurate itemized wage

20 statements, and others. As such, the common questions predominate over individual questions

21 concerning each individual class member's showing as to his or her eligibility for recovery or as

22 to the amount of his or her damages.

23 77. **Typicality:** The claims of Plaintiff are typical of the claims of the Class Members

24 because Plaintiff was employed by Defendants as a non-exempt employee in California during the

25 statute(s) of limitation applicable to each cause of action pleaded in this complaint. As alleged

26 herein, Plaintiff, like the other Class Members, was deprived of minimum, regular, and overtime

27 wages because of Defendants' unlawful timekeeping policies and practices, was deprived of rest

28 periods and premium wages in lieu thereof, was deprived of meal periods and premium wages in

lieu thereof, was subject to Defendants' uniform rest period policies and practices, was subject to Defendants' uniform meal period policies and practices, was not provided accurate itemized wage statements, was not paid all wages in full and on time, and was subject to other similar policies and practices to which the Class Members were subject.

78. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the Class Members. Moreover, Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the Class Members and Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class actions in state and federal court in the past and are committed to vigorously prosecuting this action on behalf of the Class Members.

79. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and the Class Members make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources.

80. Moreover, requiring each Class Member to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual Class Members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual Class Members against Defendants herein, and which would establish potentially incompatible standards of conduct for

1 Defendants or legal determinations with respect to individual Class Members which would, as a
2 practical matter, be dispositive of the interest of the other Class Members not parties to
3 adjudications or which would substantially impair or impede the ability of the Class Members to
4 protect their interests.

5 81. Further, the claims of the individual Class Members are not sufficiently large to
6 warrant vigorous individual prosecution considering the concomitant costs and expenses attending
7 thereto. As such, the Class Members identified above are maintainable as a class under section
8 382 of the Code of Civil Procedure.

9
10 FIRST CAUSE OF ACTION
11 *Failure to Pay All Minimum Wages*
12 *(Against All Defendants)*

13 82. Plaintiff realleges and incorporates by reference all previous paragraphs.

14 83. Section 4 of the Applicable Wage Order and Labor Code section 1197 establish the
15 right of employees to be paid minimum wages for all hours worked, in amounts set by state law.
16 (Lab. Code, § 1197; Cal. Code of Regs., tit. 8, § 11070.) Labor Code sections 1194, subdivision
17 (a), and 1194.2, subdivision (a), provide that an employee who has not been paid the legal
18 minimum wage as required by Labor Code section 1197 may recover the unpaid balance, together
19 with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the
unpaid wages and interest accrued thereon.

20 84. Here, Defendants failed to fully conform their pay practices to the requirements of
21 the law during the relevant statutory periods. Plaintiff and the other Class Members were not
22 compensated for all hours worked including, but not limited to, all hours they were subject to the
23 control of Defendants and/or suffered or permitted to work under the Labor Code and the
24 Applicable Wage Order.

25 85. Labor Code section 1198 makes unlawful the employment of an employee under
26 conditions that the IWC Wage Orders prohibit. Labor Code sections 1194, subdivision (a), and
27 1194.2, subdivision (a), provide that an employer who has failed to pay its employees the legal
28

1 minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well
2 as liquidated damages in an amount equal to the wages due and interest thereon.

3 86. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
4 Plaintiff and the other Class Members have sustained economic damages, including but not limited
5 to unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to
6 recover economic and statutory damages and penalties and other appropriate relief because of
7 Defendants' violations of the Labor Code and Applicable Wage Order.

8 87. Defendants' practices and policies regarding illegal employee compensation are
9 unlawful and create an entitlement to recovery by Plaintiff and the other Class Members in a civil
10 action for the unpaid amount of minimum wages, liquidated damages, including interest thereon,
11 statutory penalties, attorney's fees, and costs of suit according to Labor Code sections 204, 218.5,
12 1194, 1194.2, 1197, and 1198, and Code of Civil Procedure section 1021.5.

13 SECOND CAUSE OF ACTION
14 *Failure to Pay All Overtime Wages*
15 *(Against All Defendants)*

16 88. Plaintiff realleges and incorporates by reference all previous paragraphs.

17 89. This cause of action is brought pursuant to Labor Code sections 204, 510, 1194,
18 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
19 overtime hours worked and provide a private right of action for the failure to pay all overtime
20 compensation for overtime work performed. At all times relevant herein, Defendants were
21 required to properly pay Plaintiff and the other Class Members for all overtime wages earned
22 pursuant to Labor Code section 1194 and the Applicable Wage Order. Defendants caused Plaintiff
23 and the other Class Members to work overtime hours but did not compensate them at one and one-
24 half times their regular rate of pay for such hours in accordance with California law. Likewise,
25 Defendants caused Plaintiff and the other Class Members to work double-time hours but did not
26 compensate them at twice their regular rate of pay for such hours in accordance with California
27 law.

28 90. Defendants failed to fully conform their pay practices to the requirements of
California law. This unlawful conduct includes but is not limited to Defendants' uniform and

1 unlawful pay policies and practices of failing to accurately record all the time that non-exempt
2 employees were under the supervision and control of Defendants. The foregoing policies and
3 practices are unlawful and allow Plaintiff and the other Class Members to recover in a civil action
4 the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties,
5 attorney's fees, and costs of suit according to Labor Code section 204, 510, 1194, and 1198, the
6 Applicable Wage Order, and Code of Civil Procedure section 1021.5.

7 THIRD CAUSE OF ACTION

8 *Failure to Provide Rest Periods and Pay Missed Rest Period Premiums* 9 *(Against All Defendants)*

9 91. Plaintiff realleges and incorporates by reference all previous paragraphs.

10 92. Section 12 of the Applicable Wage Order, and Labor Code section 226.7 establish
11 the right of employees to be provided with a rest period of at least ten minutes for each four hour
12 period worked, or major fraction thereof. (See Cal. Code of Regs., tit. 8, § 11070.)

13 93. Due to Defendants' unlawful rest period policies and practices described in detail
14 above, Defendants did not authorize and permit Plaintiff and the other Class Members to take all
15 rest periods to which they were legally entitled. Despite Defendants' violations, Defendants have
16 not paid an additional hour of pay to Plaintiff and the other Class Members at their respective
17 regular rates of pay for each violation, in accordance with California Labor Code section 226.7.

18 94. The foregoing violations create an entitlement to recovery by Plaintiff and the other
19 Class Members in a civil action for the unpaid amount of rest period premiums owing, including
20 interest thereon, statutory penalties, and costs of suit pursuant to the Applicable Wage Order, and
21 California Labor Code section 226.7.

22 FOURTH CAUSE OF ACTION

23 *Failure to Provide Meal Periods and Pay Missed Meal Period Premiums* 24 *(Against All Defendants)*

25 95. Plaintiff realleges and incorporates by reference all previous paragraphs.

26 96. Plaintiff is informed and believes and thereon alleges, that Defendants failed in
27 their affirmative obligation to provide their hourly non-exempt employees, including Plaintiff and
28 the other Class Members, with all required meal periods in accordance with the mandates of the
Labor Code and the Applicable Wage Order, for the reasons set forth herein above. Despite

1 Defendants' violations, Defendants have not paid an additional hour of pay to Plaintiff and the
2 other Class Members at their respective regular rates of pay for each violation, in accordance with
3 California Labor Code section 226.7.

4 97. As a result, Defendants are responsible for paying premium compensation for meal
5 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the
6 Applicable Wage Order and Labor Code sections 226.7 and 512, and Civil Code sections 3287,
7 subdivision (b), and 3289. (See Cal. Code of Regs., tit. 8, § 11070.)

8 FIFTH CAUSE OF ACTION

9 *Failure to Maintain Accurate Employment Records*
10 *(Against All Defendants)*

11 98. Plaintiff realleges and incorporates by reference all previous paragraphs.

12 99. Pursuant to California Labor Code section 1174, subdivision (d), an employer shall
13 keep at a central location in the state or at the plants or establishments at which employees are
14 employed, payroll records showing the hours worked daily by and wages paid to employees
15 employed at the respective plants or establishments. These records must be kept in accordance
16 with rules established for this purpose by the commission, but in any case shall be kept on file for
17 not less than two years.

18 100. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's
19 failure to maintain accurate and complete records. This civil penalty is in addition to the civil
20 penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor
21 Code section 2699 for a violation of Labor Code section 1174, subdivision (d).

22 101. Defendant has intentionally and willfully failed to keep accurate and complete
23 records showing the hours worked daily and wages paid to Plaintiff and the other Class Members.
24 Thus, Plaintiff and the other Class Members have been denied their legal right and protected
25 interest in having available at a central location at the plant or establishment where they are
26 employed, accurate and complete payroll records showing the hours worked daily by, and the
27 wages paid to, employees at those respective locations pursuant to Labor Code 1174.
28

SIXTH CAUSE OF ACTION

*Failure to Pay Wages Timely during Employment
(Against All Defendants)*

102. Plaintiff realleges and incorporates by reference all previous paragraphs.

103. Labor Code section 200 provides that “wages” include all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, pieces, commission basis, or other method of calculation. Labor Code section 204 states that all wages earned by any person in any employment are payable twice during the calendar month and must be paid not more than seven days following the close of the period when the wages were earned. Labor Code section 210, subdivision (a), makes employers who violate Labor Code section 204 subject to a penalty of \$100 for any initial failure to timely pay each employee's full wages and \$200 for each subsequent violation, plus 25% of the amount unlawfully withheld.

104. Defendants as a matter of established company policy and procedure in the State of California, scheduled, required, suffered, and/or permitted Plaintiff and the other Class Members, to work without full compensation, to work without legally-compliant off-duty meal periods, to work without legally-compliant off-duty rest periods, and thereby failed to fully pay Plaintiff and the other Class Members within seven days of the close of payroll, as required by law.

105. Defendants, as a matter of established company policy and procedure in the State of California, falsely deny they owe Plaintiff and the other Class Members these wages, with the intent of securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress, hinder, delay, and/or defraud Plaintiff and the other Class Members.

106. Defendants’ pattern, practice, and uniform administration of its corporate policy of illegally denying employees compensation, as described herein, is unlawful and entitles Plaintiff and the other Class Members to recover, pursuant to Labor Code section 218, the unpaid balance of the compensation owed to them in a civil action and any applicable penalties, attorney fees, and interest owed to them pursuant to Labor Code sections 210 and 218.5.

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107. Plaintiff realleges and incorporates by reference all previous paragraphs.

109. Section 203 of the Labor Code provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then employer is liable for penalties in the form of continued compensation up to thirty workdays.

111. As a result, Defendants are liable to the formerly-employed Class Members for waiting time penalties amounting to thirty days wages for the formerly-employed Class Members pursuant to Labor Code section 203. (See, e.g., DLSE Manual, § 4.3.4 [failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties].)

*Failure to Indemnify All Necessary Business Expenditures
(Against All Defendants)*

28

113. California Labor Code Section 2802 states that employers must “indemnify” an employee for “all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” Likewise, Labor Code section 2804 states that “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

114. Section 9 of various IWC Wage Order permits the usage of personal tools for employees paid at least twice minimum wage for specific trades. Plaintiff and the Class Members were not paid twice minimum wage for all hours worked during the times they were required to use their tools. In addition, Defendants damaged Plaintiff's and Class Members tools

115. Here, Plaintiff and the other Class Members paid out of pocket for necessary business expenditures incurred as a direct consequence and requirement of performing their job duties, including the costs associated with their personal cell phone they required to perform their work. Despite knowing that Plaintiff and the other Class Members incurred these necessary business expenses, and requiring Plaintiff and the other Class Members to use such items, Defendants did not reimburse them.

116. Thus, Plaintiff and the other Class Members are entitled to recover the cost of such necessary business expenses, plus interest from the date each incurred such business expenses, plus fees and costs. (Lab. Code, § 2802, subds. (b), (c).)

NINTH CAUSE OF ACTION

*Failure to Furnish Accurate Itemized Wage Statements
(Against All Defendants)*

117. Plaintiff realleges and incorporates by reference all previous paragraphs.

118. Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) The gross wages earned;
- (2) The total hours worked by the employee;

- (3) The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate basis;
- (4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) The net wages earned;
- (6) The inclusive dates of the period for which the employee is paid;
- (7) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) The name and address of the legal entity that is the employer; and
- (9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

119. As set forth above, Defendants issued and continues to issue wage statements to its non-exempt employees including Plaintiff and the other Class Members that are inadequate under Labor Code section 226, subdivision (a). By failing to pay Plaintiff and the other Class Members properly as described above, Defendants failed to include required information on their wage statements, including, but not limited to, the gross wages earned, the net wages earned in violation of Labor Code section 226, subdivision (a).

120. Defendants' failure to comply with Labor Code section 226, subdivision (a), of the Labor Code was knowing and intentional. (Lab. Code, § 226, subd. (e)).

121. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff and the other Class Members in violation of Labor Code section 226, subdivision (a), Plaintiff and the other Class Members are each entitled to recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per

1 Plaintiff and per each Class Member from Defendants pursuant to Labor Code section 226,
2 subdivision (e), along with costs and reasonable attorneys' fees.

3
4 TENTH CAUSE OF ACTION
5 *Failure to Pay Accrued Vacation*
6 *(Against All Defendants)*

7 122. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
8 in the preceding paragraphs.

9 123. Under California law, accrued vacation and/or paid time off are considered earned
10 wages and cannot be forfeited if unused. A "use it or lose it" vacation policy and/or paid time off
11 policy that provides for forfeiture of vested vacation pay if not used within a designated time is
12 impermissible. *Boothby v. Atlas Mechanical, Inc.*, (1992) 6 Cal. App. 4th 1595, 1602.

13 124. Accordingly, pursuant to section 227.3 of the California Labor Code, Plaintiff and
14 the Vacation Class are entitled to recover, either their unpaid hourly wages due, or minimum wage
15 plus liquidated damages in an additional amount equal to the total amount of wages unlawfully
16 withheld during the Class Period. This violation applies equally to exempt and nonexempt
17 employees of Defendants. Here, Defendants implemented a use it or lose it policy and otherwise
18 failed to pay Plaintiff and Class Members for all vacation earned and accrued.

19 125. Pursuant to section 227.3 of the Labor Code, Plaintiff and Class Members are also
20 entitled to recover interest, costs, and attorneys' fees associated with this cause of action.

21 ELEVENTH CAUSE OF ACTION
22 *Violations of California's Unfair Competition Law*
23 *(Against All Defendants)*

24 126. Plaintiff realleges and incorporates by reference all previous paragraphs.

25 127. Defendants have engaged and continue to engage in unfair and/or unlawful business
26 practices in California in violation of California Business and Professions Code section 17200
27 through 17210, by committing the unlawful acts described above. Defendants' utilization of these
28 unfair and unlawful business practices deprived and continue to deprive Plaintiff and the other
Class Members of compensation to which they are legally entitled. These practices constitute

1 unfair and unlawful competition and provide an unfair advantage over Defendants' competitors
2 who have been and/or are currently employing workers and attempting to do so in honest
3 compliance with applicable wage and hour laws.

4 128. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct alleged
5 herein, Plaintiff for himself and on behalf of the Class Members, seeks full restitution of monies,
6 as necessary and according to proof, to restore any and all monies withheld, acquired and/or
7 converted by Defendants pursuant to Business and Professions Code sections 17203 and 17208.

8 129. The acts complained of herein occurred within the four years prior to the initiation
9 of this action and are continuing into the present and ongoing.

10 130. Plaintiff was compelled to retain the services of counsel to file this court action to
11 protect his interests and those of the Class Members, to obtain restitution and injunctive relief on
12 behalf of Defendants' current non-exempt employees and to enforce important rights affecting the
13 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
14 which Plaintiff is entitled to recover under Code of Civil Procedure section 1021.5.

15 TWELFTH CAUSE OF ACTION

16 *Penalties Pursuant To Labor Code § 2699, Et Seq. ("PAGA")*
17 *(On Behalf Of Plaintiff, The State Of California,*
18 *And The Aggrieved Employees Against All Defendants)*

19 131. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
20 in the preceding paragraphs.

21 132. Based on the above allegations incorporated by reference, Defendants have violated
22 Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 510, 512, 1102.5, 1174, 1185,
23 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2084, and others that may be applicable.

24 133. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code §
25 2699, *et seq.*

26 134. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and
27 all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial
28 subject to the following formula: \$100 for the initial violation per employee per pay period; and
\$200 for each subsequent violation per employee per pay period.

1 135. These penalties shall be allocated seventy-five percent (75%) to the Labor and
2 Workforce Development Agency (LWDA) and twenty-five percent (25%) to the affected
3 employees. These penalties may be stacked separately for each of Defendants violations of the
4 California Labor Code. *See e.g. Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx)
5 2012 U.S. Dist. LEXIS 86975, at *59, fn. 77 (C.D. Cal. June 22, 2012) (holding that although the
6 plaintiff did not seek stacked PAGA penalties, that “PAGA penalties can be ‘stacked,’ i.e., multiple
7 PAGA penalties can be assessed for the same pay period for different Labor Code violations.”);
8 *See Lopez v. Friant & Assocs., LLC*, No. A148849, 2017 Cal. App. LEXIS 839, at *1 (Ct. App.
9 Sep. 26, 2017) (“hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor
10 Code section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’
11 requirements of section 226(e)(1) and acknowledging that a Plaintiff could recover separately
12 under PAGA for violations of Labor Code §§ 226(a) and 226(e)); *accord Schiller v. David's Bridal,*
13 *Inc.*, No. 1:10-cv-00616 AWI SKO) 2010 U.S. Dist. LEXIS 81128, at *17 (E.D. Cal. July 14,
14 2010); *Pulera v. F & B, Inc.*, No. 2:08-cv-00275-MCE-DAD, 2008 U.S. Dist. LEXIS 72659, 2008
15 WL 3863489, at * 2-3 (E.D. Cal. Aug. 19, 2008); *Smith v. Brinker Intern, Inc.*, No. C 10-0213
16 VRW, 2010 U.S. Dist. LEXIS 54110, 2010 WL 1838726, at * 2-6 (N.D. Cal. May 5, 2010).

17 136. Through PAGA and to the extent permitted by law, Plaintiff seeks penalties
18 pursuant to Labor Code § 558 for Defendants’ unlawful rest period policies and practices as
19 detailed above. In accordance with Labor Code § 558, Plaintiff and the other aggrieved employees
20 are entitled to penalties for the initial violation in the amount of fifty dollars (\$50) for each
21 underpaid employee for each pay period for which the employee was underpaid in addition to an
22 amount sufficient to recover underpaid wages and for each subsequent violation, one hundred
23 dollars (\$100) for each underpaid employee for each pay period for which the employee was
24 underpaid in addition to an amount sufficient to recover underpaid wages. Wages recovered under
25 Labor Code § 558 shall be paid to the affected employee. *See Thurman v. Bayshore Transit Mgmt.,*
26 *Inc.* 203 Cal. App. 4th 1112 (2012); *Gaasterland v. Ameriprise Fin. Servs.*, 2016 U.S. Dist. LEXIS
27 126648 (N.D. Cal. Sept. 15, 2016); *Guzman v. Healthcare Servs. Grp., Inc.*, 2016 U.S. Dist. LEXIS
28 128961 (C.D. Cal. Sept. 15, 2016).

1 137. As a result, Plaintiff, as an Aggrieved Employee, may seek, in addition to any civil
2 penalty allowable under the law, unpaid or underpaid meal period premiums, unpaid or underpaid
3 rest period premiums, unpaid wages, wages paid more than seven days after the close of the
4 payrolling period, and any wages associated with Defendants policies of not providing only on-
5 duty rest periods without compensation.

6 138. In addition, to the extent permitted by law, Defendants failed to provide Plaintiff
7 and all aggrieved employees with accurate itemized wage statements in compliance with Labor
8 Code § 226(a). Plaintiff seeks separate PAGA penalties for Defendants' violations of Labor Code
9 §§ 226(a) and 226(e). *Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017); *Bell v.*
10 *Home Depot U.S.A.* (E.D. Cal. Dec. 11, 2017) No. 2:12-cv-02499 JAM-CKD, 2017 U.S. Dist.
11 LEXIS 204493, at *5 [finding after Friant that “[t]o the extent the Court's Order [granting summary
12 judgment to Home Depot] was ambiguous, the Court now clarifies that it granted summary
13 judgment on Plaintiffs' derivative claim for [PAGA] penalties under section 226(e)...the Court's
14 Order should not be read to grant summary judgment on Plaintiffs' claim for PAGA penalties based
15 on violation of section 226(a).”]).

16 139. For violations of Labor Code § 226(a), Plaintiff seeks the default penalty provided
17 by Labor Code § 226.3. Labor Code § 226.3 provides that “[a]ny employer who violates
18 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty
19 dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000)
20 per employee for each violation in a subsequent citation, for which the employer fails to provide
21 the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section
22 226.” Accordingly, through PAGA and to the extent permitted by law Plaintiff and the aggrieved
23 employees are entitled to recover penalties for violations of Labor Code § 226.3 and seeks default
24 PAGA penalties for each of Defendants' numerous violations of Labor Code § 226(e).

25 140. Further, Plaintiff, as an Aggrieved Employee, need not demonstrate or prove that
26 Defendants conduct in refusing to provide accurate and itemized wage statements was knowing,
27 intentional, or willful. *Lopez v. Friant & Assocs., LLC* (2017) 15 Cal. App. 5th 773,
28 788, (“Consistent with the PAGA statutory framework and the plain language and legislative

1 history of section 226(e), we hold a plaintiff seeking civil penalties under PAGA for a violation of
2 section 226(a) does not have to satisfy the “injury” and “knowing and intentional” requirements
3 of Section 226(e)(1).”); *see Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014)
4 (To obtain judgment on a PAGA claim, “all [plaintiff] needs to establish is a violation of section
5 226(a), which she has done, as discussed above.”); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d
6 1222, 1232 (C.D. Cal. 2011) (holding that “for the purposes of recovering PAGA penalties, one
7 need only prove a violation of Section 226(a), and need not establish a Section 226(e) injury.”);
8 *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013)
9 (“Plaintiff do not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under §
10 2699(f) of PAGA.”).

11 141. Labor Code § 210 provides that “in addition to, an entirely independent and apart
12 from, any other penalty provided in this article, every person who fails to pay the wages of each
13 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any
14 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
15 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
16 failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the
17 faulty compensation policies and practices described in detail above, Plaintiff and the other
18 Aggrieved Employees are entitled to recover penalties under Labor Code § 210 through PAGA.

19 142. Labor Code § 1102.5 prohibits retaliation for various forms of protected activity,
20 including resisting illegal conduct, opposing illegal conduct, threatening to report or reporting
21 illegal conduct, and other forms of protected activity. Violations of Labor Code § 1102.5 also
22 violate PAGA and give rise to penalties. Plaintiff and Aggrieved Employees opposed and
23 complained of illegal conduct, inter alia, illegal pay practices. Defendants retaliated against them.

24 143. Plaintiff has fully and completely exhausted his administrative remedies under
25 PAGA prior to proceeding with the PAGA claim. On September 11, 2019, Plaintiff filed his PAGA
26 Notice online with the Labor Workforce Development Agency (“LWDA”) and sent a letter by
27 certified mail to Defendants setting forth the facts and theories of the violations alleged against
28 Defendant, as prescribed by Labor Code § 2698 et seq. As required by PAGA, Plaintiff submitted

1 the \$75.00 filing fee with the LWDA by regular mail. Pursuant to Labor Code § 2699.3(a)(2)(A),
2 no notice was and/or will have been received by Plaintiff from the LWDA evidencing its intention
3 to investigate within sixty-five (65) calendar days of the postmark date of the PAGA notice.
4 Plaintiff is therefore entitled to commence and proceed with a civil action pursuant to Labor Code
5 § 2699.

6 **VI. DEMAND FOR JURY TRIAL**

7 144. Plaintiff hereby demands trial by jury of Plaintiff's and the Class Members' claims
8 against Defendants.

9 **VII. PRAYER FOR RELIEF**

10 Plaintiff prays for judgment for himself and for all others on whose behalf this suit is
11 brought against Defendants, as follows:

- 12 1. For an order certifying the proposed class;
- 13 2. For an order appointing Plaintiff as representative of the class;
- 14 3. For an order appointing Plaintiff's counsel as counsel for the class;
- 15 4. For the failure to pay all minimum wages, compensatory, consequential, general,
16 and special damages according to proof pursuant to Labor Code sections 1194,
17 1194.2, 1197, and others as may be applicable;
- 18 5. For the failure to pay all overtime wages, compensatory, consequential, general,
19 and special damages according to proof pursuant to Labor Code sections 204, 510,
20 1194, 1198, and others as may be applicable;
- 21 6. For the failure to provide rest periods and pay missed rest period premiums,
22 compensatory, consequential, general, and special damages according to proof
23 pursuant to Labor Code section 226.7;
- 24 7. For damages, penalties, fees and costs provided under Labor Code sections 226 et
25 seq.
- 26 8. For the failure to provide meal periods and pay missed meal period premiums,
27 compensatory, consequential, general, and special damages according to proof
28 pursuant to Labor Code sections 226.7 and 512;

- 1 **9.** For the failure to maintain accurate employment records, penalties pursuant to
- 2 Labor Code sections 226.3, 1174.5, and others that may be applicable;
- 3 **10.** For the failure to pay wages timely during employment, the unpaid balance of the
- 4 compensation owed to Plaintiff and the other Class Members and any applicable
- 5 penalties owed to them pursuant to Labor Code section 210;
- 6 **11.** For the failure to pay all wages earned and unpaid at separation, statutory waiting
- 7 time penalties pursuant to Labor Code sections 201 through 203, for the Class
- 8 Members who quit or were fired in an amount equal to their daily wage multiplied
- 9 by thirty days, as may be proven;
- 10 **12.** For the failure to indemnify all necessary business expenditures, all unreimbursed
- 11 business expenses, and interest thereon, that are owed, pursuant to Labor Code
- 12 section 2802, and attorney fees, pursuant to Labor Code section 2802, subdivision
- 13 (c);
- 14 **13.** A declaratory judgment that Defendants violated section 227.3 of the California
- 15 Labor Code by failing to pay Plaintiff and the Vacation Class Members for their
- 16 accrued vacation wages owed to them;
- 17 **14.** An award to Plaintiff and Vacation Class Members in the amount of their unpaid
- 18 wages owed to them for their accrued vacation time and/or liquidated damages
- 19 during the Class Period;
- 20 **15.** For the violations of California's Unfair Competition Law, restitution to Plaintiff
- 21 and the other Class Members of all money and/or property unlawfully acquired by
- 22 Defendants by means of any acts or practices declared by this court to be in
- 23 violation of Business and Professions Code sections 17200 through 17210;
- 24 **16.** Prejudgment interest on all due and unpaid wages pursuant to Labor Code section
- 25 218.6 and Civil Code sections 3287 and 3289;
- 26 **17.** On all causes of action for which attorneys' fees may be available, for attorneys'
- 27 fees and costs as provided by Labor Code sections 218.5, 226, 1194, Code of Civil
- 28 Procedure section 1021.5, and others as may be applicable;

1 **18.** For an order enjoining Defendants, and each of them, and their agents, servants,
2 and employees, and all persons acting under, in concert with, or for them, from
3 acting in derogation of any rights or duties adumbrated in this complaint; and

4 **19.** For such other and further relief, the court may deem just and proper.

5 Dated: June 28, 2022

SULLIVAN EMPLOYMENT LAW PC

7 

8

Martin Sullivan

9 *Attorney for Plaintiff and the Putative Class*