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on behalf of himself and all others similarly situated

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Superior Court of California
County of Stanislaus
Clerk of the Court
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS**

ERIK C. MCLAREN, an individual, on
behalf of himself and others similarly
situated,

Plaintiff,

vs.

TOTAL PCS SOLUTIONS, INC., a
California corporation; and DOES 1 through
20, inclusive,

Defendants.

Case No.: CV-22-004069

CLASS AND REPRESENTATIVE ACTION

Assigned for All Purposes To:

Hon. Sonny S. Sandhu
Dept.: 24

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages and for all hours worked;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code § 226(a)
6. Violation of Labor Code § 204;
7. Violation of Labor Code § 203;
8. Violation of Labor Code §§ 432.5, 206.5;
9. Violation of Labor Code § 2802;
10. Violation of Business & Professions Code § 17200 *et seq.*; and
11. Penalties under PAGA, Labor Code § 2698

DEMAND FOR JURY TRIAL

Original Complaint: September 9, 2022
Trial Date: None set.

1 Plaintiff ERIC C. MCLAREN (hereinafter “Plaintiff”), on behalf of himself and all other
2 similarly situated non-exempt, hourly employees employed by Defendants in California
3 (collectively, “Employees”; individually, “Employee”) complains of Defendants, and each of
4 them, as follows:

5 **INTRODUCTION**

6 1. Plaintiff brings this action on behalf of himself and all current and former
7 Employees within the State of California who, at any time four years prior to the filing of this
8 lawsuit, are or were employed as non-exempt, hourly employees, including those serving as
9 mobile experts and salespersons and in related positions by Defendants TOTAL PCS
10 SOLUTIONS, INC., a California corporation, and DOES 1 through 20 (all defendants being
11 collectively referred to herein as “Defendants”). Plaintiff alleges that Defendants, and each of
12 them, violated various provisions of the California Labor Code, relevant orders of the Industrial
13 Welfare Commission (IWC), and California Business & Professions Code, and seeks redress for
14 these violations.

15 2. Plaintiff and the Class members worked as hourly, non-exempt employees selling
16 cellular phone related products and services for Defendants. Plaintiff, and upon information and
17 belief other similarly situated Employees, were responsible for performing various work tasks in
18 connection with providing product sales and services support for Defendants’ customers. Plaintiff
19 has resided in California and was employed by Defendants throughout his employment based out
20 of Defendants’ store locations in Fresno County. He consistently worked at Defendants’ behest
21 without being paid all wages due and provided all required breaks. More specifically, Plaintiff and
22 the other similarly situated Class members were employed by Defendants and worked throughout
23 California providing and selling cellular phone related products and services to Defendants’
24 customers. Upon information and belief, Plaintiff was employed by Defendants and (1) shared
25 similar job duties and responsibilities (2) was subjected to the same policies and practices (3) and
26 endured similar violations at the hands of Defendants as the other Employee Class members who
27 served in similar and related positions.

1 3. Defendants required Plaintiff and the Employees in the Class to work off the clock
2 and failed to record accurate time worked by these Employees, failed to pay them at the
3 appropriate rates for all hours worked, failed to pay all wages due and owing at termination or
4 resignation, and provided Plaintiff and the Class members with inaccurate wage statements that
5 prevented them from learning of these unlawful pay practices. Defendants also failed to provide
6 Plaintiff and the Class with lawful meal and rest periods, as Employees were required to remain
7 under Defendants' control or were otherwise not provided with the opportunity to take full
8 uninterrupted, timely, and duty-free rest periods and meal breaks, as required by the Labor Code
9 and the applicable paragraphs of the IWC Wage Orders.

10 4. Defendant TOTAL PCS SOLUTIONS, INC. is a California corporation that lists its
11 principal place of business and is headquartered in Modesto, California in Stanislaus County and
12 is a retailer of cellular phone related product and services. Upon information and belief, TOTAL
13 PCS SOLUTIONS, INC. does business as "Wireless Proz," and the wage statements issued to
14 Plaintiff, and upon information and belief the other Class members, listed "DBA Wireless Proz"
15 as the employer. The notice under Labor Code § 2810.5 lists TOTAL PCS SOLUTIONS, INC. as
16 Plaintiff's employer, doing business as Wireless Proz, and both list the Modesto, California
17 address.

18 5. This Court has jurisdiction over this Action pursuant to California Code of Civil
19 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
20 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
21 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
22 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
23 obligations and liabilities giving rise to this lawsuit occurred, at least in part in Stanislaus County,
24 and Defendants operate stores that provide products and services to Defendants' customers in
25 California where Plaintiff and the other Class members were employed.

26 6. The true names and capacities, whether individual, corporate, associate, or
27 whatever else, of the Defendants sued herein as Does 1 through 20, inclusive, are currently
28 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of

1 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
2 designated herein as Does 1 through 20, inclusive, and each of them, are legally responsible in
3 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
4 this Complaint to reflect the true names and capacities of the Defendants designated herein as
5 Does 1 through 20 when their identities become known.

6 7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
7 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
8 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
9 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
10 all respects as the employers or joint employers of Employees. Defendants, and each of them,
11 exercised control over the wages, hours or working conditions of Employees, created and
12 implemented the policies and practices that governed the employment of Plaintiff and the Class
13 members and dictated their job duties and responsibilities, or otherwise suffered or permitted
14 Plaintiff and the other Employee Class members to work, or engaged, thereby creating a common
15 law employment relationship, with the Employee Class members. Therefore, Defendants, and each
16 of them, employed or jointly employed the Employee Class members.

17 **FACTUAL BACKGROUND**

18 8. The Employees who comprise the Class, including Plaintiff, are non-exempt
19 employees of Defendants pursuant to the applicable Wage Order of the Industrial Welfare
20 Commission ("IWC"). During the period of four years prior to the filing of this action through its
21 resolution, Plaintiff and the Class members were either not paid by Defendants for all hours
22 worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also
23 contends that Defendants failed to pay Plaintiff and the Class members all wages due and owing,
24 including by requiring off the clock work, failed to provide meal and rest breaks, and failed to
25 furnish accurate wage statements and timely pay all wages owed, all in violation of various
26 provisions of the California Labor Code and applicable paragraphs of the IWC Wage Orders.

27 9. During the course of Plaintiff and the Class members' employment with
28 Defendants, they were not paid all wages they were owed, including for all work performed

1 (resulting in “off the clock” work) and for all their regular and overtime hours worked. This has
2 resulted in systematic and ongoing violations of the California Labor Code and relevant IWC
3 Wage Orders.

4 10. Defendants maintain facilities throughout California, including in Stanislaus
5 County and Fresno County, where Plaintiff was employed. Plaintiff, and upon information and
6 belief the other Class members, worked shifts of five to six hours or for eight hours or more
7 hours, and generally worked at least five or six shifts during a work week.

8 11. Plaintiff would report to work early to prepare to begin working at his scheduled
9 shift time, and felt compelled by Defendants to do so in order to complete necessary tasks for
10 starting his work shift. At his scheduled shift time, Plaintiff would then clock into the system
11 using either the ADP application on his personal cellular phone or the ADP on line system
12 available through the store computers. He was required to record time punches for the start and
13 end of his work shifts and for the start and end of his meal period. Similar shift end and transition
14 tasks were also performed by Plaintiff after clocking out from his work shift at the scheduled shift
15 end time.

16 12. Defendants sales goals and incentives for the Class members often compelled
17 them to work off the clock, and Plaintiff was trained that he should be ready to work at his shift
18 start time. This caused off the clock work and when considered in connection with other off the
19 clock work endured, resulted in some instances where Plaintiff and the Class members worked
20 overtime hours. When they worked six work shifts in a week, Plaintiff and the Class members
21 also worked over 40 hours in a workweek, and Defendants failed to pay overtime premium wages
22 for all overtime hours worked. To the extent Defendants did pay overtime, upon information and
23 belief they did so at a miscalculated overtime rate by failing to include all forms of remuneration
24 in the regular rate used to calculate and pay that overtime.

25 13. By requiring off the clock work, and by auto-deducting 30 or 60 minutes for
26 alleged compliant meal periods, Defendants effectively required Plaintiff and the Class members
27 to work more hours on a work shift than Defendant paid them for. These unpaid hours also
28 resulted in some instances in Plaintiff and the Class members incurring overtime hours earlier

1 than Defendants started paying them, and Defendants failed to pay all overtime hours worked.
2 Defendants also failed to pay all overtime hours or meal period premiums at the correctly
3 calculated rate by failing to include all non-discretionary bonuses paid to Plaintiff and the Class
4 members. For example, if they sold a set baseline dollar value, Class members would receive a
5 bonus tied to the number of boxes sold or would receive an incentive for selling certain products
6 on weekends. In some instances, cash awards were given to Employees for selling a certain
7 promoted support plan or related services. Defendants failed to include these forms of
8 remuneration in the regular rate used to calculate and pay any meal period or rest period
9 premiums or overtime wages when they were paid.

10 14. Plaintiff was therefore not paid for all his hours worked at the required minimum,
11 overtime and double time wage rates due to Defendants' policy and practice of requiring him to
12 work off the clock and without pay, and failed to pay Plaintiff at the required overtime rates for
13 all hours over eight in a shift, or over forty in a work week. In some instances, unpaid off the
14 clock work resulted in Plaintiff and the Class members working past eight hours on a shift, and
15 Employees worked over forty hours in a workweek in some instances when they worked six
16 shifts in a week, which required that they be paid at the correct overtime rate of 1.5 times their
17 regular rate.

18 15. Defendants thus systematically underpaid Plaintiff and the Class members by
19 failing to pay them at the required rates for all hours over eight in a work shift or over forty in a
20 work week, and all hours over twelve in a day at the required double time rate. Upon information
21 and belief, the Class members were bound by similar scheduling and work policies which
22 Defendants required them to follow, and endured similar violations at Defendants' hands as
23 Plaintiff.

24 16. Defendants have either failed to maintain timekeeping records for Plaintiff that
25 would permit Plaintiff to discover the nature and extent of the off the clock work Defendants'
26 required and the actual hours Plaintiff worked, or have otherwise declined to produce them to
27 Plaintiff in response to a timely and lawful records request. By failing to pay for all hours
28 worked, and by deducting time for meal periods that were not lawfully provided, Defendants

1 have committed knowing and intentional ongoing violations of the record keeping requirements
2 under the Labor Code, including section 1174.

3 17. The failure to pay for all hours worked and underpayment of wages to Plaintiff
4 and the Class members is and has been a direct consequence of Defendants' unlawful
5 compensation policies and practices, which applied uniformly to the Class members working at
6 Defendants' facilities and customer locations throughout California. As a result of the above
7 described unlawful requirements to work off the clock, the failure to accurately record all hours
8 worked and pay wages at the correct rates, and the other wage violations they endured at
9 Defendants' hands, Plaintiff and the Class members were not properly paid all wages earned and
10 all wages owed to them by Defendants. As a result of Defendants' unlawful policies and
11 practices, Plaintiff and Class members incurred overtime hours worked for which they were not
12 adequately and completely compensated, in addition to the hours they were required to work off
13 the clock at their regular rates.

14 18. Therefore, from at least four years prior to the filing of this lawsuit and continuing
15 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
16 hours worked, and failing to pay minimum wages for all time worked, as required by California
17 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
18 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation
19 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a
20 week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of
21 Labor Code § 510 and the corresponding sections of IWC Wage Orders.

22 19. Defendants also failed to provide Plaintiff and the Class members with their
23 required first and second meal periods, and their first, second, and third required rest breaks. The
24 above described off the clock work contributed to Defendants' common policy of failing to
25 provide lawful meal periods to Plaintiff and the Class members, as required under the Labor Code
26 and Paragraph 11 of the IWC Wage Order(s). Defendants similarly systematically failed to
27 authorize and permit Plaintiff and the employee Class Members to take all required 10-minute
28 rest breaks, as required under the Labor Code and Paragraph 12 of the IWC Wage Order(s).

1 20. Plaintiff and the Class members generally worked shifts that entitled them to
2 receive at least one meal period and two rest breaks. However, Defendants failed to provide all
3 required meal periods and rest breaks to them. Defendants' uniformly applied policies allowed
4 for a thirty minute meal period on a shift of five hours and a sixty minute break during eight hour
5 shifts. In some instances, Plaintiff worked shifts between five and six hours without receiving a
6 meal period, and Plaintiff does not recall agreeing to any applicable waivers. If and when Plaintiff
7 received a meal break, it was generally for less than the allotted time, was later than five hours
8 into his shift, and was on-duty as Plaintiff and the Class members were expected to mind the store
9 and respond as necessary during breaks to customer and other job demands and requirements.
10 Defendants' policies thus called for Employees to remain under the control of Defendant during
11 the breaks they did take. Additionally, Defendants' managers pressured Plaintiff and the Class
12 members to ensure they clocked out for meal periods before their fifth hour of work, but did not
13 alleviate the requirement to continue working with captive customers. Therefore Plaintiff would
14 clock out on time for a meal period and continue working until he completed his duties, or would
15 otherwise work through meal periods.

16 21. Defendants thus failed to provide Plaintiff and the Class members with timely and
17 compliant meal periods. Defendants did not schedule or otherwise facilitate meal periods in the
18 daily shift scheduling and work assignments. In practice, Plaintiff and the Class members
19 scheduled their meal periods, if at all, by conferring with their co-workers. Defendants' tight
20 scheduling and job and production requirements compelled Plaintiff and the Class members to
21 work through shifts without taking timely or otherwise compliant duty-free meal periods.

22 22. While Plaintiff and the Class members generally did not work over ten hours on a
23 shift, on the occasions when they did, Defendants failed to provide them with a second
24 uninterrupted and duty-free thirty minute meal period. Defendants' unlawful timekeeping
25 practices consistently applied to all employees. In reality, meal periods were either untimely or
26 otherwise non-compliant. Defendants thus followed uniformly applied policies of not providing
27 all required meal periods and rest breaks to their Employee Class members. Work and production
28 demands and management pressure required them to work through breaks. However, even when

1 Plaintiff and the Class members were able to take a meal period, it was often provided after five
2 hours into a work shift or for less than the required 30 minutes or was otherwise interrupted by
3 work duties and the requirement to remain under Defendants' control.

4 23. Defendants also followed a policy of denying all required timely and duty-free
5 meal periods for 30 minutes in duration by automatically deducting for meal periods which were
6 presumed to have been properly provided while also systematically shortening breaks by
7 requiring Employees to remain under Defendants' control. Plaintiff and other Class members
8 were required to perform work as ordered by Defendants or otherwise remain under Defendants'
9 control for more than five hours during a shift, or ten hours in a shift, but were often required to
10 do so without receiving lawful, timely, and duty-free 30-minute meal breaks. Additionally, as
11 addressed above, Defendants followed a practice of requiring off the clock work in a manner that
12 would impact when Employees were to receive meal periods and rest breaks, thus leading to
13 further violations.

14 24. As a result, Defendants' failure to provide Plaintiff and the Class members with all
15 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
16 periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants have
17 either failed to maintain required records of when meal periods were actually provided or failed to
18 produce them in response to Plaintiff's timely and lawful requests, or else maintained inaccurate
19 and incomplete records. Defendants also failed to pay Employees "premium pay," i.e. one hour of
20 wages at each Employee's effective hourly rate of pay, for each meal period or rest break that
21 Defendants failed to provide or deficiently provided and/or failed to pay it at the correct rate of
22 pay.

23 25. Therefore, for at least four years prior to the filing of this action and through to the
24 present, Plaintiff and the Class members were unable to take off-duty breaks or were otherwise not
25 provided with the opportunity to take required meal breaks due to Defendants' policies and
26 practices. On the occasions when Plaintiff and the Class members were provided with a meal
27 period, it was often untimely or interrupted, or was impermissibly shortened, and Employees were
28 not provided with one hour's wages in lieu thereof. Meal period violations thus occurred in one or

more of the following manners:

- (a) Class members were not provided full thirty-minute duty free meal periods for work days in excess of five (5) hours and were not compensated one (1) hour's wages in lieu thereof, all in violation of, among others, Labor Code §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage Order(s);
- (b) Class members were not provided second full thirty-minute duty free meal periods for work days in excess of ten (10) hours;
- (c) Class members were required to work through at least part of their daily meal period(s);
- (d) Meal periods were provided after five (5) hours of continuous work during a shift; and
- (e) Class members were restricted in their ability to take a full thirty-minute meal period or were otherwise required to remain under Defendants' control during meal periods.

26. Defendants also failed to authorize and permit Plaintiff and the Class members to take duty-free, net ten minute rest breaks for ever four hours of shift work, or major fraction thereof. There were similar issues with the required net-ten minute rest breaks that Plaintiff and the Class members were unable to take as with meal periods. If and when Plaintiff and the Class members were provided with a rest break on a shift, they were often not provided with the required second or third rest period or else they were interrupted or shortened by work demands and were not off-duty.

27. Defendants did not schedule any required ten minute rest breaks, and Plaintiff and the Class members were compelled by work requirements and scheduling demands to continue working throughout their shifts without receiving their required first, second, and third rest breaks. Even the rest breaks they were authorized and permitted to take were often interrupted regarding work matters. Therefore, the job requirements and duties required of Plaintiff and the Class members, and the demands from supervisors, manifested a failure to authorize and permit

1 Class members to take all their required rest breaks. Plaintiff and the other similarly situated
2 Class members were either not authorized and permitted the opportunity to take a rest break, or
3 were required to remain under Defendants' control and respond to job demands and customer
4 requirements. Defendants thus also committed violations by requiring Plaintiff and the Class
5 members to remain under their control during required off-duty rest breaks.

6 28. Defendants' policies and practices thus systematically deny and denied Plaintiff
7 and the Class members full, duty-free ten-minute rest periods and thirty-minute, duty-free meal
8 periods. The California Supreme Court has instructed that the rest period requirement obligates
9 employers to permit-and authorizes employees to take-off-duty rest periods. That is, during rest
10 periods employers must relieve employees of all duties and relinquish control over how
11 employees spend their time. Plaintiff and the Class members were and are under Defendants'
12 control when they are working through rest breaks or being restricted to the store location by
13 policy.

14 29. Plaintiff and the Class were thus also not authorized and permitted to take lawful
15 rest periods, were systematically required by Defendants to work through or during breaks, and
16 were not provided with one hour's wages in lieu thereof. They were required to remain on duty
17 during breaks or portions of their breaks, thus making them either untimely or shortened and on-
18 duty, and they were also prevented from leaving the premises during rest breaks under
19 Defendants' policies and practices. Rest period violations therefore arose in one or more of the
20 following manners:

- 21 (a) Class members were required to work without being provided a minimum
22 ten minute rest period for every four hours or major fraction thereof
23 worked and were not compensated one hour of pay at their regular rate of
24 compensation for each workday that a rest period was not provided;
- 25 (b) Class members were not authorized and permitted to take timely rest
26 periods for every four hours worked, or major fraction thereof; and
- 27 (c) Class members were required to remain on duty and under Defendants'
28 control during rest periods or otherwise had their rest periods interrupted

1 by work demands.

2 30. As a result of the above described illegal policies and practices, Defendants
3 engaged in and enforced the following additional unlawful practices and policies against Plaintiff
4 and the Class members he seeks to represent:

- 5 (a) failing to pay all wages owed to Class members who either were
6 discharged, laid off, or resigned in accordance with the requirements of
7 Labor Code §§ 201, 202, 203;
- 8 (b) failing to pay all wages owed to the Class members twice monthly in
9 accordance with the requirements of Labor Code § 204;
- 10 (c) failing to pay Class members all wages owed, including all meal and rest
11 period premium wages;
- 12 (d) failing to maintain accurate records of Class members' earned wages and
13 meal periods in violation of Labor Code §§ 226 and 1174(d) and section 7
14 of the applicable IWC Wage Orders; and
- 15 (e) failing to produce timekeeping records in response to Plaintiff's timely and
16 lawful request to receive them under these authorities.

17 31. From at least four years prior to the filing of this lawsuit, and continuing to the
18 present, Defendants have also consistently failed to provide Employees with timely, accurate, and
19 itemized wage statements, in writing, as required by California wage-and-hour laws, including by
20 the above-described requirement of off the clock work, failure to pay all overtime, and failure to
21 pay premium wages for unprovided or otherwise unlawful meal and rest breaks. Defendants have
22 also made it difficult to account with precision for the unlawfully withheld wages and meal and
23 rest period compensation owed to Plaintiff and the Class, during the liability period, because they
24 did not implement and preserve a record-keeping method as required for non-exempt employees
25 by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable California Wage
26 Orders. Upon information and belief, time clock punches were not maintained or were not
27 accurately maintained for work shifts and meal periods, which were automatically presumed by
28 Defendants to have been lawfully provided when they were not. Defendants also failed to

1 accurately record and pay for all regular and overtime hours worked by Plaintiff and the Class
2 members. Defendants also failed to accurately list the name of the Employer on wage statements
3 in further violation of section 226(a).

4 32. Defendants thus provided Plaintiff and the Class members with wage statements
5 that failed to accurately report all hours worked and applicable hourly rates for all hours worked.
6 Plaintiff and the Employees in the Class were unable to discern from their wage statements alone
7 the actual hours they worked in total during a pay period.

8 33. Defendants have thus also failed to comply with Labor Code § 226(a) by issuing
9 wage statements that inaccurately reported total hours worked and total wages earned by Plaintiff
10 and the Class members, along with the appropriate applicable rates, among others requirements.
11 Plaintiff and Class members are therefore entitled to penalties not to exceed \$4,000.00 for each
12 employee pursuant to Labor Code § 226(b). Defendants have also failed to comply with paragraph
13 7 of the applicable California IWC Wage Orders by failing to maintain time records showing
14 when the employee begins and ends each work period, meal periods, wages earned pursuant to
15 Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions
16 from payment of wages and accurately reporting total hours worked by the Class members.

17 34. During the relevant time period, Defendants have knowingly and intentionally
18 provided Plaintiff and the Class members with uniform, incomplete, and inaccurate wage
19 statements. For example, Defendants issued uniform wage statements to Plaintiff that fail to
20 correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal
21 entity that is the employer; and all applicable hourly rates in effect during the pay period,
22 including overtime rates of pay, and the corresponding number of hours worked at each hourly
23 rate. Specifically, Defendants violated Labor Code §§ 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8),
24 and 226(a)(9). Because Defendants did not record the time Employees spent working off-the-clock
25 and during deducted time from their meal periods that were missed and/or interrupted (and
26 therefore time for which they should have been paid), Defendants did not list the correct amount
27 of gross wages and net wages earned by Employees, as required under Labor Code §§ 226(a)(1)
28 and 226(a)(5).

1 35. Labor Code § 1174 requires employers to keep records showing payroll data and
2 the hours worked daily by and the wages paid to employees. By failing to pay Employees wages,
3 overtime, premium pay, etc., as addressed above, Defendants failed to maintain proper
4 employment records in accordance with Section 1174. In light of the forgoing, Plaintiff and the
5 Class members seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.*
6 Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage
7 Orders by failing to maintain time records showing when the employee begins and ends each work
8 period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked
9 by itemizing in wage statements all deductions from payment of wages and accurately reporting
10 total hours worked by the Class members, and Plaintiff is entitled to recover penalties pursuant to
11 paragraph 20 of the applicable IWC Wage Orders.

12 36. Defendants required Plaintiff and the Class members to work hours off the clock
13 for which they were not compensated, including through unlawful off the clock work and during
14 interrupted or otherwise on-duty meal and rest periods. Defendants also failed to pay all overtime
15 premium wages owed for work conducted on a work shift and a workday, as addressed above.
16 Therefore, from at least four years prior to filing this lawsuit and continuing to the present,
17 Defendants have also followed a uniform and consistent policy of failing to pay all wages owed to
18 Plaintiff and other similarly situated Employees at the time of their termination or within seventy-
19 two hours of their resignation, as required by California wage-and-hour laws. Defendants thus
20 failed to pay all wages owed to Plaintiff and the Class members at the time they were terminated
21 or otherwise separated from employment, in violation of Labor Code §§ 201, 202, and 203.

22 37. Defendants also required Plaintiff and the Class members to work hours off the
23 clock for which they were not compensated, including during interrupted or otherwise on-duty
24 meal and rest periods. Defendants also failed to pay all overtime and double time premium wages
25 owed for work conducted on a work shift and a workday, as addressed above. Therefore, when
26 they received wage statements and pay checks, they did not compensate all hours worked on a
27 timely basis, resulting in Defendants' systematic failure to pay all wages owed to Plaintiff and the
28 Class members twice monthly in accordance with the requirements of Labor Code § 204.

1 38. Defendants also required Plaintiff to agree and sign his name to a statement in a
2 termination notice saying he was paid all wages and received all meal and rest breaks, whether or
3 not they were reflected in his time records. In instances such as this and in others where
4 Employees were unlawfully required to release claims against Defendants in order to receive their
5 pay checks, Defendants committed uniform and systematic violations of Labor Code §§ 206.5 and
6 432.5. Any alleged releases such as these Defendants claim to have received from Plaintiff and the
7 Class members are null and void and they are entitled to recover damages and penalties from
8 Defendants for requiring them.

9 39. Defendants also failed to reimburse all necessary business expenses Plaintiff and
10 the Class members incurred in discharging their job duties at Defendants' behest. Defendants had
11 a company-wide policy of requiring Employees to utilize their own personal cellular phones
12 and/or cellular data to carry out their job duties, but Defendants failed to reimburse them for the
13 costs of their work-related cellular phone expenses. For example, Plaintiff was required to use his
14 personal cellular phone to input time entries into the ADP application and to use other applications
15 for group communication and text messaging. Defendants also required Plaintiff and the Class
16 members to purchase and maintain company uniform items without reimbursement, including
17 company T-shirts and other items Employees were required to pay to maintain and clean.
18 Additionally, Plaintiff was on occasion asked to work at two different facilities during the same
19 work shift, and in those instances failed to reimburse any costs incurred by Plaintiff to travel
20 between the store locations. Defendants did not reimburse these necessary business expenses
21 resulting in systematic and ongoing violation of Labor Code § 2802.

22 40. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
23 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 206.5, 218, 218.5, 218.6, 221, 226,
24 226.7, 432.5, 510, 511, 512, 558, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 2802, and 2698 *et seq.*,
25 and California Code of Regulations, Title 8, section 11000 *et seq.*

26 41. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff
27 and the Class members seek injunctive relief, restitution, and disgorgement of all benefits
28 Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or

1 fraudulent practices alleged in this Complaint.

2 **CLASS ALLEGATIONS**

3 42. Plaintiff brings this class action on behalf of himself and all others similarly
4 situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the
5 Class” or “Class members”) defined as follows: “All individuals employed by Defendants at any
6 time during the period of four (4) years prior to the filing of this lawsuit and ending on a date as
7 determined by the Court (“the Class Period”), and who have been employed as non-exempt,
8 hourly salespersons and in similar and related positions in California.” Further, Plaintiff seeks to
9 represent the Subclasses composed of and defined as follows:

10 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
11 compensated for all hours worked for Defendants at the applicable minimum wage.

12 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
13 compensated for all hours worked for Defendants at the required rates of pay, including for all
14 hours worked in excess of eight in a day and/or forty in a week.

15 c. Subclass 3. Meal Period Subclass. All Class members who were subject to
16 Defendants’ policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-
17 free meal periods or one hour of pay at the Employee’s regular rate of pay in lieu thereof.

18 d. Subclass 4. Rest Break Subclass. All Class members who were subject to
19 Defendants’ policy and/or practice of failing to authorize and permit Employees to take
20 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
21 thereof, and failing to pay one hour of pay at the Employee’s regular rate of pay in lieu thereof.

22 e. Subclass 5. Wage Statement Subclass. All Class members who, within the
23 applicable limitations period, were not provided with accurate itemized wage statements.

24 f. Subclass 6. Failure to Timely Pay Wages Twice Monthly Subclass. All Class
25 members who were subject to Defendants’ policy and practice of not timely paying all wages
26 earned when they were due and payable at least twice monthly.

27 g. Subclass 7. Termination Pay Subclass. All Class members who, within the
28 applicable limitations period, either voluntarily or involuntarily separated from their employment

1 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
2 termination.

3 h. Subclass 8. Expense Reimbursement Subclass. All Class members who, within the
4 applicable limitations period, were not reimbursed by Defendants for reasonably incurred business
5 expenses in performing their job duties.

6 i. Subclass 9. Unlawful Release Subclass. All Class members who, within the
7 applicable limitations period, were required to release claims against Defendants as a prerequisite
8 to receiving their pay checks.

9 j. Subclass 10. UCL Subclass. All Class members who are owed restitution as a
10 result of Defendants' business acts and practices, to the extent such acts and practices are found to
11 be unlawful, deceptive, and/or unfair.

12 43. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
13 modify the class description with greater particularity or to provide further division into subclasses
14 or limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class
15 against Defendants, the Class Period should be adjusted accordingly.

16 44. Defendants, as a matter of company policy, practice and procedure, and in violation
17 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements,
18 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged
19 in a practice whereby Defendants failed to correctly record, calculate and pay compensation for
20 the time worked by Plaintiff and the other members of the Class, even though Defendants enjoyed
21 the benefit of this work, required Employees to perform this work and permitted or suffered to
22 permit this work. Defendants have uniformly denied these Class members wages to which these
23 employees are entitled, and failed to provide meal periods or authorize and permit rest periods, in
24 order to unfairly cheat the competition and unlawfully profit.

25 45. This action has been brought and may properly be maintained as a class action
26 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
27 of interest in this litigation and the proposed Class is easily ascertainable from the employment
28 records for Plaintiff and the Class members that Defendants are required to maintain under

1 California law.

2 **A. Numerosity**

3 46. The potential members of the Class as defined are so numerous that joinder of all
4 the Class members is impracticable. While the precise number of Class member has not been
5 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
6 time period relevant to this lawsuit employed, over 100 Employees who satisfy the Class
7 definition within the State of California. Plaintiff alleges that Defendants' employment records
8 will provide information as to the number and location of all Class members.

9 **B. Commonality**

10 47. There are questions of law and fact common to the Class that predominate over any
11 questions affecting only individual Class members. The common questions are numerous and
12 substantial and flow from Defendants' uniform policies and/or practices of violating the California
13 Labor Code addressed above. As such, these common questions predominate over individual
14 questions concerning each individual Class Member's showing as to his or her eligibility for
15 recovery or as to the amount of damages. These common questions of law and fact include:

- 16 a. Whether Defendants failed to pay Employees minimum wages;
- 17 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 18 c. Whether Defendants failed to pay Employees overtime as required under Labor
19 Code § 510;
- 20 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
21 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
22 premium pay in lieu thereof;
- 23 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
24 Orders, by failing to authorize and permit Employees to take requisite rest breaks
25 or provide premium pay in lieu thereof;
- 26 f. Whether Defendants violated Labor Code § 226(a) by providing Employees with
27 inaccurate wage statements;

- 1 g. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
2 wages and compensation due and owing at the time of termination of employment;
- 3 h. Whether Defendants' conduct was willful;
- 4 i. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage
5 Orders by failing to maintain accurate records of Class members' earned wages and
6 work periods;
- 7 j. Whether Defendants violated Labor Code § 1194 by failing to compensate all
8 Employees during the relevant time period for all hours worked, whether regular or
9 overtime;
- 10 k. Whether Defendants violated Labor Code § 204 by failing to pay Employees all
11 wages earned at least twice monthly;
- 12 l. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary
13 business expenses incurred by Employees;
- 14 m. Whether Defendants violated Labor Code §§ 206.5 and 432.5 by requiring
15 Employees to release wage claims in order to receive paychecks;
- 16 n. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 17 o. Whether Employees are entitled to equitable relief pursuant to Business and
18 Professions Code § 17200 *et seq.*

19 **C. Typicality**

20 48. The claims of the named Plaintiff are typical of those of the other Employees. The
21 Employee Class members all sustained injuries and damages arising out of and caused by
22 Defendants' common course of conduct and uniformly applied policies in violation of statutes, as
23 well as regulations, which have the force and effect of law, as alleged herein. Plaintiff's claims for
24 the off the clock work and meal and rest violations they were required to endure are typical of
25 those of the other Class members.

26 **D. Adequacy of Representation**

27 49. Plaintiff will fairly and adequately represent and protect the interest of the
28 Employee Class members. Counsel who represents Plaintiff and the Employees in the Class are

1 experienced and competent in litigating employment class actions.

2 **E. Superiority of Class Action**

3 50. A class action is superior to other available means for the fair and efficient
4 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
5 questions of law and fact common to all Employees predominate over any questions affecting only
6 individual Employees. Each Employee in the Class has been damaged and is entitled to recovery
7 by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

8 51. As to the issues raised in this case, a class action is superior to all other methods for
9 the fair and efficient adjudication of this controversy, as joinder of all Class members is
10 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class
11 members. Further, as the economic or other loss suffered by vast numbers of Class members may
12 be relatively small, the expense and burden of individual actions makes it difficult for the Class
13 members to individually redress the wrongs they have suffered. Moreover, in the event
14 disgorgement is ordered, a class action is the only mechanism that will permit the employment of
15 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
16 managing this case as a class action, and proceeding on a class-wide basis will permit Employees
17 to vindicate their rights for violations they endured which they would otherwise be foreclosed
18 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

19 52. Class action treatment will allow those persons similarly situated to litigate their
20 claims in the manner that is most efficient and economical for the parties and the judicial system.
21 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
22 Plaintiff contemplates the eventual issuance of notice to the proposed Class members that would
23 set forth the subject and nature of the instant action. The Defendants' own business records can be
24 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent
25 that any further notice is required additional media and/or mailings can be used.

26 53. Defendants, as prospective and actual employers of the Employees in the Class,
27 had a special fiduciary duty to disclose to prospective Class members the true facts surrounding
28 Defendants' pay practices, policies and working conditions imposed upon the similarly situated

1 Employees as well as the effect of any alleged arbitration agreements that may have been forced
2 upon them. In addition, Defendants knew they possessed special knowledge about pay practices
3 and policies, most notably intentionally refusing to pay for all hours actually worked which should
4 have been recorded in Defendants' pay records and the consequence of the alleged arbitration
5 agreements and policies and practices on the Employees and Class as a whole.

6 54. Plaintiff and the Employees in the Class did not discover the fact that they were
7 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there
8 any discussion about Plaintiff's and the Class' waiver of their Constitutional rights of trial by jury,
9 to collectively organize and oppose unlawful pay practices under California law as well as obtain
10 injunctive relief preventing such practices from continuing. As a result, the applicable statutes of
11 limitation tolled until such time as Plaintiff and the Class members discovered their claims.

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PAY MINIMUM WAGES**

14 **(Against All Defendants)**

15 55. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
16 full herein.

17 56. Defendants failed to pay Employees minimum wages they were owed, including
18 by their consistent policy of failing to pay Employees for all hours worked. Employees would
19 work hours and not receive wages, including as alleged above in connection with off the clock
20 work, including all the time required to remain on duty and under Defendants' control and during
21 breaks and due to the work demands placed upon them by Defendants' management. Defendants
22 also imposed difficult to attain job and shift scheduling requirements on Plaintiff and the Class
23 members, which resulted in off the clock work and underpayment of all wages owed to
24 Employees over a period of time, while benefiting Defendants. During the relevant Class Period,
25 Defendants thus regularly failed to pay minimum wages to Plaintiff and the Class members,
26 including by requiring systematic off the clock work. Defendants' uniform pattern of unlawful
27 wage and hour practices manifested, without limitation, applicable to the Class as a whole, as a
28 result of implementing a uniform policy and practice that denied accurate compensation to

1 Plaintiff and the other members of the Class as to minimum wage pay.

2 57. In California, employees must be paid at least the then applicable state minimum
3 wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014,
4 and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H)
5 of the applicable IWC Wage Orders defines “Hours Worked” as “the time during which an
6 employee is subject to the control of an employer, and includes all the time the employee is
7 suffered or permitted to work, whether or not required to do so.” Additionally, pursuant to Labor
8 Code § 204, other applicable laws and regulations, and public policy, an employer must timely
9 pay its employees for all hours worked. Defendants failed to do so.

10 58. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage”
11 states: “The minimum wage for employees fixed by the commission is the minimum wage to be
12 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

13 59. The applicable minimum wage rate fixed by the commission for work during the
14 relevant period is found in the Wage Orders.

15 60. The minimum wage provisions of California Labor Code are enforceable by private
16 civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to
17 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
18 overtime compensation applicable to the employee is entitled to recover in a civil action the
19 unpaid balance of the full amount of this minimum wage or overtime compensation, including
20 interest thereon, reasonable attorney’s fees and costs of suit.”

21 61. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
22 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
23 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
24 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
25 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
26 the absence of a contractually agreed upon one. The underpayment of wages to Plaintiff and the
27 Class members is and has been a direct consequence of Defendants’ unlawful compensation
28

1 policies and practices, which applied uniformly to the Class members working at locations and
2 work sites throughout California.

3 62. In committing the above described violations of the California Labor Code,
4 Defendants inaccurately recorded, or required Plaintiff and the Class members to input times that
5 did not reflect their actual hours worked, or calculated the correct time worked and consequently
6 underpaid the actual time worked by Plaintiff and other members of the Class, including by
7 requiring off the clock work and refusing to pay overtime, as addressed in detail above.
8 Defendants acted in an illegal attempt to avoid the payment of all earned wages, and other benefits
9 in violation of the California Labor Code, the Industrial Welfare Commission requirements and
10 other applicable laws and regulations. As a result of these violations, Defendants also failed to
11 timely pay all wages earned in accordance with California Labor Code § 1194.

12 63. California Labor Code § 1194.2 also provides for the following remedies: “In any
13 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
14 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
15 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

16 64. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
17 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial
18 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
19 pay each employee minimum wages.

20 65. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are
21 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
22 interest thereon.

23 66. Defendants have the ability to pay minimum wages for all time worked and have
24 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
25 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

26 67. Wherefore, Plaintiff and the Employee Class members are entitled to recover the
27 unpaid minimum wages (including double minimum wages), liquidated damages in an amount
28 equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees

1 and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other members of
2 the Class further request recovery of all unpaid wages, according to proof, interest, statutory costs,
3 as well as the assessment of any statutory and/or civil penalties against Defendants, in a sum as
4 provided by the California Labor Code, including § 558, and/or other applicable statutes. To the
5 extent minimum wage compensation is determined to be owed to the Class members who have
6 terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202,
7 and therefore these individuals are also be entitled to waiting time penalties under California
8 Labor Code § 203, which penalties are sought herein on behalf of these Class members.
9 Defendants' failure to timely pay all wages owed also violated Labor Code § 204 for failure to pay
10 all wages owed twice monthly, and resulted in violations of Labor Code § 226 because they
11 resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was
12 willful, intentional and not in good faith. Further, Plaintiff and other Class members are entitled to
13 seek and recover statutory costs.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

16 **(Against All Defendants)**

17 68. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
18 full herein.

19 69. California Labor Code § 1194 provides that "any employee receiving less than the
20 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
21 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
22 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action
23 may be maintained directly against the employer in an employee's name without first filing a
24 claim with the Division of Labor Standards and Enforcement.

25 70. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
26 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the
27 Industrial Welfare Commission) by failing to pay Employees for all hours worked, including: (a)
28 time and one-half their regular hourly rates for hours worked in excess of eight hours in a workday

1 or in excess of forty hours in any workweek or for the first eight hours worked on the seventh day
2 of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of
3 twelve hours in any one day or for hours worked in excess of eight hours on any seventh day of
4 work in a workweek. Defendants had a consistent policy of not paying Employees wages for all
5 hours worked, including by requiring off the clock work as addressed above and by under-
6 reporting actual hours worked.

7 71. Defendants thus had a consistent policy of not paying Employees wages for all
8 hours worked, including hours at their required regular, overtime, and double-time rates.
9 Defendants required Plaintiff and the Class members to work off the clock to avoid paying all
10 their earned and owed straight time and overtime wages and other benefits, in violation of the
11 California Labor Code, the California Code of Regulations and the IWC Wage Orders and
12 guidelines set forth by the Division of Labor Standards and Enforcement. Defendants have also
13 violated these provisions by requiring Plaintiff and other similarly situated non-exempt employees
14 to work through meal periods when they were required to be clocked out or to otherwise work off
15 the clock to complete their daily job duties or respond to customer requests or otherwise remain
16 under Defendants' control. Defendants also paid production related non-discretionary bonuses to
17 Plaintiff and the Class members as addressed above, but failed to incorporate such bonuses and
18 other forms of remuneration in the regular rate used to calculate and pay overtime to them.

19 72. Employees were not properly compensated at the correct overtime rate, nor were
20 they paid overtime rates for hours worked in excess of eight hours in a given day, and/or forty
21 hours in a given week. Based on information and belief, Defendants did not make available to
22 Employees a reasonable protocol for correcting time records when Employees worked overtime
23 hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the
24 Employee's detriment. Defendants also under-paid Plaintiff and the putative Class members all
25 wages by systematically miscalculating and underpaying overtime wages they earned, as detailed
26 above.

27 73. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of
28 regular wages owed and overtime compensation for all hours worked, as required by California

1 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable
2 IWC Wage Order, and is therefore unlawful.

3 74. Additionally, Labor Code § 558(a) provides “any employer or other person acting
4 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
5 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
6 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
7 pay period for which the employee was underpaid in addition to an amount sufficient to recover
8 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
9 underpaid employee for each pay period for which the employee was underpaid in addition to an
10 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
11 be paid to the affected employee.” Labor Code § 558(c) states, “the civil penalties provided for in
12 this section are in addition to any other civil or criminal penalty provided by law.” Defendants
13 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
14 Wage Orders. Accordingly, Plaintiff and the Class members seek the remedies set forth in Labor
15 Code § 558.

16 75. Defendants’ failure to pay compensation in a timely fashion also constituted a
17 violation of California Labor Code § 204, which requires that all wages shall be paid
18 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
19 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
20 and overtime compensation earned by Employees. Each such failure to make a timely payment of
21 compensation to Employees constitutes a separate violation of California Labor Code § 204.

22 76. Employees have been damaged by these violations of California Labor Code §§
23 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
24 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less
25 than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions
26 of labor prohibited by an order of the commission” or if the employer pays “a wage less than the
27 minimum fixed by an order of the commission” or “violates...any provision of this chapter or
28 any order or ruling of the commission.”

77. Consequently, pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of all their unpaid wages and overtime compensation for all their hours worked, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes.

THIRD CAUSE OF ACTION

MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

78. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in full herein.

79. Employees regularly worked shifts greater than five hours and in some instances, greater than ten hours. Pursuant to Labor Code § 512, and paragraph 11 of the applicable IWC Wage Order, an employer may not employ someone for a shift of more than five hours without providing him or her with a meal period of not less than thirty minutes or for a shift of more than ten hours without providing him or her with a second meal period of not less than thirty minutes.

80. Defendants failed to provide Employees with meal periods as required under the Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required to work or to otherwise remain under Defendants' control during meal periods, or Defendants provided them after Employees worked beyond the fifth hour of their shifts or Employees otherwise had them shortened and interrupted by work demands and requirements to remain under Defendants' control during off the clock time. Furthermore, upon information and belief, on the occasions when Employees worked more than ten hours in a given shift, they did so without receiving a second uninterrupted thirty minute meal period as required by law.

81. Defendants thus failed to provide Plaintiff and the Class members with meal periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order, including by not providing them with the opportunity to take meal breaks, by providing them late

1 or for less than thirty minutes, or by requiring them to perform work during breaks.

2 82. Moreover, Defendants failed to compensate Employees for each meal period not
3 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
4 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
5 employee a meal period in accordance with this section, the employer shall pay the employee one
6 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
7 period is not provided. Defendants failed to compensate the Employees in the Class for each meal
8 period not provided or inadequately provided, as required under Labor Code § 226.7 and
9 paragraphs 11 and 20 of the applicable IWC Wage Order. Additionally, to the extent Defendant
10 paid any meal period premium payments to Plaintiff and the Class members, it did so without
11 including all forms of remuneration, including bonuses, in the regular rate used to calculate and
12 pay meal period premium payments.

13 83. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the
14 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal
15 to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or
16 deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory
17 penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and
18 other statutes and applicable IWC Wage Order paragraphs.

19 **FOURTH CAUSE OF ACTION**

20 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

21 **(Against All Defendants)**

22 84. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
23 full herein.

24 85. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders
25 provide that employers must authorize and permit all employees to take rest periods at the rate of
26 ten minutes net rest time per four work hours.

27 86. Employees consistently worked consecutive four hour shifts and were generally
28 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and

1 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable
2 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for
3 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest
4 breaks of not less than ten minutes for each consecutive four hour shift. Employees were often
5 required to work or to otherwise remain under Defendants' control during rest periods, and had
6 breaks provided untimely as a result of the above described off the clock work. Plaintiff and the
7 Class members were also not permitted to leave their work premises during rest breaks.

8 87. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage
9 Orders provide that if an employer fails to provide an employee rest period in accordance with this
10 section, the employer shall pay the employee one hour of pay at the employee's regular rate of
11 compensation for each workday that the rest period is not provided.

12 88. Defendants, and each of them, have therefore intentionally and improperly denied
13 rest periods to Plaintiff and the Class members in violation of Labor Code §§ 226.7 and 512 and
14 paragraph 12 of the applicable IWC Wage Orders.

15 89. Defendants failed to authorize and permit Plaintiff and the Class members to take
16 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
17 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
18 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
19 12 and 20 of the applicable IWC Wage Orders.

20 90. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the
21 applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one hour
22 of wages at their effective hourly rates of pay for each day worked without the required rest
23 breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against
24 Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

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FIFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(Against All Defendants)

91. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in full herein.

92. California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized statement in writing showing the gross and net earnings, total hours worked, and the corresponding number of hours worked at each hourly rate; these statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid.

93. Defendants failed to provide Plaintiff and the similarly situated Employee Class members with accurate itemized wage statements in writing, as required by the Labor Code and paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements given to Employees by Defendants failed to accurately account for wages, overtime, and premium pay, including by failing to pay for all hours worked, failure to pay for all overtime hours worked and for providing deficient meal periods and rest breaks, all of which Defendants knew or reasonably should have known were owed to the Employees, as alleged above.

94. Defendants also provided Plaintiff and the Class members with wage statements that failed to accurately report all hours worked and applicable hourly rates for all hours worked. Plaintiff and the Employees in the Class were unable to discern from their wage statements along the actual hours they worked in total during a pay period.

95. Throughout the liability period, Defendants intentionally failed to furnish to Plaintiff and the Class members, upon each payment of wages, itemized statements accurately showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of

1 the employee and only the last four digits of his or her social security number or an employee
2 identification number other than a social security number, (8) the name and address of the legal
3 entity that is the employer and (9) all applicable hourly rates in effect during the pay period and
4 the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor
5 Code § 226 and paragraph 7 of the applicable IWC Wage Orders, amongst other statutory
6 requirements. Defendants knowingly and intentionally failed to provide Plaintiff and the Class
7 members with such timely and accurate wage and hour statements.

8 96. Plaintiff and the Class members suffered injury as a result of Defendants' knowing
9 and intentional failure to provide them with the wage and hour statements as required by law and
10 are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the
11 Defendants have failed to provide an accurate wage statement, failed to provide accurate and
12 complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9),
13 inclusive, and the Plaintiff and Class members cannot promptly and easily determine from the
14 wage statement alone one or more of the following: (i) The amount of the gross wages or net
15 wages paid to the employee during the pay period or any of the other information required to be
16 provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of
17 subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net
18 wages paid to the employee during the pay period, (iii) The name and address of the employer
19 and, (iv) The name of the employee and only the last four digits of his or her social security
20 number or an employee identification number other than a social security number. For purposes
21 of Labor Code § 226(e) "promptly and easily determine" means a reasonable person [i.e. an
22 objective standard] would be able to readily ascertain the information without reference to other
23 documents or information.

24 97. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
25 are required "to pay each employee, on the established payday for the period involved, not less
26 than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor
27 Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order
28 or under conditions of labor prohibited by the order is unlawful." Plaintiff and the Class members

1 may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph
2 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
3 IWC Wage Orders.

4 98. Therefore, as a direct and proximate cause of Defendants' violation of Labor Code
5 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
6 Class suffered injuries, including among other things confusion over whether they received all
7 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
8 them to make mathematical computations to analyze whether the wages paid in fact compensated
9 them correctly for all hours worked.

10 99. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable
11 IWC Wage Order, Plaintiff and the Employee Class members are entitled to recover the greater of
12 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
13 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
14 aggregate penalty of four thousand dollars (\$4,000) under Section 226(e). They are also entitled to
15 an award of costs and reasonable attorneys' fees.

16 **SIXTH CAUSE OF ACTION**
17 **VIOLATION OF LABOR CODE § 204**
18 **(Against All Defendants)**

19 100. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
20 full herein.

21 101. Labor Code § 204 instructs that: "All wages, ...earned by any person in any
22 employment are due and payable twice during each calendar month, on days designated in
23 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
24 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
25 during which the labor was performed, and labor performed between the 16th and the last day,
26 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
27 month." Additionally, the requirements of this section shall be deemed satisfied by the payment
28 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven

1 calendar days following the close of the payroll period.” As detailed above, Defendants
2 maintained a consistently applied policy and practice of not paying all wages earned between the
3 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
4 between the 16th and the last day of the month between the 1st and 10th day of the following month.
5 This included failing to pay all wages due and owing to Plaintiff and the Class members for all
6 hours they worked and failing to pay all wages earned by not more than seven calendar days
7 following the close of the payroll period, including on the occasions when supervisors did not turn
8 in Employee time records timely for a pay period.

9 102. All wages due and owing to Plaintiff and the Class members, including as required
10 under Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages
11 required by Labor Code § 1194 and other sections became due and payable to each employee in
12 each pay period that he or she was not provided with a meal period or rest period or paid straight
13 or overtime wages to which he or she was entitled.

14 103. Defendants violated Labor Code § 204 by systematically refusing to timely pay
15 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the
16 applicable IWC Wage Orders, employers are required “to pay each employee, on the established
17 payday for the period involved, not less than the applicable minimum wage for all hours worked in
18 the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer
19 hours than those fixed by the order or under conditions of labor prohibited by the order is
20 unlawful.” Plaintiff and the Class members may therefore pursue damages and penalties for
21 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
22 penalties under paragraph 20 of the applicable IWC Wage Orders.

23 104. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
24 represent have been deprived of wages in amounts to be determined at trial, and they are entitled
25 to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs,
26 pursuant to Labor Code § 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
27 applicable IWC Wage Orders.
28

SEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 203
(Against All Defendants)

105. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in full herein.

106. Plaintiff and numerous Class members are no longer employed by Defendants; they either quit Defendants' employ or were fired therefrom.

107. Defendants failed to pay these Employees all wages due and certain at the time of termination or within seventy-two (72) hours of resignation, as addressed in detail above.

108. The wages withheld from these Employees by Defendants remained due and owing for more than thirty (30) days from the date of separation from employment.

109. Defendants failed to pay Plaintiff and the Class members without abatement, all wages as defined by applicable California law. Among other things, these Employees were not paid all regular and overtime wages, including by Defendants failing to pay for all hours worked or requiring off the clock work or by unlawfully under-recording time entries to the detriment of Employees, and Defendants failed to pay premium wages owed for unprovided meal periods and rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the required time was willful within the meaning of Labor Code § 203.

110. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers are required "to pay each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Plaintiff and the Class members may therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC Wage Orders. Also, under Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less than \$100 for causing Employees "to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission" or if the

1 employer pays “a wage less than the minimum fixed by an order of the commission” or
2 “violates...any provision of this chapter or any order or ruling of the commission.”

3 111. Defendants’ failure to pay wages, as alleged, entitles Plaintiff and these former
4 Employee Class members to penalties under Labor Code § 203 and the applicable paragraphs of
5 the IWC Wage Orders as addressed above, including the requirement that an employee’s wages
6 shall continue until paid for up to thirty (30) days from the date they were due.

7 **EIGHTH CAUSE OF ACTION**
8 **VIOLATION OF LABOR CODE §§ 206.5, 432.5**
9 **(Against All Defendants)**

10 112. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
11 full herein.

12 113. Labor Code § 432.5 instructs that: “No employer, or agent, manager,
13 superintendent, or officer thereof, shall require any employee or applicant for employment to
14 agree, in writing, to any term or condition which is known by such employer, or agent, manager,
15 superintendent, or officer thereof to be prohibited by law.” Additionally, California Labor Code §
16 206.5 prohibits employers from requiring employees to execute releases of a claim or right “on
17 account of wages due, or to become due, or made as an advance on wages to be earned, unless
18 payment of those wages has been made. A release required or executed in violation of the
19 provisions of this section shall be null and void as between the employer and the employee.”

20 114. Defendants also followed a policy and practice of requiring Plaintiffs and other
21 Class members to release their claims for meal or rest period violations and/or uncompensated
22 hours worked, in violation of California Labor Code § 206.5. In some instances, Defendants
23 required Plaintiff and the other Employees to release their claims for meal and/or rest period
24 violations, as well as their claims for uncompensated hours worked, as a condition to receiving
25 their paychecks.

26 115. Defendants’ actions requiring such unlawful releases as a pre-condition to
27 receiving payment of wages for all hour worked, as alleged in violation of sections 206.5 and
28 432.5, entitles Plaintiffs to damages in a sum to be proven at trial, as well as the assessment of any

1 statutory and/or civil penalties against the Defendants in a sum as provided by the Labor Code
2 and other statutes and applicable IWC Wage Order paragraphs.

3 **NINTH CAUSE OF ACTION**
4 **VIOLATION OF LABOR CODE § 2802**
5 **(Against All Defendants)**

6 116. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
7 full herein.

8 117. Plaintiff and the Class are informed and believe and based thereon alleges that
9 throughout the period applicable, Defendants required Plaintiff and the Class members to pay for
10 necessary work related expenses they incurred. Defendants management required Plaintiff to
11 travel between store locations and purchase and maintain uniform items, and required Plaintiff to
12 use his personal cellular phone to use the ADP and WhatsApp applications solely for work
13 purposes. Defendants failed to reimburse Plaintiff for any of these business expenses incurred in
14 performing his daily job duties. Upon information and belief, the other Class members incurred
15 similar necessary business expenses in connection with performing the job duties Defendants
16 required them to perform.

17 118. Defendants thus followed a uniform policy and practice of failing to reimburse
18 Employees in the Class for these necessary work related expenses or losses incurred in direct
19 discharge of their job duties during employment with Defendants and at the direction of the
20 Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

21 119. Defendants' knowing and willful failure to reimburse lawful necessary work related
22 expenses and losses to Plaintiff and the Class members resulted in damages because, among other
23 things, Defendants did not inform employees of their right to be reimbursed for those work related
24 expenses. As Defendants failed to inform and misled Plaintiff and the Class members with regard
25 to their rights, Plaintiff and the Class members were led to believe that incurring those lawful and
26 necessary expenses was an expected and essential function of their employment with Defendants
27 and that failure to incur those expenses would have adverse consequences on their employment.
28

1 120. Therefore, Plaintiff and the Class members are entitled to reimbursement for any
2 and all necessary work related expenses, as provided for in Labor Code § 2802(b) and paragraph 9
3 of the applicable IWC Wage Orders, incurred during the direct discharge of their duties while
4 employed by Defendants, as well as accrued interest on those expenses that were not reimbursed
5 from the date Plaintiff and the Class members incurred those expenses. Further, Plaintiff and the
6 Class members are entitled to costs and attorney's fees pursuant to Labor Code § 2802(c).

7 **TENTH CAUSE OF ACTION**

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

9 **(Against All Defendants)**

10 121. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
11 full herein.

12 122. Plaintiff, on behalf of himself, the Employees in the Class, and the general public,
13 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of
14 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
15 harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting
16 the public interest within the meaning of Code of Civil Procedure § 1021.5.

17 123. Plaintiff is a "person" within the meaning of Business & Professions Code
18 § 17204, have suffered injury, and therefore has standing to bring this cause of action for
19 injunctive relief, restitution, and other appropriate equitable relief.

20 124. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
21 business practices. By the conduct alleged herein, Defendants' practices were deceptive and
22 fraudulent in that Defendants' policy and practice failed to provide the required amount of
23 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and
24 Class members for all hours worked, due to systematic business practices as alleged herein that
25 cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare
26 Commission requirements in violation of California Business and Professions Code §§ 17200, *et*
27 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California
28 Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

1 125. Wage-and-hour laws express fundamental public policies. Paying employees their
2 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental
3 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State
4 vigorously to enforce minimum labor standards, to ensure that employees are not required or
5 permitted to work under substandard and unlawful conditions, and to protect law-abiding
6 employers and their employees from competitors who lower costs to themselves by failing to
7 comply with minimum labor standards.

8 126. Defendants have violated statutes and public policies. Through the conduct alleged
9 in this Complaint, Defendants have acted contrary to these public policies, have violated specific
10 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
11 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,
12 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
13 guaranteed to all employees under the law.

14 127. Defendants' conduct, as alleged above, constitutes unfair competition in violation
15 of the Business & Professions Code § 17200 *et seq.*

16 128. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
17 overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of
18 reasonable care should have known that their conduct was unlawful; therefore their conduct
19 violates the Business & Professions Code § 17200 *et seq.*

20 129. By the conduct alleged herein, Defendants have engaged and continue to engage in
21 a business practice which violates California and federal law, including but not limited to, the
22 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
23 Code including Sections 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 for which this Court
24 should issue declaratory and other equitable relief pursuant to California Business & Professions
25 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
26 competition, including restitution of wages wrongfully withheld.

27 130. As a proximate result of the above-mentioned acts of Defendants, Employees have
28 been damaged, in a sum to be proven at trial.

131. Unless restrained by this Court, Defendants will continue to engage in the unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use by Defendants or their agents or employees of any unlawful or deceptive practice prohibited by the Business & Professions Code, including but not limited to the disgorgement of such profits as may be necessary to restore Employees to the money Defendants have unlawfully failed to pay.

ELEVENTH CAUSE OF ACTION
PENALTIES PURSUANT TO LABOR CODE § 2698, *ET SEQ.*
(Against All Defendants)

132. Plaintiff realleges and incorporate all preceding paragraphs, as though set forth in full herein.

133. Plaintiff and the Employees in the Class are also aggrieved employees as defined under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and either were or are employed by Defendants (“Aggrieved Employees”) during the relevant time period.

134. In failing to pay Aggrieved Employees minimum wages and overtime, not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders.

135. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, inter alia, on the following California Labor Code sections: 201, 202, 203, 204, 206.5, 226, 226.2, 226.7, 432.5, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, and 2698 *et seq.*

1 136. More specifically, after complying with the notice procedures of Labor Code §
2 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
3 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed
4 underlying claims and seeking penalties as specified by the applicable corresponding provisions,
5 including as follows:

6 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
7 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
8 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
9 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
10 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
11 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant
12 to Labor Code § 2699(g)(1);

13 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
14 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
15 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
16 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC
17 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under
18 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,
19 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs
20 pursuant to Labor Code § 2699(g)(1);

21 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
22 Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to
23 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,
24 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking
25 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),
26 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,
27 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by
28 providing inaccurate wage statements and failing to maintain records as required under Labor

Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code §226.3, which in addition to other penalties provided by law, subjects Defendants to “a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...”;

(d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages, under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1);

(e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For Defendants’ unlawful deductions from wages and for Defendants’ failure to reimburse the necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1);

(f) Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave: For Defendants’ failure to provide Employees with all their required and earned sick days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1);

(g) Requiring Unlawful and Unenforceable Releases from Aggrieved Employees under Labor Code §§ 206.5, 432.5: For the instances when Defendants required Employees to agree to and execute releases of their wage and hour claims as a prerequisite to receiving their pay checks in violation of Labor Code §§ 206.5 and 432.5, and seeking the civil and statutory penalties

1 available and applicable under Labor Code §§ 206.5 and 2699(a), (f)(2), (g), and also for
2 attorneys' fees and costs pursuant to Labor Code § 2699(g)(1); and

3 (h) All Alleged Violations of the IWC Wage Orders and Other Labor Code Sections:

4 For any above addressed violation of the applicable provisions of the IWC Wage Orders, each of
5 which constitute separate violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking
6 penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the
7 applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code §
8 2699(g)(1).

9 137. As also addressed above, Plaintiff, on behalf of the Aggrieved Employees, also seek
10 the penalties and remedies set forth in Labor Code § 558, which states:

11 (a) Any employer or other person acting on behalf of an employer who violates, or
12 causes to be violated, a section of this chapter or any provision regulating hours and days of work
13 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1)
14 For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for
15 which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
16 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
17 each pay period for which the employee was underpaid in addition to an amount sufficient to
18 recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected
19 employee.

16 (b) If upon inspection or investigation the Labor Commissioner determines that a
17 person had paid or caused to be paid a wage for overtime work in violation of any provision of this
18 chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare
19 Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting,
20 and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a
21 violation of this chapter shall be the same as those set out in Section 1197.1.

20 (c) The civil penalties provided for in this section are in addition to any other civil or
21 criminal penalty provided by law.

21 138. Plaintiff has exhausted his administrative remedies by submitting a certified letter to
22 the LWDA and Defendants on September 9, 2022 (LWDA-CM-906881-22) addressing in detail
23 the specific provisions of the Labor Code Defendants have violated and addressing the facts and
24 legal theories to support the alleged violations and requested penalties. The LWDA has not
25 provided notice of its intent to investigate the alleged violations within 65 calendar days of the
26 postmark date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the
27 violations addressed herein and in the PAGA Notice letter and the original Complaint.
28

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Employees and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of all unpaid wages, including overtime and double-time pay, as may be proven;
5. For compensatory damages in the amount of the hourly wage made by Employees for each missed or deficient meal period where no premium pay was paid therefor from four (4) years prior to the filing of this action, as may be proven;
6. For compensatory damages in the amount of the hourly wage made by Employees for each day requisite rest breaks were not provided or were deficiently provided where no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;
7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
8. For restitution and/or damages and penalties for Defendants' failure to pay all wages due twice monthly under Labor Code § 204, as may be proven;
9. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
10. For damages and restitution for failure to reimburse all reasonable and necessary business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;
11. For liquidated damages pursuant to California Labor Code § 1194.2(a) for failure to pay minimum wage;
12. For damages and statutory and civil penalties as may be proven and available for violations of Labor Code §§ 206.5 and 432.5;

1 13. For restitution for unfair competition pursuant to Business & Professions Code
2 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

3 14. For an order enjoining Defendants and their agents, servants, and employees, and
4 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
5 duties adumbrated in this Complaint;

6 15. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;

7 16. For penalties under Labor Code § 558, as may be proven;

8 17. For other wages and penalties under the Labor Code as may be proven;

9 18. For all general, special, and incidental damages as may be proven;

10 19. For an award of pre-judgment and post-judgment interest;

11 20. For an award providing for the payment of the costs of this suit;

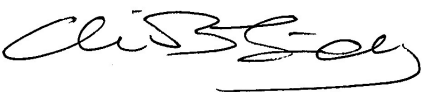
12 21. For an award of attorneys' fees; and

13 22. For such other and further relief as this Court may deem proper and just.

14
15 DATED: November 14, 2022

DAVID YEREMIAN & ASSOCIATES, INC.

16
17 By



18 David Yeremian
19 Alvin B. Lindsay
20 Attorneys for Plaintiff ERIK C. MCLAREN
21 on behalf of himself and all others similarly
22 situated
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DATED: November 14, 2022

By 
David Yermian
Alvin B. Lindsay
Attorneys for Plaintiff ERIK C. MCLAREN
on behalf of himself and all others similarly
situated

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 2540 Foothill Blvd., Suite 201, La Crescenta, CA 91214.

Larry Kazanjian
LKazanjian@pkwhlaw.com
PALMER KAZANJIAN WOHL HODSON, LLP
 2277 Fair Oaks Blvd., Ste. 455
 Sacramento, CA 95825

[X] (COURTESY COPY BY ELECTRONIC TRANSMISSION) by use of email by scanning the documents and any and all documents and emailing them to email addresses above.

[X] (STATE) I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Natalia Bermudes
Natalia Bermudes