

CASE ATTACHMENT COVER PAGE	(ENDORSED) ELECTRONICALLY FILED BY SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Bernardino on Mar 1, 2023 <i>CLERK OF THE SUPERIOR COURT</i> <i>Deputy Clerk: Mirella Lopez</i>
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ATTACHMENT NAME: Answer: First Amended Complaint	
CASE NAME: Kenneth Pepper, et al. vs. Dillard-Lewis, Inc.	CASE NUMBER: CIVSB2223428
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

KENNETH PEFFER and REGINA
VILLEGAS, individually, on a representative
basis, and on behalf of all others similarly
situated;

Plaintiff,

vs.

DILLARD-LEWIS, INC., a North Carolina
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CIVSB2223428
*[Assigned to Hon., Judge David Cohn,
Dept S26, for all purposes]*

FIRST 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 Reimburse Bus. Expenses;
- (12) Failure to Timely Pay Wages Each Period;
- (13) Failure to Timely Pay Final Wages;
- (14) Failure to Provide Accurate Itemized Wage Statements

JURY TRIAL DEMANDED

1 Plaintiffs Kenneth Pepper and Regina Villegas (“Plaintiffs”) on behalf of themselves, on a
2 representative basis, and on behalf of others similarly situated, complain and allege as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiffs bring this action against their former employer(s), Dillard-Lewis, Inc.
5 and DOES 1 through 20, inclusive, (collectively, “Defendants”) on behalf of all current and
6 former employees employed by Defendants in California (the “Class” or “Represented
7 Employees”), for Labor Code violations stemming from Defendants’ failure to pay all wages
8 owed, including minimum, regular, and overtime wages, failure to provide meal periods, failure
9 to provide rest breaks, failure to reimburse business expenses, failure to timely pay wages upon
10 separation of employment, and failure to provide accurate itemized wage statements.

11 2. Plaintiff Pepper was employed by Defendants from approximately 2018 through
12 September 2022. Plaintiff Villegas was employed by Defendants from approximately March
13 2020 through October 2022.

14 3. Plaintiffs allege on information and belief that the Represented Employees were
15 subjected to the same policies, working conditions, and corresponding wage and hour violations
16 to which Plaintiffs were subjected during employment.

17 4. Plaintiffs and the Represented Employees were not provided all minimum,
18 regular, and overtime wages due to Defendants’ failure to accurately record and compensate for
19 all hours worked. As one specific example, Plaintiffs and the Represented Employees were
20 frequently required to perform off-the-clock work at the beginning and end of shifts without
21 compensation (such as completing pre- and post-trip inspections, fueling, among other tasks).
22 Also, Plaintiffs and the Represented Employees were often required to perform work while
23 clocked out for meal periods, leading to uncompensated work. These practices violate California
24 law and led to minimum and overtime wage violations. See *Troester v. Starbucks Corporation*
25 (2018) 5 Cal.5th 829 (California law “do[es] not allow employers to require employees to
26 routinely work for minutes off the clock without compensation”); *Frlekin v. Apple Inc* (2020) 8
27 Cal.5th 1038 (tasks are compensable when employee is under company’s control and where the
28 tasks served the employer’s interests).

1 5. Additionally, Plaintiff Pepper and the Represented Employees were denied
2 California-compliant meal periods and rest breaks for the period up to (but not including)
3 January 13, 2020, which is the date that the FMCSA issued its “Determination of Preemption”
4 that preempts California’s meal and rest break laws. Thus, pursuant to *Garcia v. Superior Court*
5 (2022) 80 Cal.App.5th 63, the meal period and rest break claims herein are explicitly limited to
6 the time period *before* January 13, 2020. *Id.* at 424 (FMCSA Determination of Preemption “does
7 not bar meal and rest break claims arising from conduct that predated the order”).

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

15 7. Defendants also failed to provide Plaintiff Pepper and the Represented Employees
16 with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
17 mandated by California law. Defendants did not schedule rest breaks for Plaintiff and the
18 Represented Employees, the Represented Employees were not allowed freedom to be truly “off
19 duty” for rest breaks, and the Represented Employees were often not authorized and/or permitted
20 to take mandated rest breaks due to being overwhelmed by their hectic workload. Furthermore,
21 on occasions when Plaintiff and the Represented Employees worked longer shifts, Defendants
22 failed to authorize and/or permit mandated third rest breaks.

23 8. Moreover, at all relevant times, Defendants required Plaintiffs and the
24 Represented Employees to incur necessary business-related expenses and costs without
25 reimbursement, including, but not limited to, acquiring and maintaining a smart phone and
26 related monthly data plan to communicate with Defendants via phone and text message.

27 9. Plaintiffs further allege that they and the Represented Employees were not paid all
28 wages due and owing each pay period (Labor Code § 204) and upon separation of employment

1 within the time required by Labor Code §§ 201 – 203. Plaintiffs further allege that Defendants
2 engaged in the practice of failing to pay all wages due and owing to Plaintiffs and the
3 Represented Employees at the time their employment ended with Defendants, including, but not
4 limited to minimum, regular, and overtime wages, wage premiums, vacation and sick wages,
5 among others.

6 10. Plaintiffs further allege that Defendants failed to provide accurate itemized wage
7 statements that fully complied with the requirements of Labor Code § 226(a).

8 11. Plaintiffs allege that Defendants' wage and hour violations of the Labor Code and
9 IWC Wage Orders enabled them to decrease expenses and to increase their level of productivity
10 and profits, thereby allowing Defendants to gain an unfair advantage over its competitors.

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

17 13. Plaintiffs bring this lawsuit seeking declaratory, injunctive, equitable, and
18 monetary relief against Defendants and each of them, on behalf of themselves and the
19 Represented Employees to recover, among other things, unpaid wages and benefits, interest,
20 attorneys' fees, penalties, costs and expenses pursuant to California Labor Code §§ 200, 201,
21 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1,
22 1198, 1199, and 2802, among possibly other sections inadvertently omitted. Plaintiffs also
23 reserve the right to name additional representatives throughout the State of California.

24 **II. JURISDICTION**

25 14. This Court has jurisdiction over the claims for relief of Plaintiffs and the
26 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

27 **III. VENUE**

28 15. Venue as to each Defendant is proper in this Court pursuant to Code of Civil

1 Procedure § 395(a). Defendants transact business in San Bernardino County and the unlawful
2 acts alleged herein have a direct effect on Plaintiffs and the Represented Employees in San
3 Bernardino County. Furthermore, Defendants employed or employ Plaintiffs and Represented
4 Employees in San Bernardino County.

5 **IV. PARTIES**

6 **Plaintiff**

7 16. Plaintiff and Class Representative Kenneth Pepper was employed by Defendants
8 from approximately 2018 through September 2022 and performed work for Defendants in San
9 Bernardino County.

10 17. Plaintiff and Class Representative Regina Villegas was employed by Defendants
11 from approximately March 2020 through October 2022 and performed work for Defendants in
12 San Bernardino County

13 **Defendants**

14 18. Plaintiffs are informed and believe and thereon allege that Defendant Dillard-
15 Lewis, Inc. is a North Carolina corporation authorized to and doing business in San Bernardino
16 County, California. Plaintiffs are also informed and believe that Defendant Dillard-Lewis, Inc. is
17 and/or was the legal employer of Plaintiffs and the Represented Employees during the applicable
18 statutory periods.

19 19. Plaintiffs are ignorant of the true names, capacities, relationships, and extent of
20 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
21 inclusive, but on information and belief allege that those Defendants are legally responsible for
22 the payment of penalties and damages to Plaintiffs and all Represented Employees by virtue of
23 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
24 names. Plaintiffs will amend this complaint to allege the true names and capacities of the DOE
25 Defendants when ascertained.

26 20. Plaintiffs are informed and believe and thereon allege that they and the
27 Represented Employees worked under the joint direction and control of Defendants and that
28 Defendants, and each of them, acted in all respects pertinent to this action as the agent of the

1 other Defendants, carried out a joint scheme, business plan or policy in all respect pertinent
2 hereto, and the acts of each Defendant are legally attributable to the other Defendants. On
3 information and belief, a unity of interest and ownership between each Defendant exists such
4 that all Defendants acted as a single employer of Plaintiffs and other Represented Employees.

5 21. Furthermore, Plaintiffs are informed and believe and thereon allege that
6 Defendants, and each of them, are an integrated enterprise and should be treated as a single
7 employer because these entities share an interrelation of operations, with common human
8 resources and personnel policies and shared common offices and facilities. Additionally,
9 Defendants also have a shared website, common management, a centralized control of labor
10 operations, and common ownership or financial control.

11 22. Plaintiffs are informed and believe and thereon allege that, in conducting
12 themselves in the manner described herein, Defendants, and each of them, were acting in active
13 concert with one another such that the acts of each were and are fully attributable to the others in
14 all material respects. Plaintiffs are further informed and believe that at all relevant times
15 Defendants and each of them are now, and at all material times herein mentioned were, the
16 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining
17 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and
18 purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of
19 their remaining co-Defendants.

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

1 **V. CLASS ACTION ALLEGATIONS**

2 24. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully
3 alleged herein.

4 25. Plaintiffs bring this action on behalf of themselves and all others similarly situated
5 as a class action, pursuant to Code of Civil Procedure § 382.

6 26. 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 27. The Class, also referred to as the “Represented Employees,” that Plaintiffs seeks
9 to represent is defined as follows:

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

12 28. Plaintiffs also seek to represent the following subclasses:

13 **Meal Break Subclass**

14 All Represented Employees who worked a shift in excess of
15 5 hours from four years prior to the filing of this action until
16 January 12, 2020.

17 **Rest Break Subclass**

18 All Represented Employees who worked a shift of at least
19 3.5 hours from four years prior to the filing of this action
20 until January 12, 2020.

21 **Unreimbursed Expense Subclass**

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

25 **Waiting Time Penalties Subclass**

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

judgment is entered.

Wage Statement Penalties Subclass

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

29. Plaintiffs reserve the right to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues as appropriate.

30. Plaintiffs, as Class Representatives, are members of the class and subclasses that they seek to represent.

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

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

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

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

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

iii. Whether Defendants violated the California Labor Code and applicable IWC Wage Order by failing to provide compliant meal periods to Plaintiff Pepper and the Meal Break Subclass and whether Defendants failed to compensate Plaintiff Pepper and the Meal Break Subclass with one additional hour of wages at the regular rate of pay for each instance when a

compliant 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 Pepper and the Rest Break Subclass and whether Defendants failed to compensate Plaintiff Pepper 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 Plaintiffs 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 Plaintiffs 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 Plaintiffs 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 Plaintiffs and Represented Employees are entitled to equitable relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

34. **Typicality:** Plaintiffs' claims, as the Class Representatives, are typical of the claims of The Class. Plaintiffs, like other members of The Class, were 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.

35. **Adequacy of Representation.** Plaintiffs, as the Class Representatives, will fairly and adequately represent and protect the interests of the Class. Plaintiffs' interests are not in

1 conflict with those of the Class. Class Representative's counsel are competent and experienced in
2 litigating large employment class actions and other complex litigation matters, including cases
3 like this case.

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

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PAY MINIMUM WAGES**

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

15 *Plaintiffs and the Represented Employees Against All Defendants*

16 37. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
17 as if fully alleged herein.

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

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

26 40. As one specific example, Plaintiffs and the Represented Employees were
27 frequently required to perform off-the-clock work at the beginning and end of shifts without
28 compensation (such as completing pre- and post-trip inspections, fueling, among other tasks).

1 Also, Plaintiffs and the Represented Employees were often required to perform work while
2 clocked out for meal periods, leading to uncompensated work. These practices violate California
3 law and led to minimum wage violations. See *Troester v. Starbucks Corporation* (2018) 5
4 Cal.5th 829 (California law “do[es] not allow employers to require employees to routinely work
5 for minutes off the clock without compensation”); *Frlekin v. Apple Inc* (2020) 8 Cal.5th 1038
6 (tasks are compensable when employee is under company’s control and where the tasks served
7 the employer’s interests).

8 41. As a result of these policies and practices, Defendants failed to pay Plaintiffs and
9 the Represented Employees for all hours worked.

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

13 43. Plaintiffs are informed and believe and thereon allege that Defendants
14 intentionally, willfully, and improperly failed to pay wages to Plaintiffs and the Represented
15 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

16 44. Defendants’ conduct was willful, as Defendants knew that Plaintiffs and the
17 Represented Employees were entitled to be paid wages throughout the statutory period for each
18 hour worked, including proper minimum and regular wages, yet Defendants chose not to pay
19 them in accordance thereto.

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

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

27 47. As a result of the Defendants’ wrongful conduct, Plaintiffs and the Represented
28 Employees have been damaged in amounts to be proven at trial.

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

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

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

Plaintiffs and the Represented Employees Against All Defendants

49. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

50. Plaintiffs and the Represented Employees were employees of Defendants who did not receive proper protections and benefits of the laws governing payment of overtime wages.

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

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

53. As one specific example, Plaintiffs and the Represented Employees were frequently required to perform off-the-clock work at the beginning and end of shifts without compensation (such as completing pre- and post-trip inspections, fueling, among other tasks). Also, Plaintiffs and the Represented Employees were often required to perform work while clocked out for meal periods, leading to uncompensated work. These practices violate California law and led to overtime wage violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th

829 (California law “do[es] not allow employers to require employees to routinely work for minutes off the clock without compensation”); *Frlekin v. Apple Inc* (2020) 8 Cal.5th 1038 (tasks are compensable when employee is under company’s control and where the tasks served the employer’s interests).

54. As a result of this policy and practice, Defendants failed to pay Plaintiffs and the Represented Employees for all overtime hours worked.

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

56. Plaintiffs are informed and believe and thereon allege that Defendants intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiffs and the Represented Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

57. Defendants’ conduct was willful, as Defendants knew that Plaintiffs 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.

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

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

60. As a result of Defendants’ wrongful conduct, Plaintiffs and the Represented Employees have been damaged in amounts to be proven at trial.

61. Plaintiffs, on behalf of themselves 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.

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL PERIODS**

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

4 *Plaintiff Pepper and the Meal Break Subclass Against All Defendants*

5 62. Plaintiff Pepper incorporates the preceding paragraphs of the First Amended
6 Complaint as if fully alleged herein.

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

10 64. Labor Code § 226.7 requires employers, including Defendants, to provide
11 employees with meal periods as mandated by the Industrial Welfare Commission.

12 65. Labor Code § 512(a), in part, provides that employers, including Defendants, may
13 not employ an employee for a work period of more than five hours per day without providing an
14 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
15 except that if the total work period per day of the employee is no more than six hours, the meal
16 period may be waived by mutual consent of both the employer and the employee. Employers
17 may not employ an employee for a work period more than 10 hours per day without providing
18 the employee with a second meal period of not less than 30 minutes.

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

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

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

5 69. At all relevant times herein, Defendants failed to provide Plaintiff Pepper and the
6 Meal Break Subclass all mandated meal periods and failed to pay wage premiums in lieu of
7 mandated meal or rest periods, thereby receiving an economic benefit.

8 70. On information and belief, Plaintiff Pepper and the Meal Break Subclass did not
9 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
10 obtained from Plaintiff Pepper and the Meal Break Subclass were not willfully obtained, were not
11 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
12 unlawful adhesion. Defendants did not permit or authorize Plaintiff Pepper and the Meal Break
13 Subclass to take meal periods in accordance with California law.

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

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

23 **FOURTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE REST BREAKS**

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

26 *Plaintiff Pepper and the Rest Break Subclass Against All Defendants*

27 73. Plaintiff Pepper incorporates the preceding paragraphs of the First Amended
28 Complaint as if fully alleged herein.

1 74. Plaintiff Pepper and the Rest Break Subclass are and/or were employees of
2 Defendants who did not receive proper protections and benefits of the laws governing mandatory
3 rest breaks.

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

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

11 77. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
12 Order, Defendants shall pay Plaintiff Pepper and the Rest Break Subclass one additional hour of
13 pay at his regular rate of compensation for each day that the rest period is not provided.

14 78. At all relevant times, Defendants also failed to provide Plaintiff Pepper and the
15 Rest Break Subclass with 10 minutes of net rest break time for every 4 hours worked, or major
16 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks for the
17 Rest Break Subclass, the Rest Break Subclass were unable to leave the premises for breaks, and
18 the Rest Break Subclass were often not authorized and/or permitted to take mandated rest breaks
19 due to being overwhelmed by their hectic workload. Furthermore, on occasions when the Rest
20 Break Subclass worked longer shifts, Defendants failed to authorize and/or permit mandated
21 third rest breaks.

22 79. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
23 Order every pay period because Plaintiff Pepper and the Rest Break Subclass were not provided
24 with all mandatory rest periods and Defendants failed to pay Plaintiff Pepper and the Rest Break
25 Subclass one additional hour of compensation in lieu thereof.

26 80. At all relevant times herein, Defendants failed to provide Plaintiff Pepper and the
27 Rest Break Subclass all mandated rest breaks and failed to pay wage premiums in lieu of
28 mandated rest periods, thereby receiving an economic benefit.

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

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

FIFTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802)

Plaintiffs and the Unreimbursed Expense Subclass Against All Defendants

83. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

84. Plaintiffs and the Unreimbursed Expense Subclass are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing reimbursement of business expenses.

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

86. At all relevant times herein mentioned, as a condition of employment, Defendants required Plaintiffs and the Unreimbursed Expense Subclass to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, acquiring and maintaining a smart phone and related monthly data plan to communicate with Defendants via phone and text message.

87. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they failed to reimburse Plaintiffs and the Unreimbursed Expense Subclass for expenses incurred as a

1 direct consequence of employment with Defendants and/or under the direction of Defendants.

2 88. At all relevant times herein, Defendants failed to reimburse the Unreimbursed
3 Expense Subclass, including Plaintiffs, for expenses incurred while discharging duties to
4 Defendants, thereby receiving an economic benefit.

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

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

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

23 **SIXTH CAUSE OF ACTION**

24 **FAILURE TO TIMELY PAY FINAL WAGES**

25 (Labor Code §§ 201 – 203)

26 *Plaintiffs and the Waiting Time Penalties Subclass against All Defendants*

27 92. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
28 as if fully alleged herein.

1 93. Plaintiffs and the Waiting Time Penalties Subclass are and/or were employees of
2 Defendants who did not receive proper protections and benefits of the laws governing the timing
3 and payment of wages.

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

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

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

12 97. At all relevant times, Defendants employed a policy and practice whereby
13 Plaintiffs and the Waiting Time Penalties Subclass were not paid all wages due and owing upon
14 separation of employment within the time required by Labor Code §§ 201 and 202.

15 98. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
16 wages due and owing to Plaintiffs and the Waiting Time Penalties Subclass upon separation of
17 employment, including, but not limited to, minimum, regular, and overtime wages, meal and rest
18 period premiums, vested vacation wages, and sick wages at the proper rate of pay under § 246.

19 99. Plaintiffs allege that, at all times material to this action, Defendants had a planned
20 pattern and practice of failing to timely pay Plaintiffs and the Waiting Time Penalties Subclass
21 all wages due and owing upon separation of employment as required by Labor Code §§ 201 and
22 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiffs and the Waiting
23 Time Penalties Subclass the above-described waiting time penalty, all in an amount to be shown
24 according to proof at trial and within the jurisdiction of this Court.

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1 **SEVENTH CAUSE OF ACTION**

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

3 (Labor Code § 226)

4 *Plaintiffs and the Wage Statement Penalties Subclass against All Defendants*

5 100. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully
6 alleged herein.

7 101. Plaintiffs and the Wage Statement Penalties Subclass are and/or were employees
8 of Defendants who did not receive proper protections and benefits of the laws governing the
9 provision of accurate itemized wage statements.

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

16 103. Defendants violate Labor Code § 226(a) every pay period with respect to
17 Plaintiffs and the Wage Statement Penalties Subclass due to violations including: failure to
18 accurately state total hours worked (for example, the wage statements failed to accurately reflect
19 total compensable hours); failure to accurately state gross wages earned, all deductions, and net
20 wages earned (due to, for example, the failure to pay all required minimum and overtime wages);
21 failure to state the start and end dates of the pay period; failure to state the applicable hourly rates
22 (including the accurate overtime rate of pay); failure to state the inclusive dates of the pay
23 period; failure to accurately state the name and address of the legal entity of the employer; and
24 failure to accurately state the corresponding number of hours worked at each hourly rate.

25 104. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
26 to Plaintiffs and the Wage Statement Penalties Subclass because Defendants failed to provide a
27 wage statement to Plaintiffs and the Wage Statement Penalties Subclass that complied with the
28 requirements of Labor Code § 226(a).

1 105. Defendants' failure to provide the required writing deprived Plaintiffs and the
2 Wage Statement Penalties Subclass of the ability to know, understand, and question the
3 calculation and rate of pay and hours used to calculate the wages paid by Defendants. Therefore,
4 Plaintiffs and the Wage Statement Penalties Subclass had no way to dispute the resulting
5 miscalculation of wages, all of which resulted in an unjustified economic enrichment to said
6 Defendants. As a direct result, Plaintiffs and the Wage Statement Penalties Subclass have
7 suffered and continue to suffer, substantial losses related to the use and enjoyment of such
8 wages, lost interest on such wages and expenses and attorney's fees in seeking to compel
9 Defendants to fully perform its obligation under state law, all in amounts according to proof at
10 trial.

11 106. As a result of Defendants' knowing and intentional failure to comply with Labor
12 Code § 226(a), Plaintiffs and the Wage Statement Penalties Subclass have suffered an injury in
13 that each was prevented from knowing, understanding and disputing the wage payments paid to
14 them. Furthermore, Plaintiffs and the Wage Statement Penalties Subclass have each suffered an
15 injury in that the failure to show all wages earned on the itemized wage statements resulted in
16 Plaintiffs and the Represented Employees being denied all necessary deductions, payments, and
17 withholdings owed by the employer, including, but not limited to, the failure to make all
18 necessary contributions for unemployment benefits, social security benefits, proper payment of
19 taxes and withholdings, and other mandated state and federal benefits.

20 107. Plaintiffs have also been injured as a result of having to bring this action to
21 attempt to obtain correct wage information following Defendants' refusal to comply with many
22 of the mandates of California's Labor Code and related laws and regulations.

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

1 **EIGHTH CAUSE OF ACTION**

2 **UNFAIR AND UNLAWFUL COMPETITION**

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

4 *Plaintiffs and the Represented Employees against All Defendants*

5 109. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully
6 alleged herein.

7 110. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
8 competition, which includes any “unlawful, unfair or fraudulent business act or practice.” The
9 Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact,
10 due to the unfair and unlawful business practices of Defendants as alleged herein.

11 111. Defendants, and each of them, are “persons” as defined under Business &
12 Professions Code § 17021.

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

18 113. At all times relevant herein, Defendants did not pay Plaintiffs and the Represented
19 Employees wages and monies and other financial obligations to which they were entitled.

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

24 115. Defendants’ violations of the California Labor Code and IWC Wage Orders and
25 its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business
26 practices because it was done in a systematic manner over a period of time to the detriment of the
27 Plaintiffs and all others similarly situated.

28 116. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,

1 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
2 Plaintiffs seek to enforce important rights affecting the public interest within the meaning of
3 Code of Civil Procedure § 1021.5.

4 117. A violation of California Business & Professions Code § 17200, et seq. may be
5 predicated on the violation of any state or federal law. All of the acts described herein as
6 violations of, among other things, the California Labor Code and IWC Wage Orders, are
7 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,
8 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
9 practices in violation of California Business and Professions Code §§ 17200, et seq.

10 118. Plaintiffs, individually, and on behalf of the Represented Employees, have no
11 plain, speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
12 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
13 the unfair, unlawful and/or fraudulent business practices described above, Plaintiffs, individually,
14 and on behalf of the Represented Employees, have suffered and will continue to suffer
15 irreparable harm unless Defendants, and each of them, are restrained from continuing to engage
16 in said unfair, unlawful and/or fraudulent business practices.

17 119. Plaintiffs, individually, and on behalf of the Represented Employees, are entitled
18 to, and do, seek such relief as may be necessary to disgorge the profits which Defendants have
19 acquired, or of which Plaintiffs and Represented Employees have been deprived, by means of the
20 above-described unfair, unlawful and/or fraudulent business practices. Plaintiffs and the
21 Represented Employees are not obligated to establish individual knowledge of the unfair
22 practices of Defendants in order to recover restitution.

23 120. Plaintiffs, individually, and on behalf of the Represented Employees, are further
24 entitled to and do seek a declaration that the above described business practices are unfair,
25 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
26 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
27 the future.

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1 121. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiffs and
2 Represented Employees are entitled to restitution of the wages withheld and retained by
3 Defendants during a period that commences four years prior to the filing of this complaint; a
4 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiffs and
5 Represented Employees; an award of attorneys' fees pursuant to California Code of Civil
6 Procedure § 1021.5 and other applicable laws; and an award of costs.

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

8 122. Plaintiffs are “aggrieved employee(s)” under the PAGA as they were employed
9 by Defendants during the applicable statutory period and suffered one or more of the Labor Code
10 violations alleged herein. As such, Plaintiffs may recover the remedies described herein in a civil
11 action filed on behalf of themselves and all other similarly situated current and former aggrieved
12 employees in California against whom one or more of the alleged violations was committed
13 (hereinafter the “Aggrieved Employees”).

14 123. Plaintiffs seek to recover all applicable and available PAGA remedies pursuant to
15 Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by
16 PAGA through a representative action pursuant to the PAGA and the California Supreme Court
17 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiffs are not required to, nor
18 do they, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

19 124. Pursuant to Labor Code § 2699.3(a), Plaintiffs gave written notice by online filing
20 to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to
21 Defendants of the specific provisions of the Labor Code alleged to have been violated, including
22 the facts and theories to support the alleged violations. More than sixty-five (65) days have
23 elapsed since the date Plaintiffs provided the written notice of the claims alleged herein without
24 the LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiffs have fully
25 satisfied the administrative prerequisites to suit under the PAGA.

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1 **NINTH CAUSE OF ACTION**

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

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

4 *Plaintiffs and the Aggrieved Employees against All Defendants*

5 125. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 126. Plaintiffs and the Aggrieved Employees were not exempt from the requirement to
8 be paid at least the applicable California minimum wage throughout the statutory period for each
9 hour worked.

10 127. Plaintiffs and the Aggrieved Employees were not provided proper minimum and
11 regular wages due to Defendants' failure to accurately record and compensate for all hours
12 worked. As a result of this policy and practice, Plaintiffs and the Aggrieved Employees were
13 required to perform off-the-clock work that Defendants either knew or should have known they
14 were performing.

15 128. As one specific example, Plaintiffs and the Aggrieved Employees were frequently
16 required to perform off-the-clock work at the beginning and end of shifts without compensation
17 (such as completing pre- and post-trip inspections, fueling, among other tasks). Also, Plaintiffs
18 and the Aggrieved Employees were often required to perform work while clocked out for meal
19 periods, leading to uncompensated work. These practices violate California law and led to
20 minimum wage violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829
21 (California law "do[es] not allow employers to require employees to routinely work for minutes
22 off the clock without compensation"); *Frlekin v. Apple Inc* (2020) 8 Cal.5th 1038 (tasks are
23 compensable when employee is under company's control and where the tasks served the
24 employer's interests).

25 129. As a result of these policies and practices, Defendants failed to pay Plaintiffs and
26 the Aggrieved Employees for all hours worked.

27 130. Consequently, Defendants violated California Labor Code laws and minimum
28 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and

1 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

2 131. Plaintiffs are informed and believe and thereon allege that Defendants
3 intentionally, willfully, and improperly failed to pay wages to Plaintiffs and the Represented
4 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

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

8 **TENTH CAUSE OF ACTION**

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

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

11 *Plaintiffs and the Aggrieved Employees against All Defendants*

12 133. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
13 as if fully alleged herein.

14 134. Plaintiffs and the Aggrieved Employees were employees of Defendants who did
15 not receive proper protections and benefits of the laws governing payment of overtime wages.

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

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

26 137. As one specific example, Plaintiffs and the Aggrieved Employees were frequently
27 required to perform off-the-clock work at the beginning and end of shifts without compensation
28 (such as completing pre- and post-trip inspections, fueling, among other tasks). Also, Plaintiffs

1 and the Aggrieved Employees were often required to perform work while clocked out for meal
2 periods, leading to uncompensated work. These practices violate California law and led to
3 overtime wage violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829
4 (California law “do[es] not allow employers to require employees to routinely work for minutes
5 off the clock without compensation”); *Frlekin v. Apple Inc* (2020) 8 Cal.5th 1038 (tasks are
6 compensable when employee is under company’s control and where the tasks served the
7 employer’s interests).

8 138. As a result of this policy and practice, Defendants failed to pay Plaintiffs and the
9 Aggrieved Employees for all overtime hours worked.

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

14 140. Plaintiffs are informed and believe and thereon allege that Defendants
15 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiffs and the
16 Aggrieved Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

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

20 **ELEVENTH CAUSE OF ACTION**

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

22 (Labor Code § 2802)

23 *Plaintiffs and the Aggrieved Employees Against All Defendants*

24 142. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
25 as if fully alleged herein.

26 143. Plaintiffs and the Aggrieved Employees are and/or were employees of Defendants
27 who did not receive proper protections and benefits of the laws governing reimbursement of
28 business expenses.

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

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

TWELFTH CAUSE OF ACTION

(Labor Code § 204)

148. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

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

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

152. At all relevant times herein, Defendants did not provide Plaintiffs and the Aggrieved Employees with all wages due and owing each period within the time required by Labor Code § 204. Moreover, Defendants did not provide Plaintiffs and the Aggrieved Employees with all wages due and owing each pay period, including, but not limited to, minimum, regular, and overtime wages, within the time specified by Labor Code § 204.

153. As a result of the unlawful employment practices alleged herein, Plaintiffs seek 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.

THIRTEENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201 – 203)

Plaintiffs and the Aggrieved Employees against All Defendants

154. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

155. Plaintiffs and the Aggrieved Employees are and/or were non-exempt employees of Defendants who did not receive proper protections and benefits of the laws governing the timing and payment of final wages.

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

157. 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.

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

1 159. At all relevant times here, Defendants did not provide Plaintiffs and the
2 Aggrieved Employees with all wages due and owing upon separation of employment, including,
3 but not limited to, minimum, regular, and overtime wages within the time specified by Labor
4 Code §§ 201 – 203.

5 160. Plaintiffs allege that, at all times material to this action, Defendants had a planned
6 pattern and practice of failing to timely pay to Plaintiffs and the Aggrieved Employees all wages
7 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.

8 161. As a result of the unlawful employment practices alleged herein, Plaintiffs seek
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 **FOURTEENTH CAUSE OF ACTION**

12 **PAGA ASSESSMENT FOR**

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

14 (Labor Code § 226)

15 *Plaintiffs and the Aggrieved Employees against All Defendants*

16 162. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
17 as if fully alleged herein.

18 163. Plaintiffs and the Aggrieved Employees are and/or were employees of Defendants
19 who did not receive proper protections and benefits of the laws governing the provision of
20 accurate itemized wage statements.

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

27 165. Defendants violate Labor Code § 226(a) every pay period with respect to
28 Plaintiffs 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.

166. As a result of the unlawful employment practices alleged herein, Plaintiffs seek 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.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves, on a representative basis, and all others similarly situated, prays for judgment and relief against Defendants, jointly and severally, as follows:

1. As to the Ninth through Fourteenth Causes of Action, the assessment of all applicable and available remedies under the PAGA;
2. For reasonable attorneys' fees and costs as permitted under the PAGA;
3. That the First through Eighth Causes of Action be certified as a class action;
4. That Plaintiffs be appointed as Class Representatives;
5. That counsel for Plaintiffs be appointed Class Counsel;
6. For all applicable statutory penalties recoverable under the First through Eighth Causes of Action to the extent permitted by law, including those pursuant to Labor Code and Orders of the Industrial Welfare Commission;
7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including those pursuant to the Labor Code;
8. For injunctive relief and/or restitution as provided by the Labor Code and Business and Professions Code § 17200, *et seq.*;
9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,

201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 510, 512, 558, 1194, 1197, 1198,
and 1199, among other sections inadvertently omitted;

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

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

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

DEMAND FOR JURY TRIAL

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

Dated: February 28, 2023

LAUBY, MANKIN & LAUBY LLP

BY: 
Brian J. Mankin, Esq.
Kristina Bui Carlson, Esq.
Attorneys for Plaintiff