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BRIAN KEITZ and the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

BRIAN KEITZ, an individual on behalf
of himself and all other similarly
situated,

Plaintiff,

v.

APEX SECURITY GROUP, INC., a
corporation; and DOES 1 through 10,
inclusive,

Defendant.

CASE NO. 22CV403171

[Honorable Sunil R. Kulkarni; Dept. 1
(Complex Civil Litigation)]

CLASS ACTION

**PLAINTIFF'S FIRST AMENDED CLASS
ACTION COMPLAINT FOR:**

1. VIOLATIONS OF LABOR CODE §
204, 226.2, 1194, 1197, AND WAGE
ORDER (WAGES)
2. VIOLATIONS OF LABOR CODE §§
226.2, 510, 1194, 1198, AND WAGE
ORDER (OVERTIME WAGES)
3. VIOLATIONS OF LABOR CODE §§
226.7 AND 512 AND WAGE ORDER
(MEAL PERIODS)
4. VIOLATION OF LABOR CODE §§
226.2, 226.7, 516, 558 AND WAGE
ORDER (REST PERIODS)
5. VIOLATIONS OF LABOR CODE §
2802 (FAILURE TO REIMBURSE)
6. VIOLATIONS OF LABOR CODE §
226(A) (NON-COMPLIANT WAGE
STATEMENTS)
7. VIOLATIONS OF LABOR CODE §§
201-203 (FAILURE TO PAY ALL
WAGES OWED UPON
TERMINATION)
8. VIOLATIONS OF BUSINESS AND
PROFESSIONS CODE § 17200
9. VIOLATIONS OF CALIFORNIA
LABOR CODE SECTION 2698 ET SEQ.
- THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004

**[FILED PURSUANT TO CCP § 472 &
LABOR CODE § 2699.3(a)(2)(C)]**

JURY TRIAL DEMANDED

1 Plaintiff Brian Keitz (“Plaintiff”) alleges as follows on knowledge as to his own
2 acts/interactions and on information and belief as to all other matters.

3 **JURISDICTION AND VENUE**

4 1. This Court has personal jurisdiction over Defendant because it conducts
5 business in the State of California.

6 2. Under California Code of Civil Procedure section 395(a), venue is proper in
7 this County because Defendant does business in this County and the harm to Plaintiff
8 occurred in this County.

9 **PARTIES**

10 3. Plaintiff, at all times relevant hereto, was and is a resident of the State of
11 California.

12 4. Plaintiff is informed and believes that Defendant Apex Security Group,
13 Inc., is a corporation organized and existing under the laws of Delaware with its principal
14 place of business located at 17101 Superior St., Northridge, California 91325.

15 5. The true names and capacities of the Defendant named herein as Does 1
16 through 10, inclusive, whether individual, corporate, associate or otherwise, are unknown
17 to Plaintiff who therefore sues such Defendant by fictitious names pursuant to California
18 Code of Civil Procedure section 474. Plaintiff is informed and believes that all of the
19 Doe Defendant are California residents. Plaintiff will amend this Complaint to show
20 such true names and capacities when they have been determined.

21 6. Plaintiff is informed and believes that at all times relevant herein, each
22 defendant designated, including Does 1 through 10, was the agent, managing agent,
23 principal, owner, partner, joint venturer, representative, manager, servant, employee
24 and/or co-conspirator of each of the other Defendant, and was at all times mentioned
25 herein acting within the course and scope of said agency and employment, and that all
26 acts or omissions alleged herein were duly committed with the ratification, knowledge,
27 permission, encouragement, authorization and consent of each defendant designated
28 herein.

PLAINTIFF'S FACTUAL ALLEGATIONS

7. Between approximately August of 2013 through approximately April 15, 2022, Plaintiff worked for Defendant as a non-exempt employee, in the position of a security guard.

8. Plaintiff and other employees working for Defendant were compensated based on an hourly rate.

9. Plaintiff and other employees working for Defendant were not compensated for all time worked, were required to work "off the clock," and not paid for reporting time pay.

10. These underpayments were a result of numerous issues, including but not limited to: (1) failing to correctly pay Plaintiff and other employees for all hours they worked; (2) deducting time for meal periods even when the meal period was not taken, the meal period was less than 30 minutes, or the meal period was on duty; (3) defining "workday" in a manner that a single work shift is split across two separate workdays; (4) failure to pay shift differentials; (5) use of unauthorized alternative workweek schedules without proper payment of overtime; (6) failure to calculate the regular rate of pay; and (7) modifying timesheets when employees worked overtime.

11. Plaintiff and other employees working for Defendant were required to remain at their post until they were relieved by the next employee, which resulted in underpayment of wages and underpayment of overtime wages.

12. Plaintiff and other employees were also incorrectly provided with "reimbursements" instead of wages or reporting time pay.

13. Further, Defendant failed to pay Plaintiff and other employees all wages due to them within any time period specified by Labor Code § 204, including earned and unpaid minimum, overtime, and premium wages.

14. During Plaintiff's employment by Defendant, Plaintiff and other employees working for Defendant were forced to miss taking compliant meal periods (30-minute meal periods after the first five hours worked) due to the demands placed on them by

1 Defendant and lack of coverage. Moreover, Plaintiff and other non-exempt hourly
2 employees were deprived of taking a second meal period after ten hours worked.
3 Plaintiff and other employees were also subjected to a policy or remaining on the
4 premises during their meal periods.

5 15. During Plaintiff's employment by Defendant, Plaintiff and other employees
6 working for Defendant were forced to miss taking compliant rest periods (ten minutes
7 rest time per four hours worked) due to the demands placed on them by Defendant.
8 Plaintiff and other employees were also subjected to a policy or remaining on the
9 premises during their rest periods.

10 16. Defendant failed to pay penalties for noncompliant rest and meal periods
11 (premium pay as required by Labor Code § 226.7(b) and Sections 11 and 12 of the
12 applicable Wage Order in lieu of meal and/or rest periods).

13 17. Plaintiff and other employees were not reimbursed for all business expenses
14 and, to the extent such reimbursement was provided, it was provided in an amount not
15 sufficient to reimburse Plaintiff and other employees for such expenses, including use of
16 their personal mobile phones, calls, and data plans, which were required to perform their
17 duties. These phones would be routinely used by Plaintiff and other employees to
18 communicate with supervisors, call in security threats, and other tasks. See Cochran v.
19 Schwan's Home Service, Inc., 228 Cal. App. 4th 1137 (2014) (Lab. Code, § 2802,
20 requires an employer to reimburse an employee for the reasonable expense of the
21 mandatory use of a personal cell phone, regardless of the details of the employee's cell
22 phone plan, whether the phone bill is paid for by a third person or at all, and whether the
23 employee changed plans to accommodate worked-related cell phone usage; to show
24 liability under § 2802, an employee need only show that he or she was required to use a
25 personal cell phone to make work-related calls, and that he or she was not reimbursed).

26 18. Throughout Plaintiff's employment with Defendant, Defendant required
27 Plaintiff and other employees to wear uniforms. Section 9 of the applicable IWC Wage
28 Order provides: "When uniforms are required by the employer to be worn by the

1 employee as a condition of employment, such uniforms shall be provided and maintained
2 by the employer.” In violation of applicable law, Defendant has a policy and/or practice
3 that requires its employees to maintain/clean their uniforms on their own time and while
4 working off the clock. This also resulted in unpaid wages and overtime wages.

5 19. Based on these underpayments of regular wages, overtime wages, double
6 overtime wages, and unpaid meal/rest period penalties, Plaintiff and other employees
7 who were terminated or resigned did not receive all wages owed to them upon
8 termination or within seventy-two (72) hours after resignation.

9 20. In addition, Defendant did not provide Plaintiff and other employees with
10 accurate wage statements as required under California law. More specifically, the wage
11 statements provided to Plaintiff and other employees did not reflect or did not accurately
12 reflect the: (1) gross wages earned, (2) total hours worked by the employee, (3) the
13 number of piece-rate units earned and any applicable piece rate if the employee is paid on
14 a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the
15 period for which the employee is paid, (7) the name and address of the legal entity that is
16 the employer, and (8) all applicable hourly rates in effect during the pay period and the
17 corresponding number of hours worked at each hourly rate by the employee and, if the
18 employer is a temporary services employer as defined in Section 201.3, the rate of pay
19 and the total hours worked for each temporary services assignment. Plaintiff and other
20 employees were also incorrectly provided with “reimbursements” on their wage
21 statements instead of wages or reporting time pay.

22 21. Accordingly, Plaintiff and other employees were not able to promptly and
23 easily determine the missing information without reference to other documents or
24 information.

25 22. The wage statements also did not provide accurate information by omitting
26 the lack of meal/rest break premium pay that should have been paid to Plaintiff and the
27 other members of the Wage Statement Class. Naranjo v. Spectrum Sec. Servs., Inc., No.
28 S258966, 2022 Cal. LEXIS 2878 (May 23, 2022) (Because premium pay for missed meal

1 and rest breaks under Lab. Code, § 226.7, compensated employees for the work
2 performed during a break period and therefore constituted wages within the meaning of
3 Lab. Code, §§ 200, subd. (a), 203, 226, penalties could be available for an employer's
4 alleged failure to timely pay or report such payments.).

5 23. Defendant violated California Labor Code §§ 1174, 1174.5 by failing to
6 keep at a central location in the state or at the plants or establishments at which
7 employees are employed, payroll records showing the hours worked daily by and the
8 wages paid to employees employed at the respective plants or establishments.

9 CLASS ACTION ALLEGATIONS

10 24. This class action is filed under the provisions of Code of Civil Procedure
11 section 382, which provides that a class action may be brought when the question is one
12 of common interest to many persons, or when the number of persons is numerous and it
13 is impractical to bring them all before the court. This action is properly maintained as a
14 class action as set forth below.

15 25. Plaintiff brings this action on behalf of herself and all others similarly
16 situated in the "Class", as follows: **All persons within California who worked for**
17 **Defendant as an hourly (non-exempt) employee at any time on or after the date that**
18 **is four (4) years prior to the filing of this lawsuit**

19 26. Numerosity: Plaintiff does not know the number of members in the defined
20 Class but believes, based on popularity, number of customers, and the advertising of the
21 product/service, that the number is in the hundreds, if not substantially higher. Thus,
22 joinder of all the defined Class members is impractical due to the size and relatively
23 small value of each member's claim.

24 27. Typicality: Plaintiff's claims are typical of the claims of each member of
25 the Proposed Class because Plaintiff did not receive all wages owed, correct overtime
26 compensation, did not receive meal/rest periods in compliance with the requirements of
27
28

1 California law, and did not receive accurate wage statements as required under California
2 law.

3 28. Commonality: The members of the Class share a well-defined community
4 of interest regarding questions of law and fact, which predominate over questions that
5 may affect individual members of the Class. These common questions of law and fact
6 include (but are not limited to):

7 (a) Whether Defendant failed to pay the Proposed Class wages and
8 overtime compensation in accordance with the requirements of California law;

9 (b) Whether Defendant failed to maintain accurate records of the actual
10 hours worked by each member of the Proposed Class as required by subsection 7
11 of the applicable Industrial Welfare Commission Orders (see Franco v. Athens
12 Disposal Co., Inc., 171 Cal. App. 4th 1277, 1299 (2009) (“By law, an employer
13 must maintain time records showing an employee’s (1) ‘total daily hours worked’
14 and (2) meal periods, unless ‘operations cease’ during meals.”) (quoting Wage
15 Order, § 7(A)(3));

16 (c) Whether Defendant did not permit Plaintiff and members of the
17 Proposed Class to take a meal period after five (5) hours of work or ten (10) hours
18 of work due to lack of coverage, the need for the employees to continue working,
19 or some other unwritten practice/policy;

20 (d) Whether Defendant failed to pay premium pay for missed meal
21 periods displayed on Plaintiff’s and members of the Proposed Class’ time records;

22 (e) Whether Defendant failed to pay premium pay for missed rest
23 periods;

24 (f) Whether Defendant and its management regularly witnessed Plaintiff
25 and members of the Proposed Class not taking a meal period within five (5) hours
26 of commencing work and a second meal period after working ten (10) hours;

27 (g) Whether Defendant and its management regularly witnessed Plaintiff
28 and members of the Proposed Class not taking uninterrupted, full 30-minute meal

1 periods within five (5) hours of commencing work and a second meal period after
2 working ten (10) hours;

3 (h) Whether Defendant engaged in unfair business practices in violation
4 of California Business & Professions Code sections 17200, et seq.;

5 (i) Whether Plaintiff and the Proposed Class are entitled to
6 compensatory damages pursuant to the California Labor Code; and

7 (j) The appropriate amount of damages, restitution, and/or monetary
8 penalties resulting from Defendant's violations of California law,

9 29. Predominance: The questions that are common to all class members
10 predominate over any questions that are unique to individual class members because the
11 answers to these questions will determine Defendant's liability to all class members and
12 because any remaining individual questions with respect to amounts of relief may be
13 resolved by reference to Defendant's records.

14 30. Superiority: A class action is vastly superior to other available means for
15 the fair and efficient adjudication of class members' claims. Because this case involves
16 large numbers of employees, most, if not all, of whom have relatively small individual
17 claims, it would be beneficial to the parties and this Court to allow them to
18 simultaneously and efficiently prosecute their common claims in a single forum without
19 the unnecessary duplication of effort and expense that numerous individual actions would
20 entail. Additionally, because the monetary amounts due to many individual class
21 members are likely to be relatively small, it would make it difficult, if not impossible, for
22 individual class members to both seek and obtain relief. Moreover, a class action will
23 serve an important public interest by permitting class members to effectively pursue the
24 recovery of moneys owed to them. Further, a class action will prevent the potential for
25 inconsistent or contradictory judgments inherent in individual litigation.

26 31. Ascertainable Class: The members of the Class can be easily ascertained
27 from Defendant's records.

1 32. Adequacy of Class Representatives: Plaintiff will fairly and adequately
2 represent and protect the interests of the Class in that Plaintiff have no interests
3 antagonistic to any member of the Class. There are no material conflicts between the
4 claims of Plaintiff and the members of the Class that would make class certification
5 inappropriate.

6 33. Adequacy of Class Counsel: Plaintiff has retained counsel experienced in
7 handling class action claims and wage & hour claims.

8 **FIRST CAUSE OF ACTION**

9 **VIOLATION OF CALIFORNIA LABOR CODE §§ 204, 226.2, 1194, 1197, AND**
10 **IWC WAGE ORDER (UNDERPAYMENT OF HOURLY WAGES)**
11 **(BY PLAINTIFF AND THE CLASS AGAINST DEFENDANT)**

12 34. Plaintiff incorporates by this reference all preceding and subsequent
13 paragraphs.

14 35. California Labor Code section 204(a) states (in relevant part) that wages
15 “earned by any person in any employment are due and payable twice during each
16 calendar month, on days designated in advance by the employer as the regular paydays.”

17 36. California Labor Code section 1194(a) states (in relevant part):
18 “Notwithstanding any agreement to work for a lesser wage, any employee receiving less
19 than the legal minimum wage or the legal overtime compensation applicable to the
20 employee is entitled to recover in a civil action the unpaid balance of the full amount of
21 this minimum wage or overtime compensation, including interest thereon, reasonable
22 attorney’s fees, and costs of suit.”

23 37. California Labor Code section 1197 states (in relevant part): “The
24 minimum wage for employees fixed by the commission or by any applicable state or
25 local law, is the minimum wage to be paid to employees, and the payment of a lower
26 wage than the minimum so fixed is unlawful.”

27 38. The applicable IWC Wage states: “Every employer shall pay to each
28 employee, on the established payday for the period involved, not less than the applicable

1 minimum wage for all hours worked in the payroll period, whether the remuneration is
2 measured by time, piece, commission, or otherwise.”

3 39. As alleged above, Defendant violated the foregoing statutes and regulations
4 through its practice and/or policy of not compensating the members of the Class for all
5 time that they worked.

6 40. Pursuant to California Labor Code sections 218.5, 1194, 1194.2, 1197.2,
7 Plaintiff and the other members Class are entitled to recover the full amount of their
8 unpaid wages, liquidated damages equal to unlawfully unpaid minimum wages with
9 interest waiting time penalties, reasonable attorneys’ fees, and costs of suit. Plaintiff and
10 the other members of the Class are entitled to recover interest on all due and unpaid
11 wages and waiting time penalties under Labor Code section 218.6 and/or Civil Code
12 section 3287(a).

13 **SECOND CAUSE OF ACTION**

14 **VIOLATION OF CALIFORNIA LABOR CODE §§ 226.2, 510, 1194, 1198, AND**
15 **IWC WAGE ORDER (UNDERPAYMENT OF OVERTIME WAGES)**
16 **(BY PLAINTIFF AND THE CLASS AGAINST DEFENDANT)**

17 41. Plaintiff incorporates by this reference all preceding and subsequent
18 paragraphs.

19 42. The applicable IWC Wage Order states:

20 (A) Daily Overtime – General Provisions

21 (1) The following overtime provisions are applicable to employees 18 years
22 of age or over and to employees 16 or 17 years of age who are not
23 required by law to attend school and are not otherwise prohibited by law
24 from engaging in the subject work. Such employees shall not be
25 employed more than eight (8) hours in any workday or more than 40
26 hours in any workweek unless the employee receives one and one-half
27 (1 ½) times such employee’s regular rate of pay for all hours worked
28 over 40 hours in the workweek. Eight (8) hours of labor constitutes a

1 day's work. Employment beyond eight (8) hours in any workday or
2 more than six (6) days in any workweek is permissible provided the
3 employee is compensated for such overtime at not less than:

4 (a) One and one-half (1 ½) times the employee's regular rate of pay
5 for all hours worked In excess of eight (8) hours up to and
6 including twelve (12) hours in any workday, and for the first
7 eight (8) hours worked on the seventh (7th) consecutive day of
8 work in a workweek.; and

9 (b) Double the employee's regular rate of pay for all hours worked in
10 excess of 12 hours in any workday and for all hours worked in
11 excess of eight (8) hours on the seventh (7th) consecutive day of
12 work in a workweek.

13 (c) The overtime rate of compensation required to be paid to a
14 nonexempt full-time salaried employee shall be computed by
15 using the employee's regular hourly salary as one fortieth (1/40)
16 of the employee's weekly salary.

17 43. California Labor Code section 510(a) states: "Eight hours of labor
18 constitutes a day's work. Any work in excess of eight hours in one workday and any
19 work in excess of 40 hours in any one workweek and the first eight hours worked on the
20 seventh day of work in any one workweek shall be compensated at the rate of no less
21 than one and one-half times the regular rate of pay for an employee. Any work in excess
22 of 12 hours in one day shall be compensated at the rate of no less than twice the regular
23 rate of pay for an employee. In addition, any work in excess of eight hours on any
24 seventh day of a workweek shall be compensated at the rate of no less than twice the
25 regular rate of pay of an employee."

26 44. California Labor Code section 1194(a) states: "Notwithstanding any
27 agreement to work for a lesser wage, any employee receiving less than the legal
28 minimum wage or the legal overtime compensation applicable to the employee is entitled

1 to recover in a civil action the unpaid balance of the full amount of this minimum wage
2 or overtime compensation, including interest thereon, reasonable attorney's fees, and
3 costs of suit."

4 45. As alleged above, Defendant violated the foregoing statutes and regulations
5 through its practice and/or policy of not paying Plaintiff and other members of the Class
6 all overtime compensation owed.

7 46. Pursuant to Labor Code sections 218.5 and 1194, Plaintiff and the other
8 members of Class are entitled to recover the full amount of their unpaid overtime wages,
9 waiting time penalties, reasonable attorneys' fees, and costs of suit. Plaintiff and the
10 other members of the Class are entitled to recover interest on all due and unpaid wages
11 and waiting time penalties under Labor Code section 218.6 and/or Civil Code section
12 3287(a).

13 **THIRD CAUSE OF ACTION**

14 **VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 226.7, 512 AND IWC**
15 **WAGE ORDER (MEAL PERIODS)**
16 **(BY PLAINTIFF AND CLASS AGAINST DEFENDANT)**

17 47. Plaintiff incorporates by this reference all preceding and subsequent
18 paragraphs.

19 48. California Labor Code section 512(a) states: "An employer may not
20 employ an employee for a work period of more than five hours per day without providing
21 the employee with a meal period of not less than 30 minutes, except that if the total work
22 period per day of the employee is no more than six hours, the meal period may be waived
23 by mutual consent of both the employer and employee. An employer may not employ an
24 employee for a work period of more than 10 hours per day without providing the
25 employee with a second meal period of not less than 30 minutes, except that if the total
26 hours worked is no more than 12 hours, the second meal period may be waived by mutual
27 consent of the employer and the employee only if the first meal period was not waived."
28

1 49. Section 11(A) of the applicable IWC Wage Orders provides (in relevant
2 part): “No employer shall employ any person for a work period of more than five (5)
3 hours without a meal period of not less than 30 minutes, except that when a work period
4 of not more than six (6) hours will complete the day’s work the meal period may be
5 waived by mutual consent of the employer and the employee.”

6 50. California Labor Code section 226.7(b) provides: “If an employer fails to
7 provide an employee a meal period or rest period in accordance with an applicable order
8 of the Industrial Welfare Commission, the employer shall pay the employee one
9 additional hour of pay at the employee’s regular rate of compensation for each work day
10 that the meal or rest period is not provided.”

11 51. As alleged above, during Plaintiff’s employment by Defendant, Plaintiff
12 and other members of the Class working for Defendant were forced to miss taking
13 compliant meal periods (30-minute meal periods after the first five hours worked).
14 Moreover, Plaintiff and other members of the Class were deprived of taking a second
15 meal period after ten hours worked. Plaintiff and these other members of the Class did
16 not waive their right to their meal periods.

17 52. In addition, it was and continues to be Defendant’ policy and practice not to
18 compensate Plaintiff and other members of the Class with the pay due and owing as
19 required by California Labor Code section 226.7, and subsection 11 of the applicable
20 Industrial Welfare Commission order (i.e., one hour of pay per day per meal period at the
21 employee’s regular rate of compensation).

22 53. Plaintiff and members of the Class demand all applicable reimbursements,
23 interest, and penalties.
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FOURTH CAUSE OF ACTION

**VIOLATION OF CALIFORNIA LABOR CODE §§ 226.2, 226.7 AND IWC WAGE
ORDER (REST PERIODS)**

(BY PLAINTIFF AND THE CLASS AGAINST DEFENDANT)

54. Plaintiff incorporates by this reference all preceding and subsequent paragraphs.

55. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California Industrial Welfare Commission.

56. At all relevant times, the applicable Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof unless the total daily work time is less than three and one-half (3 ½) hours.”

57. During the relevant time period, Defendant required Plaintiff Class to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

58. During the relevant time period, Defendant willfully required Plaintiff and members of the Class to work during rest periods and failed to pay the full rest period premium for work performed during rest periods.

59. During the relevant time period, Defendant failed to pay Plaintiff and members of the Class the full rest period premium due pursuant to California Labor Code section 226.7. Defendant’s conduct violates applicable Wage Orders and California Labor Code section 226.7.

60. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff and the other members of the Class is entitled to recover from

1 Defendant one additional hour of pay at the employee's regularly hourly rate of
2 compensation for each work day that the rest period was not provided.

3 61. Plaintiff and members of the Class demand all applicable reimbursements,
4 interest, and penalties.

5 **FIFTH CAUSE OF ACTION**

6 **VIOLATION OF LABOR CODE § 2802 – FAILURE TO REIMBURSE**
7 **NECESSARY EXPENDITURES**

8 **(BY PLAINTIFF AND THE CLASS AGAINST DEFENDANT)**

9 62. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

10 63. California Labor Code § 2802, in relevant part, states: "An employer shall
11 indemnify his or her employee for all necessary expenditures or losses incurred by the
12 employee in direct consequence of the discharge of his or her duties."

13 64. As alleged above, Defendant violated the foregoing statute by not
14 reimbursing their necessary business expenses.

15 65. Subsection (c) of Labor Code § 2802 states, "[f]or the purposes of this
16 section, the terms 'necessary expenditure or losses' shall include all reasonable costs,
17 including but not limited to, attorneys' fees incurred by the employee enforcing the rights
18 granted by this section." Accordingly, Plaintiff seek damages for all necessary
19 expenditures and loses, including attorney's fees and costs pursuant to Labor Code §
20 2802(c).

21 **SIXTH CAUSE OF ACTION**

22 **VIOLATION OF CALIFORNIA LABOR CODE § 226(a)**

23 **(NON-COMPLIANT WAGE STATEMENTS)**

24 **(BY PLAINTIFF AND THE CLASS AGAINST DEFENDANT)**

25 66. Plaintiff incorporates by this reference all preceding and subsequent
26 paragraphs.

27 67. Labor Code section 226(a) provides that every employer shall furnish each
28 of its employees an accurate itemized statement in writing showing (1) gross wages

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

9 68. Defendant intentionally and willfully failed to provide Plaintiff and the
10 other members of the Class with complete and accurate wage statements.

11 69. As a result of Defendant's violation of California Labor Code section
12 226(a), Plaintiff and the other members of the Class have suffered injury and damage to
13 their statutory-protected right to receive accurate and itemized wage statements.

14 70. Pursuant to California Labor Code section 226(e), Plaintiff and the other
15 members of the Class are entitled to recover from Defendant the greater of their actual
16 damages caused by Defendant's failure to comply with California Labor Code section
17 226(a), or an aggregate penalty not exceeding four thousand dollars per employee, and
18 are entitled to an award of costs and reasonable attorney's fees.

19 **SEVENTH CAUSE OF ACTION**

20 **FAILURE TO PAY ALL WAGES OWED UPON TERMINATION IN**

21 **VIOLATION OF CALIFORNIA LABOR CODE §§ 201-203**

22 **(BY PLAINTIFF AND THE CLASS AGAINST DEFENDANT)**

23 71. Plaintiff incorporates by this reference all preceding and subsequent
24 paragraphs.

25 72. At all relevant times, California Labor Code sections 201-203 provide that
26 if an employer discharges an employee, the wages earned and unpaid at the time of
27 discharge are due and payable immediately, and if an employee quits his or her
28 employment, his or her wages shall become due and payable not later than seventy-two

1 (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his
2 or her intention to quit, in which case the employee is entitled to his or her wages at the
3 time of quitting.

4 73. As Plaintiff and other members of Class were denied wages owed to them,
5 they were not paid all wages owed to them at the time of their termination or resignation.

6 74. During the relevant time period, and as alleged above, Defendant
7 intentionally and willfully failed to pay Plaintiff and other members of the Class their
8 wages, earned and unpaid, and meal/rest period penalties within the required time period.

9 75. Plaintiff is informed and believe that other members of the Class were not
10 paid their final wages immediately upon their termination or within seventy-two (72)
11 hours of their resignation, is in violation of California Labor Code sections 201 and 202.

12 76. On information and belief, Plaintiff contends that Defendant's failure to
13 pay all wages earned upon termination in accordance with Labor Code section 201 was
14 willful. At all times relevant, Defendant's had the ability to pay all earned and unpaid
15 wages in accordance with Labor Code section 201 but intentionally chose not to comply.

16 77. California Labor Code section 203 provides that if an employer willfully
17 fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the
18 employee shall continue as a penalty from the due date thereof at the same rate until paid
19 or until an action is commenced; but the wages shall not continue for more than thirty
20 (30) days.

21 78. Pursuant to Labor Code § 218.5, Plaintiff and members of the Class are
22 entitled to recover the full amount of their unpaid wages, waiting time penalties,
23 reasonable attorneys' fees, and costs of suit. Plaintiff and the other members of the Class
24 are entitled to recover interest on all due and unpaid wages and waiting time penalties
25 under Labor Code § 218.6 and/or Civil Code § 3287(a).

EIGHTH CAUSE OF ACTION

**VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200
(BY PLAINTIFF AND THE CLASS AGAINST DEFENDANT)**

79. Plaintiff incorporates by this reference all preceding and subsequent paragraphs.

80. Business and Professions Code section 17200, et seq. (“UCL”), defines unfair competition to include any “unfair,” “unlawful,” or “fraudulent” business practice.

81. At all times relevant herein the UCL was in full force and effect and binding on Defendant.

82. The actions alleged herein by Defendant were “unlawful” under the UCL based on the violations of each of the statutes and regulations alleged herein. Defendant’s conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, members of the Class, the general public, and to Defendant’s competitors.

83. Plaintiff and members of the Class have been personally injured by Defendant’s unlawful business acts and practices as alleged herein, including, but not necessarily limited to, the loss of money and/or property.

84. Pursuant to California Business & Professions Code sections 17200, et seq., Plaintiff and members of the Class are entitled to restitution of the wages and overtime wages withheld and retained by Defendant; and a permanent injunction requiring Defendant to pay all outstanding wages due to Plaintiff and the other members of the Class.

NINTH CAUSE OF ACTION

**PRIVATE ATTORNEYS GENERAL ACT OF 2004, LABOR CODE SECTION
2698 ET SEQ.**

**(REPRESENTATIVE ACTION BY PLAINTIFF AND AGGRIEVED
EMPLOYEES AGAINST DEFENDANT)**

85. Plaintiff incorporates by reference all of the preceding and subsequent paragraphs.

86. On September 15, 2022, counsel for Plaintiff prepared and electronically submitted a letter to the California Labor & Workforce Development Agency (“LWDA”) via the California Department of Industrial Relations’ “PAGA Filing” website. A copy of the letter was mailed to Defendant, also via USPS Certified Mail. The letter contained the specific provisions of the California Labor Code violated by Defendant, as well as the facts and theories in support of Plaintiff’s claims.

87. Now that sixty-five (65) days have passed since Plaintiff notified Defendants of these violations, the statutory time period for the LWDA to investigate and/or respond, and for the employer to respond, has concluded. Plaintiff has exhausted the administrative requirements for bringing a claim under the PAGA for these violations.

88. Plaintiff seeks penalties pursuant to PAGA for based on Defendant’s following violation of the California Labor Code:

- a. Underpayment of minimum wages and hourly wages in violation of California Labor Code §§ 204, 1194, 1194.2, 1197, Wage Order 4-2001, California Minimum Wage Order.
- b. Underpayment of overtime wages in violation of California Labor Code §§ 510, 1194, and Wage Order 4-2001.
- c. Failure to provide compliant meal periods in violation of California Labor Code §§ 226.7 and 512 and Wage Order 4-2001.

- d. Failure to provide compliant rest periods in violation of California Labor Code §§ 226.7 and 512 and Wage Order 4-2001.
- e. Failure to reimburse business expenses in violation of California Labor Code 2802 and Wage Order 4-2001.
- f. Non-compliant wage statements in violation of California Labor Code § 226(a).
- g. Collection of wages previously paid to employees in violation of California Labor Code § 221.
- h. Failure to pay all wages upon resignation or termination due to the underpayment of wages and/or overtime in violation of California Labor Code §§ 201-203.
- i. Failure to pay, appropriately accrue, and forfeiture of paid time off in violation of California Labor Code § 227.3.
- j. Failure to keep payroll records showing total hours worked and wages paid in violation of California Labor Code §§ 1174-1174.5 and Wage Order 4-2001.

89. Plaintiff seeks civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof, pursuant to the California Labor Code, including California Labor Code §§ 2699(a) and 2699(f), which provides for \$100 for each initial violation and \$200 for each subsequent violation per employee pay period.

90. Plaintiff was compelled to retain the services of counsel to file this action to protect Plaintiff's interests and the interests of other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendant. Plaintiff has thereby incurred attorneys' fees and costs, which Plaintiff is entitled to recover under California Labor Code § 2699(g).

1 **JURY TRIAL DEMANDED**

2 91. Plaintiff demand a jury as to all causes of action permitted for a jury trial
3 under applicable law.

4 **PRAYER FOR RELIEF**

5 92. WHEREFORE, Plaintiff respectfully requests the Court grant Plaintiff and
6 the Class the following relief against Defendant:

- 7 a. For an order certifying the Class under California Code of Civil
8 Procedure section 382;
9 b. For appointment of Plaintiff as the representatives of the Class;
10 c. For general economic and non-economic damages according to proof;
11 d. For statutory damages according to proof;
12 e. For special damages according to proof;
13 f. For penalties where allowed by law;
14 g. For prejudgment interest pursuant to California Labor Code section 218.6,
15 California Civil Code section 3287, California Civil Code section 3288,
16 and/or any other provision of law providing for prejudgment interest;
17 h. For attorneys' fees where allowed by law;
18 i. For costs of suit incurred herein; and
19 j. For such other and further relief as this Court deems just and proper.

20
21 Dated: February 13, 2023

Respectfully submitted,
AZADIAN LAW GROUP, PC

22
23 

24 By: _____
25 GEORGE S. AZADIAN
26 Attorneys for Plaintiff, BRIAN KEITZ
27 and the Proposed Class
28

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I reside in the State of California. I am over the age of 18. My business address is 707 Foothill Blvd., Suite 200, La Cañada, California 91011.

On February 13, 2023, I served the foregoing documents described as:

PLAINTIFF'S FIRST AMENDED CLASS ACTION COMPLAINT

on all interested parties in this action as follows:

Alfred J. Landegger, Esq.
Marie D. Davis, Esq.
Evelyn Zarraga, Esq.
Landegger Verano & Davis, ALC
15760 Ventura Blvd., Suite 1200
Encino, CA 91436
alfred@landeggeresq.com
marie@landeggeresq.com

xxxx **BY EMAIL:** I caused a copy of the documents to be sent from the email address George@azadianlawgroup.com to the persons at the email address listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful

xxxx **(STATE):** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 13, 2023, at La Cañada, California.



CAMILLE L. BANKS