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HAWKINS individually, and on behalf of
others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

CARRELL HAWKINS, individually, and on
behalf of others similarly situated

Plaintiff,

vs.

CATALYST FORWARD GROUP, a
corporation; US FOODS, INC., a corporation;
SHIFTABLEHR, an unknown business form;
and DOES 1 through 50, inclusive,

Defendants

Case No. 30-2021-01197275-CU-OE-CXC

FIRST AMENDED COMPLAINT

CLASS ACTION:

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Periods
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wages
5. Failure to Pay All Wages Due to
Discharged and Quitting Employees
6. Failure to Timely Pay Wages During
Employment
7. Failure to Maintain Required Records
78. Failure to Furnish Accurate Itemized
Wage Statements
9. Failure to Indemnify Employees for
Necessary Expenditures Incurred in
Discharge of Duties
10. Unfair and Unlawful Business Practices

REPRESENTATIVE ACTION:

11. Penalties under the Labor Code Private
Attorneys General Act, as Representative
Action

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 PLAINTIFF CARRELL HAWKINS (“PLAINTIFF”) an individual, demanding a jury
3 trial, on behalf of himself and other persons similarly situated, hereby alleges as follows:

4 **JURISDICTION AND VENUE**

5 1. The Superior Court of the State of California has jurisdiction in this matter because
6 PLAINTIFF is a resident of the State of California, and Defendants CATALYST FORWARD
7 GROUP, a corporation; US FOODS, a corporation; SHIFTABLEHR, an unknown business form;
8 and DOES 1 through 50, inclusive, (collectively “DEFENDANTS”), are qualified to do business
9 in California and regularly conduct business in California. Further, no federal question is at issue
10 because the claims are based solely on California law.

11 2. Venue is proper in this judicial district and the County of Orange, California because
12 PLAINTIFF, and other persons similarly situated, performed work for DEFENDANTS in the
13 County of Orange, DEFENDANTS maintain offices and facilities and transact business in the
14 County of Orange, and because DEFENDANTS’ illegal payroll policies and practices which are
15 the subject of this action were applied, at least in part, to PLAINTIFF, and other persons similarly
16 situated, in the County of Orange.

17 **PLAINTIFF**

18 3. PLAINTIFF is a male resident of the State of California and a current employee of
19 DEFENDANTS.

20 4. PLAINTIFF, on behalf of himself and other similarly situated current and former
21 non-exempt employees of DEFENDANTS in the State of California at any time during the four
22 years preceding the filing of this action, and continuing while this action is pending, brings this
23 class action to recover, among other things, wages and penalties from unpaid wages earned and
24 due, including but not limited to unpaid minimum wages, unpaid and illegally calculated overtime
25 compensation, illegal meal and rest period policies, failure to pay all wages due to discharged and
26 quitting employees, failure to indemnify employees for necessary expenditures and/or losses
27 incurred in discharging their duties, failure to provide accurate itemized wage statements, failure
28 to maintain required records, and interest, attorneys’ fees, costs, and expenses.

5. PLAINTIFF brings this action on behalf of himself and the following similarly situated class of individuals (“CLASS MEMBERS”): all current and former non-exempt employees of DEFENDANTS in the State of California at any time within the period beginning four (4) years prior to the filing of this action and ending at the time this action settles or proceeds to final judgment (the “CLASS PERIOD”). PLAINTIFF reserves the right to name additional class representatives.

DEFENDANTS

6. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT CATALYST FORWARD GROUP is, and at all times relevant hereto was, a California corporation organized and existing under the laws of the State of California. PLAINTIFF is further informed and believes, and thereon alleges, that DEFENDANT CATALYST FORWARD GROUP is authorized to conduct business in the State of California, and does conduct business in the State of California. Specifically, DEFENDANT CATALYST FORWARD GROUP maintains offices and facilities and conducts business in, and engages in illegal payroll practices or policies in, the County of Orange, State of California.

7. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT US FOODS, INC. is, and at all times relevant hereto was, a California corporation organized and existing under the laws of the State of California. PLAINTIFF is further informed and believes, and thereon alleges, that DEFENDANT US FOODS, INC. is authorized to conduct business in the State of California, and does conduct business in the State of California. Specifically, DEFENDANT US FOODS, INC. maintains offices and facilities and conducts business in, and engages in illegal payroll practices or policies in, the County of Orange, State of California.

8. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT SHIFTABLEHR is, and at all times relevant hereto was, an unknown business form organized and existing under the laws of the State of California. PLAINTIFF is further informed and believes, and thereon alleges, that DEFENDANT SHIFTABLEHR is authorized to conduct business in the State of California, and does conduct business in the State of California. Specifically, DEFENDANT SHIFTABLEHR maintains offices and facilities and conducts business in, and

engages in illegal payroll practices or policies in, the County of Orange, State of California.

9. The true names and capacities of DOES 1 through 50, inclusive, are unknown to PLAINTIFF at this time, and PLAINTIFF therefore sues such DOE Defendants under fictitious names. PLAINTIFF is informed and believes, and thereon alleges, that each Defendant designated as a DOE is in some manner highly responsible for the occurrences alleged herein, and that PLAINTIFF and CLASS MEMBERS' injuries and damages, as alleged herein, were proximately caused by the conduct of such DOE Defendants. PLAINTIFF will seek leave of the court to amend this Complaint to allege their true names and capacities of such DOE Defendants when ascertained.

10. At all relevant times herein, DEFENDANTS were the joint employers of PLAINTIFF and CLASS MEMBERS. PLAINTIFF is informed and believes, and thereon alleges, that at all times material to this complaint DEFENDANTS were the alter egos, divisions, affiliates, integrated enterprises, joint employers, subsidiaries, parents, principals, related entities, co-conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible, of each other. Each Defendant was completely dominated by his, her or its co-Defendant, and each was the alter ego of the other.

11. At least 30 days prior to the filing of this Complaint, DEFENDANTS were provided written notice of alleged violations pursuant to Labor Code § 1028.3(d). DEFENDANTS are liable as client employers pursuant to Labor Code §§ 1028.3, 1028.3(b).

12. At all relevant times herein, PLAINTIFF and CLASS MEMBERS were employed by DEFENDANTS under employment agreements that were partly written, partly oral, and partly implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and each of them, acted pursuant to, and in furtherance of, their policies and practices of not paying PLAINTIFF and CLASS MEMBERS all wages earned and due, through methods and schemes which include, but are not limited to, failing to pay minimum wage and overtime premiums; failing to provide full, timely and uninterrupted rest and meal periods; failing to pay employees one hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period and/or rest break was not provided; failing to properly maintain records; failing to provide accurate itemized statements for each pay period including failing to include total hours worked; failing to properly

1 compensate PLAINTIFF and CLASS MEMBERS for necessary expenditures incurred in the
2 performance of their job duties; and requiring, permitting or suffering the employees to work off
3 the clock, in violation of the California Labor Code and the applicable Welfare Commission
4 (“IWC”) Orders.

5 13. PLAINTIFF is informed and believes, and thereon alleges, that each and every one
6 of the acts and omissions alleged herein were performed by, and/or attributable to, all
7 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control of,
8 each of the other DEFENDANTS, and that said acts and failures to act were within the course and
9 scope of said agency, employment and/or direction and control.

10 14. Pursuant to California Labor Code § 558.1, DEFENDANTS and any person acting
11 on behalf of any of the DEFENDANTS, are liable for violating, or causing to violate, any provision
12 regulating minimum wages or hours and days of work in any order of the Industrial Welfare
13 Commission, or Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802.

14 15. As a direct and proximate result of the unlawful actions of DEFENDANTS,
15 PLAINTIFF and CLASS MEMBERS have suffered, and continue to suffer, from loss of earnings
16 in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction of this
17 Court.

18 **FACTUAL BACKGROUND**

19 16. At all relevant times, DEFENDANTS implemented policies and practices which
20 resulted in PLAINTIFF and CLASS MEMBERS not receiving minimum wage for all hours
21 worked. For instance, during the COVID-19 pandemic beginning in March 2020, PLAINTIFF and
22 CLASS MEMBERS were required to undergo COVID-19 screenings when beginning a shift at
23 certain locations. Further, PLAINTIFF and/or CLASS MEMBERS were not compensated for pre-
24 and post-shift, off-the-clock time, and non-productive work spent under DEFENDANTS’ control
25 including for donning and doffing steel-toed safety shoes, zero-below suits, and safety equipment;
26 walking several hundred yards from the locker room to the clock-in station; waiting in line to clock
27 in; waiting in line to pass through security with their vehicles; putting the pallet jack and hand cart
28 into the truck; getting paperwork and keys to the store; checking the trucks for safety purposes;

1 moving trucks, hooking up trailers, and moving equipment prior to clocking in for their shifts;
2 and/or for continuing to work after their shifts including to refuel. Furthermore, PLAINTIFF and
3 CLASS MEMBERS were required to use their personal cell phones for work-related purposes
4 while off-the-clock.

5 17. At all relevant times, due to workload requirements and time constraints imposed
6 by DEFENDANTS during each shift, PLAINTIFF and CLASS MEMBERS were required to work
7 in excess of five (5) hours without a minimum, uninterrupted thirty (30) minute meal period and
8 were not compensated one (1) hour of pay at their regular rate of compensation for each workday
9 that a compliant meal period was not provided, in violation of the California Labor Code and
10 applicable IWC Wage Order. For example, PLAINTIFF and CLASS MEMBERS were required
11 to continue working through their meal periods and/or were required to don their safety equipment
12 prior to clocking in from their meal periods.

13 18. At all relevant times, due to workload requirements and time constraints imposed
14 by DEFENDANTS during each shift, PLAINTIFF and CLASS MEMBERS were required to work
15 in excess of ten (10) hours without a second minimum, uninterrupted thirty (30) minute meal period
16 and were not compensated one (1) hour of pay at their regular rate of compensation for each
17 workday that a compliant meal period was not provided, in violation of the California Labor Code
18 and applicable IWC Wage Order. For example, PLAINTIFF and CLASS MEMBERS were
19 required to work shifts up to thirteen (13) hours and were not provided a second meal break due to
20 the demands of the job.

21 19. DEFENDANTS also did not adequately inform PLAINTIFF and CLASS
22 MEMBERS of their rights to take a meal period by the end of the fifth (5th) hour of work, or for
23 shifts greater than ten (10) hours, by the end of the tenth (10th) hour of work. DEFENDANTS also
24 failed to accurately record meal periods. Accordingly, DEFENDANTS' policy and practice was
25 to not provide meal periods to PLAINTIFF and CLASS MEMBERS in compliance with California
26 law.

27 20. At all relevant times, due to workload requirements and time constraints imposed
28 by DEFENDANTS, PLAINTIFF and CLASS MEMBERS were frequently required to work

1 without being permitted or authorized a minimum ten (10) minute rest period for every four hours
2 or major fraction thereof. PLAINTIFF and CLASS MEMBERS were not compensated one (1)
3 hour of pay at their regular rate of compensation for each workday that a rest break was not
4 provided, in violation of the California Labor Code and applicable IWC Wage Order. For example,
5 PLAINTIFF and/or CLASS MEMBERS were not authorized and permitted rest breaks due to the
6 job demands and staffing shortage, including working through breaks to timely make deliveries.

7 21. DEFENDANTS also did not adequately inform PLAINTIFF and CLASS
8 MEMBERS of their right to take a rest period. Moreover, DEFENDANTS did not have adequate
9 policies or practices permitting or authorizing rest periods for PLAINTIFF and CLASS
10 MEMBERS, nor did DEFENDANTS have adequate policies or practices regarding the timing of
11 rest periods. DEFENDANTS also did not have adequate policies or practices to verify whether
12 PLAINTIFF and the CLASS MEMBERS were taking their required rest periods. Further,
13 DEFENDANTS did not maintain accurate records of employee work periods, and therefore,
14 DEFENDANTS cannot demonstrate that PLAINTIFF and CLASS MEMBERS took rest periods
15 during the middle of each work period. Accordingly, DEFENDANTS' policy and practice was to
16 not authorize and permit PLAINTIFF and CLASS MEMBERS to take rest periods in compliance
17 with California law.

18 22. At all relevant times, DEFENDANTS failed to reimburse PLAINTIFF and CLASS
19 MEMBERS for all business expenses necessarily incurred, including for the purchase of masks,
20 safety equipment, tools, cell phones usage, mileage and use of vehicles, insurance, and rental fees
21 for work-related purposes to communicate with colleagues, managers and/or customers.

22 23. At all relevant times, DEFENDANTS have failed to maintain payroll records
23 showing the hours worked daily by and the wages paid to PLAINTIFF and CLASS MEMBERS.
24 DEFENDANTS have also failed to maintain accurate itemized wage statements reflecting total
25 hours worked and corresponding rates of pay for those hours worked.

26 24. At all relevant times, DEFENDANTS have failed to timely pay PLAINTIFF and
27 CLASS MEMBERS all wages earned during their employment and at the conclusion of their
28 employment with DEFENDANTS.

1 **CLASS ACTION DESIGNATION**

2 25. This action is appropriately suited for a Class Action because:

3 a. The potential class is a significant number. Joinder of all current and former
4 employees individually would be impractical.

5 b. This action involves common questions of law and fact to the potential class
6 because the action focuses on DEFENDANTS' systematic course of illegal payroll practices and
7 policies, which was applied to all DEFENDANTS' non-exempt employees in violation of the Labor
8 Code, the applicable IWC wage order, and the Business and Professions Code which prohibits
9 unfair business practices arising from such violations.

10 c. The claims of PLAINTIFF are typical of the class because DEFENDANTS
11 subjected all non-exempt employees to identical violations of the Labor Code, the applicable IWC
12 wage order, and the Business and Professions Code.

13 d. PLAINTIFF is able to fairly and adequately protect the interests of all
14 members of the class because it is in his best interests to prosecute the claims alleged herein to
15 obtain full compensation due to them for all services rendered and hours worked.

16 **FIRST CAUSE OF ACTION**

17 **Failure to Provide Required Meal Periods**

18 **[Cal. Labor Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 1-2001, § 11]**

19 **(Against all DEFENDANTS)**

20 26. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
21 allegations in the foregoing paragraphs.

22 27. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies and
23 practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS
24 required, permitted or otherwise suffered PLAINTIFF and CLASS MEMBERS to take less than
25 the 30-minute meal period, to work through them, and have failed to otherwise provide the required
26 first and second meal periods to PLAINTIFF and CLASS MEMBERS pursuant to California Labor
27 Code § 226.7, 512 and IWC Order No. 1-2001, § 11 including by failing to provide a thirty (30)
28 minute, timely and uninterrupted meal period for days on which they worked more than five (5)

1 hours and failing to provide a thirty (30) minute, timely and uninterrupted second meal period for
2 days on which they worked more than ten (10) hours.

3 28. DEFENDANTS further violated California Labor Code §§ 226.7 and IWC Wage
4 Order No. 1-2001, § 11 by failing to compensate PLAINTIFF and CLASS MEMBERS who were
5 not provided with a meal period, in accordance with the applicable wage order, one additional hour
6 of compensation at each employee's regular rate of pay for each workday that a meal period was
7 not provided.

8 29. DEFENDANTS further violated California Labor Code §§ 226.7, 510, 1194, 1197,
9 and IWC Wage Order No. 1-2001 by failing to compensate PLAINTIFF and CLASS MEMBERS
10 for all hours worked during their meal periods.

11 30. As a proximate result of the aforementioned violations, PLAINTIFF and CLASS
12 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages earned
13 and due, interest, penalties, expenses, and costs of suit.

14 **SECOND CAUSE OF ACTION**

15 **Failure to Provide Required Rest Periods**

16 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 1-2001, § 12]**

17 **(Against all DEFENDANTS)**

18 31. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
19 allegations in the foregoing paragraphs.

20 32. At all times relevant herein, as part of DEFENDANTS' illegal payroll policies and
21 practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS failed
22 to provide rest periods to PLAINTIFF and CLASS MEMBERS for every four hours or major
23 fraction thereof worked as required under California Labor Code §§ 226.7 and 512, and IWC Wage
24 Order No. 1-2001, § 12.

25 33. DEFENDANTS further violated California Labor Code § 226.7 and IWC Wage
26 Order No. 1-2001, § 12 by failing to pay PLAINTIFF and CLASS MEMBERS who were not
27 provided with a rest period, in accordance with the applicable wage order, one additional hour of
28 compensation at each employee's regular rate of pay for each workday that a rest period was not

1 provided.

2 34. As a proximate result of the aforementioned violations, PLAINTIFF and CLASS
3 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages earned
4 and due, interest, penalties, expenses, and costs of suit.

5 **THIRD CAUSE OF ACTION**

6 **Failure to Pay Overtime Wages**

7 **[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 1-2001, § 3]**

8 **(Against all DEFENDANTS)**

9 35. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
10 allegations in the foregoing paragraphs.

11 36. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order No. 1-2001,
12 § 3, DEFENDANTS are required to compensate PLAINTIFF and CLASS MEMBERS for all
13 overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours
14 worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight
15 (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of
16 twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the
17 seventh consecutive day of work in any workweek.

18 37. PLAINTIFF and CLASS MEMBERS are current and former non-exempt
19 employees entitled to the protections of California Labor Code §§ 510, 1194, and IWC Wage Order
20 No. 1-2001. During the CLASS PERIOD, DEFENDANTS failed to compensate PLAINTIFF and
21 CLASS MEMBERS for all overtime hours worked as required under the foregoing provisions of
22 the California Labor Code and IWC Wage Order by, among other things: failing to pay overtime
23 at one and one-half (1 ½) or double the regular rate of pay as provided by California Labor Code
24 §§ 510, 1194, and IWC Wage Order No. 1-2001, § 3; requiring, permitting or suffering
25 PLAINTIFF and CLASS MEMBERS to work off the clock; requiring, permitting or suffering
26 PLAINTIFF and CLASS MEMBERS to work through meal and rest breaks; illegally and
27 inaccurately recording time in which PLAINTIFF and CLASS MEMBERS worked; failing to
28 properly maintain PLAINTIFF's and CLASS MEMBERS' records; failing to provide accurate

1 itemized wage statements to PLAINTIFF for each pay period; and other methods to be discovered.

2 38. In violation of California law, DEFENDANTS have knowingly and willfully
3 refused to perform their obligations to compensate PLAINTIFF and CLASS MEMBERS for all
4 wages earned and all hours worked. As a proximate result, PLAINTIFF and CLASS MEMBERS
5 have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such
6 wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel
7 DEFENDANTS to fully perform their obligations under state law, all to their respective damages
8 in amounts according to proof at time of trial, and within the jurisdiction of this Court.

9 39. DEFENDANTS' conduct described herein violates California Labor Code §§ 510,
10 1194, 1198 and IWC Wage Order No. 1-2001, § 3. Therefore, pursuant to California Labor Code
11 §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor
12 Code and IWC Wage Orders, PLAINTIFF and CLASS MEMBERS are entitled to recover the
13 unpaid balance of wages owed to them by DEFENDANTS, plus interest, penalties, attorneys' fees,
14 expenses, and costs of suit.

15 **FOURTH CAUSE OF ACTION**

16 **Failure to Pay Minimum Wages**

17 **[Cal Labor Code §§ 1194, 1197, 1199; IWC Wage Order No. 1-2001, § 4]**

18 **(Against all DEFENDANTS)**

19 40. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
20 allegations in the foregoing paragraphs.

21 41. Pursuant to California Labor Code §§ 1194, 1197, 1199 and IWC Wage Order
22 No. 1- 2001, § 4, payment to an employee of less than the applicable minimum wage for all hours
23 worked in a payroll period is unlawful.

24 42. During the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFF and
25 CLASS MEMBERS minimum wages for all hours worked by, among other things: requiring,
26 permitting or suffering PLAINTIFF and CLASS MEMBERS to work off the clock; requiring,
27 permitting or suffering PLAINTIFF and CLASS MEMBERS to work through meal and rest breaks;
28 illegally and inaccurately recording time in which PLAINTIFF and CLASS MEMBERS worked;

1 failing to properly maintain PLAINTIFF's and CLASS MEMBERS' records; failing to provide
2 accurate itemized wage statements to PLAINTIFF and CLASS MEMBERS for each pay period;
3 and other methods to be discovered.

4 43. DEFENDANTS' conduct described herein violates California Labor Code §§ 1194,
5 1197, 1199 and IWC Wage Order No. 1-2001, § 4. As a proximate result of the aforementioned
6 violations, PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to
7 proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 218.5, 218.6, 226, 558,
8 1194, 1194.2, 1197.1, and other applicable provisions under the Labor Code and IWC Wage
9 Orders, PLAINTIFF and CLASS MEMBERS are entitled to recover the unpaid balance of wages
10 owed to them by DEFENDANTS, plus liquidated damages, interest, penalties, attorneys' fees,
11 expenses, and costs of suit.

12 **FIFTH CAUSE OF ACTION**

13 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

14 **[Cal. Labor Code §§ 201, 202, 203]**

15 **(Against all DEFENDANTS)**

16 44. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
17 allegations in the foregoing paragraphs.

18 45. Pursuant to California Labor Code § 201, 202, and 203, DEFENDANTS are
19 required to pay all earned and unpaid wages to an employee who is discharged. California Labor
20 Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued
21 and unpaid at the time of discharge are due and payable immediately.

22 46. Furthermore, pursuant to California Labor Code § 202, DEFENDANTS are
23 required to pay all accrued wages due to an employee no later than 72 hours after the employee
24 quits his or her employment, unless the employee provided 72 hours previous notice of his or her
25 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

26 47. California Labor Code § 203 provides that if an employer willfully fails to pay, in
27 accordance with California Labor Code §§ 201 and 202, any wages of an employee who is
28 discharged or who quits, the employer is liable for waiting time penalties in the form of continued

1 compensation to the employee at the same rate for up to 30 workdays.

2 48. During the CLASS PERIOD, DEFENDANTS have willfully failed to pay accrued
3 wages and other compensation to PLAINTIFF and CLASS MEMBERS in accordance with
4 California Labor Code §§ 201 and 202.

5 49. As a result, PLAINTIFF and CLASS MEMBERS are entitled to all available
6 statutory penalties, including the waiting time penalties provided in California Labor Code § 203,
7 together with interest thereon, as well as other available remedies.

8 50. As a proximate result of DEFENDANTS' unlawful actions and omissions,
9 PLAINTIFF and CLASS MEMBERS have been deprived of compensation in an amount according
10 to proof at the time of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery
11 of such amounts, plus interest thereon, and attorneys' fees and costs, pursuant to California Labor
12 Code §§ 218.5, 218.6, 1194 and 2699.

13 **SIXTH CAUSE OF ACTION**

14 **Failure to Timely Pay Wages During Employment**

15 **[Cal. Lab. Code § 204]**

16 **(Against all DEFENDANTS)**

17 51. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
18 allegations in the foregoing paragraphs.

19 52. Labor Code § 204 required that all wages are due and payable twice in each calendar
20 month.

21 53. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
22 allegations in the foregoing paragraphs.

23 54. Labor Code § 204 requires that all wages are due and payable twice in each calendar
24 month. During the CLASS PERIOD, DEFENDANTS have willfully failed to pay accrued wages
25 and other compensation to PLAINTIFF and CLASS MEMBERS in accordance with California
26 Labor Code § 204, including for overtime and minimum wage for off-the-clock and nonproductive
27 time and meal and rest premiums that became due and payable to PLAINTIFF and CLASS
28 MEMBERS in each month that they were employed. DEFENDANTS violated Labor Code § 204

1 by failing to pay said wages when they were due and payable.

2 55. Labor Code § 210(a) provides that “in addition to, and entirely independent and
3 apart from, any other penalty provided in this article, every person who fails to pay the wages of
4 each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and
5 1197.5, shall be subject to a penalty as follows:

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

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

11 56. As a result, PLAINTIFF and CLASS MEMBERS are entitled to all available
12 statutory penalties, including the penalties provided in California Labor Code § 210, together with
13 interest thereon, as well as other available remedies.

14 57. As a proximate result of DEFENDANTS’ unlawful actions and omissions,
15 PLAINTIFF and CLASS MEMBERS have been deprived of compensation in an amount according
16 to proof at the time of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery
17 of such amounts, plus interest thereon, and attorneys’ fees and costs, pursuant to California Labor
18 Code §§ 1194 and 2699.

19 **SEVENTH CAUSE OF ACTION**

20 **Failure to Maintain Required Records**

21 **[Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 1-2001, § 7]**

22 **(Against all DEFENDANTS)**

23 58. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
24 allegations in the foregoing paragraphs.

25 59. During the CLASS PERIOD, as part of DEFENDANTS’ illegal payroll policies and
26 practices to deprive PLAINTIFF and CLASS MEMBERS of all wages earned and due,
27 DEFENDANTS knowingly and intentionally failed to maintain records as required under
28 California Labor Code §§ 226, 1174, and IWC Wage Order No. 1-2001, § 7, including but not

1 limited to the following records: total daily hours worked by each employee; applicable rates of
2 pay; all deductions; meal periods; time records showing when each employee begins and ends each
3 work period; and accurate itemized statements.

4 60. As a proximate result of DEFENDANTS' unlawful actions and omissions,
5 PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at trial,
6 and are entitled to all wages earned and due plus interest thereon. Additionally, PLAINTIFF and
7 CLASS MEMBERS are entitled to all available statutory penalties, including but not limited to
8 civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of
9 costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in
10 California Labor Code § 226(e), as well as other available remedies.

11 **EIGHTH CAUSE OF ACTION**

12 **Failure to Furnish Accurate Itemized Wage Statements**

13 **[Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 1-2001, § 7]**

14 **(Against all DEFENDANTS)**

15 61. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
16 allegations in the foregoing paragraphs.

17 62. During the CLASS PERIOD, DEFENDANTS routinely failed to provide
18 PLAINTIFF and CLASS MEMBERS with timely, accurate, and itemized wage statements in
19 writing showing each employee's gross wages earned, total hours worked, all deductions made, net
20 wages earned, the name and address of the legal entity or entities employing PLAINTIFF and
21 CLASS MEMBERS, and all applicable hourly rates in effect during each pay period and the
22 corresponding number of hours worked at each hourly rate, including for all time spent on
23 nonproductive times, in violation of California Labor Code §§ 226, 226.2, and IWC Wage Order
24 No. 1-2001, § 7.

25 63. During the CLASS PERIOD, DEFENDANTS knowingly and intentionally failed to
26 provide PLAINTIFF and CLASS MEMBERS with timely, accurate, and itemized wage statements
27 in accordance with California Labor Code § 226(a).

28 64. As a proximate result of DEFENDANTS' unlawful actions and omissions,

1 PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at trial,
2 and seek all wages earned and due, plus interest thereon. Additionally, PLAINTIFF and CLASS
3 MEMBERS are entitled to all available statutory penalties, including but not limited to civil
4 penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs,
5 expenses, and reasonable attorneys' fees, including but not, limited to those provided in California
6 Labor Code §§ 226(e) and (h), as well as other available remedies.

7 **NINTH CAUSE OF ACTION**

8 **Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of**
9 **Duties**

10 **[Cal. Labor Code § 2802]**

11 **(Against all DEFENDANTS)**

12 65. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
13 allegations in the foregoing paragraphs.

14 66. California Labor Code § 2802(a) requires an employer to indemnify an employee
15 for all necessary expenditures or losses incurred by the employee in direct consequence of the
16 discharge of his or her duties, or of his or her obedience to the directions of the employer.

17 67. During the CLASS PERIOD, DEFENDANTS knowingly and willfully failed to
18 indemnify PLAINTIFF and CLASS MEMBERS for all business expenses and/or losses incurred
19 in direct consequence of the discharge of their duties while working under the direction of
20 DEFENDANTS, including but not limited to expenses for uniforms and specialized clothing,
21 gloves, shoes, masks, safety equipment, tools, cell phone usage, mileage and use of vehicles,
22 insurance, rental fees and other employment-related expenses, in violation of California Labor
23 Code § 2802.

24 68. As a proximate result of DEFENDANTS' unlawful actions and omissions,
25 PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at trial,
26 and seek reimbursement of all necessary expenditures, plus interest thereon pursuant to California
27 Labor Code § 2802(b). Additionally, PLAINTIFF and CLASS MEMBERS are entitled to all
28 available statutory penalties and an award of costs, expenses, and reasonable attorneys' fees,

1 including those provided in California Labor Code § 2802(c), as well as other available remedies.

2 **TENTH CAUSE OF ACTION**

3 **Unfair and Unlawful Business Practices**

4 **[Cal. Bus. & Prof. Code §§ 17200 et. seq.]**

5 **(Against all DEFENDANTS)**

6 69. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
7 allegations in the foregoing paragraphs.

8 70. Each and every one of DEFENDANTS' acts and omissions in violation of the
9 California Labor Code and/or the applicable IWC Wage Order as alleged herein, including but not
10 limited to DEFENDANTS' failure and refusal to provide required meal periods, DEFENDANTS'
11 failure and refusal to provide required rest periods, DEFENDANTS' failure and refusal to pay
12 overtime compensation, DEFENDANTS' failure and refusal to pay minimum wages,
13 DEFENDANTS' failure and refusal to pay all wages due to discharged or quitting employees,
14 DEFENDANTS' failure and refusal to furnish accurate itemized wage statements;
15 DEFENDANTS' failure and refusal to maintain required records, DEFENDANTS' failure and
16 refusal to indemnify PLAINTIFF and CLASS MEMBERS for necessary expenditures and/or losses
17 incurring in discharging their duties, constitutes an unfair and unlawful business practice under
18 California Business and Professions Code § 17200 et seq.

19 71. DEFENDANTS' violations of California wage and hour laws constitute a business
20 practice because DEFENDANTS' aforementioned acts and omissions were done repeatedly over a
21 significant period of time, and in a systematic manner, to the detriment of PLAINTIFF and CLASS
22 MEMBERS.

23 72. DEFENDANTS have avoided payment of wages, overtime wages, meal periods,
24 rest periods, and other benefits as required by the California Labor Code, the California Code of
25 Regulations, and the applicable IWC Wage Order. Further, DEFENDANTS have failed to record,
26 report, and pay the correct sums of assessment to the state authorities under the California Labor
27 Code and other applicable regulations.

1 73. As a result of DEFENDANTS’ unfair and unlawful business practices,
2 DEFENDANTS have reaped unfair and illegal profits during the CLASS PERIOD at the expense
3 of PLAINTIFF, CLASS MEMBERS, and members of the public. DEFENDANTS should be made
4 to disgorge their ill-gotten gains and to restore them to PLAINTIFF and CLASS MEMBERS.

5 74. DEFENDANTS’ unfair and unlawful business practices entitle PLAINTIFF and
6 CLASS MEMBERS to seek preliminary and permanent injunctive relief, including but not limited
7 to orders that DEFENDANTS account for, disgorge, and restore to PLAINTIFF and CLASS
8 MEMBERS the wages and other compensation unlawfully withheld from them. PLAINTIFF and
9 CLASS MEMBERS are entitled to restitution of all monies to be disgorged from DEFENDANTS
10 in an amount according to proof at the time of trial, but in excess of the jurisdiction of this Court,
11 and an award of costs, expenses, and reasonable attorneys’ fees, including those provided in
12 California Code of Civil Procedure § 1021.5, as well as other available remedies.

13 **ELEVENTH CAUSE OF ACTION**

14 **Representative Action for Civil Penalties**

15 **[Cal. Labor Code §§ 2698-2699.5]**

16 **(Against All DEFENDANTS)**

17 75. PLAINTIFF incorporates herein by specific reference as though fully set forth the
18 allegations in all preceding paragraphs, with exception of the allegations in paragraph 13 and the
19 subparagraphs thereto.

20 76. PLAINTIFF is an “aggrieved employee” within the meaning of California Labor
21 Code § 2699(c), and a proper representative to bring a civil action on behalf of himself and other
22 current and former employees of DEFENDANTS pursuant to the procedures specified in California
23 Labor Code § 2699.3, because PLAINTIFF and CLASS MEMBERS were employed by
24 DEFENDANTS and the alleged violations of the California Labor Code were committed against
25 PLAINTIFF and CLASS MEMBERS.

26 77. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor
27 Code §§ 2698-2699.5, PLAINTIFF and CLASS MEMBERS seeks to recover civil penalties,
28 including but not limited to penalties under California Labor Code §§ 2699, 210, 226.3, 558,

1 1174.5, 1197.1, and IWC Wage Order No. 1-2001, § 20, from DEFENDANTS in a representative
2 action for the violations set forth above, including but not limited to violations of California Labor
3 Code §§ 201, 202, 203, 204, 223, 226, 226.2, 226.7, 510, 512, 1174, 1182.12, 1194, 1194.2, 1197,
4 1198, and 2802. PLAINTIFF further seeks civil penalties based on DEFENDANTS violation of
5 Labor Code §§ 226, 432, 1198.5 and Industrial Welfare Commission Order No. 1-2001, 7 (records)
6 by failing to comply with a written request for records PLAINTIFF and CLASS MEMBERS are
7 also entitled to an award of reasonable attorneys' fees and costs pursuant to California Labor Code
8 § 2699(g)(1).

9 78. Pursuant to California Labor Code §§ 2699.3, PLAINTIFF gave written notice on
10 January 15, 2021 by online filing to the California Labor and Workforce Development Agency
11 ("LWDA") and by certified mail to DEFENDANTS of the specific provisions of the California
12 Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories
13 to support the alleged violations. More than sixty-five (65) days have passed and the LWDA has
14 not provided notice to PLAINTIFF that it intends to investigate the alleged violations.

15 79. Therefore, PLAINTIFF has complied with all of the requirements set forth in
16 California Labor Code § 2699.3 to commence a representative action under PAGA.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, PLAINTIFF, individually and on behalf of all other persons similarly
19 situated, respectfully prays for relief against DEFENDANTS and DOES 1 through 50, inclusive,
20 and each of them, as follows:

- 21 1. For compensatory damages in an amount to be ascertained at trial;
- 22 2. For restitution of all monies due to PLAINTIFF and CLASS MEMBERS, as well
23 as disgorged profits from DEFENDANTS' unfair and unlawful business practices;
- 24 3. For meal and rest period compensation pursuant to California Labor Code §§ 226.7,
25 512 and IWC Wage Order No. 1-2001;
- 26 4. For liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
- 27 5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from
28

1 violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and from
2 engaging in the unlawful business practices complained of herein;

3 6. For waiting time penalties pursuant to California Labor Code § 203;

4 7. For statutory and civil penalties according to proof, including but not limited to all
5 penalties authorized by the California Labor Code §§ 210, 226(e) and §§ 2698-2699.5;

6 8. For interest on the unpaid wages at 10% per annum pursuant to California Labor
7 Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable
8 provision providing for pre-judgment interest;

9 9. For reasonable attorneys' fees and costs pursuant to California Labor Code
10 §§ 218.5, 226(e) and (h), 1194, 2699, 2802, California Civil Code § 1021.5, and any other
11 applicable provisions providing for attorneys' fees and costs;

12 10. For declaratory relief;

13 11. For an order requiring and certifying the First, Second, Third, Fourth, Fifth, Sixth,
14 Seventh, Eighth, Ninth and Tenth Causes of Action as a class action;

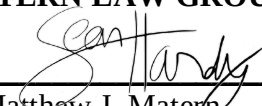
15 12. For an order appointing PLAINTIFF as class representative, and PLAINTIFF's
16 counsel as class counsel; and

17 13. For such further relief that the Court may deem just and proper.

18
19 DATED: February 16, 2024

20 Respectfully submitted,

21 **MATERN LAW GROUP, PC**

22 By: 
23 _____

24 Matthew J. Matern

25 Julia Z. Wells

26 Sean P. Hardy

27 Attorneys for Plaintiff

28 CARRELL HAWKINS, individually, and on
behalf of other persons similarly situated

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to this action. My business address is 1230 Rosecrans Avenue, Suite 200, Manhattan Beach, California 90266.

On February 16, 2024, I served the following document(s):

FIRST AMENDED COMPLAINT

☒ **By e-mail or electronic transmission.** I caused the documents to be sent to the person at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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Attorneys for SHIFTABLEHR

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

12 Executed on February 16, 2024, at Manhattan Beach, California.

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Roxana Barcenas