

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

OCT 13 2022

BY Crystal K. D'Amico
CRYSTAL K. D'AMICO, DEPUTY

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

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

AARON VAZQUEZ, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

WAY.COM, INC., a Delaware Corporation;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVSB2216363
*[Assigned to Hon. Judge David Cohn, Dept
S26, for all purposes]*

FIRST AMENDED COMPLAINT

CLASS ACTION CLAIMS

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

PAGA CLAIMS

- (10) Failure to Pay Minimum Wages;
- (11) Failure to Pay Overtime Wages;
- (12) Failure to Provide Meal Periods;
- (13) Failure to Provide Rest Breaks;
- (14) Failure to Reimburse Bus. Expenses;
- (15) Failure to Pay Vested Vacation;
- (16) Failure to Timely Pay Wages Each Period;
- (17) Failure to Timely Pay Final Wages;
- (18) Failure to Provide Accurate Itemized Wage Statements;

JURY TRIAL DEMANDED

Plaintiff Aaron Vazquez (“Plaintiff”) on behalf of himself, on a representative basis, and on behalf of others similarly situated, complains and alleges as follows.

I. INTRODUCTION AND GENERAL ALLEGATIONS

1. Plaintiff brings this action against his former employer(s), Defendants Way.com, Inc., and DOES 1 through 20, inclusive, (collectively, “Defendants”) on behalf of all current and former nonexempt employees employed by Defendants in California (the “Class” or “Represented Employees”), for Labor Code violations stemming from Defendants’ failure to pay all wages owed, including minimum, regular, and overtime wages, failure to provide meal periods, failure to provide rest breaks, failure to reimburse business expenses, failure to pay vested vacation upon separation of employment, failure to timely pay wages upon separation of employment, and failure to provide accurate itemized wage statements.

2. Plaintiff was employed by Defendants from approximately January through June 2022.

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

4. Plaintiff and the Represented Employees were not provided all minimum, regular, and overtime wages due to Defendants’ failure to accurately record and compensate for all hours worked. For example, Defendants required Plaintiff and the Represented Employees to perform routine and recurring tasks at the beginning of the shift (before being allowed to clock in) and at the end of the shift (after being allowed to clock out). And the Represented Employees were also frequently required to perform work for Defendant while clocked out for meal periods. These practices violate California law and led to uncompensated time and minimum and overtime wage violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law “do[es] not allow employers to require employees to routinely work for minutes off the clock without compensation”); See also *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when employee is under company’s control and where the tasks served the employer’s interests).

///

1 5. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the
2 Represented Employees. For example, Defendants paid Plaintiff and the Represented
3 Employees on an hourly basis but also paid additional nondiscretionary compensation (such as
4 bonuses and commissions). However, during workweeks where the Represented Employees
5 worked overtime hours and earned additional nondiscretionary compensation, Defendants failed
6 to include that compensation in the calculations for the regular rate of pay – violating the well-
7 established rule that overtime must always be paid at time and one-half the regular rate of pay.

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

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

23 8. Moreover, at all relevant times, Defendants required Plaintiff and the Represented
24 Employees to incur necessary business-related expenses and costs without reimbursement. For
25 example, Plaintiff was required to download and use an app on his personal cell phone to
26 communicate with Defendants’ customers, yet Plaintiff was not reimbursed for such expenses.
27 Additionally, Plaintiff was required to incur substantial expenses to work from his home office,
28 such as acquiring and maintaining internet and telephone services, without reimbursement.

1 9. Also, at all relevant times, Defendants utilized a policy and practice through
2 which Plaintiff and the Represented Employees accrued vacation and/or PTO hours (collectively,
3 “vacation hours”). However, on occasions when Plaintiff and the Represented Employees had
4 accrued but unused vacation hours upon separation of employment, Defendants failed to pay
5 these wages and, further, failed to pay them at the “final rate” required by Labor Code § 227.3.

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

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

14 12. Plaintiff alleges that Defendants’ violations of the wage and hour components of
15 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their
16 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
17 its competitors.

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

24 14. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
25 monetary relief against Defendants and each of them, on behalf of himself and the Represented
26 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys’ fees,
27 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
28 210, 218.6, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198,

1 1199, and 2802, among possibly other sections inadvertently omitted. Plaintiff also reserves the
2 right to name additional representatives throughout the State of California.

3 **II. JURISDICTION**

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

6 **III. VENUE**

7 16. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
8 Procedure § 395(a). Defendants transact business in San Bernardino County and the unlawful
9 acts alleged herein have a direct effect on Plaintiff and the Represented Employees in San
10 Bernardino County. Furthermore, Defendants employed or employ Plaintiff and Represented
11 Employees in San Bernardino County.

12 **IV. PARTIES**

13 **Plaintiff**

14 17. Plaintiff and Class Representative Aaron Vazquez was employed by Defendants
15 from approximately January through June 2022 and performed work for Defendants in San
16 Bernardino County.

17 **Defendants**

18 18. Plaintiff is informed and believes and thereon alleges that Defendant Way.com,
19 Inc. is a Delaware corporation authorized to and doing business in San Bernardino County,
20 California, with its principal place of business in Fremont, California. Plaintiff is also informed
21 and believes that Defendant Way.com, Inc. is and/or was the legal employer of Plaintiff and the
22 Represented Employees during the applicable statutory periods.

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

Defendants when ascertained.

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

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

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

23. Plaintiff is further informed and believes that at all relevant times, Defendants have been inadequately capitalized to conduct business, have failed to follow appropriate corporate formalities, and have simply been a shell and instrumentality through which Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly, the corporate veil should be pierced, and any liability attached to Defendants should be imposed

1 jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the
2 separate existence of these corporate entities would permit abuse of the corporate privilege,
3 thereby sanctioning fraud and promoting injustice.

4 **V. CLASS ACTION ALLEGATIONS**

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

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

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

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

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

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

16 **Meal Break Subclass**

17 All Represented Employees who worked a shift in excess of
18 5 hours during the Relevant Time Period.

19 **Rest Break Subclass**

20 All Represented Employees who worked a shift of at least
21 3.5 hours during the Relevant Time Period.

22 **Unreimbursed Expense Subclass**

23 All Represented Employees who were required to incur
24 expenses to discharge their duties for Defendants without
25 reimbursement during the Relevant Time Period.

26 **Vested Vacation Subclass**

27 All Represented Employees who had accrued but unused
28 vacation upon separation of employment during the period

four years before the filing of this action and ending when
final judgment is entered.

Waiting Time Penalties Subclass

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

Wage Statement Penalties Subclass

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

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

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

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

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

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

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

///

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

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

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

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

17 vi. Whether Defendants violated the California Labor Code by failing to
18 compensate Plaintiff and the Vested Vacation Subclass for all accrued but unused vacation hours
19 upon separation of employment;

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

23 viii. Whether Defendants violated the California Labor Code by failing to
24 provide Plaintiff and the Wage Statement Penalties Subclass with complete, accurate, itemized
25 wage statements;

26 ix. Whether Defendants violated California Business & Professions Code §§
27 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest
28 breaks, failure to provide mandated meal periods, and failure to timely pay final wages; and

1 x. Whether Plaintiff and Represented Employees are entitled to equitable
2 relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

3 34. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the
4 claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants'
5 ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all
6 wages owed, failure to provide mandated meal periods, failure to provide mandated paid rest
7 breaks, failure to timely pay wages upon separation of employment, and failure to provide
8 accurate itemized wage statements.

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

14 36. **Superiority of Class Action.** Class certification is appropriate because a class
15 action is superior to other available means for the fair and efficient adjudication of this
16 controversy. Individual joinder of all Represented Employees is not practicable, and questions of
17 law and fact common to the Class predominate over any questions affecting only individual
18 members of the Class. Each Represented Employee has been damaged and is entitled to
19 recovery by reason of Defendants' illegal policies and practices set forth above. Class action
20 treatment will allow those similarly situated persons to litigate their claims in the manner that is
21 most efficient and economical for the parties and the judicial system.

22 **FIRST CAUSE OF ACTION**

23 **FAILURE TO PAY MINIMUM WAGES**

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

25 *Plaintiff and the Represented Employees Against All Defendants*

26 37. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
27 alleged herein.

28 ///

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

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

9 40. For example, Defendants required Plaintiff and the Represented Employees to
10 perform routine and recurring tasks at the beginning of the shift (before being allowed to clock
11 in) and at the end of the shift (after being allowed to clock out). And the Represented Employees
12 were also frequently required to perform work for Defendant while clocked out for meal periods.
13 These practices violate California law and led to uncompensated time and minimum wage
14 violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law "do[es]
15 not allow employers to require employees to routinely work for minutes off the clock without
16 compensation"); See also *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable
17 when employee is under company's control and where the tasks served the employer's interests).

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

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

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

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

1 them in accordance thereto.

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

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

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

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

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY OVERTIME WAGES**

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

17 *Plaintiff and the Represented Employees Against All Defendants*

18 49. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
19 alleged herein.

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

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

28 ///

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

5 53. For example, Defendants required Plaintiff and the Represented Employees to
6 perform routine and recurring tasks at the beginning of the shift (before being allowed to clock
7 in) and at the end of the shift (after being allowed to clock out). And the Represented Employees
8 were also frequently required to perform work for Defendant while clocked out for meal periods.
9 These practices violate California law and led to uncompensated time and overtime wage
10 violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law "do[es]
11 not allow employers to require employees to routinely work for minutes off the clock without
12 compensation"); See also *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable
13 when employee is under company's control and where the tasks served the employer's interests).

14 54. Additionally, Defendants paid Plaintiff and the Represented Employees on an
15 hourly basis but also paid additional nondiscretionary compensation (such as commissions
16 and/or bonuses). However, during workweeks where the Represented Employees worked
17 overtime hours and earned additional nondiscretionary compensation, Defendants failed to
18 include that compensation in the calculations for the regular rate of pay – violating the well-
19 established rule that overtime must always be paid at time and one-half the regular rate of pay.

20 55. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
21 Represented Employees for all overtime hours worked.

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

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

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

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

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

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

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

16 **THIRD CAUSE OF ACTION**

17 **FAILURE TO PROVIDE MEAL PERIODS**

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

19 *Plaintiff and the Meal Break Subclass Against All Defendants*

20 63. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
21 alleged herein.

22 64. Plaintiff and the Meal Break Subclass are and/or were employees of Defendants
23 who did not receive proper protections and benefits of the laws governing mandatory meal
24 periods.

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

27 66. Labor Code § 512(a), in part, provides that employers, including Defendants, may
28 not employ an employee for a work period of more than five hours per day without providing an

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

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

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

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

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

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

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

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

10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE REST BREAKS**

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

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

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

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

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

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

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

28 ///

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

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

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

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

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

25 ///

26 ///

27 ///

28 ///

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 (Labor Code § 2802)

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

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

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

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

13 87. At all relevant times herein mentioned, as a condition of employment, Defendants
14 required Plaintiff and the Unreimbursed Expense Subclass to incur necessary business-related
15 expenses and costs without reimbursement. For example, Plaintiff was required to download and
16 use an app on his personal cell phone to communicate with Defendants' customers, yet Plaintiff
17 was not reimbursed for such expenses. Additionally, Plaintiff was required to incur substantial
18 expenses to work from his home office, such as acquiring and maintaining internet and telephone
19 services, without reimbursement.

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

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

26 90. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage
27 Order § 9(B), Plaintiff and the Unreimbursed Expense Subclass have suffered, and continue to
28 suffer, substantial losses related to such incurred expenses, expenses, and attorney's fees in

1 seeking to compel Defendants to fully perform their obligations under the law, all in an amount
2 to be proved at time of trial.

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

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

16 **SIXTH CAUSE OF ACTION**
17 **FAILURE TO PAY VESTED VACATION**

18 (Labor Code § 227.3)

19 *Plaintiff and the Vested Vacation Subclass Against All Defendants*

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

22 94. Plaintiff and the Vested Vacation Subclass were employees of Defendants who
23 did not receive proper protections and benefits of the laws governing the payment of vested
24 vacation time and/or paid time off upon separation of employment.

25 95. Pursuant to Labor Code § 227.3, an employer that has implemented a paid
26 vacation, paid time off, or compensated time off policy must, upon an employee’s separation
27 from employment, pay to the employee all vested but unused vacation and/or paid time off at his
28 final rate of pay.

1 96. At all relevant times, Defendants utilized a policy and practice through which
2 Plaintiff and the Vested Vacation Subclass accrued vacation hours. However, on occasions
3 when Plaintiff and the Vested Vacation Subclass had accrued but unused vacation hours upon
4 separation of employment, Defendants failed to pay these wages and, further, failed to pay them
5 at the “final rate” required by Labor Code § 227.3.

6 97. As a result, Plaintiff and the Vested Vacation Subclass did not receive
7 compensation for all accrued but unused vacation hours as required by Labor Code § 227.3.

8 98. At all relevant times herein, Defendants failed to pay the Vested Vacation
9 Subclass, including Plaintiff, all vested but unused vacation time and/or paid time off upon
10 separation from employment, thereby receiving an economic benefit.

11 99. Plaintiff is informed and believes and thereon alleges that Defendants, and each of
12 them, knowingly refused to perform their obligations to compensate the Vested Vacation
13 Subclass for all vested but unused vacation time and/or paid time off upon separation from
14 employment.

15 100. As a result of Defendants’ violations of Labor Code § 227.3, Plaintiff and the
16 Vested Vacation Subclass seek to recover the unpaid vacation hours, as well as penalties,
17 interest, attorneys’ fees, and costs as permitted under California law.

18 **SEVENTH CAUSE OF ACTION**

19 **FAILURE TO TIMELY PAY FINAL WAGES**

20 (Labor Code §§ 201 – 203)

21 *Plaintiff and the Waiting Time Penalties Subclass against All Defendants*

22 101. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
23 alleged herein.

24 102. Plaintiff and the Waiting Time Penalties Subclass are and/or were employees of
25 Defendants who did not receive proper protections and benefits of the laws governing the timing
26 and payment of wages.

27 103. Labor Code § 201 requires that the employer immediately pay any wages, without
28 abatement or reduction, to any employee who is discharged.

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

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

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

10 107. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
11 wages due and owing to Plaintiff and the Waiting Time Penalties Subclass upon separation of
12 employment, including, but not limited to, minimum, regular, and overtime wages, meal and rest
13 period premiums, and vested vacation wages.

14 108. Additionally, at all relevant times, Defendants failed to pay all mandated sick
15 wages owed to the Waiting Time Penalties Subclass at the proper rate of pay.

16 109. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees
17 must be “calculated in the same manner as the regular rate of pay for the workweek in which the
18 employee uses paid sick time, whether or not the employee actually works overtime in that
19 workweek.” Additionally, Labor Code § 246(l)(2) states that the paid sick time must be
20 “calculated by dividing the employee’s total wages, not including overtime premium pay, by the
21 employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

22 110. Here, Plaintiff and the Waiting Time Penalties Subclass were compensated on an
23 hourly basis plus additional compensation in the form of commissions and/or bonuses.
24 However, on the occasions that the Waiting Time Penalties Subclass took sick time and received
25 paid sick leave, Defendants only paid sick time at the base rate of pay (not factoring in the
26 additional compensation as required by Labor Code §§ 246(l)(1-2)), leading to unpaid wages at
27 the time of separation of employment.

28 ///

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

7 **EIGHTH CAUSE OF ACTION**

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

9 (Labor Code § 226)

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

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

13 113. Plaintiff and the Wage Statement Penalties Subclass are and/or were employees of
14 Defendants who did not receive proper protections and benefits of the laws governing the
15 provision of accurate itemized wage statements.

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

22 115. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
23 and the Wage Statement Penalties Subclass due to violations including: failure to accurately state
24 total hours worked (for example, the wage statements failed to accurately reflect the correct
25 compensable hours); failure to accurately state gross wages earned; failure to accurately state all
26 deductions; failure to accurately state net wages earned; failure to state the applicable hourly
27 rates (including the accurate overtime rate of pay); failure to state the inclusive dates of the pay
28 period; failure to accurately state the name and address of the legal entity of the employer; and

1 failure to accurately state the corresponding number of hours worked at each hourly rate.

2 116. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
3 to Plaintiff and the Wage Statement Penalties Subclass because Defendants failed to provide a
4 wage statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
5 requirements of Labor Code § 226(a).

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

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

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

28 ///

1 120. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
2 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and
3 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
4 attorney's fees and costs, to Plaintiff and the Wage Statement Penalties Subclass who were
5 injured by Defendants' failure to comply with Labor Code § 226(a). The exact amount of the
6 applicable penalty is all in an amount to be shown according to proof at trial.

7 **NINTH CAUSE OF ACTION**

8 **UNFAIR AND UNLAWFUL COMPETITION**

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

10 *Plaintiff and the Represented Employees against All Defendants*

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

13 122. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
14 competition, which includes any "unlawful, unfair or fraudulent business act or practice." The
15 Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact,
16 due to the unfair and unlawful business practices of Defendants as alleged herein.

17 123. Defendants, and each of them, are "persons" as defined under Business &
18 Professions Code § 17021.

19 124. As alleged herein, Defendants engaged in conduct that violated California's wage
20 and hour laws, including failure to pay all wages owed, including minimum, regular, overtime,
21 sick, and vacation wages, failure to provide mandated meal periods and rest breaks, failure to
22 reimburse business expenses, and failure to timely pay wages upon separation of employment,
23 all to decrease their costs and increase profits.

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

26 126. As a result of Defendants' failure to comply with the Labor Code and IWC
27 Orders, Represented Employees, including Plaintiff, suffered a loss of wages and monies, all in
28 an amount to be shown according to proof at trial. Defendants' ongoing violations of the

1 foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

2 127. Defendants' violations of the California Labor Code and IWC Wage Orders and
3 its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business
4 practices because it was done in a systematic manner over a period of time to the detriment of the
5 Plaintiff and all others similarly situated.

6 128. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
7 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
8 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of
9 Code of Civil Procedure § 1021.5.

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

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

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

1 132. Plaintiff, individually, and on behalf of the Represented Employees, is further
2 entitled to and do seek a declaration that the above described business practices are unfair,
3 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
4 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
5 the future.

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

12 **VI. PAGA CAUSES OF ACTION (Cal. Lab. Code. §§ 2698 – 2699.5)**

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

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

24 136. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing
25 to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to
26 Defendants of the specific provisions of the Labor Code alleged to have been violated, including
27 the facts and theories to support the alleged violations. More than sixty-five (65) days have
28 elapsed since the date Plaintiff provided the written notice of the claims alleged herein without

the LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiff has fully satisfied the administrative prerequisites to suit under the PAGA.

TENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES

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

Plaintiff and the Aggrieved Employees against All Defendants

137. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

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

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

140. For example, Defendants required Plaintiff and the Aggrieved Employees to perform routine and recurring tasks at the beginning of the shift (before being allowed to clock in) and at the end of the shift (after being allowed to clock out). And the Aggrieved Employees were also frequently required to perform work for Defendant while clocked out for meal periods. These practices violate California law and led to uncompensated time and minimum wage violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law "do[es] not allow employers to require employees to routinely work for minutes off the clock without compensation"); See also *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when employee is under company's control and where the tasks served the employer's interests).

141. As a result of this policy and practice, Defendants failed to pay Plaintiff and the Aggrieved Employees for all hours worked.

///

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

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

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

10 **ELEVENTH CAUSE OF ACTION**

11 **PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES**

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

13 *Plaintiff and the Aggrieved Employees against All Defendants*

14 145. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
15 as if fully alleged herein.

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

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

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

28 ///

1 149. For example, Defendants required Plaintiff and the Aggrieved Employees to
2 perform routine and recurring tasks at the beginning of the shift (before being allowed to clock
3 in) and at the end of the shift (after being allowed to clock out). And the Aggrieved Employees
4 were also frequently required to perform work for Defendant while clocked out for meal periods.
5 These practices violate California law and led to uncompensated time and overtime wage
6 violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law “do[es]
7 not allow employers to require employees to routinely work for minutes off the clock without
8 compensation”); See also *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable
9 when employee is under company’s control and where the tasks served the employer’s interests).

10 150. Additionally, Defendants paid Plaintiff and the Aggrieved Employees on an
11 hourly basis but also paid additional nondiscretionary compensation (such as commissions
12 and/or bonuses). However, during workweeks where the Aggrieved Employees worked overtime
13 hours and earned additional nondiscretionary compensation, Defendants failed to include that
14 compensation in the calculations for the regular rate of pay – violating the well-established rule
15 that overtime must always be paid at time and one-half the regular rate of pay.

16 151. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
17 Aggrieved Employees for all overtime hours worked.

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

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

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

28 ///

1 **TWELFTH CAUSE OF ACTION**

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

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

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 155. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 156. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
8 who did not receive proper protections and benefits of the laws governing meal periods.

9 157. Labor Code § 226.7 requires employers, including Defendants, to provide
10 employees with meal periods as mandated by the Industrial Welfare Commission.

11 158. Labor Code § 512(a), in part, provides that employers, including Defendants, may
12 not employ an employee for a work period of more than five hours per day without providing an
13 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
14 except that if the total work period per day of the employee is no more than six hours, the meal
15 period may be waived by mutual consent of both the employer and the employee. Employers
16 may not employ an employee for a work period more than 10 hours per day without providing
17 the employee with a second meal period of not less than 30 minutes.

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

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

28 ///

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

5 162. On information and belief, Plaintiff and the Aggrieved Employees did not
6 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
7 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not
8 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
9 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved
10 Employees to take meal periods in accordance with California law.

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

14 **THIRTEENTH CAUSE OF ACTION**

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

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

17 *Plaintiff and the Aggrieved Employees against All Defendants*

18 164. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
19 as if fully alleged herein.

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

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

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

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

4 169. At all relevant times, Defendants also failed to provide Plaintiff and the
5 Aggrieved Employees with 10 minutes of net rest break time for every 4 hours worked, or major
6 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks for the
7 Aggrieved Employees, the Aggrieved Employees were unable to leave the premises for breaks,
8 and the Aggrieved Employees were often not authorized and/or permitted to take mandated rest
9 breaks due to being overwhelmed by their hectic workload. Furthermore, on occasions when the
10 Aggrieved Employees worked longer shifts, Defendants failed to authorize and/or permit
11 mandated third rest breaks.

12 170. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
13 Order every pay period because Plaintiff and the Aggrieved Employees were not provided with
14 all mandatory rest periods and Defendants failed to pay Plaintiff and the Aggrieved Employees
15 one additional hour of compensation in lieu thereof.

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

19 **FOURTEENTH CAUSE OF ACTION**

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

21 (Labor Code § 2802)

22 *Plaintiff and the Aggrieved Employees Against All Defendants*

23 172. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
24 as if fully alleged herein.

25 173. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
26 who did not receive proper protections and benefits of the laws governing reimbursement of
27 business expenses.

28 ///

1 174. Labor Code § 2802(a) requires that the employer indemnify its employees for
2 expenses and losses incurred while discharging their duties or in obedience to the directions of
3 their employer.

4 175. At all relevant times herein mentioned, as a condition of employment, Defendants
5 required Plaintiff and the Aggrieved Employees to incur necessary business-related expenses and
6 costs without reimbursement. For example, Plaintiff was required to download and use an app on
7 his personal cell phone to communicate with Defendants' customers, yet Plaintiff was not
8 reimbursed for such expenses. Additionally, Plaintiff was required to incur substantial expenses
9 to work from his home office, such as acquiring and maintaining internet and telephone services,
10 without reimbursement.

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

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

17 **FIFTEENTH CAUSE OF ACTION**

18 **PAGA ASSESSMENT FOR FAILURE TO PAY VESTED VACATION**

19 (Labor Code § 227.3)

20 *Plaintiff and the Aggrieved Employees Against All Defendants*

21 178. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
22 as if fully alleged herein.

23 179. Plaintiff and the Aggrieved Employees were employees of Defendants who did
24 not receive proper protections and benefits of the laws governing the payment of vested vacation
25 time and/or paid time off upon separation of employment.

26 180. Pursuant to Labor Code § 227.3, an employer that has implemented a paid
27 vacation, paid time off, or compensated time off policy must, upon an employee's separation
28 from employment, pay to the employee all vested but unused vacation and/or paid time off at his

1 final rate of pay.

2 181. At all relevant times, Defendants utilized a policy and practice through which
3 Plaintiff and the Aggrieved Employees accrued vacation hours. However, on occasions when
4 Plaintiff and the Aggrieved Employees had accrued but unused vacation hours upon separation
5 of employment, Defendants failed to pay these wages and, further, failed to pay them at the
6 “final rate” required by Labor Code § 227.3.

7 182. As a result, Plaintiff and the Aggrieved Employees did not receive compensation
8 for all accrued but unused vacation hours as required by Labor Code § 227.3.

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

12 **SIXTEENTH CAUSE OF ACTION**

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

14 (Labor Code § 204)

15 *Plaintiff and the Aggrieved Employees against All Defendants*

16 184. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
17 as if fully alleged herein.

18 185. Plaintiff and the Aggrieved Employees are and/or were “nonexempt” employees
19 of Defendants who did not receive proper protections and benefits of the laws regarding the
20 timing of payment of wages each period.

21 186. Labor Code § 204(a) states that all wages earned by a person are due and payable
22 twice during each calendar month, and further states that wages earned during the first through
23 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
24 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
25 the following month.

26 ///

27 ///

28 ///

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

4 188. At all relevant times herein, Defendants did not provide Plaintiff and the
5 Aggrieved Employees with all wages due and owing each period within the time required by
6 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Aggrieved
7 Employees with all wages due and owing each pay period, including, but not limited to,
8 minimum, regular, and overtime wages, as well as meal and rest period premiums and sick time
9 at the proper rate, within the time specified by Labor Code § 204.

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

13 **SEVENTEENTH CAUSE OF ACTION**

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

15 (Labor Code §§ 201 – 203)

16 *Plaintiff and the Aggrieved Employees against All Defendants*

17 190. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
18 as if fully alleged herein.

19 191. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees
20 of Defendants who did not receive proper protections and benefits of the laws governing the
21 timing and payment of final wages.

22 192. Labor Code § 201 requires that the employer immediately pay any wages, without
23 abatement or reduction, to any employee who is discharged.

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

27 ///

28 ///

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

195. At all relevant times here, Defendants did not provide Plaintiff and the Aggrieved Employees with all wages due and owing upon separation of employment, including, but not limited to, minimum, regular, and overtime wages, vacation and sick pay at the proper rates, and meal and rest period premiums, within the time specified by Labor Code §§ 201 – 203.

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

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

EIGHTEENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226)

Plaintiff and the Aggrieved Employees against All Defendants

198. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

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

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

1 corresponding number of hours worked at each hourly rate by the employee.

2 201. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
3 and the Aggrieved Employees due to violations including: failure to accurately state total hours
4 worked (for example, the wage statements failed to accurately reflect the correct compensable
5 hours); failure to accurately state gross wages earned; failure to accurately state all deductions;
6 failure to accurately state net wages earned; failure to state the applicable hourly rates (including
7 the accurate overtime rate of pay); failure to state the inclusive dates of the pay period; failure to
8 accurately state the name and address of the legal entity of the employer; and failure to
9 accurately state the corresponding number of hours worked at each hourly rate.

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

13 **VII. PRAYER FOR RELIEF**

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

17 1. As to the Tenth through Eighteenth Causes of Action, the assessment of all
18 applicable and available remedies under the PAGA;

19 2. For reasonable attorneys' fees and costs as permitted under PAGA;

20 3. That the First through Ninth Causes of Action be certified as a class action;

21 4. That Plaintiff be appointed as Class Representative;

22 5. That counsel for Plaintiff be appointed Class Counsel;

23 6. For all applicable statutory penalties recoverable under the First through Eighth
24 Causes of Action to the extent permitted by law, including those pursuant to Labor Code and
25 Orders of the Industrial Welfare Commission;

26 7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by
27 law, including those pursuant to the Labor Code;

28 ///

1 8. For injunctive relief and/or restitution as provided by the Labor Code and
2 Business and Professions Code § 17200, *et seq.*;

3 9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
4 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194,
5 1197, 1198, and 1199, among other sections inadvertently omitted;

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

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

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

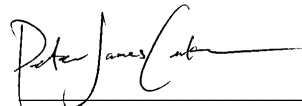
11 **DEMAND FOR JURY TRIAL**

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

14
15 Dated: September 19, 2022

LAUBY, MANKIN & LAUBY LLP

16
17 BY:



18 Brian J. Mankin, Esq.
19 Peter J. Carlson, Esq.
20 Attorneys for Plaintiff
21
22
23
24
25
26
27
28