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on behalf of himself and others similarly situated

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES- CENTRAL DISTRICT**

MARIO PABLO, on behalf of himself and others
similarly situated,

Plaintiff,

vs.

KEPT COMPANIES, INC. dba VALLEY FLEET
CLEAN; FLEETWASH, INC; and DOES 1 to
100, inclusive,

Defendants.

Case No.: 25STCV09513

CLASS AND PAGA ACTION

**PLAINTIFFS' MARIO PABLO,
CARLOS BARAJAS, JR., AND
MARTIN JOSSUE PEREZ
CONSOLIDATED FIRST AMENDED
COMPLAINT FOR DAMAGES AND
RESTITUTION FOR:**

- 1. FAILURE TO PAY WAGES FOR ALL HOURS WORKED AT MINIMUM WAGE IN VIOLATION OF LABOR CODE SECTIONS 1194 AND 1197**
- 2. FAILURE TO PAY OVERTIME WAGES FOR DAILY OVERTIME WORKED IN VIOLATION OF LABOR CODE SECTIONS 510 AND 1194**
- 3. FAILURE TO AUTHORIZE OR PERMIT MEAL PERIODS IN VIOLATION OF LABOR CODE SECTIONS 512 AND 226.7**
- 4. FAILURE TO AUTHORIZE OR PERMIT REST PERIODS IN VIOLATION OF LABOR CODE SECTION 226.7**
- 5. FAILURE TO PAY WAGES FOR ACCRUED PAID SICK DAYS**

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**AT THE REGULAR RATE OF
PAY IN VIOLATION OF
LABOR CODE SECTION 246**

- 6. FAILURE TO MAINTAIN
ACCURATE EMPLOYMENT
RECORDS IN VIOLATION OF
LABOR CODE SECTION
1174(d)**
- 7. FAILURE TO TIMELY PAY
EARNED WAGES DURING
EMPLOYMENT IN VIOLATION
OF LABOR CODE SECTION 204**
- 8. FAILURE TO PAY ALL
EARNED WAGES AND FINAL
PAYCHECKS DUE AT TIME OF
SEPARATION OF
EMPLOYMENT IN VIOLATION
OF LABOR CODE SECTIONS
201, 202, AND 203**
- 9. FAILURE TO INDEMNIFY
EMPLOYEES FOR
EMPLOYMENT RELATED
EXPENDITURES IN
VIOLATION OF LABOR CODE
SECTION 2802**
- 10. FAILURE TO PAY ACCRUED
AND VESTED VACATION/PTO
WAGES IN VIOLATION OF
LABOR CODE SECTION 227.3**
- 11. FAILURE TO PROVIDE
COMPLETE AND ACCURATE
WAGE STATEMENTS IN
VIOLATION OF LABOR CODE
SECTION 226**
- 12. UNFAIR BUSINESS PRACTICES,
IN VIOLATION OF BUSINESS
AND PROFESSIONS CODE
SECTIONS 17200, ET SEQ.**
- 13. CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

DEMAND FOR JURY TRIAL

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on behalf of himself and others similarly situated

COMES NOW Plaintiffs MARIO PABLO, CARLOS BARAJAS, JR., and MARTIN JOSSUE PEREZ (“Plaintiff” or “Plaintiffs” used interchangeably), who allege and complain on information and belief except as to those allegations relating to Plaintiffs themselves which are asserted on personal knowledge, against Defendants KEPT COMPANIES, INC. dba VALLEY FLEET CLEAN; FLEETWASH, INC.; and DOES 1 to 100, inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

1. This is a class action lawsuit seeking unpaid wages and interest thereon for failure to pay wages for all hours worked at minimum wage and all overtime hours worked at the overtime rate of pay; failure to pay overtime wages at the proper overtime rate of pay; failure to authorize or permit all legally required and/or compliant meal periods or pay meal period premium wages; failure to authorize or permit all legally required and/or compliant rest periods or pay rest period premium wages; failure to pay wages for accrued paid sick time at the regular rate of pay; statutory penalties for failure to maintain accurate employment records; statutory penalties for failure to timely pay earned wages during employment; statutory waiting time penalties in the form of continuation wages for failure to timely pay employees all wages due upon separation of employment; failure to indemnify employees for employment related expenses; failure to pay accrued and vested vacation and/or paid-time-off (PTO) wages; statutory penalties for failure to provide accurate wage statements; injunctive relief and other equitable relief; reasonable attorneys’ fees pursuant to Labor Code sections 218.5, 226(e) and 1194; costs; and interest brought on behalf of Plaintiffs and others similarly situated.

2. This is also a Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq. (“PAGA”) representative action brought by Plaintiffs on behalf of the State of California, themselves and other current and former aggrieved employees of Defendants who worked as hourly non-exempt employees in California during the relevant time period seeking civil penalties associated with Defendants’ violation of the Labor Code based on Defendants’ failure to pay wages for all hours worked at minimum wage and all overtime hours worked at the overtime rate of pay; failure to pay overtime wages at the proper overtime rate of pay; failure to authorize or

1 permit all legally required and/or compliant meal periods or pay meal period premium wages;
2 failure to authorize or permit all legally required and/or compliant rest periods or pay rest period
3 premium wages; failure to pay accrued and vested vacation and/or paid-time-off (PTO) wages;
4 statutory penalties for failure to timely pay earned wages during employment; statutory penalties
5 for secret payment of lower wages than designated by statute; statutory penalties for failure to
6 provide accurate wage statements; statutory penalties for failure to timely pay all earned wages
7 upon separation of employment; statutory penalties for failure to keep accurate employment
8 records pursuant to Labor Code § 1174; statutory penalties for failure to reimburse business
9 expenses; and failure to pay wages for accrued paid sick time at the regular rate of pay. Plaintiffs
10 experienced these violations personally, as well as are informed and believe other aggrieved
11 employees did as well. Plaintiffs seek on a representative basis, following notice to the Labor and
12 Workforce Development Agency, civil penalties, reasonable attorneys' fees pursuant to Labor
13 Code section 2699(g)(1) and costs brought on behalf of Plaintiffs, the State of California, and
14 others aggrieved.

15 **II. JURISDICTION AND VENUE**

16 3. This Court has jurisdiction over Plaintiffs' and putative class members' claims for
17 failure to pay wages for all hours worked at minimum wage and all overtime hours worked at the
18 overtime rate of pay; failure to pay overtime wages at the proper overtime rate of pay; failure to
19 authorize or permit all legally required and/or compliant meal periods or pay meal period
20 premium wages; failure to authorize or permit all legally required and/or compliant rest periods or
21 pay rest period premium wages; failure to pay wages for accrued paid sick time at the regular rate
22 of pay; statutory penalties for failure to maintain accurate employment records; statutory penalties
23 for failure to timely pay earned wages during employment; statutory waiting time penalties in the
24 form of continuation wages for failure to timely pay employees all wages due upon separation of
25 employment; failure to indemnify employees for employment related expenses; failure to pay
26 accrued and vested vacation and/or paid-time-off (PTO) wages; statutory penalties for failure to
27 provide accurate wage statements; and claims for injunctive relief and restitution under California
28 Business and Professions Code sections 17200, *et seq.*, for the following reasons: Defendants

1 operate throughout California; Defendants employed Plaintiffs and putative class members in
2 locations throughout California, including but not limited to Los Angeles County, at 11520
3 Bloomfield Ave, Santa Fe Springs, CA 90670, more than two-thirds of putative class members are
4 California citizens; the principal violations of California law occurred in California; no other class
5 actions have been filed against Defendants in the last four (4) years alleging wage and hour
6 violations; the conduct of Defendants forms a significant basis for Plaintiffs' and putative class
7 members' claims; and Plaintiffs and putative class members seek significant relief from
8 Defendants.

9 4. This Court also has jurisdiction over the claims of Plaintiffs and all other current
10 and former aggrieved California-based hourly non-exempt employees because Plaintiffs' lawsuit
11 seeks civil penalties on behalf of herself, all other current and former aggrieved California-based
12 hourly non-exempt employees, and the State of California in excess of twenty-five thousand
13 dollars (\$25,000); Defendants employed Plaintiffs and all other current and former aggrieved
14 California-based hourly non-exempt employees; and the injuries to Plaintiffs and all other current
15 and former aggrieved California-based hourly non-exempt employees occurred in locations
16 throughout California, including but not limited to Los Angeles County, at 11520 Bloomfield Ave,
17 Santa Fe Springs, CA 90670.

18 **III. PARTIES**

19 5. Plaintiffs bring this action on behalf of themselves and other members of the
20 general public similarly situated. The named Plaintiffs and the class of persons on whose behalf
21 this action is filed are current, former, and/or future employees of Defendants as direct employees
22 as well as temporary employees employed through temp agencies who work as hourly non-exempt
23 employees. At all times mentioned herein, the currently named Plaintiffs are and were residents of
24 California and were employed by Defendants in the State of California within the four (4) years
25 prior to the filing of this Complaint.

26 6. Plaintiffs also bring this action as a representative of the Labor and Workforce
27 Development Agency on behalf of themselves and other current and former employees subject to
28 violations of the Labor Code. The named Plaintiffs and the persons on whose behalf this action is

1 filed include current, former and/or future employees of Defendants who work, worked, or will
2 work for Defendants as direct employees as well as temporary employees employed through temp
3 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
4 currently named Plaintiffs are and were domiciled residents and citizens of California and were
5 employed by Defendants in an hourly position at Defendants' location in Los Angeles County
6 from in or around January, 2005, until on or about currently.

7 7. Defendants employed Plaintiff Mario Pablo as an hourly non-exempt employee
8 from in or around November 2006, until the present; Plaintiff Carlos Barajas Jr. as an hourly non-
9 exempt employee from on or around October 23, 2023, until on or about February 27, 2025; and
10 Plaintiff Martin Jossue Perez as an hourly non-exempt employee from in or around March 28,
11 2022, until on or about August 2, 2024.

12 8. Plaintiffs are informed and believe and thereon allege that Defendants employed
13 them and other hourly non-exempt employees throughout the State of California and therefore
14 their conduct forms a significant basis of the claims asserted in this matter.

15 9. Plaintiffs are informed and believe and thereon allege that Defendants KEPT
16 COMPANIES, INC dba VALLEY FLEET CLEAN and FLEETWASH, INC. are authorized to do
17 business within the State of California and are doing business in the State of California and/or that
18 Defendants DOES 1-50 are, and at all times relevant hereto were persons acting on behalf of
19 Defendants KEPT COMPANIES, INC dba VALLEY FLEET CLEAN and FLEETWASH, INC in
20 the establishment of, or ratification of, the aforementioned illegal wage and hour practices or
21 policies. Defendants KEPT COMPANIES, INC dba VALLEY FLEET CLEAN and
22 FLEETWASH, INC operate in Los Angeles County and employed Plaintiffs, putative class
23 members, and aggrieved employees in Los Angeles County, including but not limited to, at 11520
24 Bloomfield Ave, Santa Fe Springs, CA 90670.

25 10. Plaintiffs are informed and believe and thereon allege that Defendants DOES 51-
26 100 are individuals unknown to Plaintiffs. Each of the individual Defendants are sued individually
27 in their capacity as an agent, shareholder, owner, representative, supervisor, independent
28 contractor and/or employee of each the Defendants and participated in the establishment of, or

1 ratification of, the aforementioned illegal wage and hour practices or policies.

2 11. Plaintiffs are unaware of the true names of Defendants DOES 1-100. Plaintiffs sue
3 said Defendants by said fictitious names and will amend this Complaint when the true names and
4 capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted
5 by law or by the Court. Plaintiffs are informed and believe that each of the fictitiously named
6 Defendants are in some manner responsible for the events and allegations set forth in this
7 Complaint.

8 12. Plaintiffs are informed and believe and thereon allege that at all relevant times,
9 each Defendant was an employer, was the principal, agent, partner, joint venturer, officer, director,
10 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
11 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
12 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
13 of the other defendants so as to be liable for their conduct with respect to the matters alleged in
14 this Complaint. Plaintiffs are further informed and believe and thereon allege that Defendants
15 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
16 times, Defendants knew or should have known about, authorized, ratified, adopted, approved,
17 controlled, aided and abetted the conduct of all other Defendants. As used in this Complaint,
18 "Defendants" means "Defendants and each of them," and refers to the Defendants named in the
19 particular cause of action in which the word appears and includes Defendant KEPT
20 COMPANIES, INC.; and DOES 1 to 100, inclusive.

21 13. At all times mentioned herein, each Defendant was the co-conspirator, agent,
22 servant, employee, and/or joint venturer of each of the other Defendants and was acting within the
23 course and scope of said conspiracy, agency, employment, and/or joint venture and with the
24 permission and consent of each of the other Defendants.

25 14. Plaintiffs make the allegations in this Complaint without any admission that, as to
26 any particular allegation, Plaintiffs bear the burden of pleading, proving, or persuading and
27 Plaintiffs reserve all of Plaintiffs' rights to plead in the alternative.

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1 **IV. DESCRIPTION OF ILLEGAL PAY PRACTICES**

2 15. Pursuant to the applicable Industrial Welfare Commission (“IWC”) Wage Order
3 (“Wage Order”), codified at California Code of Regulations, title 8, section 11090, Defendants are
4 employers of Plaintiffs within the meaning of Wage Order 9 and applicable Labor Code sections.
5 Therefore, each of these Defendants is jointly and severally liable for the wrongs complained of
6 herein in violation of the Wage Order and the Labor Code.

7 16. **Failure to pay wages for all hours worked at the legal minimum wage:**
8 Defendants employed many of their employees, including Plaintiffs, as hourly non-exempt
9 employees. In California, an employer is required to pay hourly employees for all “hours worked,”
10 which includes all time that an employee is under the control of the employer and all time the
11 employee is suffered and permitted to work. This includes the time an employee spends, either
12 directly or indirectly, performing services which inure to the benefit of the employer.

13 17. Labor Code sections 1194 and 1197 require an employer to compensate employees
14 for all “hours worked” at least at the minimum wage rate of pay as established by the IWC and the
15 Wage Orders.

16 18. Plaintiffs and similarly situated hourly non-exempt employees worked more
17 minutes per shift than Defendants credited them with having worked. Defendants failed to pay
18 Plaintiffs and similarly situated employees all wages at the applicable minimum wage for all hours
19 worked due to Defendants’ policies, practices, and/or procedures including, but not limited to:

20 (a) requiring Plaintiffs and similarly situated employees to remain on-duty, including
21 during their off-the-clock meal breaks, due to Defendants’ requirement that Plaintiffs and similarly
22 situated employees keep the employer-issued cell phone on them and monitored at all times during
23 their shift, including during off the clock meal breaks so they can be contacted by Defendants at
24 any time during their shift.

25 (b) requiring Plaintiffs and similarly situated employees who work in the field to
26 remain on-duty, including during their off-the-clock meal breaks, due to Defendants’ requirement
27 that Plaintiffs and similarly situated employees’ must guard the truck at all times during their shift
28 including during off the clock meal breaks.

1 19. Additionally, Plaintiffs and similarly situated employees were not paid all wages
2 for all hours worked due to Defendants' uniform payroll policies and practices that unfairly
3 rounded employees' wages to the detriment of Plaintiffs and similarly situated employees. This
4 rounding policy routinely failed to capture the entirety of the hours the Plaintiffs and similarly
5 situated employees worked and was structured in a way that in favored underpayment. (*See See's*
6 *Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 907.) As a result, Plaintiffs and
7 similarly situated employees suffered periodic shortages in the hours for which they were
8 compensated. This uncompensated time violated California's requirement that employees be
9 compensated for all hours worked. As a result of this practice, Plaintiffs and similarly situated
10 employees were not compensated their minimum wages for all hours worked.

11 20. Plaintiffs and similarly situated employees were not paid for this time resulting in
12 Defendants' failure to pay minimum wage for all the hours Plaintiffs and similarly situated
13 employees worked.

14 21. Therefore, Defendants suffered, permitted, and required their hourly non-exempt
15 employees to be subject to Defendants' control without paying wages for that time. This resulted
16 in Plaintiffs and similarly situated employees working time for which they were not compensated
17 any wages, in violation of Labor Code sections 1194, 1197, and Wage Order 9.

18 22. **Failure to pay wages for overtime hours worked at the overtime rate of pay**
19 **and/or failure to pay overtime wages at the proper overtime rate of pay:** Defendants
20 employed many of their employees, including Plaintiffs, as hourly non-exempt employees. In
21 California, an employer is required to pay hourly employees for all "hours worked," which
22 includes all time that an employee is under the control of the employer and all time the employee
23 is suffered or permitted to work. This includes the time an employee spends, either directly or
24 indirectly, performing services which inure to the benefit of the employer.

25 23. Labor Code sections 510 and 1194 and Wage Order 9 require an employer to
26 compensate employees at a higher rate of pay for hours worked in excess of eight (8) hours in a
27 workday, more than forty (40) hours in a workweek, and on any seventh consecutive day of work
28 in a workweek:

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.

Labor Code section 510; Wage Order 9, §3.

24. Defendants failed to pay Plaintiffs and similarly situated employees all wages at the applicable minimum wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but not limited to:

(a) requiring Plaintiffs and similarly situated employees to remain on-duty, including during their off-the-clock meal breaks, due to Defendants' requirement that Plaintiffs and similarly situated employees keep the employer-issued cell phone on them and monitored at all times during their shift including during off the clock meal breaks so they can be contacted by Defendants at any time during their shift.

(b) requiring Plaintiffs and similarly situated employees who work in the field to remain on-duty, including during their off-the-clock meal breaks, due to Defendants' requirement that Plaintiffs and similarly situated employees' must guard the truck at all times during their shift including during off the clock meal breaks.

25. Plaintiffs and similarly situated employees were not paid for this time.

26. To the extent the employees had already worked 8 hours in the day and on workweeks they had already worked 40 hours in a workweek, the employees should have been paid overtime for this unpaid time. This resulted in hourly non-exempt employees working time which should have been paid at the legal overtime rate but was not paid any wages in violation of Labor Code sections 510, 1194, and Wage Order 9.

27. Defendants' foregoing policy, practice, and/or procedure resulted in Defendants failing to pay Plaintiffs and similarly situated employees at their overtime rate of pay for all overtime hours worked, in violation of Labor Code sections 510, 1194, 1198, and the Wage Order.

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1 28. **Failure to authorize or permit all legally required and compliant meal periods**
2 **and/or failure to pay meal period premium wages:** Defendants often employed hourly non-
3 exempt employees, including the named Plaintiffs and similarly situated employees, for shifts
4 longer than five (5) hours in length and shifts longer than ten (10) hours in length.

5 29. California law requires an employer to authorize or permit an uninterrupted meal
6 period of no less than thirty (30) minutes no later than the end of the employee's fifth hour of
7 work and a second meal period no later than the employee's tenth hour of work. Labor Code
8 section 512; Wage Order 9, §11. If the employee is not relieved of all duties during a meal period,
9 the meal period shall be considered an "on duty" meal period and counted as time worked. A paid
10 "on duty" meal period is only permitted when (1) the nature of the work prevents an employee
11 from being relieved of all duty and (2) the parties have a written agreement agreeing to on-duty
12 meal periods. If the employee is not free to leave the work premises or worksite during the meal
13 period, even if the employee is relieved of all other duty during the meal period, the employee is
14 subject to the employer's control and the meal period is counted as time worked. If an employer
15 fails to provide an employee a meal period in accordance with the law, the employer must pay the
16 employee one (1) hour of pay at the employee's regular rate of pay for each workday that a legally
17 required and compliant meal period was not provided. Labor Code section 226.7; Wage Order 9,
18 §11.

19 30. Here, Plaintiffs and similarly situated employees worked shifts long enough to
20 entitle them to meal periods under California law. Nevertheless, Defendants employed policies,
21 practices, and/or procedures that resulted in their failure to authorize or permit meal periods to
22 Plaintiffs and similarly situated employees of no less than thirty (30) minutes for each five-hour
23 period of work as required by law. Such policies, practices, and/or procedures included, but were
24 not limited to:

25 (a) Failing to provide Plaintiffs and similarly situated employees with timely,
26 uninterrupted, duty-free meal breaks of at least 30 minutes for every five hours worked due to
27 workload and schedule.

28 (b) Requiring Plaintiffs and similarly situated employees to remain on-duty, including

1 during their off-the-clock meal breaks, due to Defendants' requirement that Plaintiffs and similarly
2 situated employees keep the employer-issued cell phone on them and monitored at all times during
3 their shift including during off the clock meal breaks so they can be contacted by Defendants at
4 any time during their shift.

5 (c) Requiring Plaintiffs and similarly situated employees who work in the field to
6 remain on-duty, including during their off-the-clock meal breaks, due to Defendants' requirement
7 that Plaintiffs and similarly situated employees' must guard the truck at all times during their shift
8 including during off the clock meal breaks.

9 31. Additionally, Defendants failed to pay Plaintiffs and similarly situated employees
10 a meal period premium wage of one (1) additional hour of pay at their regular rate of
11 compensation for each workday the employees did not receive all legally required and compliant
12 meal periods. Defendants employed policies and procedures which ensured that employees did not
13 receive any meal period premium wages to compensate them for workdays in which they did not
14 receive all legally required and compliant meal periods.

15 32. The aforementioned policies, practices, and/or procedures of Defendants resulted in
16 Plaintiffs and similarly situated employees not being provided with all legally required and
17 compliant meal periods and/or not receiving premium wages to compensate them for such
18 instances, all in violation of California law.

19 33. **Failure to authorize and permit all legally required and compliant rest periods**
20 **and/or failure to pay rest period premiums:** Defendants often employed non-exempt
21 employees, including the named Plaintiffs and similarly situated employees, for shifts of least
22 three-and-a-half (3.5) hours.

23 34. California law requires every employer to authorize and permit an employee a rest
24 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
25 Code section 226.7; Wage Order 9, §12. If the employer fails to authorize or permit a required rest
26 period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of
27 compensation for each workday the employer did not authorize or permit a legally required rest
28 period. *Id.* Under California law, "[e]mployees are entitled to 10 minutes' rest for shifts from three

1 and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30
2 minutes for shifts of more than 10 hours up to 14 hours, and so on.” *Brinker Restaurant Corp. v.*
3 *Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code section 226.7; Wage Order 9,
4 §12. Rest periods, insofar as practicable, shall be in the middle of each work period. Wage Order
5 9, §12. Additionally, the rest period requirement “obligates employers to permit – and authorizes
6 employees to take – off-duty rest periods.” *Augustus v. ABM Security Services, Inc.*, (2016) 5
7 Cal.5th 257, 269. That is, during rest periods employers must relieve employees of all duties and
8 relinquish control over how employees spend their time. *Id.*

9 35. In this case, Plaintiffs and similarly situated employees regularly worked shifts of
10 more than three-and-a-half (3.5) hours. Nevertheless, Defendants employed policies, practices,
11 and/or procedures that resulted in their failure to authorize or permit all legally required and
12 compliant rest periods to Plaintiffs and similarly situated employees. Such policies, practices,
13 and/or procedures included, but were not limited to:

14 (a) Failing to provide Plaintiffs and similarly situated employees with net ten (10)
15 minute rest breaks for every four (4) hours worked or major fraction thereof due to workload and
16 schedule.

17 (b) Requiring Plaintiffs and similarly situated employees to remain on-duty, including
18 during their rest breaks, due to Defendants’ requirement that Plaintiffs and similarly situated
19 employees keep the employer-issued cell phone on them and monitored at all times during their
20 shift including during rest breaks so they can be contacted by Defendants at any time during their
21 shift.

22 (c) Requiring Plaintiffs and similarly situated employees who work in the field to
23 remain on-duty, including during their rest breaks, due to Defendants’ requirement that Plaintiffs
24 and similarly situated employees must guard the truck at all times during their shift, including
25 during rest breaks.

26 36. Additionally, Defendants failed to pay Plaintiffs and similarly situated employees a
27 rest period premium wage of one (1) additional hour of pay at their regular rate of compensation
28 for each workday the employees did not receive all legally required and compliant rest periods.

1 Defendants employed policies and procedures which ensured that employees did not receive any
2 rest period premium wages to compensate them for workdays in which they did not receive all
3 legally required and compliant rest periods.

4 37. The aforementioned policies, practices, and/or procedures of Defendants resulted in
5 Plaintiffs and similarly situated employees not being provided with all legally required and
6 compliant rest periods and/or not receiving premium wages to compensate them for such
7 instances, all in violation of California law.

8 38. **Failure to pay wages for accrued paid sick days at the regular rate of pay:**
9 Defendants had a policy and/or procedure where Plaintiffs and similarly situated non-exempt
10 remote employees accrued paid sick time.

11 39. Labor Code section 246, subdivision (a), states in relevant part “[a]n employee
12 who...works in California for the same employer for 30 or more days within a year from the
13 commencement of employment is entitled to paid sick days.” Additionally, an employee accrues
14 paid sick days at the rate of no-less-than one (1) hour per every thirty (30) hours worked,
15 beginning at the commencement of employment. Labor Code section 246(b).

16 40. Here, Plaintiffs and similarly situated non-exempt remote employees were
17 employed by Defendants for 30 or more days and were entitled to paid sick days. Also, Plaintiffs
18 and similarly situated non-exempt remote employees began accruing paid sick days since the
19 beginning of each of their respective employment with Defendants.

20 41. Labor Code section 246, subdivision (l), provides that an employer shall calculate
21 the paid sick time for non-exempt employees in the same manner as the regular rate of pay for the
22 workweek in which the employee elected to use paid sick time. “The regular rate at which an
23 employee is employed shall be deemed to include all remuneration for employment paid to, or on
24 behalf, of the employee.” See Division of Labor Standards Enforcement – Enforcement Policies
25 and Interpretations Manual, Section 49.1.2.

26 42. In this case, Plaintiffs allege that when he and similarly situated non-exempt remote
27 employees elected to use paid sick time, Defendants failed to pay them sick time wages at the
28 proper sick time rate of pay due to Defendants’ failure to include all remuneration when

1 calculating the sick time rate of pay. Specifically, Defendants maintained a policy, practice, and/or
2 procedure of failing to include all remuneration such as “bonus pay”, “friends and family pay”,
3 “customer service bonus”, “COVID-19 bonus”, and “dual language pay”, for example, when
4 calculating Plaintiffs’ and similarly situated non-exempt remote employees’ regular rate of pay for
5 the purpose of paying sick time.

6 43. Defendants’ foregoing policy, practice, and/or procedure resulted in Defendants
7 failing to pay Plaintiffs and similarly situated non-exempt remote employees at their sick time
8 regular rate of pay for all sick time accrued, in violation of Labor Code section 246.

9 44. **Failure to maintain accurate employment records:** Defendants failed to
10 maintain records as required under Labor Code § 1174 and IWC Wage Order No. 4-2001, § 7.

11 45. Labor Code section 1174 states, “[e]very person employing labor in this stat
12 shall... [k]eep, at a central location in the state or at the plants or establishments at which
13 employees are employed, payroll records showing the hours worked daily by and the wages paid
14 to, ..., employees employed at the respective plants or establishments.”

15 46. IWC Wage Order No. 4-2001, § 7 states that every employer shall keep accurate
16 information with respect to each one of its employees, including time records showing when the
17 employee begins and ends each work period and meal period, total hours worked in the payroll
18 period and applicable rates of pay, and total wages paid each payroll period.

19 47. In this case, Defendants violated these requirements by failing to accurately record
20 employee hours worked including, but not limited to, Defendants’ failure to record each meal
21 period taken, the applicable rates of pay, and the wages paid.

22 48. **Failure to timely pay earned wages during employment:** Labor Code § 204
23 expressly requires employers who pay employees on a weekly, biweekly, or semimonthly basis to
24 pay all wages “not more than seven calendar days following the close of the payroll period.” Due
25 to Defendants’ failure to pay to Plaintiffs and the Class Members minimum wage and overtime
26 compensation and meal and rest period premiums as described above, Defendants failed to timely
27 pay its employees within seven calendar days following the close of payroll in accordance with
28 Labor Code § 204 on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016

1 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling*
2 vs. *P.F. Chang's China Bistro, Inc.* that a failure to pay rest period premiums can support claims
3 under Labor Code §§ 203 and 204).

4 49. As a derivative of Plaintiffs' claims above, Plaintiffs alleges that Defendants failed
5 to timely pay Plaintiffs and similarly situated employees' earned wages (including minimum
6 wages, overtime wages, meal period premium wages, and/or rest period premium wages), in
7 violation of Labor Code section 204.

8 50. Defendants have policies, practices, and/or procedures that resulted in their failure
9 to pay Plaintiffs and similarly situated employees their earned wages within the applicable time
10 frames outlined in Labor Code section 204.

11 51. **Failure to timely pay final wages:** As a result of Defendants' failure to pay
12 Plaintiffs and the Class Members for meal and rest period premiums, and failure to pay all
13 minimum and overtime wages, Defendants have violated and continue to violate Labor Code §
14 203. Labor Code § 203 provides "if an employer willfully fails to pay . . . any wages of an
15 employee who is discharged or who quits, the wages of the employee shall continue as a penalty. .
16 ." for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

17 52. Defendants had policies where Plaintiffs and the Class Members whose
18 employment with Defendants concluded were not compensated for each and every hour worked or
19 at the appropriate rate. Additionally, Defendants failed to pay all Class Members for meal and rest
20 period premiums and all unpaid minimum and overtime wages, whose sums were certain, at the
21 time of termination or within seventy-two (72) hours of their resignation and have failed to pay
22 those sums for thirty (30) days thereafter.

23 53. **Failure to indemnify employees for employment related expenditures:** Labor
24 Code section 2802(a) states that "[a]n employer shall indemnify his or her employee for all
25 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
26 of his or her duties, or of his or her obedience to the directions of the employer..." An employer is
27 prohibited from passing the ordinary business expenses and losses of the employer onto the
28 employee. (Labor Code section 2802).

1 54. Defendants employed policies, practices, and/or procedures of impermissibly
2 passing business-related expenses to Plaintiffs and similarly situated employees. These policies,
3 practices, and/or procedures included, but were not limited to:

4 (a) Mandatory use of personal cell phones for work-related communications
5 both during and outside of scheduled shifts, including calls with supervisors, managers, and other
6 employees regarding work assignments;

7 (b) Cleaning and maintaining uniforms, reflective vests, shirts with Defendants'
8 logo, and safety boots;

9 (c) Purchase and maintenance of required work tools such as hand tools, pliers,
10 and screwdrivers that were essential for performing daily job responsibilities.

11 (d) Vehicle mileage.

12 55. Defendants employed policies and procedures which ensured Plaintiffs and
13 similarly situated employees would not receive indemnification for the aforementioned necessary
14 expenditures incurred as a result of their employment with Defendants.

15 56. Defendants' aforementioned policies, practices, and/or procedures resulted in
16 Plaintiffs and similarly situated employees not receiving indemnification for employment-related
17 expenditures, in violation of Labor Code section 2802.

18 57. **Failure to pay accrued and vested vacation and/or PTO wages upon**
19 **separation:** Defendants had a policy and/or procedure where Plaintiffs and similarly situated
20 employees accrued paid vacation time and/or personal time off ("PTO").

21 58. Labor Code section 227.3 states in relevant part "...whenever a contract of
22 employment or employer policy provides for paid vacations, and an employee is terminated
23 without having taken off his vested vacation time, all vested vacation shall be paid to him as
24 wages at his final rate in accordance with such contract of employment or employer policy
25 respecting eligibility or time served...." Given this, vacation/PTO wages are deferred wages that
26 vest once accrued and an employer must pay its employees all unused vested vacation/PTO at the
27 time of termination at the employees' final rate of pay.

28 59. In this case, Plaintiffs and similarly situated employees regularly worked enough

1 hours to accrue vested vacation/PTO wages. Nevertheless, Defendants employed policies,
2 practices, and/or procedures that resulted in their failure to pay accrued and vested vacation/PTO
3 wages upon separation of employment, in violation of Labor Code section 227.3.

4 **60. Failure to provide accurate wage statements:** Labor Code section 226(a)
5 provides, *inter alia*, that, upon paying an employee his or her wages, the employer must “furnish
6 each of his or her employees ... an itemized statement in writing showing (1) gross wages earned,
7 (2) total hours worked by the employee, except for any employee whose compensation is solely
8 based on a salary and who is exempt from payment of overtime under subdivision (a) of Section
9 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate
10 units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
11 deductions, provided, that all deductions made on written orders of the employee may be
12 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the pay period
13 for which the employee is paid, (7) the name of the employee and his or her social security
14 number, (8) the name and address of the legal entity that is the employer, and (9) all applicable
15 hourly rates in effect during the pay period and the corresponding number of hours worked at each
16 hourly rate by the employee.”

17 **61.** As a derivative of Plaintiffs’ claims above, Plaintiffs allege that Defendants failed
18 to provide accurate wage and hour statements to them and other similarly situated employees who
19 were subject to Defendants’ control for uncompensated time and who did not receive all their
20 earned wages (including minimum wages, overtime wages, meal period premium wages, and/or
21 rest period premium wages), in violation of Labor Code section 226.

22 **V. CLASS DEFINITIONS AND CLASS ALLEGATIONS**

23 **62.** Plaintiffs brings this action on behalf of themselves, on behalf of others similarly
24 situated, and on behalf of the general public, and as members of a Class defined as follows:

25 **A. Minimum Wage Class:** All current and former hourly non-exempt
26 employees employed by Defendants as direct employees as well as temporary employees
27 employed through temp agencies in California at any time from four (4) years prior to the filing of
28 the initial Complaint in this matter through the date notice is mailed to a certified class who were

1 not paid at least minimum wage for all time they were subject to Defendants' control.

2 **B. Overtime Class:** All current and former hourly non-exempt employees
3 employed by Defendants as direct employees as well as temporary employees employed through
4 temp agencies in California at any time from four (4) years prior to the filing of the initial
5 Complaint in this matter through the date notice is mailed to a certified class who worked more
6 than eight (8) hours in a workday, forty (40) hours in a workweek, and/or seven (7) days in a
7 workweek, to whom Defendants did not pay overtime wages.

8 **C. Meal Period Class:** All current and former hourly non-exempt employees
9 employed by Defendants as direct employees as well as temporary employees employed through
10 temp agencies in California at any time from four (4) years prior to the filing of the initial
11 Complaint in this matter through the date notice is mailed to a certified class who worked shifts
12 more than five (5) hours yet Defendants failed to authorize or permit all required duty-free meal
13 periods of not less than thirty (30) minutes.

14 **D. Rest Period Class:** All current and former hourly non-exempt employees
15 employed by Defendants as direct employees as well as temporary employees employed through
16 temp agencies in California at any time from four (4) years prior to the filing of the initial
17 Complaint in this matter through the date notice is mailed to a certified class who worked shifts of
18 at least three-and-a-half (3.5) hours who did not receive all required duty-free rest periods of a net
19 ten (10) minutes for every four (4) hours worked or major fraction thereof.

20 **E. Sick Time Pay Class:** All current and former hourly non-exempt
21 employees employed by Defendants in California who earned additional remuneration during any
22 pay periods in which they accrued sick pay and whose regular rate of pay did not include such
23 additional remuneration when Defendants calculated those employees' sick pay wages.

24 **F. Record Class:** All current and former hourly non-exempt employees
25 employed by Defendants as direct employees as well as temporary employees employed through
26 temp agencies in California at any time from one (1) year prior to the filing of the initial
27 Complaint in this action through the date notice is mailed to a certified class who received
28 inaccurate or incomplete payroll records.

1 G. **Pay Day Class:** All current and former hourly non-exempt employees
2 employed by Defendants as direct employees as well as temporary employees employed through
3 temp agencies in California at any time from four (4) years prior to the filing of the initial
4 Complaint in this action through the date notice is mailed to a certified class who were not timely
5 paid earned wages during their employment.

6 H. **Waiting Time Class:** All current and former hourly non-exempt employees
7 employed by Defendants as direct employees as well as temporary employees employed through
8 temp agencies in California at any time from four (4) years prior to the filing of the initial
9 Complaint in this action through the date notice is mailed to a certified class who did not receive
10 payment of all unpaid wages upon separation of employment within the statutory time period

11 I. **Indemnification Class:** All current and former hourly non-exempt
12 employees employed by Defendants as direct employees as well as temporary employees
13 employed through temp agencies in California at any time from four (4) years prior to the filing of
14 the initial Complaint in this action through the date notice is mailed to a certified class who and
15 who did not receive indemnification to reimburse them for the necessary expenditures incurred in
16 the discharge of their duties.

17 J. **Vacation/PTO Class:** All current and former hourly non-exempt
18 employees employed by Defendants in California at any time from four (4) years prior to the filing
19 of the initial Complaint in this action through the date notice is mailed to a certified class who
20 were not paid all accrued and vested vacation/PTO wages upon separation of employment.

21 K. **Wage Statement Class:** All current and former hourly non-exempt
22 employees employed by Defendants as direct employees as well as temporary employees
23 employed through temp agencies in California at any time from one (1) year prior to the filing of
24 the initial Complaint in this action through the date notice is mailed to a certified class who
25 received inaccurate or incomplete wage and hour statements.

26 L. **California Class:** All aforementioned classes are herein collectively
27 referred to as the "California Class."

28 63. There is a well-defined community of interest in the litigation and the classes are

ascertainable:

A. **Numerosity:** While the exact number of class members in each class is unknown to Plaintiffs at this time, the Plaintiff classes are so numerous that the individual joinder of all members is impractical under the circumstances of this case.

B. **Common Questions Predominate:** Common questions of law and fact exist as to all members of the Plaintiff classes and predominate over any questions that affect only individual members of each class. The common questions of law and fact include, but are not limited to:

i. Whether Defendants violated Labor Code sections 1194 and 1197 by not paying wages at the minimum wage rate for all time that the Minimum Wage Class Members were subject to Defendants' control;

ii. Whether Defendants violated Labor Code sections 510 and 1194 by not paying the Overtime Class Members at the applicable overtime rate for working in excess of eight (8) hours in a workday, in excess of forty (40) hours in a workweek, and/or seven (7) days in a workweek;

iii. Whether Defendants violated Labor Code sections 512 and 226.7, as well as the applicable Wage Order, by employing the Meal Period Class Members without providing all compliant and/or required meal periods and/or paying meal period premium wages;

iv. Whether Defendants violated Labor Code section 226.7 by employing the Rest Period Class Members without providing all compliant and/or required rest periods and/or paying rest period premium wages;

v. Whether Defendants violated Labor Code section 226.7, as well as the applicable Wage Order, by employing the Rest Period Premium Wages Class Members without paying rest period premium wages at the proper rate;

vi. Whether Defendants violated Labor Code section 246 by employing the Sick Time Pay Class Members without paying sick pay wages at the proper rate;

vii. Whether Defendants violated Labor Code section 1174, as well as the applicable Wage Order, by failing to provide the Record Class Members with accurate

1 employment records;

2 viii. Whether Defendants violated Labor Code section 204 by employing
3 Pay Day Class Members without timely paying them all earned wages during their employment;

4 ix. Whether Defendants failed to provide the Waiting Time Class
5 Members with all of their earned wages upon separation of employment within the statutory time
6 period;

7 x. Whether Defendants violated Labor Code section 2802 by failing to
8 provide Indemnification Class Members with reimbursement of costs to compensate them for the
9 necessary expenditures incurred in the discharge of their duties;

10 xi. Whether Defendants violated Labor Code section 227.3 by
11 employing the Vacation/PTO Class Members without providing and paying accrued and vested
12 vacation/PTO wages upon separation of employment;

13 xii. Whether Defendants failed to provide the Wage Statement Class
14 Members with accurate itemized statements at the time they received their itemized statements;

15 xiii. Whether Defendants committed unlawful business acts or practice
16 within the meaning of Business and Professions Code sections 17200, *et seq.*;

17 xiv. Whether Class Members are entitled to unpaid wages, penalties, and
18 other relief pursuant to their claims;

19 xv. Whether, as a consequence of Defendants' unlawful conduct, the
20 Class Members are entitled to restitution, and/or equitable relief; and

21 xvi. Whether Defendants' affirmative defenses, if any, raise any common
22 issues of law or fact as to Plaintiffs and as to Class Members as a whole.

23 C. **Typicality:** Plaintiffs' claims are typical of the claims of the class members
24 in each of the classes. Plaintiffs and members of the Minimum Wage Class sustained damages
25 arising out of Defendants' failure to pay wages at least at minimum wage for all time the
26 employees were subject to Defendants' control. Plaintiffs and members of the Overtime Wage
27 Class sustained damages arising out of Defendants' failure to pay overtime wages for overtime
28 hours worked. Plaintiffs and members of the Meal Period Class sustained damages arising out of

Defendants' failure to provide non-exempt employees with all required meal periods and/or meal periods that were duty-free and not less than thirty (30) minutes and/or failure to pay meal period premium wages as compensation. Plaintiffs and members of the Rest Period Class sustained damages arising out of Defendants' failure to provide non-exempt employees with all required rest periods and/or rest periods that were duty-free and of a net ten (10) minutes and/or failure to pay rest period premium wages as compensation. Plaintiffs and members of the Sick Pay Class sustained damages arising out of Defendants' failure to pay accrued paid sick time at the regular rate of pay. Plaintiffs and members of the Record Class sustained damages arising out of Defendants' failure to maintain accurate employment records. Plaintiffs and members of the Pay Day Class sustained damages arising out of Defendants' failure to timely pay them all wages earned during their employment in compliance with Labor Code section 204. Plaintiffs and members of the Waiting Time Class sustained damages arising out of Defendants' failure to provide all unpaid yet earned wages due upon separation of employment within the statutory time limit. Plaintiffs and members of the Indemnification Class sustained damages from Defendants' failure to provide reimbursement of costs to compensate them for the necessary expenditures incurred in the discharge of their duties. Plaintiffs and members of the Vacation/PTO Class sustained damages arising out of Defendants' failure to timely pay all non-exempt employees of accrued and vested vacation/PTO wages upon separation of employment. Plaintiffs and members of the Wage Statement Class sustained damages arising out of Defendants' failure to furnish them with accurate itemized wage statements in compliance with Labor Code section 226.

D. **Adequacy of Representation:** Plaintiffs will fairly and adequately protect the interests of the members of each class. Plaintiffs have no interest that is adverse to the interests of the other class members.

E. **Superiority:** A class action is superior to other available means for the fair and efficient adjudication of this controversy. Because individual joinder of all members of each class is impractical, class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender.

The expenses and burdens of individual litigation would make it difficult or impossible for individual members of each class to redress the wrongs done to them, while important public interests will be served by addressing the matter as a class action. The cost to and burden on the court system of adjudication of individualized litigation would be substantial, and substantially more than the costs and burdens of a class action. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

F. **Public Policy Consideration:** Employers throughout the state violate wage and hour laws. Current employees often are afraid to assert their rights out of fear of direct or indirect retaliation. Former employees fear bringing actions because they perceive their former employers can blacklist them in their future endeavors with negative references or by other means. Class actions provide the class members who are not named in the Complaint with a type of anonymity that allows for vindication of their rights.

FIRST CAUSE OF ACTION

**FAILURE TO PAY WAGES FOR ALL HOURS OF WORK AT THE LEGAL MINIMUM
WAGE RATE IN VIOLATION OF LABOR CODE SECTIONS 1194 AND 1197
(Against All Defendants by Plaintiffs and the Minimum Wage Class)**

64. Plaintiffs incorporate by reference and re-allege each and every allegation contained in this pleading as though fully set forth herein.

65. At all times relevant to this Complaint, Plaintiffs and the Minimum Wage Class were hourly non-exempt employees of Defendants.

66. Pursuant to Labor Code sections 1194, 1197, and the Wage Order, Plaintiffs and the Minimum Wage Class are entitled to receive wages for all hours worked, i.e., all time they were subject to Defendants' control, and those wages must be paid at least at the minimum wage rate in effect during the time the employees earned the wages.

67. Defendants' policies, practices, and/or procedures required Plaintiffs and the Minimum Wage Class to be engaged, suffered, or permitted to work without being paid wages for all of the time in which they were subject to Defendants' control.

68. Defendants employed policies, practices, and/or procedures including, but not

1 limited to:

2 (a) requiring Plaintiffs and the Minimum Wage Class to remain on-duty, including
3 during their off-the-clock meal breaks, due to Defendants' requirement that Plaintiffs and the
4 Minimum Wage Class keep the employer-issued cell phone on them and monitored at all times
5 during their shift including during off the clock meal breaks so they can be contacted by
6 Defendants at any time during their shift.

7 (b) requiring Plaintiffs and the Minimum Wage Class who work in the field to remain
8 on-duty, including during their off-the-clock meal breaks, due to Defendants' requirement that
9 Plaintiffs and the Minimum Wage Class must guard the truck at all times during their shift
10 including during off the clock meal breaks.

11 69. Additionally, Plaintiffs and the Minimum Wage Class were not paid all wages for
12 all hours worked due to Defendants' uniform payroll policies and practices that unfairly rounded
13 employees' wages to the detriment of Plaintiffs and similarly situated employees. This rounding
14 policy routinely failed to capture the entirety of the hours the Plaintiffs the Minimum Wage Class
15 worked and was structured in a way that in favored underpayment. (*See See's Candy Shops, Inc. v.*
16 *Superior Court* (2012) 210 Cal.App.4th 889, 907.) As a result, Plaintiffs the Minimum Wage
17 Class suffered periodic shortages in the hours for which they were compensated. This
18 uncompensated time violated California's requirement that employees be compensated for all
19 hours worked. As a result of this practice, Plaintiffs the Minimum Wage Class were not
20 compensated their minimum wages for all hours worked.

21 70. Plaintiffs and the Minimum Wage Class were not paid for this time resulting in
22 Defendants' failure to pay minimum wage for all the hours Plaintiffs and the Minimum Wage
23 Class worked.

24 71. As a result of Defendants' unlawful conduct, Plaintiffs and the Minimum Wage
25 Class have suffered damages in an amount subject to proof, to the extent that they were not paid
26 wages at a minimum wage rate for all hours worked.

27 72. Pursuant to Labor Code sections 1194 and 1194.2, Plaintiffs and the Minimum
28 Wage Class are entitled to recover unpaid minimum wage, interest thereon, liquidated damages in

1 the amount of their unpaid minimum wage, and attorneys' fees and costs.

2 **SECOND CAUSE OF ACTION**

3 **FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF LABOR CODE**

4 **SECTIONS 510 and 1194**

5 **(Against All Defendants by Plaintiffs and the Overtime Class)**

6 73. Plaintiffs incorporate by reference and re-allege each and every allegation
7 contained in this pleading as though fully set forth herein.

8 74. At times relevant to this Complaint, Plaintiffs and the Overtime Class were hourly
9 non-exempt employees of Defendants, covered by Labor Code sections 510 and 1194 and the
10 Wage Order 9.

11 75. Pursuant to Labor Code sections 510 and 1194 and the Wage Order 9, hourly non-
12 exempt employees are entitled to receive a higher rate of pay for all hours worked in excess of
13 eight (8) hours in a workday, forty (40) hours in a workweek, and on the seventh day of work in a
14 workweek.

15 76. Labor Code section 510, subdivision (a), states in relevant part:

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

27 77. Further, Labor Code section 1198 provides,

28 The maximum hours of work and the standard conditions of labor fixed by the
commission shall be the maximum hours of work and the standard conditions of
labor for employees. The employment of any employee for longer hours than those
fixed by the order or under conditions of labor prohibited by the order is unlawful.

78. Despite California law requiring employers to pay employees a higher rate of
pay for all hours worked more than eight (8) hours in a workday, more than forty (40) hours in a

workweek, and on the seventh day of work in a workweek, Defendants failed to pay all overtime wages to Plaintiffs and the Overtime Class for their daily overtime hours worked.

79. Specifically, Defendants employed policies, practices, and/or procedures including, but not limited to:

(a) Requiring Plaintiffs and the Overtime Class to remain on-duty, including during their off-the-clock meal breaks, due to Defendants' requirement that Plaintiffs and the Overtime Class keep the employer-issued cell phone on them and monitored at all times during their shift including during off the clock meal breaks so they can be contacted by Defendants at any time during their shift.

(b) Requiring Plaintiffs and the Overtime Class who work in the field to remain on-duty, including during their off-the-clock meal breaks, due to Defendants' requirement that Plaintiffs and the Overtime Class must guard the truck at all times during their shift including during off the clock meal breaks.

80. Plaintiffs and the Overtime Class were not paid for this time.

81. To the extent that the foregoing unpaid time resulted from Plaintiffs and the Overtime Class being subject to the control of Defendants when they worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and/or seven days in a workweek, Defendants failed to pay them at their overtime rate of pay for all the overtime hours they worked.

82. As a result of Defendants' unlawful conduct, Plaintiffs and the Overtime Class have suffered damages in an amount subject to proof, to the extent that they were not paid at their proper overtime rate of pay for all hours worked which constitute overtime.

83. Pursuant to Labor Code section 1194, Plaintiffs and the Overtime Class are entitled to recover the full amount of their unpaid overtime wages, prejudgment interest, and attorneys' fees and costs.

THIRD CAUSE OF ACTION

FAILURE TO AUTHORIZE OR PERMIT MEAL PERIODS IN VIOLATION OF LABOR

CODE SECTIONS 512 AND 226.7

(Against All Defendants by Plaintiffs and the Meal Period Class)

1 84. Plaintiffs incorporate by reference and re-allege each and every allegation
2 contained in this pleading as though fully set forth herein.

3 85. At all times relevant to this Complaint, Plaintiffs and the Meal Period Class were
4 hourly non-exempt employees of Defendants, covered by Labor Code sections 512 and 226.7 and
5 the Wage Order.

6 86. California law requires an employer to authorize or permit an employee an
7 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
8 all duties and the employer relinquishes control over the employee's activities no later than the
9 end of the employee's fifth hour of work and a second meal period no later than the employee's
10 tenth hour of work. Labor Code sections 226.7, 512; Wage Order 9, §11; *Brinker Rest. Corp. v.*
11 *Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. If the employer requires the employee to remain at
12 the work site or facility during the meal period, the meal period must be paid. This is true even
13 where the employee is relieved of all work duties during the meal period. *Bono Enterprises, Inc. v.*
14 *Bradshaw* (1995) 32 Cal.App.4th 968. Labor Code section 226.7 provides that if an employee
15 does not receive a required meal or rest period that "the employer shall pay the employee one
16 additional hour of pay at the employee's regular rate of compensation for each work day that the
17 meal or rest period is not provided."

18 87. In this case, Plaintiffs and the Meal Period Class worked shifts long enough to
19 entitle them to meal periods under California law. Nevertheless, Defendants employed policies,
20 practices, and/or procedures that resulted in their failure to authorize or permit meal periods to
21 Plaintiffs and the Meal Period Class of no less than thirty (30) minutes for each five-hour period of
22 work as required by law. Such policies, practices, and/or procedures included, but were not limited
23 to:

24 (a) Failing to provide Plaintiffs and the Meal Period Class with timely, uninterrupted,
25 duty-free meal breaks of at least 30 minutes for every five hours worked due to workload and
26 schedule.

27 (b) Requiring Plaintiffs and the Meal Period Class to remain on-duty, including during
28 their off-the-clock meal breaks, due to Defendants' requirement that Plaintiffs and the Meal Period

1 Class keep the employer-issued cell phone on them and monitored at all times during their shift
2 including during off the clock meal breaks so they can be contacted by Defendants at any time
3 during their shift.

4 (c) Requiring Plaintiffs and the Meal Period Class who work in the field to remain on-
5 duty, including during their off-the-clock meal breaks, due to Defendants' requirement that
6 Plaintiffs and the Meal Period Class must guard the truck at all times during their shift including
7 during off the clock meal breaks.

8 88. Additionally, Defendants failed to pay Plaintiffs and the Meal Period Class one (1)
9 hour of pay at their regular rate of pay for each workday they did not receive all legally required
10 and legally compliant meal periods. Defendants lacked a policy and procedure for compensating
11 Plaintiffs and the Meal Period Class with premium wages when they did not receive all legally
12 required and legally compliant meal periods.

13 89. Defendants' unlawful conduct alleged herein occurred in the course of employment
14 of Plaintiffs and the Meal Period Class and such conduct has continued through the filing of this
15 Complaint.

16 90. Because Defendants failed to provide employees with meal periods in compliance
17 with the law, Defendants are liable to Plaintiffs and the Meal Period Class for one (1) hour of
18 additional pay at the regular rate of compensation for each workday that Defendants did not
19 provide all legally required and legally compliant meal periods, pursuant to Labor Code section
20 226.7 and the Wage Order.

21 91. Plaintiffs, on behalf of themselves and Meal Period Class seeks damages and all
22 other relief allowable, including a meal period premium wage for each workday Defendants failed
23 to provide all legally required and legally compliant meal periods, plus pre-judgment interest.

24 **FOURTH CAUSE OF ACTION**

25 **FAILURE TO AUTHORIZE OR PERMIT REQUIRED REST PERIODS IN VIOLATION**
26 **OF LABOR CODE SECTION 226.7**

27 **(Against All Defendants by Plaintiffs and the Rest Period Class)**

28 92. Plaintiffs incorporate by reference and re-allege each and every allegation

1 contained in this pleading as though fully set forth herein.

2 93. At all times relevant to this Complaint, Plaintiffs and the Rest Period Class were
3 employees of Defendants, covered by Labor Code section 226.7 and Wage Order 9.

4 94. California law requires that “[e]very employer shall authorize and permit all
5 employees to take rest periods, which insofar as practicable shall be in the middle of each work
6 period. The authorized rest period time shall be based on the total hours worked daily at the rate of
7 ten (10) minutes net rest time per four (4) hours or major fraction thereof....” Wage Order 9, §12.
8 Employees are entitled to 10 minutes rest for shifts from three and one-half to six hours in length,
9 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10
10 hours up to 14 hours, and so on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53
11 Cal.4th 1004, 1029; Labor Code section 226.7. Additionally, the rest period requirement
12 “obligates employers to permit – and authorizes employees to take – off-duty rest periods.”
13 *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods
14 employers must relieve employees of all duties and relinquish control over how employees spend
15 their time. *Id.* If an employer fails to provide an employee a rest period in accordance with the
16 applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the
17 employee’s regular rate of compensation for each work day that the rest period is not provided.”
18 Wage Order 9, §12; Labor Code section 226.7.

19 95. In this case, Plaintiffs and the Rest Period Class regularly worked shifts of more
20 than three-and-a-half (3.5) hours. Nevertheless, Defendants employed policies, practices, and/or
21 procedures that resulted in their failure to authorize or permit all legally required and compliant
22 rest periods to Plaintiffs and the Rest Period Class. Such policies, practices, and/or procedures
23 included, but were not limited to:

24 (a) Failing to provide Plaintiffs and the Rest Period Class with net ten (10) minute rest
25 breaks for every four (4) hours worked or major fraction thereof due to workload and schedule.

26 (b) Requiring Plaintiffs and the Rest Period Class to remain on-duty, including during
27 their rest breaks, due to Defendants’ requirement that Plaintiffs and the Rest Period Class keep the
28 employer-issued cell phone on them and monitored at all times during their shift, including during

rest breaks so they can be contacted by Defendants at any time during their shift.

(c) Requiring Plaintiffs and the Rest Period Class who work in the field to remain on-duty, including during their rest breaks, due to Defendants' requirement that Plaintiffs and the Rest Period Class must guard the truck at all times during their shift including during rest breaks.

96. Additionally, Defendants failed to pay Plaintiffs and the Rest Period Class one (1) hour of pay at their regular rate of pay for each workday they did not receive all legally required and legally compliant rest periods. Defendants lacked a policy and procedure for compensating Plaintiffs and the Rest Period Class with premium wages when they did not receive all legally required and legally compliant rest periods.

97. Defendants' unlawful conduct alleged herein occurred in the course of employment of Plaintiffs and the Rest Period Class and such conduct has continued through the filing of this Complaint.

98. Because Defendants failed to provide employees with rest periods in compliance with the law, Defendants are liable to Plaintiffs and the Rest Period Class for one (1) hour of additional pay at the regular rate of compensation for each workday that Defendants did not provide all legally required and legally compliant rest periods, pursuant to Labor Code section 226.7 and the Wage Order.

99. Plaintiffs, on behalf of themselves and the Rest Period Class, seeks damages and all other relief allowable, including a rest period premium wage for each workday Defendants failed to provide all legally required and legally compliant rest periods, plus pre-judgment interest.

FIFTH CAUSE OF ACTION

FAILURE TO PAY WAGES FOR ACCRUED PAID SICK DAYS AT THE REGULAR RATE OF PAY IN VIOLATION OF LABOR CODE SECTION 246

(Against All Defendants by Plaintiffs and the Sick Pay Class)

100. Plaintiffs incorporate all paragraphs above re-allege each and every allegation contained in this pleading as though fully set forth herein.

101. At all times relevant to this Complaint, Plaintiffs and the Sick Pay Class were employees of Defendants, covered by Labor Code section 246 and Wage Order 4.

1 102. Labor Code section 246, subdivision (a), states in relevant part “[a]n employee
2 who...works in California for the same employer for 30 or more days within a year from the
3 commencement of employment is entitled to paid sick days.” Additionally, an employee accrues
4 paid sick days at the rate of no-less-than one (1) hour per every thirty (30) hours worked,
5 beginning at the commencement of employment. Labor Code section 246(b).

6 103. Here, Plaintiffs and the Sick Pay Class were employed by Defendants for 30 or
7 more days and were entitled to paid sick days. Also, Plaintiffs and the Sick Pay Class began
8 accruing paid sick days during their employment with Defendants.

9 104. Labor Code section 246, subdivision (l), provides that an employer shall calculate
10 the paid sick time for non-exempt employees in the same manner as the regular rate of pay for the
11 workweek in which the employee elected to use paid sick time. “The regular rate at which an
12 employee is employed shall be deemed to include all remuneration for employment paid to, or on
13 behalf, of the employee.” See Division of Labor Standards Enforcement – Enforcement Policies
14 and Interpretations Manual, Section 49.1.2.

15 105. In this case, Plaintiffs allege that when they and the Sick Pay Class elected to use
16 paid sick time, Defendants failed to pay them sick time wages at the proper sick time rate of pay
17 due to Defendants’ failure to include all remuneration when calculating the sick time rate of pay.
18 Specifically, Defendants maintained a policy, practice, and/or procedure of failing to include all
19 remuneration such as “bonus pay”, “friends and family pay”, “customer service bonus”, “COVID-
20 19 bonus”, and “dual language pay”, for example, when calculating Plaintiffs’ and the Sick Pay
21 Class’s regular rate of pay for the purpose of paying sick time.

22 106. Defendants’ unlawful conduct alleged herein occurred in the course of employment
23 of Plaintiffs and the Sick Pay Class, and such conduct has continued through the filing of this
24 Complaint.

25 107. Because Defendants failed to provide employees with wages for sick time in
26 compliance with the law, Defendants are liable to Plaintiffs and the Sick Pay Class for payment at
27 the regular rate of compensation for each sick time period that Defendants did not provide sick
28 pay, pursuant to Labor Code section 246.

108. Plaintiffs, on behalf of themselves, and the Sick Pay Class, seek damages and all other relief allowable for each sick time period taken where Defendants failed to pay wages for, plus pre-judgment interest.

SIXTH CAUSE OF ACTION

FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS

(Against All Defendants by Plaintiffs and the Record Class)

109. Plaintiffs incorporate all paragraphs above as though fully set forth herein.

110. At all times relevant to this Complaint, Plaintiffs and the Record Class were employees of Defendants, covered by Labor Code sections 201 and 202.

111. During the Class Period, Defendants knowingly failed to maintain records as required under Labor Code § 1174(d) and IWC Wage Order No. 4-2001, § 7, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; meal periods; and accurate itemized statements.

112. As a proximate result of Defendants' unlawful actions and omissions, Plaintiffs and Class Members have been damaged in an amount according to proof at trial, and are entitled to all wages earned and due, plus interest thereon. Additionally, Plaintiffs and Class Members are entitled to all available statutory penalties, including but not limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5 and 2699, and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in California Labor Code § 226(e), as well as other available remedies.

SEVENTH CAUSE OF ACTION

FAILURE TO TIMELY PAY EARNED WAGES DURING EMPLOYMENT IN

VIOLATION OF LABOR CODE SECTION 204

(Against All Defendants by Plaintiffs and the Pay Day Class)

113. Plaintiffs incorporate all paragraphs above as though fully set forth herein.

114. Plaintiffs and the Pay Day Class have been employed by Defendants in the State of California. In California, wages must be paid at least twice during each calendar month on days designated in advance by the employer as regular paydays, subject to some exceptions. Labor

Code §204(a). Wages earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the 16th and the 26th day of that month and wages earned between the 16th and the last day, inclusive, of any calendar month must be paid between the 1st and 10th day of the following month. Id. Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be paid within seven (7) calendar days following the close of the payroll period in which wages were earned. Labor Code §204(d).

115. As a derivative of Plaintiffs' claims above, Plaintiffs alleges that Defendants failed to timely pay Plaintiffs' and the Pay Day Class' earned wages (including minimum wages, overtime wages, meal period premium wages, and/or rest period premium wages), in violation of Labor Code section 204.

116. Defendants' aforementioned policies, practices, and/or procedures resulted in their failure to pay Plaintiffs and the Pay Day Class their earned wages within the applicable time frames outlined in Labor Code section 204.

117. As a result of Defendants' unlawful conduct, Plaintiffs and the Pay Day Class have suffered damages in an amount subject to proof, to the extent that they were not timely paid their earned wages pursuant to Labor Code section 204.

118. Pursuant to Labor Code section 210, Plaintiffs and the Pay Day Class are entitled to recover civil penalties as follows: (1) for any initial violation, one hundred dollars (\$100) for each failure to pay each employee; and (2) for each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus twenty-five (25%) percent of the amount unlawfully withheld.

EIGHTH CAUSE OF ACTION

FAILURE TO PAY ALL EARNED WAGES AND FINAL PAYCHECKS DUE AT TIME OF SEPARATION OF EMPLOYMENT IN VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203

(Against All Defendants by Plaintiffs and the Waiting Time Class)

119. Plaintiffs incorporate all paragraphs above as though fully set forth herein.

120. At all times relevant to this Complaint, Plaintiffs and the Waiting Time Class were

employees of Defendants, covered by Labor Code sections 201 and 202.

121. An employer is required to pay all unpaid wages timely after an employee's employment ends. The wages are due immediately upon termination or within seventy-two (72) hours of resignation. Labor Code §§201, 202. If an employee gave seventy-two (72) hours previous notice, they were entitled to payment of all wages earned and unpaid at the time of resignation. Id.

122. Defendants failed to pay Plaintiffs and on information and belief, the Waiting Time Class, with all wages earned and unpaid prior to separation of employment, in accordance with either Labor Code section 201 or 202. Plaintiffs are informed and believe and thereon allege that at all relevant times within the limitations period applicable to this cause of action, Defendants maintained a policy or practice of not paying hourly employees all earned wages timely upon separation of employment.

123. Defendants' failure to pay Plaintiffs and the Waiting Time Class with all wages earned prior to separation of employment timely in accordance with Labor Code sections 201 and 202 was willful. Defendants' practices include failing to pay at least minimum wage for all time worked, overtime wages for all overtime hours worked, meal period premium wages, and/or rest period premium wages.

124. Pursuant to either Labor Code section 201 or 202, Plaintiffs and the Waiting Time Class are entitled to all wages earned prior to separation of employment that Defendants have yet to pay them.

125. Pursuant to Labor Code section 203, Plaintiffs and the Waiting Time Class are entitled to continuation of their wages, from the day their earned and unpaid wages were due until paid, up to a maximum of thirty (30) days.

126. As a result of Defendants' conduct, Plaintiffs and the Waiting Time Class have suffered damages in an amount, subject to proof, to the extent they were not paid for all wages earned prior to separation of employment.

127. As a result of Defendants' conduct, Plaintiffs and the Waiting Time Class have suffered damages in an amount, subject to proof, to the extent they were not paid all continuation

1 wages owed under Labor Code section 203.

2 128. Plaintiffs and the Waiting Time Class are entitled to recover the full amount of
3 their unpaid wages, continuation wages under Labor Code section 203, and interest thereon.

4 **NINTH CAUSE OF ACTION**

5 **FAILURE TO INDEMNIFY EMPLOYEES FOR EMPLOYMENT RELATED**
6 **EXPENDITURES IN VIOLATION OF LABOR CODE SECTION 2802**

7 **(Against All Defendants by Plaintiffs and the Indemnification Class)**

8 129. Plaintiffs incorporate all paragraphs above as though fully set forth herein.

9 130. Plaintiffs and members of the Indemnification Class have been employed by
10 Defendants in the State of California. Labor Code section 2802(a) states that “[a]n employer shall
11 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
12 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
13 directions of the employer...” An employer is prohibited from passing the ordinary business
14 expenses and losses of the employer onto the employee. (Labor Code section 2802).

15 131. During the Class Period, Defendants knowingly and willfully failed to indemnify
16 Plaintiffs and Class Members for all business expenses and/or losses incurred in direct
17 consequence of the discharge of their duties while working under the direction of Defendants,
18 including but not limited to: (1) mandatory use of personal cell phones for work-related
19 communications both during and outside of scheduled shifts, including calls with supervisors,
20 managers, and other employees regarding work assignments; (2) cleaning and maintaining
21 uniforms, reflective vests, shirts with Defendants’ logo, and safety boots; (3) purchase and
22 maintenance of required work tools such as hand tools, pliers, and screwdrivers that were essential
23 for performing daily job responsibilities, (4) vehicle mileage, and other employment-related
24 expenses, in violation of California Labor Code § 2802.

25 132. As a proximate result of Defendants’ unlawful actions and omissions, Plaintiffs and
26 Class Members have been damaged in an amount according to proof at trial, and seek
27 reimbursement of all necessary expenditures, plus interest thereon pursuant to California Labor
28 Code § 2802(b). Additionally, Plaintiffs and Class Members are entitled to all available statutory

1 penalties and an award of costs, expenses, and reasonable attorneys' fees, including those provided
2 in California Labor Code § 2802(c), as well as other available remedies.

3 **TENTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE ACCRUED AND VESTED VACATION/PTO WAGES IN**

5 **VIOLATION OF LABOR CODE § 227.3**

6 **(Against All Defendants and DOE Defendants by Plaintiffs and the Vacation/PTO Class)**

7 133. Plaintiffs incorporate by reference and re-allege each and every allegation
8 contained in this pleading as though fully set forth herein.

9 134. At times relevant to this Complaint, Plaintiffs and the members of the Vacation
10 Class were non-exempt employees of Defendants covered by California Labor Code § 227.3.

11 135. California Labor Code § 227.3 states in relevant part:

12 Unless otherwise provided by a collective-bargaining agreement, whenever
13 a contract of employment or employer policy provides for paid vacation,
14 and an employee is terminated without having taken off his vested vacation
15 time, all vested vacation shall be paid to him as wages at his final rate in
accordance with such contract of employment or employer policy respecting
eligibility or time served...

16 136. Defendants employ policies which provide for vacation/PTO to Plaintiffs and
17 Vacation Class members.

18 137. Wages vest during the pay period in which they are earned. Plaintiffs and members
19 of the Vacation Class earned vacation/PTO wages while employed by Defendants. Defendants
20 failed to pay all accrued and vested vacation/PTO wages upon separation.

21 138. Defendants employed policies and procedures which ensured Plaintiffs and
22 members of the Vacation Class would not receive their accrued and vested vacation/PTO wages
23 upon termination.

24 139. Pursuant to California Labor Code § 227.3, Plaintiffs and Vacation Class members
25 seek damages and all other relief allowable plus pre-judgment interest for all accrued and vested
26 vacation/PTO wages Defendants failed to pay upon separation.

27 **ELEVENTH CAUSE OF ACTION**

28 **FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS IN**

VIOLATION OF LABOR CODE SECTION 226

(Against All Defendants by Plaintiffs and the Wage Statement Class)

140. Plaintiffs incorporate by reference and re-allege each and every allegation contained in this pleading as though fully set forth herein .

141. At all times relevant to this Complaint, Plaintiffs and the Wage Statement Class were hourly, non-exempt employees of Defendants, covered by Labor Code section 226.

142. Pursuant to Labor Code section 226, subdivision (a), Plaintiffs and the Wage Statement Class were entitled to receive, semimonthly or at the time of each payment of wages, an itemized wage statement accurately stating the following:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

143. As a derivative of Plaintiffs' claims above, Plaintiffs alleges that Defendants failed to provide accurate wage and hour statements to him and the Wage Statement Class who were subject to Defendants' control for uncompensated time and who did not receive all their earned wages (including minimum wages, overtime wages, meal period premium wages, and/or rest period premium wages), in violation of Labor Code section 226.

144. Defendants provided Plaintiffs and the Wage Statement Class with itemized statements which stated inaccurate information including, but not limited to, the number of hours worked, the gross wages earned, and the net wages earned.

145. Defendants' failure to provide Plaintiffs and the Wage Statement Class with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiffs and the Wage Statement Class with accurate wage statements but intentionally provided

1 wage statements they knew were not accurate. Defendants knowingly and intentionally put in
2 place practices which deprived employees of wages and resulted in Defendants knowingly and
3 intentionally providing inaccurate wage statements. These practices included Defendants' failure
4 to include all hours worked and all wages due.

5 146. As a result of Defendants' unlawful conduct, Plaintiffs and the Wage Statement
6 Class have suffered injury. The absence of accurate information on their wage statements has
7 prevented earlier challenges to Defendants' unlawful pay practices, will require discovery and
8 mathematical computations to determine the amount of wages owed, and will cause difficulty and
9 expense in attempting to reconstruct time and pay records. Defendants' conduct led to the
10 submission of inaccurate information about wages and amounts deducted from wages to state and
11 federal government agencies. As a result, Plaintiffs and the Wage Statement Class are required to
12 participate in this lawsuit and create more difficulty and expense for Plaintiffs and the Wage
13 Statement Class from having to reconstruct time and pay records than if Defendants had complied
14 with their legal obligations.

15 147. Pursuant to Labor Code section 226(e), Plaintiffs and the Wage Statement Class are
16 entitled to recover fifty (50) dollars per employee for the initial pay period in which a section 226
17 violation occurred and one hundred dollars per employee per violation for each subsequent pay
18 period, not to exceed an aggregate penalty of four thousand (4,000) dollars per employee.

19 148. Pursuant to Labor Code section 226(h), Plaintiffs and the Wage Statement Class are
20 entitled to bring an action for injunctive relief to ensure Defendants' compliance with Labor Code
21 section 226(a). Injunctive relief is warranted because Defendants continue to provide currently
22 employed Wage Statement Class members with inaccurate wage statements in violation of Labor
23 Code section 226(a) and currently employed Wage Statement Class members have no adequate
24 legal remedy for the continuing injuries that will be suffered as a result of Defendants' ongoing
25 unlawful conduct. Injunctive relief is the only remedy available for ensuring Defendants'
26 compliance with Labor Code section 226(a).

27 149. Pursuant to Labor Code sections 226(e) and 226(h), Plaintiffs and the Wage
28 Statement Class are entitled to recover the full amount of penalties due under section 226(e),

1 reasonable attorneys' fees, and costs of suit.

2 **TWELFTH CAUSE OF ACTION**

3 **UNFAIR BUSINESS PRACTICES, IN VIOLATION OF BUSINESS AND PROFESSIONS**
4 **CODE SECTIONS 17200, ET SEQ.**

5 **(Against All Defendants by Plaintiffs and the California Class)**

6 150. Plaintiffs incorporate by reference and re-allege each and every allegation
7 contained in this pleading as though fully set forth herein.

8 151. The unlawful conduct of Defendants alleged herein constitutes unfair competition
9 within the meaning of Business and Professions Code section 17200. This unfair conduct includes
10 Defendants' use of policies, practices, and/or procedures which resulted in: failure to pay
11 employees at least at the minimum wage rate for all hours which they worked; failure to pay
12 overtime wages for all overtime hours worked; failure to authorize or permit all legally required
13 and/or compliant meal periods or pay meal period premium wages; failure to authorize or permit
14 all legally required and/or compliant rest periods or pay rest period premium wages; failure to pay
15 accrued and vested vacation/PTO wages upon separation of employment; failure to provide
16 accurate wage and hour statements; failure to timely pay earned wages during employment; secret
17 payment of lower wages than designated by statute; failure to timely pay all earned wages upon
18 separation of employment; failure to keep accurate employment records pursuant to Labor Code §
19 1174; failure to reimburse business expenses; and failure to pay wages for accrued paid sick time
20 at the regular rate of pay. Due to their unfair and unlawful business practices in violation of the
21 Labor Code, Defendants have gained a competitive advantage over other comparable companies
22 doing business in the State of California that comply with their obligations to pay minimum wages
23 for all hours worked; pay overtime wages for all overtime hours worked; authorize or permit all
24 legally required and/or compliant meal periods or pay meal period premium wages; authorize or
25 permit all legally required and/or compliant rest periods or pay rest period premium wages; pay
26 accrued sick days; maintain accurate employment records; pay wages timely during employment;
27 pay all wages earned and unpaid at separation; indemnify all necessary business expenditures; pay
28 accrued and vested vacation/PTO wages upon separation of employment; provide accurate wage

1 and hour statements.

2 152. As a result of Defendants' unfair competition as alleged herein, Plaintiffs and the
3 California Class have suffered injury in fact and lost money or property, as described in more
4 detail above.

5 153. Pursuant to Business and Professions Code section 17203, Plaintiffs and the
6 California Class are entitled to restitution of all wages and other monies rightfully belonging to
7 them that Defendants failed to pay and wrongfully retained by means of their unlawful and unfair
8 business practices. Plaintiffs also seeks an injunction against Defendants on behalf of the
9 California Class enjoining Defendants, and any and all persons acting in concert with them, from
10 engaging in each of the unlawful policies, practices, and/or procedures set forth herein, along with
11 reasonable attorney's fees and costs under Code of Civil Procedure section 1021.5 and other
12 applicable statutes.

13 **THIRTEENTH CAUSE OF ACTION**

14 **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF**
15 **2004, LABOR CODE SECTIONS 2698, ET SEQ.**

16 **(Against All Defendants by Plaintiffs)**

17 154. Plaintiffs incorporate all paragraphs above as though fully set forth herein.

18 155. During Plaintiffs' employment and continuing through the present, Plaintiffs allege
19 Defendants violated Labor Code sections, 201-204, 210, 218.5, 218.6, 223, 226, 226.3, 226.7,
20 227.3, 246, 510, 512, 558, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198,
21 1198.5, 1199, 2800, 2802, 2804 and the applicable Wage Orders.

22 156. Specifically, Defendants have committed the following violations of California
23 Labor Code:

24 157. **Failure to pay wages for all hours worked at the legal minimum wage:**
25 Defendants employed many of their employees, including Plaintiffs, as hourly non-exempt
26 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
27 which includes all time that an employee is under control of the employer and all time the
28 employee is suffered and permitted to work. This includes the time an employee spends, either

1 directly or indirectly, performing services which inure to the benefit of the employer.

2 158. Labor Code sections 1194 and 1197 require an employer to compensate employees
3 for all “hours worked” at least at a minimum wage rate of pay as established by the IWC and the
4 Wage Orders.

5 159. In this case, Plaintiffs and other current and former aggrieved California-based
6 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
7 having worked. Specifically, Defendants failed to pay Plaintiffs and other current and former
8 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
9 wage for all hours worked due to Defendants’ policies, practices, and/or procedures including, but
10 not limited to:

11 (a) requiring Plaintiffs and other current and former aggrieved California-
12 based hourly non-exempt employees to remain on-duty, including during their off-the-clock meal
13 breaks, due to Defendants’ requirement that Plaintiffs and other current and former aggrieved
14 California-based hourly non-exempt employees keep the employer-issued cell phone on them and
15 monitored at all times during their shift including during off the clock meal breaks so they can be
16 contacted by Defendants at any time during their shift.

17 (b) requiring Plaintiffs and other current and former aggrieved California-
18 based hourly non-exempt employees who work in the field to remain on-duty, including during
19 their off-the-clock meal breaks, due to Defendants’ requirement that Plaintiffs and other current
20 and former aggrieved California-based hourly non-exempt employees must be on-call during their
21 shift including during off the clock meal breaks.

22 160. Therefore, Defendants suffered, permitted, and required Plaintiffs and other
23 current and former aggrieved California-based hourly non-exempt employees to be subject to
24 Defendants’ control without paying wages for that time. This resulted in Plaintiffs and other
25 current and former aggrieved California-based hourly non-exempt employees working time for
26 which they were not compensated any wages, in violation of Labor Code sections 1194 and 1197
27 and the applicable Wage Order.

28 161. Plaintiffs are further informed and believe, and based thereon allege, that

Defendants' conduct above that gave rise to such violations was malicious, fraudulent, or oppressive. Defendants would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

162. **Failure to pay wages for overtime hours worked at the overtime rate of pay and/or failure to pay overtime wages at the proper rate of pay:** Defendants employed many of their employees, including Plaintiffs, as hourly non-exempt employees. In California, an employer is required to pay hourly employees for all "hours worked," which includes all time that an employee is under control of the employer and all time the employee is suffered and permitted to work. This includes the time an employee spends, either directly or indirectly, performing services that inure to the benefit of the employer.'

163. Labor Code sections 510 and 1194 require an employer to compensate employees a higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

Any work in excess of eight (8) hours in one workday, any work in excess of forty (40) hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of work in any one (1) workweek, shall be compensated at the rate of no less than one-and-one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve (12) hours in one (1) 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 (8) 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.

Labor Code section 510. Labor Code section 510.

164. In this case, Defendants failed to pay Plaintiffs and other current and former aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours worked due to Defendants' policies, practices, and/or procedures including, but not limited to:

(a) Requiring Plaintiffs and other current and former aggrieved California-based hourly non-exempt employees to remain on-duty, including during their off-the-clock meal breaks, due to Defendants' requirement that Plaintiffs and other current and former aggrieved California-based hourly non-exempt employees keep the employer-issued cell phone on them and monitored at all times during their shift including during off the clock meal breaks so they can be contacted by Defendants at any time during their shift.

1 (b) Requiring Plaintiffs and other current and former aggrieved California-
2 based hourly non-exempt employees who work in the field to remain on-duty, including during
3 their off-the-clock meal breaks, due to Defendants' requirement that Plaintiffs and other current
4 and former aggrieved California-based hourly non-exempt employees must be on-call or subject to
5 recall during their shift including during off the clock meal breaks.

6 165. Plaintiffs are further informed and believe, and based thereon allege, that
7 Defendants' conduct above that gave rise to such violations was malicious, fraudulent, or
8 oppressive. Defendants would further be liable for civil penalties pursuant to Labor Code section
9 2699(f)(2)(B)(ii).

10 166. The foregoing policies, practices, and/or procedures resulted in time during each
11 workday that Plaintiffs and other current and former aggrieved California-based hourly non-
12 exempt employees were under the control of Defendants but were not compensated. To the extent
13 that the foregoing uncompensated time occurred when Plaintiffs and other current and former
14 aggrieved California-based hourly non-exempt employees worked more than eight (8) hours in a
15 workday, more than forty (40) hours in a workweek, and/or seven (7) days in a workweek,
16 Defendants failed to pay them at their overtime rate of pay for overtime hours worked, in violation
17 of Labor Code sections 510, 1194 and 1198, and the applicable Wage Order.

18 167. **Failure to pay wages to hourly non-exempt employees for workdays that**
19 **Defendants failed to provide legally required and compliant meal periods and/or failure to**
20 **pay period premium wages:** Plaintiffs and other current and former aggrieved California-based
21 hourly non-exempt employees regularly worked shifts of more than five (5) hours in length and
22 shifts of more than ten (10) hours in length.

23 168. California law requires an employer to authorize or permit an employee an
24 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
25 all duties and the employer relinquishes control over the employee's activities prior to the
26 employee's sixth hour of work. Labor Code sections 226.7, 512, and 1198; Wage Order 9 at §11;
27 *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not
28 employ an employee for a work period of more than ten (10) hours per day without providing the

1 employee with a second such meal period of not less than thirty (30) minutes prior to the start of
2 the eleventh hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the
3 meal period shall be considered an “on duty” meal period and counted as time worked. A paid “on
4 duty” meal period is only permitted when: (1) the nature of the work prevents an employee from
5 being relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal
6 periods.

7 169. If an employer fails to provide an employee a meal period in accordance with the
8 law, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of pay
9 for each workday that a legally required and compliant meal period was not provided. Labor Code
10 sections 226.7 and 1198; Wage Order 9 at §11.

11 170. In this case, Defendants failed to authorize or permit legally required and compliant
12 meal periods to Plaintiffs and other current and former aggrieved California-based hourly
13 nonexempt employees due to Defendants’ policies, practices, and/or procedures, including but not
14 limited to:

15 (a) Failing to provide Plaintiffs and other current and former aggrieved
16 California-based hourly non-exempt employees timely, uninterrupted, duty-free meal breaks of at
17 least 30 minutes for every five hours worked due to workload and schedule.

18 (b) Requiring Plaintiffs and other current and former aggrieved California-
19 based hourly non-exempt employees to remain on-duty, including during their off-the-clock meal
20 breaks, due to Defendants’ requirement that Plaintiffs and other current and former aggrieved
21 California-based hourly non-exempt employees keep the employer-issued cell phone on them and
22 monitored at all times during their shift including during off the clock meal breaks so they can be
23 contacted by Defendants at any time during their shift.

24 (c) Requiring Plaintiffs and other current and former aggrieved California-
25 based hourly non-exempt employees who work in the field to remain on-duty, including during
26 their off-the-clock meal breaks, due to Defendants’ requirement that Plaintiffs and other current
27 and former aggrieved California-based hourly non-exempt employees must be on-call at all times
28 during their shift including during off the clock meal breaks.

171. Additionally, Plaintiffs alleges that Defendants maintained a policy, practice, and/or procedure of failing to compensate Plaintiffs and other current and former aggrieved California-based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each workday that Plaintiffs and other current and former aggrieved California-based hourly non-exempt employees did not receive legally required and compliant meal periods, in violation of Labor Code section 226.7.

172. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiffs and other current and former aggrieved California-based hourly non-exempt employees not receiving wages to compensate them for workdays during which Defendants did not provide them with meal periods in compliance with California law.

173. Plaintiffs are further informed and believe, and based thereon allege, that Employer's conduct above that gave rise to such violations was malicious, fraudulent, or oppressive. Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

174. **Failure to pay wages to hourly non-exempt employees for workdays that Defendants failed to provide legally required and compliant rest periods and/or failure to pay rest period premium:** Plaintiffs and other current and former aggrieved California-based hourly non-exempt employees regularly worked shifts of more than three-and-a-half (3.5) hours.

175. California law requires every employer to authorize and permit an employee a rest period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor Code section 226.7; Wage Order 9 at §12. Under California law, "[e]mployees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code section 226.7; Wage Order 9 at §12. Rest periods, insofar as practicable, shall be in the middle of each work period. Wage Order 9 at §12. Additionally, the rest period requirement ""obligates employers to permit – and authorizes employees to take – off-duty rest periods." *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269. That is, during rest periods employers must

1 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

2 176. If the employer fails to authorize or permit a required rest period, the employer
3 must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday
4 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
5 Wage Order 9 at § 12.

6 177. In this case, Defendants failed to authorize or permit all legally required and
7 compliant rest periods to Plaintiffs and other current and former aggrieved California-based hourly
8 non-exempt employees due to Defendants' policies, practices, and/or procedures including, but not
9 limited to:

10 (a) Failing to provide Plaintiffs and other current and former aggrieved
11 California-based hourly non-exempt employees with net ten (10) minute rest breaks for every four
12 (4) hours worked or major fraction thereof due to workload and schedule.

13 (b) Requiring Plaintiffs and other current and former aggrieved California-
14 based hourly non-exempt employees to remain on-duty, including during their rest breaks, due to
15 Defendants' requirement that Plaintiffs and other current and former aggrieved California-based
16 hourly nonexempt employees keep the employer-issued cell phone on them and monitored at all
17 times during their shift including during rest breaks so they can be contacted by Defendants at any
18 time during their shift.

19 (c) Requiring Plaintiffs and other current and former aggrieved California-
20 based hourly non-exempt employees who work in the field to remain on-duty, including during
21 their rest breaks, due to Defendants' requirement that Plaintiffs and other current and former
22 aggrieved California-based hourly non-exempt employees must guard the truck at all times during
23 their shift including during rest breaks.

24 178. Additionally, Plaintiffs allege that Defendants maintained a policy, practice, and/or
25 procedure of failing to compensate Plaintiffs and other current and former aggrieved California-
26 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
27 workday they did not receive legally required and compliant rest periods, in violation of Labor
28 Code section 226.7.

1 179. Defendants’ foregoing policies, practices, and/or procedures resulted in Plaintiffs
2 and other current and former aggrieved California-based hourly non-exempt employees not
3 receiving wages to compensate them for workdays in which Defendants did not provide them with
4 rest periods in compliance with California law.

5 180. Plaintiffs are further informed and believe, and based thereon allege, that
6 Defendants’ conduct above that gave rise to such violations was malicious, fraudulent, or
7 oppressive. Defendants would further be liable for civil penalties pursuant to Labor Code section
8 2699(f)(2)(B)(ii).

9 181. **Failure to pay accrued and vested vacation and/or PTO wages upon**
10 **separation:** Defendants had a policy and/or procedure where Plaintiffs and other current and
11 former aggrieved California-based hourly non-exempt employees accrued paid vacation time
12 and/or personal time off (“PTO”).

13 182. Labor Code section 227.3 states in relevant part “...whenever a contract of
14 employment or employer policy provides for paid vacations, and an employee is terminated
15 without having taken off his vested vacation time, all vested vacation shall be paid to him as
16 wages at his final rate in accordance with such contract of employment or employer policy
17 respecting eligibility or time served....” Given this, vacation/PTO wages are deferred wages that
18 vest once accrued and an employer must pay its employees all unused vested vacation/PTO at the
19 time of termination at the employees’ final rate of pay.

20 183. In this case, Plaintiffs and other current and former aggrieved California-based
21 hourly non-exempt employees regularly worked enough hours to accrue vested vacation/PTO
22 wages. Nevertheless, Defendants employed policies, practices, and/or procedures that resulted in
23 their failure to pay accrued and vested vacation/PTO wages upon separation of employment, in
24 violation of Labor Code section 227.3.

25 184. Plaintiffs also believe these failures were malicious, fraudulent, or oppressive.
26 Employer would further be liable for civil penalties pursuant to Labor Code section
27 2699(f)(2)(B)(ii).

28 185. **Failure to timely pay earned wages during employment:** In California, wages

1 must be paid at least twice during each calendar month on days designated in advance by the
2 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
3 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
4 16th and the 26th day of that month and wages earned between the 16th and the last day,
5 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
6 month. Id. Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
7 paid within seven (7) calendar days following the close of the payroll period in which wages were
8 earned. Labor Code section 204(d).

9 186. As a derivative of Plaintiffs' claims above, Plaintiffs allege that Defendants failed
10 to timely pay Plaintiffs' and other current and former aggrieved California-based hourly non-
11 exempt employees' earned wages (including minimum wages, overtime wages, meal period
12 premium wages and/or rest period premium wages), in violation of Labor Code section 204.
13 Defendants' aforementioned policies, practices, and/or procedures resulted in their failure to pay
14 Plaintiffs' and other current and former aggrieved California-based hourly non-exempt employees'
15 their earned wages within the applicable time frames outlined in Labor Code section 204.

16 187. Plaintiffs also believe these failures were malicious, fraudulent, or oppressive.
17 Employer would further be liable for civil penalties pursuant to Labor Code section
18 2699(f)(2)(B)(ii).

19 188. **Secret payment of lower wages than designated by statute:** Labor Code section
20 223 provides that, where any statute or contract requires an employer to maintain the designated
21 wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage
22 designated by statute or contract. By engaging in the unlawful conduct alleged herein, including
23 by failing to: pay overtime wages at the applicable legal overtime rate, meal break premiums and
24 lawful sick pay at the employees' regular rate of pay, as established by Labor Code sections 226.7,
25 246, 510, 1194 and sections 11 and 12 of the applicable IWC Wage Orders, as incorporated by
26 Labor Code section 1198, the Defendants secretly paid a lower wage than designated by statute
27 while purporting to pay the wages designated by statute, in violation of Labor Code section 223.

28 189. Plaintiffs also believe these failures were malicious, fraudulent, or oppressive.

1 Employer would further be liable for civil penalties pursuant to Labor Code section
2 2699(f)(2)(B)(ii).

3 **190. Failure to provide complete and accurate wage statements:** Labor Code section
4 226, subdivision (a). Labor Code section 226(a) provides, inter alia, that, upon paying an
5 employee his or her wages, the employer must “furnish each of his or her employees ... an
6 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
7 employee, except for any employee whose compensation is solely based on a salary and who is
8 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
9 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
10 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
11 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
12 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
13 name of the employee and his or her social security number, (8) the name and address of the legal
14 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
15 the corresponding number of hours worked at each hourly rate by the employee.”

16 **191.** As a derivative of Plaintiffs’ allegations above, Defendants’ failure to pay Plaintiffs
17 and other current and former aggrieved California-based hourly non-exempt employees all wages
18 earned (including minimum wages, overtime wages, meal period premium wages, and/or rest
19 period premium wages) rendered Plaintiffs’ and other current and former aggrieved California-
20 based hourly non-exempt employees’ wage statements inaccurate, in violation of Labor Code
21 section 226(a)(1, 2, 5 & 9).

22 **192.** Plaintiffs believe these failures were willful and intentional.

23 **193.** Plaintiffs also believe these failures were malicious, fraudulent, or oppressive.
24 Defendants would further be liable for civil penalties pursuant to Labor Code section
25 2699(f)(2)(B)(ii).

26 **194. Failure to timely pay all earned wages upon separation of employment:** Labor
27 Code section 203 provides “if an employer willfully fails to pay . . . any wages of an employee
28 who is discharged or who quits, the wages of the employee shall continue as a penalty” for up to

1 thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) As a result of
2 Defendants' failure to pay the Plaintiffs and other current and former aggrieved California-based
3 hourly non-exempt employees for the wages described above, along with rest and meal break
4 premiums, Defendants violated and continue to violate Labor Code section 203.

5 195. Due to Defendants' faulty pay policies, the Plaintiffs and other current and former
6 aggrieved California-based hourly non-exempt employees whose employment with Defendants
7 concluded were not compensated for each and every hour worked at the appropriate rate.
8 Defendants have failed to pay formerly-employed Plaintiffs and other current and former
9 aggrieved California-based hourly non-exempt employees whose sums were certain at the time of
10 termination within at least seventy-two hours of their resignation and have failed to pay those
11 sums for thirty days thereafter.

12 196. **Failure to keep accurate employment records pursuant to Labor Code § 1174:**
13 Labor Code section 226, subdivision (a), requires employers to keep an accurate record of, among
14 other things, all hours worked by employees. Labor Code section 226.3 provides, in pertinent part,
15 as follows:

16 "Any employer who violates subdivision (a) of Section 226 shall be
17 subject to a civil penalty in the amount of two hundred fifty dollars
18 (\$250) per employee per violation in an initial citation and one
19 thousand dollars (\$1,000) per employee for each violation in a
20 subsequent citation, for which the employer fails to provide the
21 employee a wage deduction statement or fails to keep the records
22 required in subdivision (a) of Section 226. The civil penalties
23 provided for in this section are in addition to any other penalty
24 provided by law." (Lab. Code, § 226.3, emphasis added.)

25 197. Likewise, Labor Code section 1174, subdivision (d), requires every employer,
26 including Defendants, to:

27 "Keep, at a central location in the state or at the plants or
28 establishments at which employees are employed, payroll records

1 showing the hours worked daily by and the wages paid to, and the
2 number of piece-rate units earned by and any applicable piece rate
3 paid to, employees employed at the respective plants or
4 establishments. These records shall be kept in accordance with rules
5 established for this purpose by the commission, but in any case shall
6 be kept on file for not less than three years. An employer shall not
7 prohibit an employee from maintaining a personal record of hours
8 worked, or, if paid on a piece-rate basis, piece-rate units earned.”
9 (Lab. Code, § 1174, subd. (d), emphasis added.)

10 198. Defendants failed to provide the Plaintiffs and other current and former aggrieved
11 California-based hourly non-exempt employees with accurate itemized wage statements.
12 Defendants did so, in part, because they failed to accurately track hours worked by the Plaintiffs
13 and other current and former aggrieved California-based hourly non-exempt employees.
14 Defendants have thus failed to keep accurate records of the “total hours worked by the
15 employee[s]” in violation of Labor Code section 226, subdivision (a), and are therefore subject to
16 the penalties provided by Labor Code section 226.3. These penalties are “in addition to any other
17 penalty provided by law.” (Lab. Code, § 226.3.)

18 199. The failure to accurately track hours worked also resulted in a failure of Defendants
19 to keep a record of all “payroll records showing the hours worked daily by” Defendants’
20 employees, including Plaintiffs, in violation of Labor Code section 1174, subdivision (d).

21 200. **Failure to reimburse business expenses:** At all relevant times herein, Defendants
22 were subject to Labor Code section 2802, which states that “an employer shall indemnify his or
23 her employees for all necessary expenditures or losses incurred by the employee in direct
24 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
25 employer.” The purpose of this section is to “prevent employers from passing along their
26 operating expenses onto their employees.” (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42
27 Cal.4th 554, 562.)

28 201. At all relevant times herein, Defendants were subject to Labor Code section 2804,

1 which states that “any contract or agreement, express or implied, made by any employee to waive
2 the benefits of this article or any part thereof, is null and void, and this article shall not deprive any
3 employee or his personal representative of any right or remedy to which he is entitled under the
4 laws of this State.”

5 202. Thus, the Plaintiffs and other current and former aggrieved California-based hourly
6 non-exempt employees were and are entitled to reimbursement for the expenses they incurred
7 during the course of their duties. The duty to reimburse even extends to the use of equipment the
8 employee may already own and would be required to pay for anyway. (*Cochran v. Schwan’s*
9 *Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 [“The threshold question in this case is this:
10 Does an employer always have to reimburse an employee for the reasonable expense of the
11 mandatory use of a personal cell phone, or is the reimbursement obligation limited to the situation
12 in which the employee incurred an extra expense that he or she would not have otherwise incurred
13 absent the job? The answer is that reimbursement is always required. Otherwise, the employer
14 would receive a windfall because it would be passing its operating expenses on to the
15 employee.”].)

16 203. Here, Defendants failed to fully reimburse the Plaintiffs and other current and
17 former aggrieved California-based hourly non-exempt employees for necessary expenditures
18 incurred as a direct consequence and requirement of performing their job duties, including the
19 costs associated with their personal cell phone they required to perform their work. Consequently,
20 Defendants failed to comply with Labor Code section 2802.

21 204. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
22 employee, on behalf of himself or herself and other current or former employees, to bring a civil
23 action to recover civil penalties against all Defendants pursuant to the procedures specified in
24 Labor Code section 2699.3.

25 205. Plaintiffs have complied with the procedures for bringing suit specified in Labor
26 Code section 2699.3. Plaintiffs filed their PAGA Claim Notices with the LWDA and provided
27 notice to Defendants by certified mail which provided notice of the specific provisions of the
28 Labor Code alleged to have been violated, including the facts and theories to support the

1 violations alleged. Plaintiff Carlos Barajas filed his PAGA Claim Notice on November 8, 2024;
2 Plaintiff Mario Pablo filed his PAGA Claim Notice on April 1, 2025; and Plaintiff Martin Perez
3 filed his PAGA Claim Notice on April 23, 2025.

4 206. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
5 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
6 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
7 parties notice within 60 days of the date of Plaintiffs' PAGA Claim Notice that the LWDA intends
8 to investigate Plaintiffs' claims.

9 207. Pursuant to Labor Code sections 2699(a) and (f), Plaintiffs are entitled to recover
10 civil penalties for Defendants' violations of Labor Code sections 204, 223, 226(a), 226.7, 510,
11 512, and 1194, During Plaintiffs' employment and continuing through the present, preceding
12 Plaintiffs sending the initial PAGA Claim Notice to the LWDA to the present, in the following
13 amounts:

14 (a) For violations of Labor Code sections 226(a), and 226.7, one hundred
15 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
16 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation
17 [penalty amounts established by Labor Code section 2699(f)(2)].

18 (b) For violations of Labor Code section 226(a), alternatively, two hundred
19 fifty dollars (\$250) for each employee for each pay period for the initial violation, and for each
20 subsequent violation, one thousand dollars (\$1000) for each underpaid employee for each pay
21 period [penalty amounts established by Labor Code section 226.3].

22 (c) For violations of Labor Code section 510 and 512, fifty dollars (\$50) for
23 each employee for each pay period for the initial violation, and for each subsequent violation, one
24 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts
25 established by Labor Code section 558].

26 (d) For violations of Labor Code section 204, one hundred dollars (\$100) for
27 each failure to pay each employee in any initial violation, and for each subsequent violation, or
28 any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each

1 employee, plus 25 percent of the amount unlawfully withheld [penalty amounts established by
2 Labor Code section 210].

3 (e) For violations of Labor Code section 223, one hundred dollars (\$100) for
4 each failure to pay each employee in any initial violation, and for each subsequent violation, or
5 any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each
6 employee, plus 25 percent of the amount unlawfully withheld [penalty amounts established by
7 Labor Code section 225.5].

8 208. Pursuant to Labor Code section 2699(g), Plaintiffs are entitled to an award of
9 reasonable attorneys' fees and costs in connection with their claims for civil penalties.

10 **PRAYER FOR RELIEF**

11 **WHEREFORE, PLAINTIFFS ON THEIR OWN BEHALF AND ON BEHALF OF**
12 **THOSE SIMILARLY SITUATED, PRAYS AS FOLLOWS:**

13 **ON THE FIRST, SECOND, THIRD, FOURTH, FIFTH, SIXTH, SEVENTH,**
14 **EIGHTH, NINTH, TENTH, AND ELEVENTH CAUSES OF ACTION:**

15 1. That the Court determine that this action may be maintained as a class action (for
16 the entire California Class and/or any and all of the specified sub-classes) pursuant to Code of
17 Civil Procedure section 382 and any other applicable law;

18 2. That the named Plaintiffs be designated as class representatives for the California
19 Class (and all sub-classes thereof);

20 3. For a declaratory judgment that the policies, practices, and/or procedures
21 complained herein are unlawful; and

22 4. For an injunction against Defendants enjoining them, and any and all persons
23 acting in concert with them, from engaging in each of the unlawful policies, practices, and/or
24 procedures set forth herein.

25 **ON THE FIRST CAUSE OF ACTION:**

26 1. That Defendants be found to have violated the minimum wage provisions of the
27 Labor Code and the IWC Wage Order as to Plaintiffs and the Minimum Wage Class;

28 2. For damages, according to proof, including but not limited to unpaid wages;

3. For any and all legally applicable penalties;
4. For liquidated damages pursuant to Labor Code section 1194.2;
5. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 1194, and post-judgment interest;
6. For attorneys' fees and costs of suit, including but not limited to that recoverable under Labor Code section 1194;
7. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 218.6, and post-judgment interest; and
8. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE SECOND CAUSE OF ACTION:

1. That Defendants be found to have violated the overtime provisions of the Labor Code and the IWC Wage Order as to Plaintiffs and the Overtime Class;
2. For damages, according to proof, including but not limited to unpaid wages;
3. For any and all legally applicable penalties;
4. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 1194, and post-judgment interest;
5. For attorneys' fees and costs of suit, including but not limited to that recoverable under Labor Code section 1194; and
6. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE THIRD CAUSE OF ACTION:

1. That Defendants be found to have violated the meal period provisions of the Labor Code and the IWC Wage Order as to Plaintiffs and the Meal Period Class;
2. For damages, according to proof, including unpaid premium wages;
3. For any and all legally applicable penalties;
4. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 218.6, and post-judgment interest; and

5. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE FOURTH CAUSE OF ACTION:

1. That Defendants be found to have violated the rest period provisions of the Labor Code and the IWC Wage Order as to Plaintiffs and the Rest Period Class;

2. For damages, according to proof, including unpaid premium wages;

3. For any and all legally applicable penalties;

4. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 218.6, and post-judgment interest; and

5. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE FIFTH CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the Labor Code regarding failure to pay wages for accrued paid sick time as to Plaintiffs and the Sick Pay Class;

2. For damages and/or penalties, according to proof, including unpaid regular rate wages;

3. For any and all legally applicable penalties;

4. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 218.6, and post-judgment interest; and

5. For attorneys' fees and costs of suit, including but not limited to those recoverable under Labor Code section 246; and

6. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE SIXTH CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the Labor Code regarding maintenance of records as to Plaintiffs and the Waiting Time Class;

2. For damages and/or penalties, according to proof, including damages and/or statutory penalties under Labor Code sections 226 subdivision (e), 226.3, 1174.5, and any other

1 legally applicable damages or penalties;

2 3. For pre-judgment interest and post-judgment interest;

3 4. For an injunction against Defendants enjoining them, and any and all persons
4 acting in concert with them, from engaging in violations of Labor Code section 1174 subdivision
5 (d), and IWC Wage Order No. 4-2001, § 7;

6 5. For such other further relief, in law and/or equity, as the Court deems just or
7 appropriate.

8 **ON THE SEVENTH CAUSE OF ACTION:**

9 1. That Defendants be found to have violated Labor Code 204 as to Plaintiffs and the
10 Pay Day Class;

11 2. For damages, according to proof;

12 3. For any and all legally applicable penalties, including but not limited to those
13 recoverable pursuant to Labor Code section 210(a);

14 4. For pre-judgment interest, including but not limited to that recoverable under Labor
15 Code section 218.6, and post-judgment interest; and

16 5. For such other further relief, in law and/or equity, as the Court deems just or
17 appropriate.

18 **ON THE EIGHTH CAUSE OF ACTION:**

19 1. That Defendants be found to have violated the provisions of the Labor Code
20 regarding payment of all unpaid wages due upon resignation or termination as to Plaintiffs and the
21 Waiting Time Class;

22 2. For damages and/or penalties, according to proof, including damages and/or
23 statutory penalties under Labor Code section 203 and any other legally applicable damages or
24 penalties;

25 3. For pre-judgment interest, including under Labor Code section 218.6, and post-
26 judgment interest; and

27 4. For such other further relief, in law and/or equity, as the Court deems just or
28 appropriate.

ON THE NINTH CAUSE OF ACTION:

1. That the Defendants be found to have violated the indemnification provisions of the Labor Code as to the Plaintiffs and the Indemnification Class;
2. For damages, according to proof, including unpaid use and/or costs of necessary tools and/or resources;
3. For any and all legally applicable penalties;
4. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 2802, and post-judgment interest;
5. For attorneys' fees and costs of suit, including but not limited to that recoverable under Labor Code section 2802; and
6. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE TENTH CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the Labor Code regarding failure to pay accrued and vested vacation/PTO wages as to Plaintiffs and the Vacation/PTO Class;
2. For damages and/or penalties, according to proof, including unpaid wages, damages, and/or statutory penalties under Labor Code § 227.3 and any other legally applicable damages or penalties;
3. An injunction against Defendants to obtain their compliance with Labor Code § 227.3;
4. For attorneys' fees and costs of suit, including but not limited to those recoverable under Labor Code § 227.3; and
5. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE ELEVENTH CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the Labor Code regarding accurate itemized paystubs as to Plaintiffs and the Wage Statement Class;

2. For damages and/or penalties, according to proof, including damages and/or statutory penalties under Labor Code section 226, subdivision (e), and any other legally applicable damages or penalties;

3. For pre-judgment interest and post-judgment interest;

4. For an injunction against Defendants enjoining them, and any and all persons acting in concert with them, from engaging in violations of Labor Code section 226, subdivision (a);

5. For attorneys' fees and costs of suit, including but not limited to those recoverable under Labor Code section 226, subdivision (e); and

6. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE TWELFTH CAUSE OF ACTION:

1. That Defendants be found to have violated Business and Professions Code sections 17200, *et seq.*, for the conduct alleged herein as to the California Class;

2. A declaratory judgment that the practices complained herein are unlawful;

3. An injunction against Defendants enjoining them, and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies and patterns set forth herein;

4. For restitution to the full extent permitted by law;

5. For attorneys' fees and costs of suit, including but not limited to that recoverable under Code of Civil Procedure section 1021.5; and

6. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

WHEREFORE, PLAINTIFFS, ON BEHALF OF THEMSELVES AND ON OTHER AGGRIEVED EMPLOYEES, PRAY AS FOLLOWS:

ON THE THIRTEENTH CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to the Plaintiffs and aggrieved employees;

2. For any and all legally applicable penalties during the relevant statute of limitations subject to any permissible tolling, including but not limited to those recoverable under the California Labor Code, including but not limited to sections 210, 225.5, 226.3, 558, 2699(f);

3. For attorneys' fees and costs of suit, including but not limited to those recoverable under California Labor Code section 2699(g); and

4. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

Dated: March 4, 2026

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By: /s/Paolo Policastro
Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Paolo Policastro, Esq.
Attorneys for Plaintiff
MARIO PABLO,
on behalf of himself and others similarly situated

Dated: March 4, 2026

Respectfully submitted,
MELMED LAW GROUP P.C.

By: /s/Maria Burciaga
Jonathan Melmed
Maria Burciaga
Attorneys for Plaintiff
CARLOS BARAJAS JR.,
on behalf of himself and others similarly situated

Dated: March 4, 2026

Respectfully submitted,
JAMES HAWKINS APLC.

By: /s/Lance Dacre
James R. Hawkins
Isandra Y. Fernandez
Lance Dacre
Attorneys for Plaintiff
MARTIN JOSSUE PEREZ,
on behalf of himself and others similarly situated

DEMAND FOR JURY TRIAL

Plaintiffs MARIO PABLO, CARLOS BARAJAS, JR., and MARTIN JOSSUE PEREZ
demand a trial by jury for themselves and the California Class on all claims so triable.

Dated: March 4, 2026

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By: /s/Paolo Policastro
Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Paolo Policastro, Esq.
Attorneys for Plaintiff
MARIO PABLO,
on behalf of himself and others similarly situated

Dated: March 4, 2026

Respectfully submitted,
MELMED LAW GROUP P.C.

By: /s/Maria Burciaga
Jonathan Melmed
Maria Burciaga
Attorneys for Plaintiff
CARLOS BARAJAS JR.,
on behalf of himself and others similarly situated

Dated: March 4, 2026

Respectfully submitted,
JAMES HAWKINS APLC.

By: /s/Lance Dacre
James R. Hawkins
Isandra Y. Fernandez
Lance Dacre
Attorneys for Plaintiff
MARTIN JOSSUE PEREZ,
on behalf of himself and others similarly situated

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am an employee in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 8889 W. Olympic Blvd., Suite 200, Beverly Hills, California 90211.

On March 4, 2026, I served the foregoing documents, described as:

1. "PLAINTIFFS' MARIO PABLO, CARLOS BARAJAS, JR., AND MARTIN JOSSUE PEREZ CONSOLIDATED FIRST AMENDED COMPLAINT"

on all interested parties in this action by placing a true copy thereof in a sealed envelope, addressed as follows:

- A (VIA CASE ANYWHERE)** I caused a true and correct copy of the document(s) described above to be electronically served on counsel of record at the electronic service addresses maintained and transmitted by CASE ANYWHERE.
- B (BY ELECTRONIC MAIL)** As follows: I caused such documents to be emailed to the attorneys listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- X (STATE)** I declare, under penalty of perjury under the laws of the State of California, that the above is true and correct.

Service List Attached

Executed March 4, 2026, at Beverly Hills, California.

/s/ Veverly K Esquivel
Veverly Esquivel

SERVICE LIST

PARTY SERVED	METHOD OF SERVICE
<i>Attorneys for Defendant KEPT COMPANIES, INC.:</i> Robert S. Blumberg, Bar No. 161649 rblumberg@littler.com Alan H. Emurian, Bar No. 328587 aemurian@littler.com LITTLER MENDELSON, P.C. 2049 Century Park East, 5th Floor Los Angeles, California 90067.3107 Telephone: 310.553.0308 Facsimile: 800.715.1330	A
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PROOF OF SERVICE