

Carolyn H. Cottrell (SBN 166977)
Samantha A. Smith (SBN 233331)
Beth A. Christopher (SBN 244242)
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
Telephone: (415) 421-7100
Facsimile: (415) 421-7105
ccottrell@schneiderwallace.com
ssmith@schneiderwallace.com
echristopher@schneiderwallace.com

Attorneys for Plaintiffs and Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

LILIA HERNANDEZ, LAUREN LICAS, IDA LUNA, JENNIFER BURSACK, MICHELLE MANESSE, NATASHA GILMAN, CURTIS ALLEN, JOSHUA PAVELKO, VICTORIA MCGOVERN, DANA COLLINS, KENNETH EALA, NASIM EDRAKIAN, ERIN BRIGANCE, CHRISTOPHER FORTMAN, CONSTANCE GORMAN, MELINDA GUERRERO, JACKIE HOLLIS, KENNETH CHUNG, LISA FLOWER, EDWARD LIU, LORINA WILSON, LUPITA CHINN a/k/a NATALIA CHINN, ARLENE MCGEE, MARVIN MENEFEE, DEAN MOSALLAM a/k/a NORDIEAN MOSALLAM, APRIL PONCE, HEATHER RANDRUP, JUNG SEO, JASON SHUMSKI, JENNIFER TALLEY, and JENNIFER VENEGAS; each as an individual and on behalf of all other similarly situated aggrieved employees,

Plaintiffs,

v.

LOANDEPOT.COM, LLC, a Delaware corporation; and DOES 1-50, inclusive,

Defendant.

Honorable William Claster
Department CX104
Case No.: 30-2022-01298792-CU-OE-CXC

FIRST AMENDED COMPLAINT FOR:

- (1) FAILURE TO PROVIDE MEAL PERIODS (Labor Code §§ 226.7, 512, and 1198);
- (2) FAILURE TO PROVIDE REST PERIODS (Labor Code §§ 226.7, 1198, and IWC NO. 4-2001);
- (3) FAILURE TO PAY WAGES (Labor Code §§ 510, 1194);
- (4) FAILURE TO REIMBURSE WORK EXPENSES (Labor Code § 2802);
- (5) FAILURE TO MAINTAIN ACCURATE RECORDS (Labor Code § 1174(d));
- (6) FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Labor Code § 226 (a), 226.3);
- (7) FAILURE TO PAY ALL WAGES DUE UPON TERMINATION (Labor Code §§ 201-203);
- (8) UNFAIR BUSINESS PRACTICES (Bus. & Prof. Code §§ 17200 *et seq.*);
- (9) PENALTIES PURSUANT TO PAGA, LABOR CODE § 2699(a); and
- (10) PENALTIES PURSUANT TO PAGA, LABOR CODE § 2699(f).

JURY TRIAL DEMANDED

1 **INTRODUCTION**

2 1. Plaintiffs Lilia Hernandez, Lauren Licas, Ida Luna, Jennifer Bursack, Michelle
3 Manesse, Natasha Gilman, Curtis Allen, Joshua Pavelko, Victoria McGovern, Dana Collins, Kenneth
4 Eala, Nasim Edrakian, Erin Brigance, Christopher Fortman, Constance Gorman, Melinda Guerrero,
5 Jackie Hollis, Kenneth Chung, Lisa Flower, Edward Liu, Lorina Wilson, Lupita Chinn a/k/a Natalia
6 Chinn, Arlene McGee, Marvin Menefee, Dean Mosallam a/k/a Nordiean Mosallam, April Ponce,
7 Heather Randrup, Jung Seo, Jason Shumski, Jennifer Talley, Jennifer Venegas, Carla Saetia, Aaron
8 Black, Antoinette Nicole, David Richter, Ray Hseih, Noemy Orellana, Frank Vasquez, and Brandon
9 Steinberg (collectively “Plaintiffs”) bring this action individually, and as a representative action,
10 pursuant to the Private Attorneys General Act of 2004, Labor Code §§ 2698 *et seq.* (“PAGA”), on
11 behalf of themselves and non-exempt employees employed, or formerly employed, within the State
12 of California by Defendant LOANDEPOT.COM, LLC (“Defendant” or “Loan Depot”) and any
13 subsidiaries or affiliated companies (hereinafter, along with DOES 1 through 50, collectively referred
14 to as “Defendants”).

15 2. Plaintiffs bring this action against Defendants for violations of California wage and
16 hour laws stemming from Defendants’ unlawful policies and practices, including: (1) failing to pay
17 all wages owed, including minimum and overtime wages; (2) failing to provide or make available
18 meal periods and rest breaks entitled by law, and failing to pay premium payments for non-compliant
19 meal periods and/or rest breaks; (3) failing to reimburse work-related expenses incurred in the
20 discharge of job duties; (4) failing to provide accurate wage statements; (5) failing to pay all wages
21 due upon termination; and (6) failing to maintain accurate records of hours worked and wages earned.

22 3. Plaintiffs bring this lawsuit seeking monetary relief against Defendants to recover,
23 among other things, unpaid wages, meal period and rest break compensation, interest, attorney’s fees,
24 costs and expenses, and penalties, as well as other relief requested herein, pursuant to Labor Code §§
25 201-203, 210, 226, 226.3, 226.7, 558, 512, 1174.5, 2802, and 2698 *et seq.*, and the applicable Industrial
26 Welfare Commission (“IWC”) Wage Orders.

27 ///

28 ///

THE PARTIES

Plaintiffs

4. Plaintiff Lilia Hernandez is an individual over the age of eighteen, and at all times mentioned in this Complaint was a resident of the State of California. Upon information and belief, Plaintiff Hernandez worked for Defendant as a non-exempt, hourly mortgage loan officer in Irvine, California from approximately April 2021 to August 2021.

5. Plaintiff Lauren Licas is an individual over the age of eighteen, and at all times mentioned in this Complaint was a resident of the State of California. Upon information and belief, Plaintiff Licas worked for Defendant as a non-exempt, hourly loan officer in Foothill Ranch, California from approximately February 22, 2021 to October 1, 2021.

6. Plaintiff Ida Luna is an individual over the age of eighteen, and at all times mentioned in this Complaint was a resident of the State of California. Upon information and belief, Plaintiff Luna worked for Defendant as a non-exempt, hourly senior loan officer in Lake Forest, California from approximately October 2020 to September 2021.

7. Plaintiff Jennifer Bursack is an individual over the age of eighteen, and at all times mentioned in this Complaint was a resident of the State of California. Upon information and belief, Plaintiff Bursack worked for Defendant as a non-exempt, hourly mortgage banker in Foothill Ranch, California from approximately April 2020 to April 2022.

8. Plaintiff Michelle Manesse is an individual over the age of eighteen, and at all times mentioned in this Complaint was a resident of the State of California. Upon information and belief, Plaintiff Manesse worked for Defendant as a non-exempt, hourly employee in Foothill Ranch, California from approximately October 25, 2021 to March 8, 2022.

9. Plaintiff Natasha Gilman is an individual over the age of eighteen, and at all times mentioned in this Complaint was a resident of the State of California. Upon information and belief, Plaintiff Gilman worked for Defendant as a non-exempt, hourly senior account manager in Hollister, California from approximately September 2019 to April 2022.

10. Plaintiff Curtis Allen is an individual over the age of eighteen, and at all times mentioned in this Complaint was a resident of the State of California. Upon information and belief,

1 Plaintiff Allen worked for Defendant as a non-exempt, hourly Mortgage Loan Officer in California
2 from approximately September 2021 to June 2022.

3 11. Plaintiff Joshua Pavelko is an individual over the age of eighteen, and at all times
4 mentioned in this Complaint was a resident of the State of California. Upon information and belief,
5 Plaintiff Pavelko worked for Defendant in California from approximately August 30, 2021 to April
6 15, 2022 as a non-exempt, hourly Loan Officer.

7 12. Plaintiff Victoria McGovern is an individual over the age of eighteen. Upon
8 information and belief, Plaintiff McGovern worked for Defendant as a non-exempt Junior Account
9 Manager and Senior Loan Processor in Foothill Ranch, California from approximately October 2020
10 to February 2022.

11 13. Plaintiff Dana Collins is an individual over the age of eighteen, and at all times
12 mentioned in this Complaint was a resident of the State of California. Upon information and belief,
13 Plaintiff Collins worked for Defendant as a non-exempt Account Manager and then Customer Lending
14 Representative in California from approximately October 2020 to October 2021.

15 14. Plaintiff Kenneth Eala is an individual over the age of eighteen, and at all times
16 mentioned in this Complaint was a resident of the State of California. Upon information and belief,
17 Plaintiff Eala worked for Defendant as a non-exempt Loan Officer in California from approximately
18 March 2020 to September 2021.

19 15. Plaintiff Nasim Edrakian is an individual over the age of eighteen, and at all times
20 mentioned in this Complaint was a resident of the State of California. Upon information and belief,
21 Plaintiff Edrakian worked for Defendant as a non-exempt hourly Funding Specialist in California from
22 approximately October 26, 2020 to September 2, 2021.

23 16. Plaintiff Erin Brigrance is an individual over the age of eighteen, and at all times
24 mentioned in this Complaint was a resident of the State of California. Upon information and belief,
25 Plaintiff Brigrance worked for Defendant as a non-exempt hourly Closer Funder in California from
26 approximately September 2020 to July 2021.

27 17. Plaintiff Christopher Fortman is an individual over the age of eighteen. Upon
28 information and belief, Plaintiff Fortman worked for Defendant as a non-exempt Loan Officer in

1 California from approximately November 2020 to May 2021.

2 18. Plaintiff Constance Gorman is an individual over the age of eighteen, and at all times
3 mentioned in this Complaint was a resident of the State of California. Upon information and belief,
4 Plaintiff Gorman worked for Defendant as a non-exempt hourly Loan Processor in California from
5 approximately October 05, 2020 to May 13, 2022.

6 19. Plaintiff Melinda Guerrero is an individual over the age of eighteen, and at all times
7 mentioned in this Complaint was a resident of the State of California. Upon information and belief,
8 Plaintiff Guerrero worked for Defendant as a non-exempt hourly Loan Processor in California from
9 approximately April 12, 2021 to April 26, 2022.

10 20. Plaintiff Jackie Hollis is an individual over the age of eighteen, and at all times
11 mentioned in this Complaint was a resident of the State of California. Upon information and belief,
12 Plaintiff Hollis worked for Defendant as a non-exempt hourly Loan Processor in California from
13 approximately October 11, 2021 to March 2022.

14 21. Plaintiff Kenneth Chung is an individual over the age of eighteen, and at all times
15 mentioned in this Complaint was a resident of the State of California. Upon information and belief,
16 Plaintiff Chung worked for Defendant as a non-exempt hourly Mortgage Loan Officer in California
17 from approximately September 2021 to June 24, 2022.

18 22. Plaintiff Lisa Flower is an individual over the age of eighteen, and at all times
19 mentioned in this Complaint was a resident of the State of California. Upon information and belief,
20 Plaintiff Flower worked for Defendant as a non-exempt, hourly Underwriter in California from
21 approximately August 2019 to April 26, 2022.

22 23. Plaintiff Edward Liu is an individual over the age of eighteen, and at all times
23 mentioned in this Complaint was a resident of the State of California. Upon information and belief,
24 Plaintiff Liu worked for Defendant as a non-exempt hourly Mortgage Underwriter in California from
25 approximately June 2019 to March 2022.

26 24. Plaintiff Lorina Wilson is an individual over the age of eighteen, and at all times
27 mentioned in this Complaint was a resident of the State of California. Upon information and belief,
28 Plaintiff Wilson worked for Defendant as a non-exempt hourly Customer Service Support

1 Representative in California from approximately January 2021 to December 2021.

2 25. Plaintiff Lupita Chinn a/k/a Natalia Chinn is an individual over the age of eighteen,
3 and at all times mentioned in this Complaint was a resident of the State of California. Upon
4 information and belief, Plaintiff Chinn worked for Defendant as a non-exempt Senior Account
5 Manager in California from approximately March 22, 2020 to February 2, 2022. Plaintiff Arlene
6 McGee is an individual over the age of eighteen, and at all times mentioned in this Complaint was a
7 resident of the State of California. Upon information and belief, Plaintiff McGee worked for
8 Defendant as a Senior Account Manager in California from approximately March 2020 to April 2021.

9 26. Plaintiff Marvin Menefee is an individual over the age of eighteen, and at all times
10 mentioned in this Complaint was a resident of the State of California. Upon information and belief,
11 Plaintiff Menefee worked for Defendant as a Mortgage Closer Funder in California from
12 approximately June 2020 to March 25, 2022.

13 27. Plaintiff Dean Mosallam a/k/a Nordiean Mosallam is an individual over the age of
14 eighteen, and at all times mentioned in this Complaint was a resident of the State of California. Upon
15 information and belief, Plaintiff Mosallam worked for Defendant as a non-exempt hourly Loan Officer
16 and Customer Lending Representative in California from approximately February 8, 2021 to February
17 28, 2022.

18 28. Plaintiff April Ponce is an individual over the age of eighteen, and at all times
19 mentioned in this Complaint was a resident of the State of California. Upon information and belief,
20 Plaintiff Ponce worked for Defendant as a non-exempt hourly Loan Officer in California from
21 approximately April 2021 to November 2021.

22 29. Plaintiff Heather Randrup is an individual over the age of eighteen, and at all times
23 mentioned in this Complaint was a resident of the State of California. Upon information and belief,
24 Plaintiff Randrup worked for Defendant as a non-exempt hourly Loan Processing Team Leader in
25 California from approximately August 2020 to June 2022.

26 30. Plaintiff Jung Seo is an individual over the age of eighteen, and at all times mentioned
27 in this Complaint was a resident of the State of California. Upon information and belief, Plaintiff Seo
28 worked for Defendant as a non-exempt hourly Loan Officer in California from approximately

February 2020 to April 2022.

31. Plaintiff Jason Shumski is an individual over the age of eighteen, and at all times mentioned in this Complaint was a resident of the State of California. Upon information and belief, Plaintiff Shumski worked for Defendant as a non-exempt hourly Senior Account Manager in California from approximately October 20, 2020 to March 13, 2022.

32. Plaintiff Jennifer Talley is an individual over the age of eighteen, and at all times mentioned in this Complaint was a resident of the State of California. Upon information and belief, Plaintiff Talley worked for Defendant as a Loan Closer in California from approximately October 26, 2020 to August 12, 2022.

33. Plaintiff Jennifer Venegas is an individual over the age of eighteen, and at all times mentioned in this Complaint was a resident of the State of California. Upon information and belief, Plaintiff Venegas worked for Defendant as a non-exempt hourly Loan Officer in California from approximately July 2021 to May 2022.

34. Plaintiff Carla Saetia is an individual over the age of eighteen, and at all times mentioned in this Complaint was a resident of the State of California. Upon information and belief, Plaintiff Saetia worked for Defendant as a non-exempt hourly Processing Assistant Manager and Account Manager in California from approximately May 2020 to April 2022.

35. Plaintiff Aaron Black is an individual over the age of eighteen, and at all times mentioned in this Complaint was a resident of the State of California. Upon information and belief, Plaintiff Black worked for Defendant as a non-exempt hourly Loan Officer from approximately June 2021 to November 2021.

36. Plaintiff Antoinette Nicole is an individual over the age of eighteen, and at all times mentioned in this Complaint was a resident of the State of California. Upon information and belief, Plaintiff Nicole worked for Defendant as a non-exempt hourly Senior Account Representative from approximately August 2020 to in or about 2021.

37. Plaintiff David Richter is an individual over the age of eighteen, and at all times mentioned in this Complaint was a resident of the State of California. Upon information and belief, Plaintiff Richter worked for one or more of Defendants as an hourly, non-exempt Mortgage Lending

Officer from approximately November 2001 to August 2022.

38. Plaintiff Ray Hseih is an individual over the age of eighteen, and at all times mentioned in this Complaint was a resident of the State of California. Upon information and belief, Plaintiff Hseih worked for Defendant as a non-exempt broker from approximately February 2010 to the present.

39. Plaintiff Noemy Orellana is an individual over the age of eighteen, and at all times mentioned in this Complaint was a resident of the State of California. Upon information and belief, Plaintiff Orellana worked for Defendant as a non-exempt hourly Loan Officer from approximately September 2019 to June 2020 and December 2020 to June 2021.

40. Plaintiff Frank Vasquez is an individual over the age of eighteen, and at all times mentioned in this Complaint was a resident of the State of California. Upon information and belief, Plaintiff Vasquez worked for Defendant as a non-exempt hourly Senior Loan Officer from approximately November 2018 to November 2022.

41. Plaintiff Brandon Steinberg is an individual over the age of eighteen, and at all times mentioned in this Complaint was a resident of the State of California. Upon information and belief, Steinberg worked for Defendant as a non-exempt hourly Customer Lending Representative and Senior Account Manager from approximately December 2020 to February 2022.

42. Aggrieved Employees are former hourly, non-exempt employees of Defendants, including but not limited to loan officers, senior loan officers, lending officers, customer lending representatives, business intelligence analysts, loan consultants, escrow administrators, mortgage loan officers, mortgage consultants, mortgage bankers, loan specialists, loss mitigation specialists, foreclosure specialists, tax specialists, and other employees with similar job duties, in California.

Defendant

43. Plaintiffs are informed and believe and thereon allege that Defendant LoanDepot.com, LLC (“Defendant”) is a residential and consumer lending company. Defendant is a Delaware limited liability company headquartered in Foothill Ranch, California. Defendant is registered to do business in California, does business in California, and employs and employed thousands of hourly, non-exempt employees, including Plaintiffs in California. Defendant may be served with process by serving its registered agent, Registered Agent Solutions, Inc., 720 14th Street, Sacramento, California

1 95814.

2 44. Plaintiffs are unaware of the true names or capacities of Defendants sued herein under
3 the fictitious names DOES 1–50, inclusive, but pray for leave to amend and serve such fictitiously-
4 named Defendants pursuant to California Code of Civil Procedure § 474 once their names and
5 capacities become known.

6 45. Plaintiffs are informed and believe and thereon allege that DOES 1–50, inclusive, are
7 the partners, agents, owners, shareholders, managers, principals or employees of Defendant and/or
8 were acting on behalf of Defendant in doing the acts and omissions alleged herein.

9 46. Plaintiffs are informed and believe and thereon allege that each and all of the acts and
10 omissions alleged herein was performed by or is attributable to Defendants, each acting as the agent
11 for the other, with legal authority to act on the other’s behalf. The acts of any and all Defendants were
12 in accordance with, and represent the policy of, Defendants.

13 47. At all times relevant herein, Defendants ratified each and every act or omission
14 complained of herein. At all times herein mentioned, Defendants aided and abetted the acts and
15 omissions of each and all of the other Defendants in proximately causing the damages herein alleged.

16 48. Defendants, directly or indirectly, controlled at all relevant times the employment
17 terms, pay practices, timekeeping practices, and daily work of Plaintiffs and Aggrieved Employees.
18 Thus, each Defendant is an “employer” as that term is used in the Labor Code and IWC Wage Orders.

19 49. At all relevant times, Defendants have done business under the laws of California, have
20 had places of business in California including in this judicial district, and have employed Plaintiffs
21 and Aggrieved Employees in California and in this judicial district. At all relevant times, each
22 Defendant was a “person” as defined in Labor Code § 18 and Business and Professions Code § 17201.

23 50. Plaintiffs are informed and believe and thereon allege that Defendants are in some
24 manner, intentionally, negligently or otherwise, responsible for the acts, omissions, occurrences and
25 transactions alleged herein.

26 ///

27 ///

28 ///

1 **JURISDICTION AND VENUE**

2 51. The civil penalties sought by Plaintiffs exceed the minimum jurisdiction limits of the
3 Orange County Superior Court and will be established according to proof at trial.

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

8 53. This Court has jurisdiction over the violations alleged herein and over Defendants
9 because upon information and belief, each party has sufficient minimum contacts in California or
10 otherwise intentionally avails itself of California law so as to render the exercise of jurisdiction over
11 it by the California courts consistent with traditional notions of fair play and substantial
12 justice. Defendant at all relevant times employed Plaintiffs that performed their work duties
13 throughout the State of California, including in the County of Orange.

14 54. Venue is proper in this Court because, upon information and belief, the named
15 Defendant maintains an office in this county and the acts and omissions alleged herein took place in
16 this county.

17 **GENERAL ALLEGATIONS AND SUMMARY OF CLAIMS**

18 55. Loan Depot is a residential and consumer lending company with locations throughout
19 California, including the County of Orange.

20 56. Plaintiffs and Aggrieved Employees are current and former employees of Defendants
21 in California, including but not limited to loan officers, senior loan officers, lending officers, customer
22 lending representatives, business intelligence analysts, loan consultants, escrow administrators,
23 mortgage loan officers, mortgage consultants, mortgage bankers, loan specialists, loss mitigation
24 specialists, foreclosure specialists, tax specialists, and other employees with similar job duties.
25 Plaintiffs' and Aggrieved Employees' job duties generally include but are not limited to providing
26 customer service and support to Defendants' lending clients.

27 57. Plaintiffs are informed and believe and thereon allege that the policies and practices
28 of Defendants have at all relevant times been similar for Plaintiffs and Aggrieved Employees,

1 regardless of particular job assignment or location in California.

2 58. The nature of Plaintiffs' and Aggrieved Employees' work, providing loan services to
3 clients, is time sensitive, rigorous, and nonstop. As such, Plaintiffs and Aggrieved Employees were
4 frequently prevented from taking timely meal periods and rest breaks and were not relieved of all
5 duties to take such breaks due to constant work demands and staffing shortages.

6 59. Plaintiffs and Aggrieved Employees were regularly and systematically prohibited by
7 Defendants from taking timely, compliant, uninterrupted, unpaid 30-minute meal periods for every
8 five hours worked as required by Labor Code § 512 and Wage Order No. 4, nor were Plaintiffs or
9 Aggrieved Employees paid a one hour premium wage at their regular rate of pay for each missed,
10 short, late or interrupted meal period.

11 60. Plaintiffs and Aggrieved employees were regularly and systematically prohibited by
12 Defendants from taking, timely, compliant, uninterrupted paid 10-minute rest periods for every four
13 hours worked (or major fraction thereof) as required by Labor Code §§ 226.7, 512 and Wage Order
14 No. 4, nor were Plaintiffs or Aggrieved Employees paid a one-hour premium wage at their regular rate
15 of pay for each missed, short, late or interrupted rest period.

16 61. Defendants knew or reasonably should have known that Plaintiffs and Aggrieved
17 Employees were not timely relieved of all duties and were impeded or prevented from taking timely
18 all meal periods and rest breaks.

19 62. Defendants maintained a policy and/or practice of failing to properly compensate
20 Plaintiffs and Aggrieved Employees for work related tasks performed while "off-the-clock," either
21 before/after their scheduled shifts or during their meal periods while clocked out. Defendants' failure
22 to compensate Plaintiffs and Aggrieved Employees for work performed while off-the-clock results in
23 a failure to compensate Plaintiffs and Aggrieved Employees for all time spent working for Defendants'
24 benefit, including at minimum wage, overtime, and/or double time under California law.

25 63. Further, many Plaintiffs and Aggrieved Employees receive commission payments from
26 Defendant that are not factored into the regular rate for purposes of calculating overtime
27 compensation, resulting in them performing services for the benefit of Defendant without proper
28 compensation.

1 64. Plaintiffs are informed, believe, and thereon allege that Defendants utilize the same or
2 substantially similar timekeeping mechanisms throughout all California.

3 65. As a result of these policies and/or practices, Plaintiffs and Aggrieved Employees are
4 denied compensation for all hours worked, including minimum wages and overtime.

5 66. Defendants' common course of wage-and-hour abuse includes routinely failing to
6 maintain true and accurate records of the hours worked by Plaintiffs and Aggrieved Employees.
7 Defendants have failed to record hours that Plaintiffs and Aggrieved Employees work off-the-clock,
8 as well as non-compliant meal and rest periods.

9 67. Defendants do not provide Plaintiffs and Aggrieved Employees with accurate wage
10 statements as required by California law. Plaintiffs and Aggrieved Employees receive wage statements
11 that do not reflect all hours worked, premium pay for missed meal and rest periods, and applicable
12 overtime premiums.

13 68. Defendants also fail to reimburse Plaintiffs and Aggrieved Employees for all business
14 expenses incurred while on the job. Plaintiffs and Aggrieved Employees must use their personal
15 cellphones and personal cell voice, text, and data plans for extensive, work-related communications,
16 such as speaking with supervisors, clients, and coworkers about mortgage loans in process. Defendants
17 fail to reimburse Plaintiffs and Aggrieved Employees for expenses incurred while using their home
18 internet to complete required job duties. Defendants fail to reimburse Plaintiffs and Aggrieved
19 Employees for such "out-of-pocket" business expenses in violation of Labor Code § 2802.

20 69. Defendants do not provide Plaintiffs and Aggrieved Employees with full payment of
21 all wages owed upon separation from employment. At the time their employment ends, Plaintiffs and
22 Aggrieved Employees are owed wages and premium pay for all time worked, overtime, and missed
23 meal and rest breaks, whether their termination was voluntary or involuntary; yet Defendants fail to
24 provide Plaintiffs and Aggrieved Employees with such payments. As a result, Defendants are subject
25 to waiting time penalties pursuant to the California Labor Code.

26 70. Plaintiffs are informed and believe and thereon allege that Defendants are aware that
27 their policies and practices deprive Plaintiffs and Aggrieved Employees of substantial pay for all time
28 worked, including overtime compensation and minimum wages, and that their workers do not receive

legally compliant meal and rest periods. Thus, Defendants' denial of wages, compliant meal and rest periods, and premium payments is and was deliberate and willful.

71. Plaintiffs are informed and believe and thereon allege that Defendants' unlawful conduct has been widespread, repeated, and consistent as to the Plaintiffs and Aggrieved Employees throughout Defendants' operations in California.

72. Defendants' conduct was willful, carried out in bad faith, and triggers significant civil penalties in an amount to be determined at trial.

73. Defendants' company-wide policies and practices violate California law as pled herein. Plaintiffs seek declaratory relief, regular and overtime compensation, premium pay for rest and meal break violations, reimbursement of business expenses, liquidated damages and other damages and penalties as permitted by California Law, interest, and attorneys' fees and costs.

FIRST CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS
In Violation of Labor Code §§ 226.7(c), 512(a), 1198 and IWC Order No. 4-2001
(Brought by Plaintiffs on Behalf of Themselves
Against Defendant and Does 1 – 50, inclusive)

74. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

75. Defendants routinely fail to provide or make available complaint meal periods to Plaintiffs.

76. The work demands placed on Plaintiffs regularly prevent them from taking first meal periods, and, when applicable, second meal periods throughout the day. Plaintiffs do not receive the requisite premium pay for their missed meal breaks as required by California law.

77. Labor Code §§ 226.7 and 512 and the applicable Wage Order require Defendants to provide or make available meal periods to their employees. Labor Code §§ 226.7 and 512 and the Wage Order prohibit employers from employing an employee for more than five (5) hours without a meal period of not less than thirty minutes, and from employing an employee more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty minutes.

78. Unless the employee is relieved of all duty during the thirty-minute meal period, the employee is considered "on duty" and the meal period is counted as time worked under the applicable

Wage Order 1-2001(11)(C) and Wage Order 7-2001(11)(C).

79. Under Labor Code § 226.7(b) and the applicable Wage Order, an employer who fails to provide or make available a required meal period must, as compensation, pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period was not provided or made available.

80. Despite these requirements, Defendants have knowingly and willfully refused to perform their obligations to provide or make available to Plaintiffs the ability to take the off-duty meal periods to which they are entitled.

81. Defendants have also failed to pay Plaintiffs one (1) hour of pay for each day an off-duty meal period was denied. Defendants' conduct described herein violates Labor Code §§ 226.7 and 512. Therefore, pursuant to Labor Code § 226.7(b), Plaintiffs are entitled to compensation for the failure to provide or make available meal periods, plus interest, attorneys' fees, expenses and costs of suit.

82. As a proximate result of the aforementioned violations, Plaintiffs have been damaged in an amount according to proof at time of trial.

83. Wherefore, Plaintiffs request relief as hereinafter provided.

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS
In Violation of Labor Code §§ 226.7(c), 1198 and IWC Order No. 9-2001
(Brought by Plaintiffs on Behalf of Themselves
Against Defendant and Does 1 – 50, inclusive)

84. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

85. Defendants routinely fail to authorize and permit rest periods to Plaintiffs.

86. Labor Code § 226.7 and the applicable Wage Orders require employers to authorize and permit employees to take ten (10) minutes of net rest time per (4) four hours or major fraction thereof of work, and to pay employees their full wage during those rest periods.

87. Under Labor Code §226.7(b), IWC Wage Order 1-2001(12)(B), and IWC Wage Order 7-2001(12)(B), an employer who fails to provide or make available a required rest period must, as compensation, pay the employee one (1) hour of pay at the employee's regular rate of compensation

1 for each workday that the rest period was not provided or made available.

2 88. Despite these requirements, Defendants have knowingly and willfully refused to
3 perform their obligations to provide or make available to Plaintiffs the ability to take the off-duty rest
4 periods to which they are entitled.

5 89. Defendants have also failed to pay Plaintiffs one (1) hour of pay for each day an off-
6 duty rest period was denied. Defendants' conduct described herein violations Labor Code § 226.7.
7 Therefore, pursuant to Labor Code § 226.7(b), Plaintiffs are entitled to compensation for the failure
8 to authorize and permit rest periods, plus interest, attorneys' fees, expenses, and cost of suit.

9 90. As a proximate result of the aforementioned violations, Plaintiffs have been damaged
10 in an amount according to proof at time of trial.

11 91. Wherefore, Plaintiffs request relief as hereinafter provided.

12 **THIRD CAUSE OF ACTION**
13 **FAILURE TO PAY WAGES, INCLUDING MINIMUM AND OVERTIME**
14 **In Violation of Labor Code §§ 510, 1194**
15 **(Brought by Plaintiffs on Behalf of Themselves**
16 **Against Defendant and Does 1 – 50, inclusive)**

17 92. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully
18 set forth herein.

19 93. At all relevant times, the IWC Wage Orders applicable to Plaintiffs require employers
20 to pay their employees for each hour worked at no less than minimum wage. "Hours worked" means
21 the time during which an employee is subject to the control of an employer, and includes all the time
22 the employee is suffered or permitted to work, whether or not required to do so, and in the case of an
23 employee who is required to reside on the employment premises, that time spent carrying out assigned
24 duties shall be counted as hours worked.

25 94. At all relevant times, the IWC Wage Orders applicable to Plaintiffs' employment by
26 Defendants provided that employees working for more than eight (8) hours in a day or forty (40) hours
27 in a work week are entitled to overtime compensation at the rate of one and one-half times the regular
28 rate of pay for all hours worked in excess of eight (8) hours in a day or forty (40) hours in a work
week. An employee who works more than twelve (12) hours in a day is entitled to overtime
compensation at a rate of twice the regular rate of pay.

1 95. Labor Code § 510 codifies the right to overtime compensation at the rate of one and
2 one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or forty
3 (40) hours in a work week, and to overtime compensation at twice the regular rate of pay for hours
4 worked in excess of twelve (12) hours in a day or eight (8) hours in a day on the seventh day of work
5 in a particular work week.

6 96. Labor Code § 1197.1 states, “Any employer or other persons acting individually as an
7 officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage
8 less than the minimum fixed by an applicable state or local law, or by an order of the commission shall
9 be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and
10 any applicable penalties pursuant to Section 203...”

11 97. At all times relevant, Plaintiffs regularly performed non-exempt work and thus were
12 subject to the overtime requirements of the IWC Wage Orders, CCR §§ 11000 *et. seq.*, and the Labor
13 Code.

14 98. As discussed herein, Defendants did not compensate Plaintiffs for all hours worked as
15 required by California law and the applicable IWC Wage Order. As a result, Plaintiffs were not paid
16 all lawful wages, including minimum wages and overtime wages. Plaintiffs are informed and believe,
17 and thereon allege, that Defendants knew or should have known that Plaintiffs were entitled to receive
18 all wages owed yet failed to do so.

19 99. Pursuant to Labor Code §§ 510, 558 and 1194, Plaintiffs are entitled to recover their
20 unpaid wages and overtime compensation, as well as interest, costs, and attorneys’ fees.

21 100. As a proximate result of the aforementioned violations, Plaintiffs have been damaged
22 in an amount according to proof at time of trial.

23 101. Wherefore, Plaintiffs request relief as hereinafter provided.

24 ///

25 ///

26 ///

27 ///

28 ///

FOURTH CAUSE OF ACTION
FAILURE TO REIMBURSE WORK EXPENSES
In Violation of Labor Code § 2802
(Brought by Plaintiffs on Behalf of Themselves
Against Defendant and Does 1 – 50, inclusive)

102. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

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

104. Plaintiffs are required to pay out of pocket for necessary business expenses incurred as a result of their work for Defendants, but they are not reimbursed for these expenses. Defendant required Plaintiffs to use personal cell phones and personal cell voice, text, and data plans for extensive, work-related communications, such as speaking with supervisors, clients, and coworkers about mortgage loans in process. Defendants also required Plaintiffs to use their home internet to successfully complete tasks as part of their employment. Defendants did not reimburse Plaintiffs for such “out-of-pocket” business expenses in violation of Labor Code § 2802.

105. As a proximate result of the aforementioned violations, Plaintiffs have been damaged in an amount according to proof at time of trial.

106. Wherefore, Plaintiffs request relief as hereinafter provided.

FIFTH CAUSE OF ACTION
FAILURE TO MAINTAIN ACCURATE RECORDS
In Violation of Labor Code § 1174(d)
(Brought by Plaintiffs on Behalf of Themselves
Against Defendant and Does 1 – 50, inclusive)

107. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

108. California Labor Code § 1174(d) provides in pertinent part, “Every person employing labor in this state shall keep... at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less

1 than three years. An employer shall not prohibit an employee from maintaining a personal record of
2 hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

3 109. Defendants knowingly and intentionally failed to accurately record, track, maintain and
4 keep accurate records of each and every hour worked, and wages earned for Plaintiffs.

5 110. Upon information and belief, Plaintiffs have alleged herein that in an effort to fabricate
6 the appearance of compliance with the provisions of the Labor Code, Defendants routinely required
7 Plaintiffs to work off-the-clock and prohibited Plaintiffs from receiving proper, timely, and compliant
8 meal and rest breaks to avoid paying overtime.

9 111. Thus, at all relevant times, Defendants failed to maintain accurate records of all hours
10 Plaintiffs worked, including hours they were working during meal periods and rest breaks, and for the
11 days they worked in excess of eight hours, and/or work weeks in excess of forty hours. As a result of
12 Defendants’ failure to maintain proper accurate records, premium penalties to which Plaintiffs were
13 entitled for meal period and rest break violations were not properly recorded either.

14 112. Plaintiffs are therefore entitled to and seek to recover penalties, pursuant to Labor Code
15 § 1174.5, which provides that an employer who fails to properly maintain records pursuant to §
16 1174(d) shall be subject to a civil penalty of five hundred dollars (\$500).

17 113. As a proximate result of the aforementioned violations, Plaintiffs have been damaged
18 in an amount according to proof at time of trial.

19 114. Wherefore, Plaintiffs request relief as hereinafter provided.

20 **SIXTH CAUSE OF ACTION**
21 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
22 **In Violation of Labor Code § 226(a)**
23 **(Brought by Plaintiffs on Behalf of Themselves**
24 **Against Defendant and Does 1 – 50, inclusive)**

25 115. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully
26 set forth herein.

27 116. Section 226(a) of the California Labor Code requires Defendants to itemize in wage
28 statements all deductions from payment of wages and to accurately report total hours worked by
Plaintiffs including applicable hourly rates and reimbursement expenses among other things.
Defendants knowingly and intentionally failed to comply with Labor Code § 226 on wage statements

1 they provided to Plaintiffs.

2 117. The applicable IWC Wage Orders require Defendants to maintain time records for each
3 employee showing, among other things, start and end times for each work period, meal periods, split
4 shift intervals, and total daily hours worked in an itemized wage statement; Defendants must show all
5 deductions and reimbursements from payment of wages, and accurately report total hours worked by
6 each of Plaintiffs. On information and belief, Defendants have failed to record all or some of the items
7 delineated in applicable IWC Wage Orders and Labor Code § 226.

8 118. As a result of Defendants' knowing and intentional failure to comply with Labor Code
9 § 226(a), Plaintiffs have suffered injury and damage to their statutorily protected rights. Specifically,
10 Plaintiffs have been injured by Defendants' intentional violation of Labor Code § 226(a) because they
11 were denied both their legal right to receive, and their protected interest in receiving, accurate itemized
12 wage statements under Labor Code § 226(a). In addition, Defendants have made it difficult to calculate
13 the amount of wages and compensation owed to Plaintiffs. Plaintiffs have had to file this lawsuit and
14 will be required to conduct discovery and perform computations in order to analyze whether in fact
15 Plaintiffs were paid correctly and the extent of the underpayment, thereby causing Plaintiffs to incur
16 expenses and lost time. Plaintiffs would not have had to engage in these efforts and incur these costs
17 had Defendants provided wage statements accurately showing their regular and overtime rates of pay
18 and the other information specified above. This has also impaired and delayed Plaintiffs' ability to
19 demand and recover underpaid wages from Defendants.

20 119. Plaintiffs are entitled to recover from Defendants the greater of their actual damages
21 caused by Defendants' failure to comply with Labor Code § 226(a) or an aggregate penalty not
22 exceeding \$4,000 dollars per employee.

23 120. Wherefore, Plaintiffs request relief as hereinafter provided.

24 ///

25 ///

26 ///

27 ///

28 ///

SEVENTH CAUSE OF ACTION
FAILURE TO PAY ALL WAGES DUE UPON TERMINATION
In Violation of Labor Code §§ 201-203
(Brought by Plaintiffs on Behalf of Themselves
Against Defendant and Does 1 – 50, inclusive)

121. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

122. Defendants did not provide Plaintiffs with their wages when due under California law after their employment with Defendants ended.

123. Labor Code § 201 provides: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

124. Labor Code § 202 provides:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

125. Labor Code § 203 provides, in relevant part:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

126. Plaintiffs left their employment with Defendants during the statutory period, at which time Defendants owed them unpaid wages. These earned, but unpaid, wages derive from time spent working off-the-clock for the benefit of Defendants before and after their scheduled shifts and during missed or interrupted meal periods, and/or missed or interrupted second meal periods.

127. Defendants willfully refuse and continue to refuse to pay Plaintiffs all the wages that are due and owing to them for the work performed and premium payments for missed or interrupted meal periods, and/or missed or interrupted second meal periods, upon the end of their employment. As a result of Defendants’ actions, Plaintiffs have suffered and continue to suffer substantial losses, including lost earnings, and interest.

128. Defendants’ willful failure to pay Plaintiffs the wages due and owing them constitutes a violation of Labor Code §§ 201-202. As a result, Defendants are liable to Plaintiffs for all penalties

owing pursuant to Labor Code §§ 201-203.

129. In addition, addition, Labor Code § 203 provides that an employee's wages will continue as a penalty up to thirty days from the time the wages were due. Therefore, the Plaintiffs are entitled to penalties pursuant to Labor Code § 203, plus interest.

130. Wherefore, Plaintiffs request relief as hereinafter provided.

EIGHTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES
In Violation of Bus. & Prof. Code § 17200 et seq.
(Brought by Plaintiffs on Behalf of Themselves
Against Defendant and Does 1 – 50, inclusive)

131. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

132. Business and Professions Code §§ 17200 *et seq.*, the Unfair Competition Law (the "UCL"), prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business acts or practices.

133. Business and Professions Code § 17204 allows a person injured by unfair business acts or practices to prosecute a civil action for violation of the UCL.

134. Labor Code § 90.5(a) states it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

135. Beginning at an exact date unknown to Plaintiffs, but at least since the date four years prior to the filing of this lawsuit, Defendants have committed acts of unfair competition as defined by the UCL, by engaging in the unlawful, unfair, and fraudulent business acts and practices described in this Complaint, including, but not limited to:

- a. violations of Labor Code §§ 226.7 and 512 and Wage Orders 1-2001 and 7-2001 pertaining to meal breaks;
- b. violations of Labor Code §§ 226.7 and Wage Order 1-2001 pertaining to rest breaks;

- c. violations of Labor Code §§ 1182.11, 1182.12, 1194, 1197, 1197.1, 1198, and IWC Wage Order 1-2001 pertaining to payment of wages, including minimum wage, for all hours worked;
- d. violations of Labor Code § 2802 and Wage Orders 1-2001 and 7-2001 pertaining to reimbursement of necessary business expenses;
- e. violations of Labor Code §§ 226, 226.3 and 226.6 regarding accurate, timely itemized wage statements; and
- f. violations of Labor Code §§ 201-203 pertaining to payment of all wages owed during employment and following separation from employment.

136. The violations of these laws and regulations, as well as of the fundamental California public policies protecting wages, serve as unlawful predicate acts and practices for purposes of the UCL.

137. The acts and practices described above constitute unfair, unlawful, and fraudulent business practices, and unfair competition, within the meaning of the UCL. Among other things, the acts and practices described herein have taken from Plaintiffs wages rightfully earned by them, while enabling Defendants to gain an unfair competitive advantage over law-abiding employers and competitors.

138. Business and Professions Code § 17203 provides that a court may make such orders or judgments as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to prevent Defendants from repeating the unlawful, unfair, and fraudulent business acts and practices alleged above.

139. As a direct and proximate result of the aforementioned acts and practices, Plaintiffs have suffered a loss of money and property, in the form of unpaid wages, which are due and payable.

140. Business and Professions Code § 17203 provides that the Court may restore to any person in interest any money or property which may have been acquired by means of such unfair competition. Plaintiffs are entitled to restitution pursuant to Business and Professions Code § 17203 for all wages and payments unlawfully withheld from them during the four-year period prior to the filing of this Complaint. Plaintiffs' success in this action will enforce important rights affecting the

1 public interest. Plaintiffs seek and are entitled to unpaid wages, declaratory and injunctive relief, and
2 all other equitable remedies owing to them.

3 141. Plaintiffs herein take upon themselves enforcement of these laws and lawful claims.

4 142. There is a financial burden involved in pursuing this action, the action is seeking to
5 vindicate a public right, and it would be against the interests of justice to penalize Plaintiffs by forcing
6 them to pay attorneys' fees from any recovery thereof. Attorneys' fees are appropriate pursuant to
7 Code of Civil Procedure § 1021.5 and otherwise.

8 143. Wherefore, Plaintiffs and request relief as hereinafter provided.

9
10 **NINTH CAUSE OF ACTION**
11 **PENALTIES PURSUANT TO § 2699(a) OF**
12 **THE PRIVATE ATTORNEYS GENERAL ACT**
13 **(Brought by Plaintiffs on Behalf of Themselves and Aggrieved Employees**
14 **Against Defendant and Does 1 – 50, inclusive)**

15 144. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth
16 herein.

17 145. The Private Attorneys General Act ("PAGA") expressly establishes that any provision
18 of the California Labor Code which provides for a civil penalty to be assessed and collected by the
19 Labor and Workforce Development Agency (the "LWDA"), or any of its departments, divisions,
20 commissions, boards, agencies, or employees for a violation of the Labor Code may be recovered
21 through a civil action brought by an aggrieved employee on behalf of himself or herself, and other
22 current or former employees.

23 146. Plaintiffs, by their employment with Defendants and Defendants' violations of the
24 Labor Code as alleged herein, are Aggrieved Employees with standing to bring an action under the
25 PAGA.

26 147. Defendants do not provide Plaintiffs and Aggrieved Employees with accurate itemized
27 wage statements as required by California law, as a result of the meal and rest break, off-the-clock
28 work, and overtime violations set forth above, and Defendants' failure to provide premium pay for the
missed breaks.

///

///

1 148. Labor Code § 2699(a) provides:

2 Notwithstanding any other provision of law, any provision of this code that
3 provides for a civil penalty to be assessed and collected by the Labor and
4 Workforce Development Agency or any of its departments, divisions,
5 commissions, boards, agencies or employees, for a violation of this code,
6 may, as an alternative, be recovered through a civil action brought by an
7 aggrieved employee on behalf of himself or herself and other current or
8 former employees.

9 149. Labor Code § 226(a) provides:

10 An employer, semimonthly or at the time of each payment of wages, shall
11 furnish to his or her employee, either as a detachable part of the check, draft,
12 or voucher paying the employee's wages, or separately if wages are paid by
13 personal check or cash, an accurate itemized statement in writing showing
14 (1) gross wages earned, (2) total hours worked by the employee, except as
15 provided in subdivision (j), (3) the number of piece-rate units earned and any
16 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
17 deductions, provided that all deductions made on written orders of the
18 employee may be aggregated and shown as one item, (5) net wages earned,
19 (6) the inclusive dates of the period for which the employee is paid, (7) the
20 name of the employee and only the last four digits of his or her social security
21 number or an employee identification number other than a social security
22 number, (8) the name and address of the legal entity that is the employer ...
23 and (9) all applicable hourly rates in effect during the pay period and the
24 corresponding number of hours worked at each hourly rate by the employee
... The deductions made from payment of wages shall be recorded in ink or
other indelible form, properly dated, showing the month, day, and year, and
a copy of the statement and the record of the deductions shall be kept on file
by the employer for at least three years at the place of employment or at a
central location within the State of California.

25 The IWC Wage Orders also establishes this requirement. (*See* IWC Wage Order 4-2001(7)).

26 150. Labor Code § 226(e)(1) provides:

27 An employee suffering injury as a result of a knowing and intentional failure
28 by an employer to comply with subdivision (a) is entitled to recover the greater
of all actual damages or fifty dollars (\$50) for the initial pay period in which a
violation occurs and one hundred dollars (\$100) per employee for each
violation in a subsequent pay period, not to exceed an aggregate penalty of four
thousand dollars (\$4,000), and is entitled to an award of costs and reasonable
attorney's fees.

29 151. Defendants' failure to provide Plaintiffs and Aggrieved Employees with compliant
30 meal and rest periods is and was in violation of Labor Code § 512 and Wage Orders 1-2001 and 7-
31 2001.

32 152. Due to Defendants' failure to pay one hour of premium pay to Plaintiffs and Aggrieved

1 Employees for each missed or noncompliant meal or rest period, along with the off-the-clock work,
2 and overtime violations, the wage statements Defendants provide their employees, including the
3 Aggrieved Employees, do not reflect the actual gross wages earned, actual net wages earned, or actual
4 hours worked. Accordingly, Defendants have knowingly and willfully failed to provide timely,
5 accurate itemized wage statements to Plaintiffs and the Aggrieved Employees in accordance with
6 Labor Code §§ 226, 226.3, and 226.6, and the applicable IWC Wage Order(s).

7 153. Defendants also do not provide Plaintiff and Aggrieved Employees with their wages
8 when due under California law after their employment with Defendants ends, as a result of the meal
9 and rest break, off-the-clock work, and overtime violations set forth herein and Defendants' failure to
10 provide premium pay for the noncompliant breaks.

11 154. Labor Code §§ 201 and 202 require employers to immediately pay wages earned and
12 unpaid to an employee that is discharged, and to pay an employee who quits within 72 hours after he
13 or she quits, at the latest.

14 155. Labor Code § 203 provides, in relevant part:

15 If an employer willfully fails to pay, without abatement or reduction, in
16 accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages
17 of an employee who is discharged or who quits, the wages of the employee
18 shall continue as a penalty from the due date thereof at the same rate until paid
or until an action therefor is commenced; but the wages shall not continue for
more than 30 days.

19 156. Labor Code § 256 provides: "The Labor Commissioner shall impose a civil penalty in
20 an amount not exceeding 30 days' pay as waiting time under the terms of Section 203."

21 157. Plaintiffs and Aggrieved Employees have left their employment with Defendants
22 during the statutory period, at which time Defendants owed them unpaid wages for premium pay for
23 missed or noncompliant meal and rest periods.

24 158. On information and belief, Defendants violated Labor Code § 2802 and Wage Orders
25 1-2001 and 7-2001 pertaining to reimbursement of necessary business expenses, by failing and
26 refusing to reimburse Plaintiffs' expenses necessarily incurred in the discharge of their job duties for
27 Defendants.

28 159. On information and belief, Defendants violated Labor Code §§ 201-202, 1182.11,

1 1182.12, 1194, 1197, 1197.1, 1198, and IWC Wage Order 1-2001 pertaining to payment of wages,
2 including minimum wage, for all hours worked, including but not limited to by failing to pay Plaintiffs
3 at no less than minimum wage for all time spent working for Defendants, and/or by failing to pay the
4 legal overtime rate as set forth above.

5 160. Defendants willfully refused and continue to refuse to pay Plaintiffs and Aggrieved
6 Employees all the wages that are due and owing them, in the form of meal and rest period premium
7 pay and other wages due and owing, upon the end of their employment. Defendants' failure to pay all
8 premiums required for noncompliant meal and rest periods is and was in violation of Labor Code §
9 226.7.

10 161. As a result of Defendants' actions, Plaintiffs and Aggrieved Employees have suffered
11 and continue to suffer substantial losses, including lost earnings, and interest.

12 162. Plaintiffs seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
13 Defendants, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees in
14 compliance with Labor Code §§ 201-202 in the amounts established by Labor Code § 203. Plaintiffs
15 seek such penalties as an alternative to the penalties available under Labor Code § 203, as prayed for
16 herein.

17 163. Labor Code § 226.3 provides:

18 Any employer who violates subdivision (a) of Section 226 shall be subject
19 to a civil penalty in the amount of two hundred fifty dollars (\$250) per
20 employee per violation in an initial citation and one thousand dollars
21 (\$1,000) per employee for each violation in a subsequent citation, for which
22 the employer fails to provide the employee a wage deduction statement or
23 fails to keep the records required in subdivision (a) of Section 226. The civil
24 penalties provided for in this section are in addition to any other penalty
25 provided by law.

26 164. Plaintiffs seek civil penalties pursuant to Labor Code § 2699(a) for each failure by
27 Defendants, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage
28 statement in compliance with Labor Code § 226(a) in the amounts established by Labor Code § 226(e).
Plaintiffs seek such penalties as an alternative to the penalties available under Labor Code § 226(e),
as prayed for herein.

165. Plaintiffs also seek civil penalties pursuant to Labor Code § 2699(a) for Defendants'

violations of Labor Code §§ 226.7, 512, 1182.11, 1182.12, 1194, 1197, 1197.1, 1198.

166. Plaintiffs also seek civil penalties pursuant to Labor Code §§ 225.5, 226.3, and 256.

167. Pursuant to Labor Code § 2699.3(a)(1) and (2), on August 31, 2022, Plaintiffs Lilia Hernandez, Lauren Licas, Ida Luna, Jennifer Bursack, Michelle Manesse, Natasha Gilman, Curtis Allen, Joshua Pavelko, Carla Saetia, and Brandon Steinberg provided the LWDA with notice of their intention to file these claims, and 65 calendar days have passed without notice from the LWDA. These plaintiffs have satisfied the administrative prerequisites to commence this civil action in compliance with Labor Code § 2699.3(a).

Pursuant to Labor Code § 2699.3(a)(1) and (2), on December 22, 2022, Plaintiffs Dana Collins, Kenneth Eala, Nasim Edrakian, Erin Brigance, Constance Gorman, Melinda Guerrero, Jackie Hollis, Kenneth Chung, Lisa Flower, Edward Liu, Lorina Wilson, Lupita Chinn a/k/a Natalia Chinn, Arlene McGee, Marvin Menefee, Dean Mosallam a/k/a Nordiean Mosallam, April Ponce, Heather Randrup, Jung Seo, Jason Shumski, Jennifer Talley, and Jennifer Venegas, provided the LWDA with notice of their intention to file these claims. On December 30, 2022, this notice was amended to add in Plaintiffs Aaron Black, Antoinette Nicole, David Richter, Ray Hseih, Noemy Orellana, and Frank Vasquez. Once the 65-day administrative exhaustion period provided in Labor Code § 2699.3(a) has passed, these plaintiffs will amend this Complaint to allege the same. Plaintiffs seek the aforementioned penalties on behalf of the State, other Aggrieved Employees, and themselves as set forth in Labor Code § 2699.

168. Defendants are liable to Plaintiffs, Aggrieved Employees, and the State of California for the civil penalties set forth in this Complaint, with interest thereon. Plaintiffs are also entitled to an award of attorneys' fees and costs as set forth below.

169. Wherefore, Plaintiffs request relief as hereinafter provided.

///

///

///

///

///

TENTH CAUSE OF ACTION
PENALTIES PURSUANT TO § 2699(f) OF THE
PRIVATE ATTORNEYS GENERAL ACT
(Brought by Plaintiffs on Behalf of Themselves and Aggrieved Employees
Against Defendant and Does 1 – 50, inclusive)

170. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

171. Labor Code § 2699(f) provides:

For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

172. Labor Code § 200 defines wages as “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or method of calculation.”

173. IWC Wage Orders 4-2001(2)(K) defines “hours worked” as “the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

174. Labor Code § 1198 makes it unlawful for employers to employ employees under conditions that violate the Wage Order.

175. Labor Code § 510 provides, in relevant part:

Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

///

///

1 176. Labor Code § 1197 provides:

2 The minimum wage for employees fixed by the commission or by any
3 applicable state or local law, is the minimum wage to be paid to employees,
4 and the payment of a lower wage than the minimum so fixed is unlawful.
This section does not change the applicability of local minimum wage laws
to any entity.

5 177. Labor Code § 1194(a) provides, in relevant part:

6 Notwithstanding any agreement to work for a lesser wage, any employee
7 receiving less than the legal minimum wage or the legal overtime
8 compensation applicable to the employee is entitled to recover in a civil
9 action the unpaid balance of the full amount of this minimum wage or
overtime compensation, including interest thereon, reasonable attorney's
fees, and costs of suit.

10 178. Labor Code § 1198 makes it unlawful for employers to employ employees under
11 conditions that violate the Wage Order.

12 179. California law further requires that employers pay their employees for all hours worked
13 at the statutory or agreed upon rate. No part of the rate may be used as a credit against a minimum
14 wage obligation.

15 180. By failing to maintain adequate time records as required by Labor Code §1174(d) and
16 IWC Wage Order 4-2001(7), Defendants have made it difficult to calculate the minimum wage
17 compensation due to Plaintiffs and Aggrieved Employees.

18 181. Labor Code §§ 226.7 and 512 and IWC Wage Orders 4-2001 require Defendants to
19 authorize, permit, and/or make available timely and compliant meal and rest periods to its employees.
20 Labor Code §§ 226.7 and 512 and IWC Wage Orders 4-2001 prohibit employers from employing an
21 employee for more than five hours without a meal period of not less than thirty minutes, and from
22 employing an employee more than ten hours per day without providing the employee with a second
23 meal period of not less than thirty minutes. Unless the employee is relieved of all duty during the
24 thirty-minute meal period and ten-minute rest period, the employee is considered "on duty" and the
25 meal period is counted as time worked under the applicable wage orders.

26 182. Labor Code § 2802 requires Defendants to indemnify their employees for all necessary
27 expenditures or losses incurred in direct consequence of the discharge of their duties.

28 183. To the extent that any violation alleged herein does not carry penalties under Labor

Code § 2699(a), Plaintiffs seek civil penalties pursuant to Labor Code § 2699(f) for Plaintiffs and Aggrieved Employees each pay period in which he or she was aggrieved, in the amounts established by Labor Code § 2699(f). Plaintiffs seek penalties pursuant to Labor Code § 2699(f) for Plaintiffs and Aggrieved Employees for violations of Labor Code provisions including but not limited to Labor Code §§ 201-203, 226, 226.3, 226.6, 226.7, 510, 512, 1182.11, 1182.12, 1194, 1197, 1197.1, 1198, 2800, 2802, and IWC Wage Orders 1-2001, 4-2001, and 7-2001, and any other violation alleged herein which does not carry penalties under Labor Code § 2699(a).

184. Pursuant to Labor Code § 2699.3(a)(1) and (2), on August 31, 2022, Plaintiffs Lilia Hernandez, Lauren Licas, Ida Luna, Jennifer Bursack, Michelle Manesse, Natasha Gilman, Curtis Allen, Joshua Pavelko, Carla Saetia, and Brandon Steinberg provided notice to LWDA of their intention to file these claims, and 65 calendar days have passed without response from the LWDA. These plaintiffs have satisfied the administrative prerequisites to commence this civil action in compliance with Labor Code § 2699.3(a).

185. Pursuant to Labor Code § 2699.3(a)(1) and (2), on December 22, 2022, Plaintiffs Dana Collins, Kenneth Eala, Nasim Edrakian, Erin Brigance, Constance Gorman, Melinda Guerrero, Jackie Hollis, Kenneth Chung, Lisa Flower, Edward Liu, Lorina Wilson, Lupita Chinn a/k/a Natalia Chinn, Arlene McGee, Marvin Menefee, Dean Mosallam a/k/a Nordiean Mosallam, April Ponce, Heather Randrup, Jung Seo, Jason Shumski, Jennifer Talley, and Jennifer Venegas provided notice to the LWDA of their intention to file these claims. On December 30, 2022, this notice was amended to add in Plaintiffs Aaron Black, Antoinette Nicole, David Richter, Ray Hseih, Noemy Orellana, and Frank Vasquez. Once the 65-day administrative exhaustion period provided in Labor Code § 2699.3(a) has passed, these plaintiffs will amend this Complaint to allege the same.

186. Plaintiffs seek the aforementioned penalties on behalf of the State, other Aggrieved Employees, and themselves as set forth in Labor Code § 2699(g)(1).

187. Defendants are jointly liable to Plaintiffs, the Aggrieved Employees, and the State of California for the civil penalties set forth in this Complaint, with interest thereon. Plaintiffs are also entitled to an award of attorneys' fees and costs as set forth below.

188. Wherefore, Plaintiffs request relief as hereinafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

1. Appropriate equitable relief to remedy Defendants' violations of California law including, but not necessarily limited to, an order enjoining Defendants from continuing their unlawful practices;
2. For an award of unpaid wages for all labor performed and liquidated damages in an amount equal to the amount unlawfully unpaid pursuant to Labor Code §§ 200, 218, 1194 and 1194.2;
3. For an award of unpaid overtime wages pursuant to Labor Code §§ 510 and 1194;
4. All appropriate California statutory penalties;
5. Compensation at the rate of one hour of regular pay for each instance in Plaintiffs were not provided a first or second meal period;
6. Compensation at the rate of one hour of regular pay for each instance in which Plaintiffs worked through a rest break or was not provided a proper rest break for every four hours worked or major fraction thereof;
7. Labor Code § 203 penalties;
8. Damages and penalties pursuant to Labor Code §§ 226(a) and 226.3 and 210;
9. Reimbursement of the necessary expenses incurred by Plaintiffs in the discharge of their duties;
10. An award of civil penalties to the full extent allowed by PAGA to the State of California, Plaintiffs and Aggrieved Employees;
11. Pre-judgment and post-judgment interest, as provided by law;
12. Such other equitable relief as the Court may deem just and proper; and
13. Attorneys' fees and costs of suit, including expert fees and fees pursuant to California Labor Code §§ 218.5, 226, 1194, Code of Civil Procedure § 1021.5, and other applicable California laws.

///

///

///

1 Dated: December 30, 2022

Respectfully Submitted,

2
3 

4 Carolyn H. Cottrell
5 Samantha A. Smith
6 Beth A. Christopher
7 **SCHNEIDER WALLACE**
8 **COTTRELL KONECKY LLP**

9 *Attorneys for Plaintiffs on behalf of the State of*
10 *California and Aggrieved Employees*

11 **DEMAND FOR JURY TRIAL**

12 Plaintiffs hereby demand a trial by jury on all claims and issues for which Plaintiffs are
13 entitled to a jury.

14 Dated: December 30, 2022

Respectfully Submitted,

15
16 

17 Carolyn H. Cottrell
18 Samantha A. Smith
19 Beth A. Christopher
20 **SCHNEIDER WALLACE**
21 **COTTRELL KONECKY LLP**

22 *Attorneys for Plaintiffs on behalf of the State of*
23 *California and Aggrieved Employees*