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ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

09/27/2022 at 09:23:00 AM

Clerk of the Superior Court
By Emily Schilawski, Deputy Clerk

Attorneys for Plaintiffs Kurt Abron, Jonathan Bagley, and Robert Warren, as individuals, and on behalf of all others similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

KURT ABRON, JONATHAN BAGLEY,
and ROBERT WARREN, as individuals
and on behalf of all others similarly
situated,

Plaintiffs,

vs.

ST. ANTHONY FOUNDATION; and
DOES 1 through 20, inclusive,

Defendants.

Case No. 37-2022-00027353-CU-OE-CTL

*Assigned for All Purposes to:
Judge Eddie C. Sturgeon; Dept. C-67*

**[Amended as a matter of right, pursuant to
Labor Code section 2699.3(a)(2)(C)]**

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Failure to Reimburse Necessary Business-Related Expenses;
6. Failure to Provide Accurate Itemized Wage Statements;
7. Failure to Pay All Wages Due Upon Separation of Employment;
8. Violation of Business and Professions Code §§ 17200, *et seq.*, and
9. Enforcement of Labor Code § 2698 *et seq.* (“PAGA”)

1 Plaintiffs Kurt Abron, Jonathan Bagley, and Robert Warren, individually, and on behalf
2 of others similarly situated, alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiffs Kurt Abron, Jonathan Bagley, and Robert Warren (“Plaintiffs”) bring
5 this putative class action and representative action pursuant to the Private Attorneys General Act
6 of 2004, Cal. Lab. Code. § 2698 *et seq.*, pursuant to California Code of Civil Procedure § 382,
7 against defendants St. Anthony Foundation, and DOES 1 through 20, inclusive (collectively,
8 “Defendants”), on behalf of themselves as individuals, and on behalf of California citizens who
9 are and were employed by Defendants as non-exempt employees throughout California.

10 2. Defendants are in the human services industry, operating a non-profit
11 organization.

12 3. Through this action, Plaintiffs allege that Defendants have engaged in a
13 systematic pattern of wage and hour violations under the California Labor Code and Industrial
14 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
15 unfair competition.

16 4. Plaintiffs are informed and believe, and thereon alleges, that Defendants have
17 increased their profits by violating state wage and hour laws by, among other things:

- 18 (a) failing to pay all wages (including minimum wages and overtime wages);
- 19 (b) failing to pay overtime wages at the proper rates;
- 20 (c) failing to provide lawful meal periods or compensation in lieu thereof;
- 21 (d) failing to authorize or permit lawful rest breaks or provide compensation
22 in lieu thereof;
- 23 (e) failing to reimburse employees for necessary business-related expenses;
- 24 (f) failing to maintain or to provide accurate itemized wage statements; and
- 25 (g) failing to pay all wages due upon separation of employment.

26 5. Plaintiffs seek monetary relief against Defendants on behalf of themselves and all
27 others similarly situated in California to recover, among other things, unpaid wages and benefits,
28 interest, attorneys’ fees, costs and expenses, and penalties pursuant to Labor Code §§ 201, 202,

203, 204, 210, 226, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2698, *et seq.*, and Code of California Civil Procedure § 1021.5.

JURISDICTION AND VENUE

6. This is a class action pursuant to California Code of Civil Procedure § 382. The monetary damages and restitution sought by Plaintiffs exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

7. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes, except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

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

9. Venue is proper in this Court because, upon information and belief, Defendants reside, transact business, or have offices in this county, and/or the acts and omissions alleged herein took place in this county.

THE PARTIES

10. Plaintiffs are residents of California and worked for Defendants in California during the relevant time periods as alleged herein.

11. Plaintiffs are informed and believe, and thereon alleges that at all times hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as employers, whose employees were and are engaged throughout this county and the State of California.

12. Plaintiffs are unaware of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this

1 First Amended Complaint and serve such fictitiously named defendants once their names and
2 capacities become known.

3 13. Plaintiffs are informed and believes, and thereon alleges, that DOES 1 through 20
4 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants at
5 all relevant times.

6 14. Plaintiffs are informed and believes, and thereon alleges, that each defendant
7 acted in all respects pertinent to this action as the agent of the other defendant, carried out a joint
8 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
9 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as
10 the employer and/or joint employer of Plaintiffs and the class members.

11 15. Plaintiffs are informed and believes, and thereon alleges, that each and all of the
12 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
13 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
14 the other's behalf. The acts of any and all Defendants were in accordance with, and represent,
15 the official policy of Defendants.

16 16. At all relevant times, Defendants, and each of them, acted within the scope of such
17 agency or employment, or ratified each and every act or omission complained of herein. At all
18 relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each
19 and all the other Defendants in proximately causing the damages herein alleged.

20 17. Plaintiffs are informed and believes, and thereon alleges, that each of said
21 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
22 omissions, occurrences, and transactions alleged herein.

23 **CLASS ACTION ALLEGATIONS**

24 18. Plaintiffs bring this action under Code of Civil Procedure § 382 on behalf of
25 themselves and all others similarly situated who were affected by Defendants' Labor Code,
26 Business and Professions Code §§ 17200, and IWC Wage Order violations.

27 19. All claims alleged herein arise under California law for which Plaintiffs seek relief
28 authorized by California law.

1 20. Plaintiffs' proposed class consists of and is defined as follows:

2 Class

3 All California citizens currently or formerly employed by Defendant as non-exempt
4 employees in the State of California at any time between January 15, 2018¹ and the
5 date of class certification ("Class").

6 21. Plaintiffs also seeks to certify the following subclass of employees:

7 Waiting Time Subclass

8 All members of the Class who separated their employment with Defendant at any
9 time between January 15, 2019 and the date of class certification ("Waiting Time
10 Subclass").

11 22. Plaintiffs reserve the right to modify or re-define the Class, establish additional
12 subclasses, or modify or re-define any class or subclass definition as appropriate based on
13 investigation, discovery, and specific theories of liability.

14 23. Members of the Class and the Subclass described above will be collectively
15 referred to as "Class Members."

16 24. There are common questions of law and fact as to the Class Members that
17 predominate over any questions affecting only individual members including, but not limited to,
18 the following:

- 19 (a) Whether Defendants fail to pay Plaintiffs and Class Members all wages
20 (including minimum wages, double time wages, and overtime wages) for
21 all hours worked by Plaintiff and Class Members.
- 22 (b) Whether Defendants paid Plaintiffs and other Class Members overtime
23 compensation at the proper rates;
- 24 (c) Whether Defendants failed to pay Plaintiffs and other Class Members for
25 required off-the-clock work.

26
27
28 ¹ The statute of limitations for this matter was tolled between April 6, 2020 and October 1, 2020
pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

- 1 (d) Whether Defendants required Plaintiffs and Class Members to work over
2 eight (8) hours per day, over twelve (12) hours per day, over forty (40)
3 hours per week, and/or seven (7) consecutive days and failed to pay them
4 overtime compensation at the proper rate.
- 5 (e) Whether Defendants deprived Plaintiffs and Class Members of timely
6 meal periods or required Plaintiffs and Class Members to work through
7 meal periods without proper compensation.
- 8 (f) Whether Defendants deprived Plaintiffs and Class Members of rest breaks
9 or required Plaintiffs and Class Members to work through rest breaks
10 without proper compensation.
- 11 (g) Whether Defendants failed to properly reimburse necessary business-
12 related expenses incurred by Plaintiffs and Class Members.
- 13 (h) Whether Defendants failed to pay Plaintiffs and other Class Members two
14 times the applicable minimum wage to employees who were required to
15 provide and maintain hand tools and equipment typically provided by the
16 employer and required for the trade.
- 17 (i) Whether Defendants failed to provide Plaintiffs and Class Members
18 accurate itemized wage statements.
- 19 (j) Whether Defendants failed to timely pay the Waiting Time Subclass all
20 wages due upon termination or within seventy-two (72) hours of
21 resignation.
- 22 (k) Whether Defendants' conduct was willful or reckless.
- 23 (l) Whether Defendants engaged in unfair business practices in violation of
24 Business and Professions Code §§ 17200, *et seq.*

25 25. There is a well-defined community of interest in this litigation and the proposed
26 Class and Subclass are readily ascertainable:

27 (a) Numerosity: The Class Members are so numerous that joinder of all
28 members is impractical. Although the members of the entire Class and Subclass are unknown to

1 Plaintiff at this time, on information and belief, the class is estimated to be greater than twenty-
2 five (25) individuals. The identities of the Class Members are readily ascertainable by inspection
3 of Defendants' employment and payroll records.

4 (b) Typicality: The claims (or defenses, if any) of Plaintiffs are typical of the
5 claims (or defenses, if any) of the Class Members because Defendants' failure to comply with
6 the provisions of California's wage and hour laws entitled each Class Member to similar pay,
7 benefits, and other relief. The injuries sustained by Plaintiffs are also typical of the injuries
8 sustained by the Class Members because they arise out of and are caused by Defendants' common
9 course of conduct as alleged herein.

10 (c) Adequacy: Plaintiffs will fairly and adequately represent and protect the
11 interests of all Class Members because it is in their best interest to prosecute the claims alleged
12 herein to obtain full compensation and penalties due to them and the Class Members. Plaintiffs'
13 attorneys, as proposed class counsel, are competent and experienced in litigating large
14 employment class actions and versed in the rules governing class action discovery, certification,
15 and settlement. Plaintiffs have incurred and, throughout the duration of this action, will continue
16 to incur attorneys' fees and costs that have been and will be necessarily expended for the
17 prosecution of this action for the substantial benefit of the Class Members.

18 (d) Superiority: The nature of this action makes use of class action
19 adjudication superior to other methods. A class action will achieve economies of time, effort, and
20 expense as compared with separate lawsuits and will avoid inconsistent outcomes because the
21 same issues can be adjudicated in the same manner for the entire Class and Subclass at the same
22 time. If appropriate, this Court can, and is empowered to, fashion methods to efficiently manage
23 this case as a class action.

24 (e) Public Policy Considerations: Employers in the State of California violate
25 employment and labor laws every day. Current employees are often afraid to assert their rights
26 out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
27 because they believe their former employers might damage their future endeavors through
28 negative references and/or other means. Class actions provide class members who are not named

1 in the complaint with a type of anonymity that allows for the vindication of their rights while
2 affording them privacy protections.

3 **GENERAL ALLEGATIONS**

4 26. At all relevant times mentioned herein, Defendants employed Plaintiffs and other
5 California residents as non-exempt employees at Defendants' California business location(s).

6 27. Defendants employed Plaintiffs as non-exempt employees at Defendants'
7 California business location.

8 28. Defendants continue to employ non-exempt employees within California.

9 29. Plaintiffs are informed and believe, and thereon allege, that at all times herein
10 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who
11 were knowledgeable about California's wage and hour laws, employment and personnel
12 practices, and the requirements of California law.

13 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
14 should have known that Plaintiffs and Class Members were entitled to receive wages for all time
15 worked (including minimum wages and overtime wages) and that they were not receiving all
16 wages earned for work that was required to be performed. In violation of the Labor Code and
17 IWC Wage Orders, Plaintiffs and Class Members were not paid all wages (including minimum
18 wages, double time wages, and overtime wages) due to Defendants illegal employment practices,
19 including, but not limited to, requiring unpaid off-the clock work; and failing to pay Plaintiffs
20 and other Class Members at the proper hourly rates for all hours worked, among other reasons.

21 31. Plaintiffs are informed and believe, and thereon allege, that Defendants
22 improperly calculated the overtime rate of pay for Plaintiffs and Class Members because the rates
23 did not include non-discretionary wages, including, but not limited to, bonuses, shift differentials,
24 and/or other incentive pay into the computation of their regular rate of pay for purposes of
25 calculating the overtime rate of pay.

26 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
27 should have known that Plaintiffs and Class Members were entitled to receive all required meal
28 periods or payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular

1 rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the
2 Labor Code and IWC Wage Orders, Plaintiffs and Class Members did not receive all meal periods
3 or payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular rate of
4 pay when they did not receive a timely, uninterrupted meal period.

5 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
6 should have known that Plaintiffs and Class Members were entitled to receive all rest breaks or
7 payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular rate of pay
8 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiffs
9 and Class Members did not receive all rest breaks or payment of one (1) additional hour of pay
10 at Plaintiffs' and Class Members' regular rate of pay when a rest break was missed.

11 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
12 should have known that Plaintiffs and Class Members were entitled to reimbursement for
13 necessary expenditures incurred in connection with the performance and execution of their job
14 duties. In violation of the California Labor Code, Plaintiffs and Class Members did not receive
15 adequate reimbursement for necessary business expenses, including, but not limited to,
16 reimbursement for cell phone use.

17 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
18 should have known that Plaintiffs and Class Members were entitled to receive itemized wage
19 statements that accurately showed the following information pursuant to the Labor Code: (1)
20 gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units
21 earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
22 deductions, provided that all deductions made on written orders of the employee may be
23 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for
24 which the employee is paid; (7) the name of the employee and only the last four digits of his or
25 her social security number or an employee identification number other than a social security
26 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
27 hourly rates in effect during the pay period and the corresponding number of hours worked at
28

1 each hourly rate by the employee. In violation of the Labor Code, Plaintiffs and Class Members
2 were not provided with accurate itemized wage statements.

3 36. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
4 should have known that the Waiting Time Subclass was entitled to timely payment of wages due
5 upon separation of employment. In violation of the Labor Code, the Waiting Time Subclass did
6 not receive payment of all wages within permissible time periods.

7 37. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
8 should have known they had a duty to compensate Plaintiffs and Class Members, and Defendants
9 had the financial ability to pay such compensation but willfully, knowingly, and intentionally
10 failed to do so in order to increase Defendants' profits.

11 38. Therefore, Plaintiffs bring this lawsuit seeking monetary and injunctive relief
12 against Defendants on behalf of themselves and all Class Members to recover, among other
13 things, unpaid wages (including minimum wages, double time wages, and overtime wages),
14 unpaid meal period premium payments, unpaid rest period premium payments, interest,
15 attorneys' fees, penalties, costs, and expenses.

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO PAY MINIMUM WAGES**

18 (Violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197; Violation of IWC Wage Order §3-4)

19 39. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
20 though fully set forth herein.

21 40. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
22 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
23 wage than the minimum so fixed is unlawful.

24 41. During the relevant time period, Defendants paid Plaintiffs and Class Members
25 less than minimum wages when they failed to pay proper compensation for all hours worked. To
26 the extent these hours do not qualify for the payment of overtime, Plaintiffs and Class Members
27 were not being paid at least the lawful minimum wage for their work.
28

42. During the relevant time period, Defendants regularly failed to pay at least minimum wage to Plaintiffs and Class Members for all hours worked pursuant to Labor Code §§ 1194 and 1197.

43. Defendants' failure to pay Plaintiffs and Class Members the required minimum wage violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and Class Members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorneys' fees.

44. Pursuant to Labor Code § 1194.2, Plaintiffs and Class Members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued interest thereon.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME

(Violation of Labor Code §§ 510, 1194, and 1198; Violation of IWC Wage Order § 3)

45. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as though fully set forth herein.

46. Labor Code § 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either one and one-half (1½) or two (2) times the person's regular rate of pay, depending on the number of hours or days worked by the person on a daily or weekly basis.

47. Specifically, the applicable IWC Wage Orders provide that Defendants are and were required to pay overtime compensation to Plaintiffs and Class Members at the rate of one and one-half times (1½) their regular rate of pay when working and for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first eight (8) hours of work on the seventh day of work in a workweek.

48. The applicable IWC Wage Orders further provide that Defendants are and were required to pay overtime compensation to Plaintiffs and Class Members at a rate of two times their regular rate of pay when working and for all hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours on the seventh day of work in a workweek.

1 49. California Labor Code § 510 codifies the right to overtime compensation at one
2 and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in
3 a day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
4 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
5 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
6 seventh day of work in a workweek.

7 50. Labor Code § 510 and the applicable IWC Wage Orders provide that employment
8 of more than six days in a workweek is only permissible if the employer pays proper overtime
9 compensation as set forth herein.

10 51. Plaintiffs and Class Members were non-exempt employees entitled to the
11 protections of California Labor Code §§ 510 and 1194.

12 52. During the relevant time period, Defendants required Plaintiffs and Class
13 Members to work in excess of eight (8) hours in a day, forty (40) hours in a week, and/or for a
14 seventh consecutive day in a workweek without paying Plaintiffs and Class Members proper
15 overtime wages for their work.

16 53. During the relevant time period, Defendants failed to pay Plaintiffs and Class
17 Members overtime wages for all overtime hours worked when Plaintiff and Class Members
18 worked in excess of eight (8) hours in a day, forty (40) hours in a week and/or for a seventh
19 consecutive day of work in a workweek, or when Plaintiffs and Class Members worked in excess
20 of twelve (12) hours in a day and/or in excess of eight (8) hours on the seventh day of work in a
21 work week.

22 54. During the relevant time period, Defendants failed to pay Plaintiffs and Class
23 Members overtime wages at the correct rate because they failed to include non-discretionary
24 wages, including, but not limited to, bonuses, shift differentials, and/or other incentive pay in the
25 computation of their overtime rate of pay, which caused Plaintiffs and Class Members to not be
26 paid all overtime wages owed.

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28 ///

1 55. In violation of state law, Defendants knowingly and willfully refused to perform
2 their obligations and compensate Plaintiffs and Class Members for all wages earned and all hours
3 worked.

4 56. Defendants' failure to pay Plaintiffs and Class Members the unpaid balance of
5 overtime and double time compensation, as required by California law, violates the provisions
6 of Labor Code §§ 510 and 1198, and is therefore unlawful.

7 57. Pursuant to Labor Code § 1194, Plaintiffs and Class Members are entitled to
8 recover their unpaid overtime and double time compensation as well as interest, costs, and
9 attorneys' fees.

10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO PROVIDE MEAL PERIODS**

12 (Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

13 58. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
14 though fully set forth herein

15 59. Labor Code § 226.7 provides that no employer shall require an employee to work
16 during any meal period mandated by the IWC Wage Orders.

17 60. Section 11 of the applicable IWC Wage Order states, "[n]o employer shall employ
18 any person for a work period of more than five (5) hours without a meal period of not less than
19 30 minutes, except that when a work period of not more than six (6) hours will complete the day's
20 work the meal period may be waived by mutual consent of the employer and the employee."

21 61. Labor Code § 512(a) provides that an employer may not require, cause, or permit
22 an employee to work for a period of more than five (5) hours per day without providing the
23 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the
24 total work period per day of the employee is not more than six (6) hours, the meal period may be
25 waived by mutual consent of both the employer and the employee.

26 62. Labor Code § 512(a) also provides that an employer may not employ an employee
27 for a work period of more than ten (10) hours per day without providing the employee with a
28 second meal period of not less than thirty (30) minutes, except that if the total hours worked is no

1 more than twelve (12) hours, the second meal period may be waived by mutual consent of the
2 employer and the employee only if the first meal period was not waived.

3 63. During the relevant time period, Plaintiffs and Class Members did not receive
4 compliant meal periods for working more than five (5) and/or ten (10) hours per day because their
5 meal periods were missed, late, short, interrupted, and/or they were not permitted to take a second
6 meal period.

7 64. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order requires
8 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of
9 compensation for each work day that a compliant meal period is not provided.

10 65. At all relevant times, Defendants failed to pay Plaintiffs and Class Members meal
11 period premiums for missed, late, short, and/or interrupted meal periods pursuant to Labor Code
12 § 226.7(b) and section 11 of the applicable IWC Wage Order.

13 66. As a result of Defendants' failure to pay Plaintiffs and Class Members an
14 additional hour of pay for each day a compliant meal period was not provided, Plaintiffs and Class
15 Members suffered and continue to suffer a loss of wages and compensation.

16 **FOURTH CAUSE OF ACTION**

17 **FAILURE TO PERMIT REST BREAKS**

18 (Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12)

19 67. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
20 though fully set forth herein.

21 68. Labor Code § 226.7(a) provides that no employer shall require an employee to
22 work during any rest period mandated by the IWC Wage Orders.

23 69. Section 12 of the applicable IWC Wage Order states "[e]very employer shall
24 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
25 the middle of each work period[,]" and the "[a]uthorized rest period time shall be based on the
26 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
27 fraction thereof[,]" unless the total daily work time is less than three and one-half (3½) hours.
28

1 70. During the relevant time period, Plaintiffs and Class Members did not receive a
2 ten (10) minute rest period for every four (4) hours or major fraction thereof worked because they
3 were required to work through their daily rest periods, were not permitted to take timely rest
4 periods, and/or were not authorized to take their rest periods.

5 71. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires
6 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of
7 compensation for each work day that a compliant rest period is not provided.

8 72. At all relevant times, Defendants failed to pay Plaintiffs and Class Members rest
9 period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code §
10 226.7(b) and section 12 of the applicable IWC Wage Order.

11 73. As a result of Defendants' failure to pay Plaintiffs and Class Members an
12 additional hour of pay for each day a compliant rest period was not provided, Plaintiffs and Class
13 Members suffered and continue to suffer a loss of wages and compensation.

14 **FIFTH CAUSE OF ACTION**

15 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

16 **(Violation of Labor Code §§ 2800, 2802)**

17 74. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
18 though fully set forth herein.

19 75. Labor Code § 2800 states that an employer shall in all cases indemnify his
20 employee for losses.

21 76. Labor Code § 2802 requires employers to indemnify their employees for all
22 necessary expenditures or losses incurred by employees in direct consequence of the discharge of
23 their duties.

24 77. Section 9 of the applicable IWC Wage Order states that when tools or equipment
25 are required by the employer or are necessary to the performance of a job, such tools and
26 equipment shall be provided and maintained by the employer.

27 78. During the relevant time period, Defendants required Plaintiffs and class members
28 to incur expenses without properly compensating them for such expenses.

1 79. In violation of Labor Code §§ 2800 and 2802, Defendants failed to indemnify
2 Plaintiff and class members for these expenses.

3 80. In committing the violations as herein alleged, Defendants have intentionally and
4 willfully failed to fully reimburse Plaintiff and class members for necessary business-related costs
5 and expenses. As a direct result, Plaintiffs and class members have suffered and continue to suffer
6 substantial losses relating to the use and enjoyment of such expenses.

7 **SIXTH CAUSE OF ACTION**

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

9 (Violation of Labor Code § 226)

10 81. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
11 though fully set forth herein.

12 82. Labor Code § 226(a) requires Defendants to provide each employee with an
13 accurate wage statement in writing showing nine pieces of information, including, the following:
14 (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units
15 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
16 deductions, provided that all deductions made on written orders of the employee may be
17 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
18 which the employee is paid, (7) the name of the employee and the last four digits of his or her
19 social security number or an employee identification number other than a social security number,
20 (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly
21 rates in effect during the pay period and the corresponding number of hours worked at each hourly
22 rate by the employee.

23 83. During the relevant time period, Defendants have knowingly and intentionally
24 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiffs
25 and Class Members. Defendants provided Plaintiffs and Class Members with wage statements
26 that were missing or inaccurately stated one or more of the following items: (1) gross wages
27 earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any
28 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided

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

7 84. As a result of Defendants' knowing and intentional failure to comply with Labor
8 Code § 226(a), Plaintiffs and Class Members have suffered injury and damage to their statutorily-
9 protected rights. Specifically, Plaintiffs and Class Members are deemed to suffer an injury
10 pursuant to Labor Code § 226(e) where, as here, Defendants intentionally violated Labor Code §
11 226(a). Plaintiffs and Class Members were denied both their legal right to receive, and their
12 protected interest in receiving, accurate itemized wage statements under Labor Code § 226(a). In
13 addition, because Defendants failed to provide the accurate rates of pay on wage statements,
14 Defendants prevented Plaintiffs and Class Members from determining if all hours worked were
15 paid at the appropriate rate and the extent of the underpayment. Plaintiffs have had to file this
16 lawsuit in order to analyze the extent of the underpayment, thereby causing Plaintiffs to incur
17 expenses and lost time. Plaintiffs would not have had to engage in these efforts and incur these
18 costs had Defendants provided the accurate hours worked, wages earned, and rates of pay. This
19 has also delayed Plaintiffs' ability to demand and recover the underpayment of wages from
20 Defendants.

21 85. Plaintiffs and Class Members are entitled to recover from Defendants the greater
22 of all actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty
23 dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars
24 (\$100.00) per employee for each violation in subsequent pay periods in an amount not exceeding
25 four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

26 86. Defendants' violations of California Labor Code § 226(a) prevented Plaintiffs and
27 Class Members from knowing, understanding, and disputing the wages paid to them and resulted
28 in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and

1 intentional failure to comply with California Labor Code § 226(a), Plaintiff and Class Members
2 have suffered an injury, in the exact amount of damages and/or penalties to be shown according
3 to proof at trial.

4 87. Class Members that are still employed by Defendants are also entitled to injunctive
5 relief under California Labor Code § 226(h), compelling Defendants to comply with California
6 Labor Code § 226. Accordingly, affected Class Members seek the recovery of attorneys' fees and
7 costs incurred in obtaining this injunctive relief.

8 SEVENTH CAUSE OF ACTION

9 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

10 (Violation of Labor Code §§ 201, 202, and 203)

11 88. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
12 though fully set forth herein.

13 89. Labor Code §§ 201 and 202 provide that if an employer discharges an employee,
14 the wages earned and unpaid at the time of discharge are due and payable immediately, and that
15 if an employee voluntarily leaves his employment, his or her wages shall become due and payable
16 not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72)
17 hours previous notice of an intention to quit, in which case the employee is entitled to his or her
18 wages at the time of quitting.

19 90. During the relevant time period, Defendants willfully failed to pay the Waiting
20 Time Subclass all their earned wages upon termination, including, but not limited to, proper
21 minimum wage and overtime compensation, meal period premiums, and rest period premiums
22 either at the time of discharge or within seventy-two (72) hours of their leaving Defendants'
23 employ.

24 91. Defendants' failure to pay the Waiting Time Subclass all their earned wages at the
25 time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is in
26 violation of Labor Code §§ 201 and 202.

27 92. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
28 immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202, then

1 the wages of the employee shall continue as a penalty from the due date at the same rate until paid
2 or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

3 93. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover
4 from Defendants the statutory penalty, which is defined as the Waiting Time Subclass members'
5 regular daily wages at their regular hourly rate of pay for each day they were not paid, up to a
6 maximum of thirty (30) days.

7 **EIGHTH CAUSE OF ACTION**

8 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**

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

10 94. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
11 though fully set forth herein.

12 95. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of
13 unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice . .
14 . .”

15 96. A violation of California Business and Professions Code §§ 17200, *et seq.*, may
16 be predicated on a violation of any state or federal law. In the instant case, Defendants’ policies
17 and practices violated state law, causing Plaintiffs and Class Members to suffer and continue to
18 suffer injuries-in-fact.

19 97. Defendants’ policies and practices violated state law in at least the following
20 respects:

21 (a) Failing to pay all wages earned (including minimum wage, sick pay, double time,
22 and overtime wages) to Plaintiffs and Class Members as a result of unpaid off-the-
23 clock work, failing to compensate employees for providing and maintaining
24 necessary tools for the trade, among other violations, in violation of Labor Code
25 §§ 246, 510, 1182.12, 1194, 1194.2, 1197, and 1198.

26 (b) Failing to pay all overtime wages at the proper rate to Plaintiffs and Class Members
27 in violation of Labor Code §§ 510, 1194 and 1198;
28

1 (c) Failing to provide compliant meal periods without paying Plaintiffs and Class
2 Members premium wages for every day said meal periods were not provided in
3 violation of Labor Code §§ 226.7 and 512.

4 (d) Failing to authorize or permit compliant rest breaks without paying Plaintiffs and
5 Class Members premium wages for every day said rest breaks were not authorized
6 or permitted in violation of Labor Code § 226.7.

7 (e) Failing to reimburse Plaintiff and class members for necessary business expenses,
8 in violation of Labor Code §§ 2800 and 2802.

9 (f) Failing to provide Plaintiffs and Class Members with accurate itemized wage
10 statements in violation of Labor Code § 226.

11 (g) Failing to timely pay all earned wages to the members of the Waiting Time
12 Subclass upon separation of employment in violation of Labor Code §§ 201, 202,
13 and 203.

14 98. As alleged herein, Defendants systematically engaged in unlawful conduct in
15 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages
16 (minimum and overtime wages), failing to provide meal periods and rest breaks or compensation
17 in lieu thereof, failing to furnish accurate wage statements, and failing to pay all wages due and
18 owing upon separation of employment in a timely manner, all in order to decrease their costs of
19 doing business and increase their profits.

20 99. At all relevant times herein, Defendants held themselves out to Plaintiffs and Class
21 Members as being knowledgeable concerning the labor and employment laws of California.

22 100. At all times relevant herein, Defendants intentionally avoided paying Plaintiffs
23 and Class Members wages and monies, thereby creating for Defendants an artificially lower cost
24 of doing business in order to undercut their competitors and establish and/or gain a greater
25 foothold in the marketplace.

26 101. As a result of Defendants' intentional, willful, purposeful, and wrongful
27 misrepresentation of their conformance with the California Labor Code and IWC Wage Orders,
28

1 Plaintiffs and Class Members suffered a loss of wages and monies, all in an amount to be shown
2 according to proof at trial.

3 102. By violating the foregoing statutes and regulations as herein alleged, Defendants'
4 acts constitute unfair and unlawful business practices under California Business and Professions
5 Code §§ 17200, *et seq.*

6 103. As a result of the unfair and unlawful business practices of Defendants, as alleged
7 herein, Plaintiffs and Class Members are entitled to injunctive relief, disgorgement, and restitution
8 in an amount to be shown according to proof at trial.

9 104. Plaintiffs seek to enforce important rights affecting the public interest within the
10 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged herein,
11 has been and continues to be unfair, unlawful, and harmful to Plaintiffs, Class Members, and the
12 general public. Based on Defendants' conduct as alleged herein, Plaintiffs and Class Members
13 are entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

14 **NINTH CAUSE OF ACTION**

15 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

16 105. Plaintiffs hereby re-alleges and incorporate by reference the previous paragraphs as
17 though fully set forth herein.

18 106. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
19 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
20 ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees for
21 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by
22 an aggrieved employee on behalf of himself or herself and other current or former employees
23 pursuant to the procedures specified in Labor Code § 2699.3.

24 107. For all provisions of the Labor Code except those for which a civil penalty is
25 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
26 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
27 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
28 period in which Defendants violated these provisions of the Labor Code.

1 108. Defendants' conduct violates numerous Wage Order and Labor Code sections,
2 including, but not limited to, the following:

- 3 a. violation of Labor Code §§ 201, 202, 203, 204, 210, 246, 510, 1182.12,
4 1194, 1197, and 1198 for failure to timely pay all earned wages (including
5 minimum wage and overtime wages) owed to Plaintiffs and other aggrieved
6 employees during employment and upon separation of employment as
7 herein alleged;
- 8 b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal
9 periods to Plaintiffs and other aggrieved employees and failure to pay
10 premium wages for missed meal periods as herein alleged;
- 11 c. violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiffs
12 and other aggrieved employees and failure to pay premium wages for
13 missed rest periods as herein alleged;
- 14 d. violation of Labor Code § 226 for failure to provide accurate itemized wage
15 statements to Plaintiffs and other aggrieved employees as herein alleged;
- 16 e. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate
17 and complete records showing, among other things, the hours worked daily
18 by and the wages paid to aggrieved employees; and
- 19 f. violation of Labor Code § 2802 for failure to reimburse Plaintiffs and other
20 aggrieved employees for necessary business expenses as herein alleged.

21 109. Plaintiffs are "aggrieved employees" because they were employed by the alleged
22 violator and had one or more of the violations committed against them, and therefore are properly
23 suited to represent the interests of all other aggrieved employees.

24 110. Plaintiffs exhausted the procedural requirements under Labor Code § 2699.3 as to
25 Defendants and are therefore able to pursue a claim for penalties on behalf of themselves and all
26 other aggrieved employees under PAGA.

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111. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiffs are entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

112. For bringing this action, Plaintiffs are entitled to attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

Plaintiffs, as individuals and on behalf of all others similarly situated, pray for relief and judgment against Defendants, jointly and severally, as follows:

1. For certification under California Code of Civil Procedure § 382 of the proposed Class, Waiting Time Subclass, and any other appropriate subclasses;

2. For appointment of Kurt Abron, Jonathan Bagley, and Robert Warren as the class representatives;

3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;

4. For compensatory damages in an amount according to proof at trial;

5. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties;

6. For economic and/or special damages in an amount according to proof at trial;

7. For liquidated damages pursuant to Labor Code § 1194.2;

8. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;

9. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;

10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

11. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et seq.*;

12. For pre-judgment interest;

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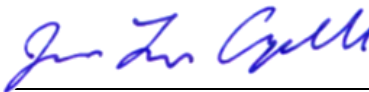
13. For civil penalties;

14. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including, but not limited to, Code of Civil Procedure § 1021.5, Labor Code §§ 226(e), 1194, and 2698 *et seq.*; and

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

Dated: September 27, 2022

AEGIS LAW FIRM, PC

By: 

Jessica L. Campbell
Attorneys for Plaintiffs