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

CARLOS FLORES, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

NIKKISO AMERICA, INC., a Delaware
Corporation; ACD, LLC, a California Limited
Liability Company; CRYOGENIC
INDUSTRIES, INC., a Delaware
Corporation; CRYOGENIC INDUSTRIES
SERVICE COMPANIES, LLC, a California
Limited Liability Company; CRYOQUIP,
LLC, a California Limited Liability
Company; COSMODYNE, LLC, a California
Limited Liability Company; and DOES 1
through 20, inclusive;

Defendants.

Case No.: CVRI2204626
*[Assigned to Hon. Judge Harold W. Hopp,
Dept. 10, for all purposes]*

SECOND AMENDED COMPLAINT

CLASS ACTION CLAIMS

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Meal Periods;
- (4) Failure to Provide Rest Breaks;
- (5) Failure to Reimburse Bus. Expenses;
- (6) Failure to Timely Pay Final Wages;
- (7) Failure to Provide Accurate Itemized Wage Statements;
- (8) Unfair and Unlawful Competition

PAGA CLAIMS

- (9) Failure to Pay Minimum Wages;
- (10) Failure to Pay Overtime Wages;
- (11) Failure to Provide Meal Periods;
- (12) Failure to Provide Rest Breaks;
- (13) Failure to Reimburse Bus. Expenses;
- (14) Failure to Timely Pay Wages Each Period;
- (15) Failure to Timely Pay Final Wages;
- (16) Failure to Provide Accurate Itemized Wage Statements.

Complaint filed: 10/25/2022
FAC filed: 11/22/2022

Plaintiff Carlos Flores (“Plaintiff”) on behalf of himself, on a representative basis, and on behalf of others similarly situated, complains and alleges as follows.

I. INTRODUCTION AND GENERAL ALLEGATIONS

1. Plaintiff brings this action against his former employer(s), Nikkiso America, Inc., ACD, LLC, Cryogenic Industries, Inc., Cryogenic Service Companies, LLC, Cryoquip, LLC, Cosmodyne, LLC, and DOES 1 through 20, inclusive, (collectively, “Defendants”) on behalf of all current and former nonexempt employees employed by Defendants in California (the “Class” or “Represented Employees”), for Labor Code violations stemming from Defendants’ failure to pay all wages owed, including minimum, regular, and overtime wages, failure to provide meal periods, failure to provide rest breaks, failure to reimburse business expenses, failure to timely pay wages upon separation of employment, and failure to provide accurate itemized wage statements.

2. Plaintiff was employed by Defendants from approximately 2019 through May 2022.

3. Plaintiff alleges on information and belief that the Represented Employees were subjected to the same policies, working conditions, and corresponding wage and hour violations to which Plaintiff was subjected during employment.

4. Plaintiff and the Represented Employees were not provided all minimum, regular, and overtime wages due to Defendants’ failure to accurately record and compensate for all hours worked.

5. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the Represented Employees. For example, Defendants paid Plaintiff and the Represented Employees on an hourly basis but also paid additional nondiscretionary compensation. However, during workweeks where the Represented Employees worked overtime hours and earned additional nondiscretionary compensation, Defendants failed to include that compensation in the calculations for the regular rate of pay – violating the well-established rule that overtime must always be paid at time and one-half the regular rate of pay.

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1 6. Plaintiff and the Represented Employees were also denied 30-minute off-duty
2 meal periods, as mandated by California law. As a result of Defendants' policies and practices,
3 the Represented Employees were subjected to meal period violations when they were: (1) unable
4 to take a meal period due to workload, (2) forced to take an on-duty meal period while under the
5 control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal
6 period after the 5th hour of work, and (5) not provided mandated second meal periods for shifts
7 in excess of 10 hours.

8 7. Defendants also failed to provide Plaintiff and the Represented Employees with
9 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
10 mandated by California law. Defendants did not schedule rest breaks for Plaintiff and the
11 Represented Employees, the Represented Employees were not allowed freedom to be truly "off
12 duty" for rest breaks, and the Represented Employees were often not authorized and/or permitted
13 to take mandated rest breaks due to being overwhelmed by their hectic workload. Furthermore,
14 on occasions when Plaintiff and the Represented Employees worked longer shifts, Defendants
15 failed to authorize and/or permit mandated third rest breaks.

16 8. Moreover, at all relevant times, Defendants required Plaintiff and the Represented
17 Employees to incur necessary business-related expenses and costs without reimbursement,
18 including, but not limited to, acquiring and/or providing tools that were required to carry out
19 their tasks for Defendants.

20 9. Plaintiff further alleges that he and the Represented Employees were not paid all
21 wages due and owing each pay period (Labor Code § 204) and upon separation of employment
22 within the time required by Labor Code §§ 201 – 203. Plaintiff further alleges that Defendants
23 engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Represented
24 Employees at the time their employment ended with Defendants, including, but not limited to
25 minimum, regular, and overtime wages, wage premiums, vacation and sick wages, among others.

26 10. Plaintiff further alleges that Defendants failed to provide accurate itemized wage
27 statements that fully complied with the requirements of Labor Code § 226(a).

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1 11. Plaintiff alleges that Defendants' violations of the wage and hour components of
2 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their
3 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
4 its competitors.

5 12. At all material times, Defendants and DOES 1 through 20 were and/or are the
6 Represented Employees' employers or persons acting on behalf of the Represented Employees'
7 employer, within the meaning of California Labor Code § 558, who violated or caused to be
8 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
9 hours and days of work in an IWC Wage Order and, as such, are subject to penalties for each
10 underpaid employee as set forth in Labor Code § 558 and under California law.

11 13. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
12 monetary relief against Defendants and each of them, on behalf of himself and the Represented
13 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
14 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
15 210, 218.6, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198,
16 1199, and 2802, among possibly other sections inadvertently omitted. Plaintiff also reserves the
17 right to name additional representatives throughout the State of California.

18 **II. JURISDICTION**

19 14. This Court has jurisdiction over the claims for relief of Plaintiff and the
20 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

21 **III. VENUE**

22 15. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
23 Procedure § 395(a). Defendants' principal place of business is in Temecula, within Riverside
24 County. Defendants also transact business in Riverside County and the unlawful acts alleged
25 herein have a direct effect on Plaintiff and the Represented Employees in Riverside County.
26 Furthermore, Defendants employed or employ Plaintiff and Represented Employees in Riverside
27 County.
28

1 **IV. PARTIES**

2 **Plaintiff**

3 16. Plaintiff and Class Representative Carlos Flores was employed by Defendants
4 from approximately 2019 through May 2022 and performed work for Defendants in California.

5 **Defendants**

6 17. Plaintiff is informed and believes and thereon alleges that Defendant Nikkiso
7 America, Inc.: (1) is a Delaware corporation with its principal place of business in Temecula,
8 California, (2) is authorized to and doing business in Riverside County, California, and (3) is
9 and/or was the legal employer of Plaintiff and the Represented Employees during the applicable
10 statutory periods.

11 18. Plaintiff is informed and believes and thereon alleges that Defendant ACD, LLC:
12 (1) is a California limited liability company, with Defendant Cryogenic Industries, Inc., as its
13 member/manager and whose principal place of business is in Temecula, California, (2) is
14 authorized to and doing business in Riverside County, California, and (3) is and/or was the legal
15 employer of Plaintiff and the Represented Employees during the applicable statutory periods.

16 19. Plaintiff is informed and believes and thereon alleges that Defendant Cryogenic
17 Industries, Inc.: (1) is a Delaware corporation with its principal place of business in Temecula,
18 California, (2) is authorized to and doing business in Riverside County, California, and (3) is
19 and/or was the legal employer of Plaintiff and the Represented Employees during the applicable
20 statutory periods.

21 20. Plaintiff is informed and believes and thereon alleges that Defendant Cryogenic
22 Industries Service Companies, LLC: (1) is a California limited liability company, with ACD,
23 LLC as a member/manager and whose principal place of business is in Temecula, California, (2)
24 is authorized to and doing business in Riverside County, California, and (3) is and/or was the
25 legal employer of Plaintiff and the Represented Employees during the applicable statutory
26 periods.

27 21. Plaintiff is informed and believes and thereon alleges that Defendant Cryoquip,
28 LLC: (1) is a California limited liability company, with Cryogenic Industries, Inc. as a

1 member/manager and whose principal place of business is in Temecula, California, (2) is
2 authorized to and doing business in Riverside County, California, and (3) is and/or was the legal
3 employer of Plaintiff and the Represented Employees during the applicable statutory periods.

4 22. Plaintiff is informed and believes and thereon alleges that Defendant Cosmodyne,
5 LLC: (1) is a California limited liability company, with its principal executive office in
6 Temecula, California, (2) is authorized to and doing business in Riverside County, California,
7 and (3) is and/or was the legal employer of Plaintiff and the Represented Employees during the
8 applicable statutory periods.

9 23. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
10 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
11 inclusive, but on information and belief alleges that those Defendants are legally responsible for
12 the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of
13 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
14 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
15 Defendants when ascertained.

16 24. Plaintiff is informed and believes and thereon alleges that he and the Represented
17 Employees worked under the joint direction and control of Defendants and that Defendants, and
18 each of them, acted in all respects pertinent to this action as the agent of the other Defendants,
19 carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of
20 each Defendant are legally attributable to the other Defendants. On information and belief, a
21 unity of interest and ownership between each Defendant exists such that all Defendants acted as
22 a single employer of Plaintiff and other Represented Employees.

23 25. Furthermore, Plaintiff is informed and believes and thereon alleges that
24 Defendants, and each of them, are an integrated enterprise and should be treated as a single
25 employer because these entities share an interrelation of operations, with common human
26 resources and personnel policies and shared common offices and facilities. Additionally,
27 Defendants also have a shared website, common management, a centralized control of labor
28 operations, and common ownership or financial control.

1 26. Plaintiff is informed and believes and thereon alleges that, in conducting
2 themselves in the manner described herein, Defendants, and each of them, were acting in active
3 concert with one another such that the acts of each were and are fully attributable to the others in
4 all material respects. Plaintiff is further informed and believes that at all relevant times
5 Defendants and each of them are now, and at all material times herein mentioned were, the
6 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining
7 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and
8 purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of
9 their remaining co-Defendants.

10 27. For example, at all relevant times: (1) Defendants were all owned, controlled, and
11 operated by the same parent company, (2) Defendants were all treated as one unit under the
12 banner of the “Nikkiso Clean Energy & Industrial Gases Group,” (3) Defendants applied the
13 same policies and practices to the Represented Employees, regardless of which specific entity
14 purportedly employed the Represented Employee, (4) many of Defendants are the
15 members/managers of other entities herein (*e.g.*, Cryogenic Industries, Inc. is a member/manager
16 of both ACD, LLC and Cryoquip, LLC; ACD, LLC is a member/manager of Cryogenic
17 Industries Service Companies, LLC), (5) Defendants share the same common business address,
18 and (6) Defendants share the common management and executive team.

19 28. Plaintiff is further informed and believes that at all relevant times, Defendants
20 have been inadequately capitalized to conduct business, have failed to follow appropriate
21 corporate formalities, and have simply been a shell and instrumentality through which
22 Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly,
23 the corporate veil should be pierced, and any liability attached to Defendants should be imposed
24 jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the
25 separate existence of these corporate entities would permit abuse of the corporate privilege,
26 thereby sanctioning fraud and promoting injustice.

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1 **V. CLASS ACTION ALLEGATIONS**

2 29. Plaintiff incorporates the preceding paragraphs of the Second Amended
3 Complaint as if fully alleged herein.

4 30. Plaintiff brings this action on behalf of himself and all others similarly situated as
5 a class action, pursuant to Code of Civil Procedure § 382.

6 31. The relevant time period for this class action is defined as the period beginning
7 four years prior to the filing of this action until class certification (the “Relevant Time Period”).

8 32. The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to
9 represent is defined as follows:

10 All current and former nonexempt employees employed by
11 Defendants in California during the Relevant Time Period.

12 33. Plaintiff also seeks to represent the following subclasses:

13 **Meal Break Subclass**

14 All Represented Employees who worked a shift in excess of
15 5 hours during the Relevant Time Period.

16 **Rest Break Subclass**

17 All Represented Employees who worked a shift of at least
18 3.5 hours during the Relevant Time Period.

19 **Unreimbursed Expense Subclass**

20 All Represented Employees who were required to incur
21 expenses to discharge their duties for Defendants without
22 reimbursement during the Relevant Time Period.

23 **Waiting Time Penalties Subclass**

24 All Represented Employees who separated from their
25 employment with Defendants during the period three years
26 before the filing of this action and ending when final
27 judgment is entered.
28

1 **Wage Statement Penalties Subclass**

2 All Represented Employees during the period one year
3 before the filing of this action and ending when final
4 judgment is entered.

5 34. Plaintiff reserves the right to amend or modify the class description with greater
6 specificity or further division into subclasses or limitation to particular issues as appropriate.

7 35. Plaintiff, as Class Representative, is a member of the class and subclasses that he
8 seeks to represent.

9 36. This action has been brought and may properly be maintained as a class action
10 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
11 litigation and the proposed class is easily ascertainable from Defendants' records.

12 37. **Numerosity:** The potential members of the Class as defined are so numerous that
13 a joinder of all Represented Employees is impracticable. Although the exact number is currently
14 unknown to Plaintiff, this information is easily ascertainable from Defendants' records.

15 38. **Commonality:** There are questions of law and fact common to the class which
16 predominate over any questions affecting only individual members of the class, including
17 without limitation:

18 i. Whether Defendants violated the California Labor Code and applicable
19 IWC Wage Order by failing to pay wages to Plaintiff and the Represented Employees for all
20 hours worked;

21 ii. Whether Defendants violated the California Labor Code and applicable
22 IWC Wage Order by failing to pay proper overtime wages to Plaintiff and the Represented
23 Employees for hours above 8 and/or 12 per day and/or 40 per week;

24 iii. Whether Defendants violated the California Labor Code and applicable
25 IWC Wage Order by failing to provide compliant meal periods to Plaintiff and the Meal Break
26 Subclass and whether Defendants failed to compensate Plaintiff and the Meal Break Subclass
27 with one additional hour of wages at the regular rate of pay for each instance when a compliant
28 meal period was not provided;

iv. Whether Defendants violated the California Labor Code and applicable IWC Wage Order by failing to provide compliant rest breaks to Plaintiff and the Rest Break Subclass and whether Defendants failed to compensate Plaintiff and the Rest Break Subclass with one additional hour of wages at the regular rate of pay for each instance when a paid rest break was not provided;

v. Whether Defendants violated the Labor Code and applicable IWC Wage Order by failing to reimburse Plaintiff and the Unreimbursed Expense Subclass for business expenses incurred discharging their duties or in obedience to the directions of their employer;

vi. Whether Defendants violated the California Labor Code by failing to timely pay all wages due upon separation of employment between Defendants and Plaintiff and the Waiting Time Penalties Subclass, whether such separation was voluntary or involuntary;

vii. Whether Defendants violated the California Labor Code by failing to provide Plaintiff and the Wage Statement Penalties Subclass with complete, accurate, itemized wage statements;

viii. Whether Defendants violated California Business & Professions Code §§ 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest breaks, failure to provide mandated meal periods, and failure to timely pay final wages; and

ix. Whether Plaintiff and Represented Employees are entitled to equitable relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

39. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants' ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all wages owed, failure to provide mandated meal periods, failure to provide mandated paid rest breaks, failure to reimburse business expenses, failure to timely pay wages upon separation of employment, and failure to provide accurate itemized wage statements.

40. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly and adequately represent and protect the interests of the Class. Plaintiff's interests are not in conflict with those of the Class. Class Representative's counsel are competent and experienced in

1 litigating large employment class actions and other complex litigation matters, including cases
2 like this case.

3 41. **Superiority of Class Action.** Class certification is appropriate because a class
4 action is superior to other available means for the fair and efficient adjudication of this
5 controversy. Individual joinder of all Represented Employees is not practicable, and questions of
6 law and fact common to the Class predominate over any questions affecting only individual
7 members of the Class. Each Represented Employee has been damaged and is entitled to
8 recovery by reason of Defendants' illegal policies and practices set forth above. Class action
9 treatment will allow those similarly situated persons to litigate their claims in the manner that is
10 most efficient and economical for the parties and the judicial system.

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO PAY MINIMUM WAGES**

13 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

14 *Plaintiff and the Represented Employees Against All Defendants*

15 42. Plaintiff incorporates the preceding paragraphs of the Second Amended
16 Complaint as if fully alleged herein.

17 43. Plaintiff and the Represented Employees were not exempt from the requirement
18 to be paid at least the applicable California minimum wage throughout the statutory period for
19 each hour worked.

20 44. Plaintiff and the Represented Employees were not provided proper minimum and
21 regular wages due to Defendants' failure to accurately record and compensate for all hours
22 worked. As a result of this policy and practice, Plaintiff and the Represented Employees were
23 required to perform off-the-clock work that Defendants either knew or should have known they
24 were performing.

25 45. As a result of these policies and practices, Defendants failed to pay Plaintiff and
26 the Represented Employees for all hours worked.

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1 46. Consequently, Defendants violated California Labor Code laws and minimum
2 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
3 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

4 47. Plaintiff is informed and believes and thereon alleges that Defendants
5 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Represented
6 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

7 48. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
8 Represented Employees were entitled to be paid wages throughout the statutory period for each
9 hour worked, including proper minimum and regular wages, yet Defendants chose not to pay
10 them in accordance thereto.

11 49. At all material times, Defendants DOES 1 through 20 were and/or are the
12 employer of Plaintiff and the Represented Employees or were persons acting on behalf of said
13 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be
14 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
15 Labor Code regulating hours and days of work respectively.

16 50. During employment of Plaintiff and the Represented Employees, Defendants
17 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

18 51. As a result of the Defendants' wrongful conduct, Plaintiff and the Represented
19 Employees have been damaged in amounts to be proven at trial.

20 52. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of
21 all unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs,
22 pursuant to Lab.Code §§ 1194 and 1194.2, against Defendants in an amount to be proven at trial.

23 **SECOND CAUSE OF ACTION**

24 **FAILURE TO PAY OVERTIME WAGES**

25 (Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

26 *Plaintiff and the Represented Employees Against All Defendants*

27 53. Plaintiff incorporates the preceding paragraphs of the Second Amended
28 Complaint as if fully alleged herein.

1 54. Plaintiff and the Represented Employees were employees of Defendants who did
2 not receive proper protections and benefits of the laws governing payment of overtime wages.

3 55. Labor Code § 204 requires that the employer timely pay all overtime wages to its
4 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
5 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in
6 any one workweek shall be compensated at the rate of no less than one and one-half times the
7 regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12)
8 in one workday shall be compensated at twice the regular rate of pay for an employee.

9 56. At all relevant times, Plaintiff and the Represented Employees were required by
10 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
11 Defendants' failure to accurately record and compensate for all hours worked Plaintiff and the
12 Represented Employees did not receive proper overtime compensation.

13 57. As one specific example, Defendants paid Plaintiff and the Represented
14 Employees on an hourly basis but also paid additional nondiscretionary compensation (such as
15 bonuses). However, during workweeks where the Represented Employees worked overtime
16 hours and earned additional nondiscretionary compensation, Defendants failed to include that
17 compensation in the calculations for the regular rate of pay – violating the well-established rule
18 that overtime must always be paid at time and one-half the regular rate of pay.

19 58. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
20 Represented Employees for all overtime hours worked.

21 59. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
22 Order § 3(A) every pay period with respect to Plaintiff and the Represented Employees because
23 Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per
24 week without proper overtime compensation.

25 60. Plaintiff is informed and believes and thereon alleges that Defendants
26 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the
27 Represented Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

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61. Defendants' conduct was willful, as Defendants knew that Plaintiff and the Represented Employees were entitled to be paid proper overtime wages throughout the statutory period, yet Defendants chose not to pay them in accordance thereto.

63. During the employment of Plaintiff and the Represented Employees, Defendants failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

65. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of all unpaid overtime wages, penalties, interest, attorneys' fees, and costs of suit against Defendants in an amount to be proven at trial.

FAILURE TO PROVIDE MEAL PERIODS

Plaintiff and the Meal Break Subclass Against All Defendants

67. Plaintiff and the Meal Break Subclass are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing mandatory meal periods.

69. Labor Code § 512(a), in part, provides that employers, including Defendants, may not employ an employee for a work period of more than five hours per day without providing an

1 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
2 except that if the total work period per day of the employee is no more than six hours, the meal
3 period may be waived by mutual consent of both the employer and the employee. Employers
4 may not employ an employee for a work period more than 10 hours per day without providing
5 the employee with a second meal period of not less than 30 minutes.

6 70. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
7 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
8 pay for each meal period that is missed.

9 71. At all relevant times herein, Plaintiff and the Meal Break Subclass were denied
10 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
11 practices, Plaintiff and the Represented Employees were subjected to meal period violations
12 when they were: (1) unable to take a meal period due to workload, (2) forced to take an on-duty
13 meal period while under the control of the Company, (3) forced to take a shortened meal period,
14 (4) forced to take a meal period after the 5th hour of work, and (5) not provided mandated
15 second meal periods for shifts in excess of 10 hours.

16 72. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
17 Order every pay period because Plaintiff and the Meal Break Subclass were not provided with all
18 mandatory meal periods and Defendants failed to pay Plaintiff and the Meal Break Subclass one
19 additional hour of compensation at the regular rate of pay in lieu thereof.

20 73. At all relevant times herein, Defendants failed to provide Plaintiff and the Meal
21 Break Subclass all mandated meal periods and failed to pay wage premiums in lieu of mandated
22 meal or rest periods, thereby receiving an economic benefit.

23 74. On information and belief, Plaintiff and the Meal Break Subclass did not
24 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
25 obtained from Plaintiff and the Meal Break Subclass were not willfully obtained, were not
26 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
27 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Meal Break Subclass
28 to take meal periods in accordance with California law.

1 75. By their failure to provide Plaintiff and the Meal Break Subclass with meal
2 periods as required by California law, and failing to pay one hour of additional wages in lieu of
3 each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and
4 IWC Wage Order § 11. Accordingly, Defendants are liable for one hour of additional wages at
5 the employee's regular rate of compensation for each work day that a meal period was not
6 lawfully provided in an amount to be proven at time of trial.

7 76. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
8 and IWC Wage Order § 11, Defendants, and each of them, are liable to Plaintiff and the Meal
9 Break Subclass for unpaid wage premiums, penalties, costs, and interest.

10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE REST BREAKS**

12 (Labor Code §§ 226.7 and 512; IWC Wage Order § 12)

13 *Plaintiff and the Rest Break Subclass Against All Defendants*

14 77. Plaintiff incorporates the preceding paragraphs of the Second Amended
15 Complaint as if fully alleged herein.

16 78. Plaintiff and the Rest Break Subclass are and/or were employees of Defendants
17 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

18 79. Labor Code § 226.7 requires employers, including Defendants, to provide rest
19 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

20 80. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
21 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
22 each work period. Employees shall receive a 10-minute rest period every four hours or major
23 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
24 hours worked, for which there shall be no deduction from wages.

25 81. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
26 Order, Defendants shall pay Plaintiff and the Represented Employees one additional hour of pay
27 at his regular rate of compensation for each day that the rest period is not provided.

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1 82. At all relevant times, Defendants also failed to provide Plaintiff and the Rest
2 Break Subclass with 10 minutes of net rest break time for every 4 hours worked, or major
3 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks for the
4 Rest Break Subclass, the Rest Break Subclass were unable to leave the premises for breaks, and
5 the Rest Break Subclass were often not authorized and/or permitted to take mandated rest breaks
6 due to being overwhelmed by their hectic workload. Furthermore, on occasions when the Rest
7 Break Subclass worked longer shifts, Defendants failed to authorize and/or permit mandated
8 third rest breaks.

9 83. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
10 Order every pay period because Plaintiff and the Rest Break Subclass were not provided with all
11 mandatory rest periods and Defendants failed to pay Plaintiff and the Represented Employees
12 one additional hour of compensation in lieu thereof.

13 84. At all relevant times herein, Defendants failed to provide Plaintiff and the Rest
14 Break Subclass all mandated rest breaks and failed to pay wage premiums in lieu of mandated
15 rest periods, thereby receiving an economic benefit.

16 85. By their failure to provide Plaintiff and the Rest Break Subclass with rest breaks
17 as required by California law, and failing to pay one hour of additional wages in lieu of each rest
18 break not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage
19 Order § 12. Accordingly, Defendants are liable for one hour of additional wages at the
20 employee's regular rate of compensation for each workday that a paid rest break was not
21 lawfully provided in an amount to be proven at time of trial.

22 86. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
23 and IWC Wage Order § 12, Defendants, and each of them, are liable to Plaintiff and the Rest
24 Break Subclass for unpaid wage premiums, penalties, costs, and interest.

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 (Labor Code § 2802)

4 *Plaintiff and the Unreimbursed Expense Subclass Against All Defendants*

5 87. Plaintiff incorporates the preceding paragraphs of the Second Amended
6 Complaint as if fully alleged herein.

7 88. Plaintiff and the Unreimbursed Expense Subclass are and/or were employees of
8 Defendants who did not receive proper protections and benefits of the laws governing
9 reimbursement of business expenses.

10 89. Labor Code § 2802(a) requires that the employer indemnify its employees for
11 expenses and losses incurred while discharging their duties or in obedience to the directions of
12 their employer.

13 90. At all relevant times herein mentioned, as a condition of employment, Defendants
14 required Plaintiff and the Unreimbursed Expense Subclass to incur necessary business-related
15 expenses and costs without reimbursement, including, but not limited to, acquiring and/or
16 providing tools that were required to carry out their tasks for Defendants.

17 91. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
18 failed to reimburse Plaintiff and the Unreimbursed Expense Subclass for expenses incurred as a
19 direct consequence of employment with Defendants and/or under the direction of Defendants.

20 92. At all relevant times herein, Defendants failed to reimburse the Unreimbursed
21 Expense Subclass, including Plaintiff, for expenses incurred while discharging duties to
22 Defendants, thereby receiving an economic benefit.

23 93. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage
24 Order § 9(B), Plaintiff and the Unreimbursed Expense Subclass have suffered, and continue to
25 suffer, substantial losses related to such incurred expenses, expenses, and attorney's fees in
26 seeking to compel Defendants to fully perform their obligations under the law, all in an amount
27 to be proved at time of trial.

28 ///

94. Labor Code § 2802(b) states that “[a]ll awards made by a Court for reimbursement of necessary expenditures” shall carry interest, at the same rate as judgments in civil actions, and said interest will accrue from the date on which the employee incurred the necessary expenditure or loss including, but not limited to, reasonable costs and attorney’s fees incurred by the employee enforcing the rights granted pursuant to Labor Code § 2802. The exact amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

95. Furthermore, Labor Code § 2802(c) states that “[f]or the purposes of this section, the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee in enforcing the rights granted by this section.” Therefore, Plaintiff and the Unreimbursed Expense Subclass seek to recover the unreimbursed expenses, interest on the unreimbursed expenses, and the costs and attorney’s fees necessarily incurred in pursuing same. The exact amount of reimbursements, interest, costs, and attorney’s fees will be in an amount to be proved at the time of trial.

SIXTH CAUSE OF ACTION

FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201 – 203)

Plaintiff and the Waiting Time Penalties Subclass against All Defendants

96. Plaintiff incorporates the preceding paragraphs of the Second Amended Complaint as if fully alleged herein.

97. Plaintiff and the Waiting Time Penalties Subclass are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing the timing and payment of wages.

98. Labor Code § 201 requires that the employer immediately pay any wages, without abatement or reduction, to any employee who is discharged.

99. Labor Code § 202 requires that the employer pay all wages earned and unpaid, without abatement or reduction, no later than 72 hours of receiving an employee's notice of intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

/ / /

1 100. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
2 penalty from the due date thereof at the same rate until paid or until an action therefore is
3 commenced, but the wages shall not continue for more than thirty (30) days.

4 101. At all relevant times, Defendants employed a policy and practice whereby
5 Plaintiff and the Waiting Time Penalties Subclass were not paid all wages due and owing upon
6 separation of employment within the time required by Labor Code §§ 201 and 202.

7 102. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
8 wages due and owing to Plaintiff and the Waiting Time Penalties Subclass upon separation of
9 employment, including, but not limited to, minimum, regular, and overtime wages, meal and rest
10 period premiums, vested vacation wages under Labor Code § 227.3, and sick wages at the
11 proper rate of pay under § 246.

12 103. Plaintiff alleges that, at all times material to this action, Defendants had a planned
13 pattern and practice of failing to timely pay Plaintiff and the Waiting Time Penalties Subclass all
14 wages due and owing upon separation of employment as required by Labor Code §§ 201 and
15 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Waiting
16 Time Penalties Subclass the above-described waiting time penalty, all in an amount to be shown
17 according to proof at trial and within the jurisdiction of this Court.

18 **SEVENTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

20 (Labor Code § 226)

21 *Plaintiff and the Wage Statement Penalties Subclass against All Defendants*

22 104. Plaintiff incorporates the preceding paragraphs of the Second Amended
23 Complaint as if fully alleged herein.

24 105. Plaintiff and the Wage Statement Penalties Subclass are and/or were employees of
25 Defendants who did not receive proper protections and benefits of the laws governing the
26 provision of accurate itemized wage statements.

27 106. Labor Code § 226(a) requires an employer to provide its employees with itemized
28 wage statements accurately stating gross wages earned, all deductions, net wages earned, the

1 inclusive dates of the pay period, the employee's name and the last four digits of his or her
2 Social Security number (or employee identification number), the name and address of the legal
3 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
4 corresponding number of hours worked at each hourly rate by the employee.

5 107. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
6 and the Wage Statement Penalties Subclass due to violations including: failure to accurately state
7 total hours worked (for example, the wage statements failed to accurately reflect total
8 compensable hours); failure to accurately state gross wages earned, all deductions, and net wages
9 earned (due to, for example, the failure to pay all required minimum and overtime wages);
10 failure to state the start and end dates of the pay period; failure to state the applicable hourly rates
11 (including the accurate overtime rate of pay); failure to state the inclusive dates of the pay
12 period; failure to accurately state the name and address of the legal entity of the employer; and
13 failure to accurately state the corresponding number of hours worked at each hourly rate.

14 108. Additionally, Defendants' wage statements directly violated Labor Code § 226(a)
15 each period due to the failure to pay and report premium wages for denied meal periods and rest
16 breaks under § 226.7.

17 109. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
18 to Plaintiff and the Wage Statement Penalties Subclass because Defendants failed to provide a
19 wage statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
20 requirements of Labor Code § 226(a).

21 110. Defendants' failure to provide the required writing deprived Plaintiff and the
22 Wage Statement Penalties Subclass of the ability to know, understand, and question the
23 calculation and rate of pay and hours used to calculate the wages paid by Defendants. Therefore,
24 Plaintiff and the Wage Statement Penalties Subclass had no way to dispute the resulting
25 miscalculation of wages, all of which resulted in an unjustified economic enrichment to said
26 Defendants. As a direct result, Plaintiff and the Wage Statement Penalties Subclass have suffered
27 and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost
28 interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully

1 perform its obligation under state law, all in amounts according to proof at trial.

2 111. As a result of Defendants' knowing and intentional failure to comply with Labor
3 Code § 226(a), Plaintiff and the Wage Statement Penalties Subclass have suffered an injury in
4 that each was prevented from knowing, understanding and disputing the wage payments paid to
5 them. Furthermore, Plaintiff and the Wage Statement Penalties Subclass have each suffered an
6 injury in that the failure to show all wages earned on the itemized wage statements resulted in
7 Plaintiff and the Represented Employees being denied all necessary deductions, payments, and
8 withholdings owed by the employer, including, but not limited to, the failure to make all
9 necessary contributions for unemployment benefits, social security benefits, proper payment of
10 taxes and withholdings, and other mandated state and federal benefits.

11 112. Plaintiff has also been injured as a result of having to bring this action to attempt
12 to obtain correct wage information following Defendants' refusal to comply with many of the
13 mandates of California's Labor Code and related laws and regulations.

14 113. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
15 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and
16 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
17 attorney's fees and costs, to Plaintiff and the Wage Statement Penalties Subclass who were
18 injured by Defendants' failure to comply with Labor Code § 226(a). The exact amount of the
19 applicable penalty is all in an amount to be shown according to proof at trial.

20 **EIGHTH CAUSE OF ACTION**

21 **UNFAIR AND UNLAWFUL COMPETITION**

22 (Business and Professions Code § 17200 *et seq.*)

23 *Plaintiff and the Represented Employees against All Defendants*

24 114. Plaintiff incorporates the preceding paragraphs of the Second Amended
25 Complaint as if fully alleged herein.

26 115. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
27 competition, which includes any "unlawful, unfair or fraudulent business act or practice." The
28 Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact,

1 due to the unfair and unlawful business practices of Defendants as alleged herein.

2 116. Defendants, and each of them, are “persons” as defined under Business &
3 Professions Code § 17021.

4 117. As alleged herein, Defendants engaged in conduct that violated California’s wage
5 and hour laws, including failure to pay all wages owed, including minimum, regular, overtime,
6 sick, and vacation wages, failure to provide mandated meal periods and rest breaks, failure to
7 reimburse business expenses, and failure to timely pay wages upon separation of employment,
8 all to decrease their costs and increase profits.

9 118. At all times relevant herein, Defendants did not pay Plaintiff and the Represented
10 Employees wages and monies and other financial obligations to which they were entitled.

11 119. As a result of Defendants’ failure to comply with the Labor Code and IWC
12 Orders, Represented Employees, including Plaintiff, suffered a loss of wages and monies, all in
13 an amount to be shown according to proof at trial. Defendants’ ongoing violations of the
14 foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

15 120. Defendants’ violations of the California Labor Code and IWC Wage Orders and
16 its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business
17 practices because it was done in a systematic manner over a period of time to the detriment of the
18 Plaintiff and all others similarly situated.

19 121. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
20 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
21 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of
22 Code of Civil Procedure § 1021.5.

23 122. A violation of California Business & Professions Code § 17200, *et seq.* may be
24 predicated on the violation of any state or federal law. All of the acts described herein as
25 violations of, among other things, the California Labor Code and IWC Wage Orders, are
26 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,
27 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
28 practices in violation of California Business and Professions Code §§ 17200, *et seq.*

1 123. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
2 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
3 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
4 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
5 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
6 harm unless Defendants, and each of them, are restrained from continuing to engage in said
7 unfair, unlawful and/or fraudulent business practices.

8 124. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
9 and does, seek such relief as may be necessary to disgorge the profits which Defendants have
10 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the
11 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
12 Represented Employees are not obligated to establish individual knowledge of the unfair
13 practices of Defendants in order to recover restitution.

14 125. Plaintiff, individually, and on behalf of the Represented Employees, is further
15 entitled to and do seek a declaration that the above described business practices are unfair,
16 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
17 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
18 the future.

19 126. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and
20 Represented Employees are entitled to restitution of the wages withheld and retained by
21 Defendants during a period that commences four years prior to the filing of this complaint; a
22 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
23 Represented Employees; an award of attorneys' fees pursuant to California Code of Civil
24 Procedure § 1021.5 and other applicable laws; and an award of costs.

25 **VI. PAGA CAUSES OF ACTION (*Cal. Lab. Code.* §§ 2698 – 2699.5)**

26 127. Plaintiff is an "aggrieved employee" under the PAGA as he was employed by
27 Defendants during the applicable statutory period and suffered one or more of the Labor Code
28 violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil

1 action filed on behalf of himself and all other similarly situated current and former aggrieved
2 employees in California against whom one or more of the alleged violations was committed
3 (hereinafter the “Aggrieved Employees”).

4 128. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to
5 Labor Code § 2699, as well as attorneys’ fees, costs, and/or other damages as permitted by
6 PAGA through a representative action pursuant to the PAGA and the California Supreme Court
7 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor
8 does he, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

9 129. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing
10 to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to
11 Defendants of the specific provisions of the Labor Code alleged to have been violated, including
12 the facts and theories to support the alleged violations. More than sixty-five (65) days have
13 elapsed since the date Plaintiff provided the written notice of the claims alleged herein without
14 the LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiff has fully
15 satisfied the administrative prerequisites to suit under the PAGA.

16 **NINTH CAUSE OF ACTION**

17 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES**

18 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

19 *Plaintiff and the Aggrieved Employees against All Defendants*

20 130. Plaintiff incorporates the preceding paragraphs of the Second Amended
21 Complaint as if fully alleged herein.

22 131. Plaintiff and the Aggrieved Employees were not exempt from the requirement to
23 be paid at least the applicable California minimum wage throughout the statutory period for each
24 hour worked.

25 132. Plaintiff and the Aggrieved Employees were not provided proper minimum and
26 regular wages due to Defendants’ failure to accurately record and compensate for all hours
27 worked. As a result of this policy and practice, Plaintiff and the Aggrieved Employees were
28 required to perform off-the-clock work that Defendants either knew or should have known they

1 were performing.

2 133. Consequently, Defendants violated California Labor Code laws and minimum
3 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
4 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

5 134. Plaintiff is informed and believes and thereon alleges that Defendants
6 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved
7 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

8 135. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
9 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
10 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA

11 **TENTH CAUSE OF ACTION**

12 **PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES**

13 (Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

14 *Plaintiff and the Aggrieved Employees against All Defendants*

15 136. Plaintiff incorporates the preceding paragraphs of the Second Amended
16 Complaint as if fully alleged herein.

17 137. Plaintiff and the Aggrieved Employees were employees of Defendants who did
18 not receive proper protections and benefits of the laws governing payment of overtime wages.

19 138. Labor Code § 204 requires that the employer timely pay all overtime wages to its
20 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
21 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in
22 any one workweek shall be compensated at the rate of no less than one and one-half times the
23 regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12)
24 in one workday shall be compensated at twice the regular rate of pay for an employee.

25 139. At all relevant times, Plaintiff and the Aggrieved Employees were required by
26 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
27 Defendants' failure to accurately record and compensate for all hours worked Plaintiff and the
28 Aggrieved Employees did not receive proper overtime compensation.

1 140. Also, as one additional example, Defendants paid Plaintiff and the Aggrieved
2 Employees on an hourly basis but also paid additional nondiscretionary compensation (such as
3 bonuses). However, during workweeks where the Aggrieved Employees worked overtime hours
4 and earned additional nondiscretionary compensation, Defendants failed to include that
5 compensation in the calculations for the regular rate of pay – violating the well-established rule
6 that overtime must always be paid at time and one-half the regular rate of pay.

7 141. As a result of these policies and practices, Defendants failed to pay Plaintiff and
8 the Aggrieved Employees for all overtime hours worked.

9 142. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
10 Order § 3(A) every pay period with respect to Plaintiff and the Aggrieved Employees because
11 Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per
12 week without proper overtime compensation.

13 143. Plaintiff is informed and believes and thereon alleges that Defendants
14 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the
15 Aggrieved Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

16 144. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
17 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
18 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

19 **ELEVENTH CAUSE OF ACTION**

20 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS**

21 (Labor Code § 226.7 and 512; IWC Wage Order § 11, 12)

22 *Plaintiff and the Aggrieved Employees against All Defendants*

23 145. Plaintiff incorporates the preceding paragraphs of the Second Amended
24 Complaint as if fully alleged herein.

25 146. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
26 who did not receive proper protections and benefits of the laws governing meal periods.

27 147. Labor Code § 226.7 requires employers, including Defendants, to provide
28 employees with meal periods as mandated by the Industrial Welfare Commission.

1 148. Labor Code § 512(a), in part, provides that employers, including Defendants, may
2 not employ an employee for a work period of more than five hours per day without providing an
3 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
4 except that if the total work period per day of the employee is no more than six hours, the meal
5 period may be waived by mutual consent of both the employer and the employee. Employers
6 may not employ an employee for a work period more than 10 hours per day without providing
7 the employee with a second meal period of not less than 30 minutes.

8 149. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
9 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
10 pay for each meal period that is missed.

11 150. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied
12 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
13 practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when
14 they were: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal
15 period while under the control of the Company, (3) forced to take a shortened meal period, (4)
16 forced to take a meal period after the 5th hour of work, and (5) not provided mandated second
17 meal periods for shifts in excess of 10 hours.

18 151. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
19 Order every pay period because Plaintiff and the Aggrieved Employees were not provided with
20 all mandatory meal periods and Defendants failed to pay Plaintiff and the Aggrieved Employees
21 one additional hour of compensation at the regular rate of pay in lieu thereof.

22 152. On information and belief, Plaintiff and the Aggrieved Employees did not
23 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
24 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not
25 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
26 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved
27 Employees to take meal periods in accordance with California law.
28

1 153. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
2 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
3 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

4 **TWELFTH CAUSE OF ACTION**

5 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS**

6 (Labor Code § 226.7 and 512; IWC Wage Order § 12)

7 *Plaintiff and the Aggrieved Employees against All Defendants*

8 154. Plaintiff incorporates the preceding paragraphs of the Second Amended
9 Complaint as if fully alleged herein.

10 155. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
11 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

12 156. Labor Code § 226.7 requires employers, including Defendants, to provide rest
13 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

14 157. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
15 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
16 each work period. Employees shall receive a 10-minute rest period every four hours or major
17 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
18 hours worked, for which there shall be no deduction from wages.

19 158. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
20 Order, Defendants shall pay Plaintiff and the Represented Employees one additional hour of pay
21 at his regular rate of compensation for each day that the rest period is not provided.

22 159. At all relevant times, Defendants also failed to provide Plaintiff and the
23 Aggrieved Employees with 10 minutes of net rest break time for every 4 hours worked, or major
24 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks for the
25 Aggrieved Employees, the Aggrieved Employees were unable to leave the premises for breaks,
26 and the Aggrieved Employees were often not authorized and/or permitted to take mandated rest
27 breaks due to being overwhelmed by their hectic workload. Furthermore, on occasions when the
28

1 Aggrieved Employees worked longer shifts, Defendants failed to authorize and/or permit
2 mandated third rest breaks.

3 160. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
4 Order every pay period because Plaintiff and the Aggrieved Employees were not provided with
5 all mandatory rest periods and Defendants failed to pay Plaintiff and the Aggrieved Employees
6 one additional hour of compensation in lieu thereof.

7 161. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
8 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
9 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA

10 **THIRTEENTH CAUSE OF ACTION**

11 **PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES**

12 (Labor Code § 2802)

13 *Plaintiff and the Aggrieved Employees Against All Defendants*

14 162. Plaintiff incorporates the preceding paragraphs of the Second Amended
15 Complaint as if fully alleged herein.

16 163. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
17 who did not receive proper protections and benefits of the laws governing reimbursement of
18 business expenses.

19 164. Labor Code § 2802(a) requires that the employer indemnify its employees for
20 expenses and losses incurred while discharging their duties or in obedience to the directions of
21 their employer.

22 165. At all relevant times herein mentioned, as a condition of employment, Defendants
23 required Plaintiff and the Aggrieved Employees to incur necessary business-related expenses and
24 costs without reimbursement including, but not limited to, acquiring and/or providing tools that
25 were required to carry out their tasks for Defendants.

26 166. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
27 failed to reimburse Plaintiff and the Aggrieved Employees for expenses incurred as a direct
28 consequence of employment with Defendants and/or under the direction of Defendants.

1 167. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
2 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
3 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

4 **FOURTEENTH CAUSE OF ACTION**

5 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD**

6 (Labor Code § 204)

7 *Plaintiff and the Aggrieved Employees against All Defendants*

8 168. Plaintiff incorporates the preceding paragraphs of the Second Amended
9 Complaint as if fully alleged herein.

10 169. Plaintiff and the Aggrieved Employees are and/or were "nonexempt" employees
11 of Defendants who did not receive proper protections and benefits of the laws regarding the
12 timing of payment of wages each period.

13 170. Labor Code § 204(a) states that all wages earned by a person are due and payable
14 twice during each calendar month, and further states that wages earned during the first through
15 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
16 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
17 the following month.

18 171. Furthermore, Labor Code § 204(d) states "[t]he requirements of this section shall
19 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
20 the wages are paid not more than seven calendar days following the close of the payroll period."

21 172. At all relevant times herein, Defendants did not provide Plaintiff and the
22 Aggrieved Employees with all wages due and owing each period within the time required by
23 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Aggrieved
24 Employees with all wages due and owing each pay period, including, but not limited to,
25 minimum, regular, and overtime wages, as well as meal and rest period premiums and sick time
26 at the proper rate, within the time specified by Labor Code § 204.

1 173. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
2 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
3 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

4 **FIFTEENTH CAUSE OF ACTION**

5 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES**

6 (Labor Code §§ 201 – 203)

7 *Plaintiff and the Aggrieved Employees against All Defendant*

8 174. Plaintiff incorporates the preceding paragraphs of the Second Amended
9 Complaint as if fully alleged herein.

10 175. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees
11 of Defendants who did not receive proper protections and benefits of the laws governing the
12 timing and payment of final wages.

13 176. Labor Code § 201 requires that the employer immediately pay any wages, without
14 abatement or reduction, to any employee who is discharged.

15 177. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
16 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
17 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

18 178. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
19 penalty from the due date thereof at the same rate until paid or until an action therefore is
20 commenced, but the wages shall not continue for more than thirty (30) days.

21 179. At all relevant times here, Defendants did not provide Plaintiff and the Aggrieved
22 Employees with all wages due and owing upon separation of employment, including, but not
23 limited to, minimum, regular, and overtime wages, vacation and sick pay at the proper rates, and
24 meal and rest period premiums, within the time specified by Labor Code §§ 201 – 203.

25 180. Plaintiff alleges that, at all times material to this action, Defendants had a planned
26 pattern and practice of failing to timely pay to Plaintiff and the Aggrieved Employees all wages
27 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.
28

181. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA

SIXTEENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226)

Plaintiff and the Aggrieved Employees against All Defendants

182. Plaintiff incorporates the preceding paragraphs of the Second Amended Complaint as if fully alleged herein.

183. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing the provision of accurate itemized wage statements.

184. Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, all deductions, net wages earned, the inclusive dates of the pay period, the employee's name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

185. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff and the Aggrieved Employees due to violations including: failure to accurately state total hours worked (for example, the wage statements failed to accurately reflect total compensable hours); failure to accurately state gross wages earned, all deductions, and net wages earned (due to, for example, the failure to pay all required minimum and overtime wages); failure to state the start and end dates of the pay period; failure to state the applicable hourly rates (including the accurate overtime rate of pay); failure to state the inclusive dates of the pay period; failure to accurately state the name and address of the legal entity of the employer; and failure to accurately state the corresponding number of hours worked at each hourly rate.

1 186. Additionally, Defendants' wage statements directly violated Labor Code § 226(a)
2 each period due to the failure to pay and report premium wages for denied meal periods and rest
3 breaks under § 226.7.

4 187. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
5 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
6 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA

7 **VII. PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, on behalf of himself, on a representative basis, and all others
9 similarly situated, prays for judgment and relief against Defendants, jointly and severally, as
10 follows:

11 1. As to the Ninth through Sixteenth Causes of Action, the assessment of all
12 applicable and available remedies under the PAGA;

13 2. For reasonable attorneys' fees and costs as permitted under the PAGA;

14 3. That the First through Eighth Causes of Action be certified as a class action;

15 4. That Plaintiff be appointed as Class Representative;

16 5. That counsel for Plaintiff be appointed Class Counsel;

17 6. For all applicable statutory penalties recoverable under the First through Eighth
18 Causes of Action to the extent permitted by law, including those pursuant to Labor Code and
19 Orders of the Industrial Welfare Commission;

20 7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by
21 law, including those pursuant to the Labor Code;

22 8. For injunctive relief and/or restitution as provided by the Labor Code and
23 Business and Professions Code § 17200, *et seq.*;

24 9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
25 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194,
26 1197, 1198, 1199, and 2802, among other sections inadvertently omitted;

1 10. For an award of damages in the amount of unpaid compensation including, but
2 not limited to, unpaid wages, benefits, and penalties according to proof, including interest
3 thereon;

4 11. For pre- and post-judgment interest; and

5 12. For such other relief as the Court deems just and proper.

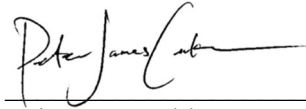
6 **DEMAND FOR JURY TRIAL**

7 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, hereby
8 demands a jury trial as to the First through Eighth Causes of Action pled herein.

9
10 Dated: January 27, 2023

LAUBY, MANKIN & LAUBY LLP

11
12 BY:



13 Brian J. Mankin, Esq.
14 Peter J. Carlson, Esq.
15 Attorneys for Plaintiff
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PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 5198 Arlington Avenue, PMB 513, Riverside, CA 92504.

On February 2, 2023, I caused to be served the foregoing document(s) described as follows:

SECOND AMENDED COMPLAINT

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **By Mail** I deposited such envelope in the mail at Riverside, California. The envelope was mailed with postage thereon fully prepaid.

☐ **By Facsimile** I sent this document via fax to all parties as listed on attached service list, on

☐ **By Overnight Service** I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmfirm.com to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

☐ **By Certified Mail-Return Receipt Requested** I caused such envelope with postage fully prepaid thereon, to be placed in the United States mail at Riverside, California

☐ **By Personal Service** I caused said document(s) to be personally served by hand on the parties listed on the attached service list

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 2, 2023, Riverside, California.

☐ **Federal** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


Tracie Chiarito, Declarant

SERVICE LIST

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