

AEGIS LAW FIRM, PC
SAMUEL A. WONG, State Bar No. 217104
KASHIF HAQUE, State Bar No. 218672
FAWN BEKAM, State Bar No. 307312
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251
fbekam@aegislawfirm.com

Attorneys for Plaintiff Bart Wells, individually,
and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

BART WELLS, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

THE DREAM JUNCTION, LLC; MARCO
FINE ARTS; and DOES 1 through 20,
inclusive,

Defendants.

Case No. 30-2022-01272907-CU-OE-CXC

Assigned for all purposes to:
Hon. Randall J. Sherman, Dept. CX-105

FIRST AMENDED 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 Provide Accurate Itemized Wage Statements;
6. Failure to Pay All Wages Due Upon Separation of Employment;
7. Failure to Reimburse Necessary Business Expenses; and
8. Violation of Business and Professions Code §§ 17200, *et seq.*

1 Plaintiff Bart Wells, individually, and on behalf of others similarly situated, alleges as
2 follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Bart Wells (“Plaintiff”) brings this putative class action against
5 defendants The Dream Junction, LLC, Marco Fine Arts, and DOES 1 through 20, inclusive
6 (collectively, “Defendants”), on behalf of himself individually and a putative class of California
7 citizens who are and were employed by Defendants as non-exempt employees throughout
8 California.

9 2. Defendants are in the business of t-shirt printing.

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

14 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
15 increased their profits by violating state wage and hour laws by, among other things:

16 (a) Failing to pay all wages (including minimum wages and overtime
17 wages);

18 (b) Failing to provide lawful meal periods or compensation in lieu thereof;

19 (c) Failing to authorize or permit lawful rest breaks or provide compensation
20 in lieu thereof;

21 (d) Failing to provide accurate itemized wage statements;

22 (e) Failing to pay all wages due upon separation of employment; and

23 (f) Failing to reimburse all business expenses incurred by the employee in
24 direct consequence of the discharge of his or her duties.

25 5. Plaintiff seeks monetary relief against Defendants on behalf of himself and all
26 others similarly situated in California to recover, among other things, unpaid wages and
27 benefits, interest, attorneys’ fees, costs and expenses, and penalties pursuant to Labor Code §§
28 201, 202, 203, 204, 226, 226.7, 510, 511, 512, 1182.12, 1194, 1194.2, 1197, 1198, 2800, 2802,

1 and Code of California Civil Procedure § 1021.5.

2 **JURISDICTION AND VENUE**

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

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

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

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

18 **THE PARTIES**

19 10. Plaintiff is a citizen of California. Plaintiff was employed by Defendants during
20 the Class Period in California.

21 11. Plaintiff is informed and believes, and thereon alleges that at all times
22 hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage
23 Orders as employers, whose employees were and are engaged throughout this county and the
24 State of California.

25 12. Plaintiff is unaware of the true names or capacities of the defendants sued herein
26 under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this
27 Complaint and serve such fictitiously named defendants once their names and capacities
28 become known.

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

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

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

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

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

CLASS ACTION ALLEGATIONS

18. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of himself and all others similarly situated who were affected by Defendants' Labor Code, Business and Professions Code §§ 17200, *et. seq.*, and IWC Wage Order violations.

19. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

20. Plaintiff's proposed class consists of and is defined as follows:

Class

1 All California citizens currently or formerly employed by Defendants as non-
2 exempt employees in the State of California at any time between February 2,
3 2018¹ and the date of class certification (“Class”).

4 21. Plaintiff also seeks to certify the following subclass of employees:

5 Waiting Time Subclass

6 All Class Members who separated their employment with Defendants at any time
7 between February 2, 2019 and the date of class certification (“Subclass” or
8 “Waiting Time Subclass”).

9 22. Plaintiff reserves the right to establish other or additional subclasses, or modify
10 or re-define the Class, or any class or subclass definition as appropriate based on investigation,
11 discovery, and specific theories of liability.

12 23. Members of the Class and the Subclass described above will be collectively
13 referred to as “Class Members.”

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

17 (a) Whether Defendants failed to implement a valid alternative workweek
18 schedule and thus failed to pay Plaintiff and Class Members proper
19 overtime compensation or failed to pay properly under a valid alternative
20 workweek schedule;

21 (b) Whether Defendants paid Plaintiff and Class Members all wages
22 (including minimum and overtime wages) for all hours worked by
23 Plaintiff and Class Members;

24 (c) Whether Defendants required Plaintiff and Class Members to work over
25 8 hours per day, over twelve (12) hours per day, and/or over forty (40)

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

1 hours per week and failed to pay them overtime compensation at the
2 proper rate;

3 (d) Whether Defendants deprived Plaintiff and Class Members of timely
4 meal periods or required Plaintiff and Class Members to work through
5 meal periods without compensation;

6 (e) Whether Defendants deprived Plaintiff and Class Members of rest breaks
7 or required Plaintiff and Class Members to work through rest breaks
8 without compensation;

9 (f) Whether Defendants failed to provide Plaintiff and Class Members
10 accurate itemized wage statements;

11 (g) Whether Defendants failed to timely pay Plaintiff and the Subclass all
12 wages due upon termination or within seventy-two (72) hours of
13 resignation;

14 (h) Whether Defendants required Plaintiff and class members to incur
15 expenses for work and then failed to adequately reimburse Plaintiff and
16 Class Members for such expenses;

17 (i) Whether Defendants failed to pay Plaintiff and class members' vacation
18 pay at the regular rate of pay;

19 (j) Whether Defendants' conduct was willful or reckless; and

20 (k) Whether Defendants engaged in unfair business practices in violation of
21 Business and Professions Code §§ 17200, *et seq.*

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

24 (a) Numerosity: The Class Members are so numerous that joinder of all
25 members is impractical. Although the members of the entire Class and Subclass are unknown
26 to Plaintiff at this time, on information and belief, the class is estimated to be greater than one
27 100 individuals. The identities of the Class Members are readily ascertainable by inspection of
28 Defendants' employment and payroll records.

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

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

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

21 (e) Public Policy Considerations: Employers in the State of California
22 violate employment and labor laws every day. Current employees are often afraid to assert their
23 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing
24 actions because they believe their former employers might damage their future endeavors
25 through negative references and/or other means. Class actions provide class members who are
26 not named in the complaint with a type of anonymity that allows for the vindication of their
27 rights while affording them privacy protections.

28 **GENERAL ALLEGATIONS**

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

3 27. Defendants continue to employ non-exempt employees within California.

4 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
5 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals
6 who were knowledgeable about California's wage and hour laws, employment and personnel
7 practices, and the requirements of California law.

8 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and Class Members were entitled to receive overtime wages
10 and that they were not receiving all wages earned for work under Defendants' Alternative
11 Workweek Schedule. Plaintiff believes Defendant either failed to implement a proper
12 alternative workweek or failed to properly pay overtime under a valid Alternative Workweek
13 Schedule and thus owe Plaintiff and Class Members unpaid overtime.

14 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and Class Members were entitled to receive wages for all time
16 worked (including minimum wages and overtime wages) and that they were not receiving all
17 wages earned for work that was required to be performed, including when Plaintiff and Class
18 Members were required to undergo COVID screenings off-the-clock. In violation of the Labor
19 Code and IWC Wage Orders, Plaintiff and Class Members were not paid all wages (including
20 minimum wages and overtime wages) for all hours worked.

21 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and Class Members were entitled to receive all required meal
23 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
24 rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the
25 Labor Code and IWC Wage Orders, Plaintiff and Class Members did not receive all meal
26 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
27 rate of pay when they did not receive a timely, uninterrupted meal period.

28 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and Class Members were entitled to receive all rest breaks or
2 payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of pay
3 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff
4 and Class Members did not receive all rest breaks or payment of one (1) additional hour of pay
5 at Plaintiff's and Class Members' regular rate of pay when a rest break was missed.

6 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and class members were entitled to reimbursement for
8 necessary expenditures incurred in connection with the performance and execution of their job
9 duties. In violation of the California Labor Code, Plaintiff and class members did not receive
10 adequate reimbursement for necessary business expenses, including, but not limited to,
11 reimbursement for cell phone.

12 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that the Class Members were entitled to receive itemized wage statements
14 that accurately showed the gross and net wages earned, total hours worked, all applicable
15 hourly rates in effect, and the number of hours worked at each hourly rate in accordance with
16 California law. In violation of the Labor Code, the Class Members were not provided with
17 accurate itemized wage statements.

18 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that the Waiting Time Subclass members were entitled to timely payment
20 of wages due upon separation of employment. In violation of the Labor Code, the Waiting
21 Time Subclass did not receive payment of all wages within permissible time periods, including
22 but not limited to vacation pay at the regular rate.

23 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known they had a duty to compensate Plaintiff and Class Members, and
25 Defendants had the financial ability to pay such compensation but willfully, knowingly, and
26 intentionally failed to do so in order to increase Defendants' profits.

27 37. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief
28 against Defendants on behalf of himself and all Class Members to recover, among other things,

1 unpaid wages (including minimum and overtime wages), meal period premium payments, rest
2 period premium payments, interest, attorneys' fees, penalties, costs, and expenses.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**

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

6 38. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
7 though fully set forth herein.

8 39. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
9 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
10 wage than the minimum so fixed is unlawful.

11 40. During the relevant time period, Defendants paid Plaintiff and Class Members
12 less than the minimum wage when they failed to pay proper compensation for all hours worked.
13 To the extent these hours do not qualify for the payment of overtime, Plaintiff and Class
14 Members were not being paid at least the minimum wage for their work.

15 41. During the relevant time period, Defendants regularly failed to pay at least the
16 minimum wage to Plaintiff and Class Members for all hours worked pursuant to Labor Code
17 §§ 1194 and 1197, as alleged herein.

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

22 43. Pursuant to Labor Code § 1194.2, Plaintiff and Class Members are entitled to
23 recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued
24 interest thereon.

25 **SECOND CAUSE OF ACTION**

26 **FAILURE TO PAY OVERTIME WAGES**

27 (Violation of Labor Code §§ 510, 511, 1194, and 1198; Violation of IWC Wage Order § 3)

28 44. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as

1 though fully set forth herein.

2 45. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
3 unlawful to employ persons without compensating them at a rate of pay either one and one-half
4 (1½) or two (2) times the person's regular rate of pay, depending on the number of hours
5 worked by the person on a daily or weekly basis.

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

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

15 48. California Labor Code § 510 codifies the right to overtime compensation at one
16 and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in
17 a day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
18 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
19 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
20 seventh day of work in a workweek.

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

24 50. Plaintiff and Class Members were non-exempt employees entitled to the
25 protections of California Labor Code §§ 510 and 1194.

26 51. During the relevant time period, Defendants failed to pay Plaintiff and Class
27 Members overtime wages for all overtime hours worked when Plaintiff and Class Members
28 worked in excess of eight (8) hours in a day and/or forty (40) hours in a week or for a seventh

1 day of work in a workweek, or when Plaintiff and Class Members worked in excess of twelve
2 (12) hours in a day and/or in excess of eight (8) hours on the seventh day of work in a work
3 week. To the extent these hours qualify for the payment of overtime, Plaintiff and Class
4 Members worked shifts of eight (8) hours or more without being paid proper overtime wages.

5 52. During the relevant time period, Defendants failed to pay Plaintiff and Class
6 Members all wages owed when Defendants failed to properly implement an alternative
7 workweek election or failed to properly pay overtime wages under a valid alternative
8 workweek election.

9 53. In violation of state law, Defendants knowingly and willfully refused to perform
10 their obligations and compensate Plaintiff and Class Members for all wages earned and all
11 hours worked, as alleged herein.

12 54. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of
13 overtime and double time compensation, as required by California law, violates the provisions
14 of Labor Code §§ 510 and 1198, and is therefore unlawful.

15 55. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to
16 recover their unpaid overtime and double time compensation as well as interest, costs, and
17 attorneys' fees.

18 **THIRD CAUSE OF ACTION**

19 **FAILURE TO PROVIDE MEAL PERIODS**

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

21 56. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
22 though fully set forth herein

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

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

1 the employee.”

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

7 60. Labor Code § 512(a) also provides that an employer may not employ an
8 employee for a work period of more than ten (10) hours per day without providing the employee
9 with a second meal period of not less than thirty (30) minutes, except that if the total hours
10 worked is no more than twelve (12) hours, the second meal period may be waived by mutual
11 consent of the employer and the employee only if the first meal period was not waived.

12 61. During the relevant time period, Plaintiff and Class Members did not receive
13 compliant meal periods for working more than five (5) and/or ten (10) hours per day because
14 their meal periods were missed, late, short, and/or they were not permitted to take meal periods.

15 62. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
16 an employer to pay an employee one (1) additional hour of pay at the employee’s regular rate of
17 compensation for each work day that a compliant meal period is not provided.

18 63. At all relevant times, Defendants failed to pay Plaintiff and Class Members meal
19 period premiums for missed, late, and/or short meal periods pursuant to Labor Code § 226.7(b)
20 and section 11 of the applicable IWC Wage Order.

21 64. As a result of Defendants’ failure to pay Plaintiff and Class Members an
22 additional hour of pay for each day a compliant meal period was not provided, Plaintiff and
23 Class Members suffered and continue to suffer a loss of wages and compensation.

24 **FOURTH CAUSE OF ACTION**

25 **FAILURE TO PERMIT REST BREAKS**

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

27 65. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
28 though fully set forth herein.

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

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

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

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

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

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

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Violation of Labor Code § 226)

72. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

73. Labor Code § 226(a) requires Defendants to provide each employee with an accurate wage statement in writing showing nine pieces of information, including, the following: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of

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

9 74. During the relevant time period, Defendants have knowingly and intentionally
10 failed to comply with Labor Code § 226(a) on wage statements that were provided to the Class
11 Members. The deficiencies include, among other things, the failure to correctly identify the
12 name of the legal entity that is the employer and state the gross and net wages earned, total
13 hours worked, all applicable hourly rates in effect, and the number of hours worked at each
14 hourly rate by the Class Members.

15 75. As a result of Defendants' knowing and intentional failure to comply with Labor
16 Code § 226(a), the Class Members suffered injury and damage to their statutorily-protected
17 rights. Specifically, the Class Members are deemed to suffer an injury pursuant to Labor Code
18 § 226(e) where, as here, Defendants intentionally violated Labor Code § 226(a). The Class
19 Members were denied both their legal right to receive, and their protected interest in receiving,
20 accurate itemized wage statements under Labor Code § 226(a). Plaintiff has had to file this
21 lawsuit in order to analyze the extent of the underpayment, thereby causing Plaintiff to incur
22 expenses and lost time. Plaintiff would not have had to engage in these efforts and incur these
23 costs had Defendants provided the accurate hours worked, wages earned, and rates of pay. This
24 has also delayed Plaintiff's ability to demand and recover the underpayment of wages from
25 Defendants.

26 76. The Class Members are entitled to recover from Defendants the greater of all
27 actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty
28 dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars

1 (\$100.00) per employee for each violation in subsequent pay periods in an amount not
2 exceeding four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

3 77. Defendants' violations of California Labor Code § 226(a) prevented the Class
4 Members from knowing, understanding, and disputing the wages paid to them and resulted in
5 an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
6 intentional failure to comply with California Labor Code § 226(a), the Class Members have
7 suffered an injury, in the exact amount of damages and/or penalties to be shown according to
8 proof at trial.

9 78. The Class Members are also entitled to injunctive relief under California Labor
10 Code § 226(h), compelling Defendants to comply with California Labor Code § 226.
11 Accordingly, the Class Members seek the recovery of attorneys' fees and costs incurred in
12 obtaining this injunctive relief.

13 SIXTH CAUSE OF ACTION

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

15 (Violation of Labor Code §§ 201, 202, 203, 227.3)

16 79. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
17 though fully set forth herein.

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

24 81. Labor Code § 227.3 provides all accrued vacation pay is due upon termination
25 of employment.

26 82. During the relevant time period, Defendants willfully failed to pay the Waiting
27 Time Subclass all their earned wages upon termination, including, but not limited to, proper
28 minimum wage and overtime compensation, vacation pay at the regular rate, meal period

1 premiums, and rest period premiums either at the time of discharge or within seventy-two (72)
2 hours of their leaving Defendants' employ.

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

6 84. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
7 immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202,
8 then the wages of the employee shall continue as a penalty from the due date at the same rate
9 until paid or until an action is commenced; but the wages shall not continue for more than thirty
10 (30) days.

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

15 SEVENTH CAUSE OF ACTION

16 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

17 (Violation of Labor Code §§ 2800, 2802)

18 86. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
19 though fully set forth herein.

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

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

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

28 90. During the relevant time period, Defendants required Plaintiff and class members

1 to incur cell phone expenses without properly compensating them for such expenses.

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

4 92. In committing the violations as herein alleged, Defendants have intentionally and
5 willfully failed to fully reimburse Plaintiff and class members for necessary business-related
6 costs and expenses. As a direct result, Plaintiff and class members have suffered and continue to
7 suffer substantial losses relating to the use and enjoyment of such compensation, wages,
8 expenses, and attorney's fees.

9 **EIGHTH CAUSE OF ACTION**

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

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

12 93. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
13 though fully set forth herein.

14 94. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of
15 unfair competition, which includes any "unlawful, unfair or fraudulent business act or practice
16 ..."

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

21 96. Defendants' policies and practices violated state law in at least the following
22 respects:

- 23 (a) Failing to pay all wages earned (including minimum wage and overtime
24 wages) to Plaintiff and Class Members in violation of Labor Code §§
25 227.3, 510, 511, 1182.12, 1194, 1194.2, 1197, and 1198;
- 26 (b) Failing to provide compliant meal periods without paying Plaintiff and
27 Class Members premium wages for every day said meal periods were not
28 provided in violation of Labor Code §§ 226.7 and 512;

- 1 (c) Failing to authorize or permit compliant rest breaks without paying
2 Plaintiff and Class Members premium wages for every day said rest
3 breaks were not authorized or permitted in violation of Labor Code §
4 226.7;
- 5 (d) Failing to provide the Class Members with accurate itemized wage
6 statements in violation of Labor Code § 226;
- 7 (e) Failing to timely pay all earned wages to the members of the Waiting
8 Time Subclass upon separation of employment in violation of Labor
9 Code §§ 201, 202, and 203; and
- 10 (f) Failing to reimburse business expenses in violation of Labor Code §§
11 2800 and 2802.

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

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

22 99. At the time Plaintiff and Class Members were hired, Defendants knowingly,
23 intentionally, and wrongfully misrepresented to each of them their conformance with the
24 California Labor Code and IWC Wage Orders, including proper payments required by law.

25 100. At all times relevant herein, Plaintiff and Class Members relied on and believed
26 Defendants' representations concerning their conformance with California's wage and hour
27 laws all to their detriment.

28 101. At all times relevant herein, Defendants intentionally avoided paying Plaintiff

1 and Class Members wages and monies, thereby creating for Defendants an artificially lower
2 cost of doing business in order to undercut their competitors and establish and/or gain a greater
3 foothold in the marketplace.

4 102. As a result of Defendants' intentional, willful, purposeful, and wrongful
5 misrepresentation of their conformance with the California Labor Code and IWC Wage Orders,
6 Plaintiff and Class Members suffered a loss of wages and monies, all in an amount to be shown
7 according to proof at trial.

8 103. By violating the foregoing statutes and regulations as herein alleged,
9 Defendants' acts constitute unfair and unlawful business practices under California Business
10 and Professions Code §§ 17200, *et seq.*

11 104. As a result of the unfair and unlawful business practices of Defendants, as
12 alleged herein, Plaintiff and Class Members are entitled to injunctive relief, disgorgement, and
13 restitution in an amount to be shown according to proof at trial.

14 105. Plaintiff seeks to enforce important rights affecting the public interest within the
15 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged
16 herein, has been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members,
17 and the general public. Based on Defendants' conduct as alleged herein, Plaintiff and Class
18 Members are entitled to an award of attorneys' fees pursuant to California Code of Civil
19 Procedure § 1021.5.

20 **PRAYER FOR RELIEF**

21 Plaintiff, on his own behalf and on behalf of all others similarly situated, prays for relief
22 and judgment against Defendants, jointly and severally, as follows:

- 23 1. For certification under California Code of Civil Procedure § 382 of the proposed
24 Class, Waiting Time Subclass, and any other appropriate subclasses;
- 25 2. For appointment of Bart Wells as the class representative;
- 26 3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;
- 27 4. For compensatory damages in an amount according to proof at trial;
- 28 5. For an award of damages in the amount of unpaid compensation including, but

1 not limited to, unpaid wages, benefits, and penalties;

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

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

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

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

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

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

13 12. For pre-judgment interest;

14 13. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted
15 by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§
16 226(e), 1194, and 2802(c); and

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

18
19 Dated: August 9, 2022

AEGIS LAW FIRM, PC

20 By: _____

Fawn F. Bekam

Attorneys for Plaintiff Bart Wells