

1 Drew Lewis, Esq. (SBN 309288)

2 Jessica Hart, Esq. (SBN 331441)

3 **DREW LEWIS, PC**

4 2999 Douglas Blvd. Ste. 180

5 Roseville, CA 95661

6 Tel: (833) 600-7400

7 Email: drew@drewlewis.law

8 jhart@drewlewis.law

9 Attorneys for Plaintiff(s)

10 **SUPERIOR COURT STATE OF CALIFORNIA**

11 **COUNTY OF PLACER**

12 TODD KERN on behalf of himself, and
13 similarly situated employees

14 Plaintiff(s),

15 vs.

16 VEXILLUM, INC. d/b/a EZ ELECTRIC,
17 a California Corporation, CLIFFORD
18 ZACHMAN, an individual, DOES 1-20,
19 inclusive

20 Defendant(s).

Case No.: S-CV-0049365

21 **CLASS ACTION COMPLAINT**

22 **PLAINTIFF'S FIRST AMENDED
23 COMPLAINT FOR DAMAGES**

- 24 1. **Failure to Pay Minimum Wage** (Lab.
25 Code, §§ 1194, 1194.2, Wage Order 16)
- 26 2. **Failure to Pay Overtime** (Lab. Code,
27 §§ 510, 1194; Wage Order 16)
- 28 3. **Failure to Provide Meal Breaks** (Labor
Code § 512, Wage Order 16)
4. **Failure to Provide Rest Breaks** (Labor
Code § 226.7, Wage Order 16)
5. **Inaccurate Wage Statement Penalties**
6. **Failure to Timely Pay Wages During
Employment** (Lab. Code, §§ 204, 210)
7. **Unlawful Competition** (Bus. & Prof.
Code, § 17200)
8. **Waiting-Time Penalties** (Lab. Code, §§
201-203)
9. **Failure to Reimburse Expenses** (Lab.
Code § 2802)
10. **Private Attorneys General Act** (Lab.
Code § 2699, et seq.)

COMES NOW, Plaintiff TODD KERN (“Plaintiff”), on behalf of himself and similarly situated employees hereby file this First Amended Complaint against VEXILLUM, INC. d/b/a EZ ELECTRIC, a California Corporation, CLIFFORD ZACHMAN, an individual; DOES 1-20, inclusive (“Defendants”). On information and belief, Plaintiff alleges:

NATURE OF THE ACTION

1. Plaintiff brings this class and Private Attorneys General Act (“PAGA”) action based on alleged violations of the California Labor Code and Industrial Welfare Commission Order No. 16-100 against Defendants. As set forth in more detail below, Plaintiff alleges that Defendants are liable to him and other similarly situated current and former employees, who worked in California as non-exempt employees from four (4) years prior to the date this complaint was filed to the present for damages, penalties, and related relief. These claims are based on Defendants’ 1) failure pay minimum and overtime wages for all hours worked, including drive time and mandatory training time; 2) failure to provide code-compliant meal and rest periods; 3) failure to provide accurate and compliant wage statements; 4) failure to timely pay wages both during and upon termination or resignation of employment; 5) failure maintain accurate records; 7) failure to provide reimbursement for worked-related expenses; and 8) unfair competition. Plaintiff has also alleged a claim under the PAGA based on these violations.

VENUE & JURISDICTION

2. This case is subject to the jurisdiction of this Court pursuant to the California Labor Code, California Business and Professions Code, and the California Code of Civil Procedure. The amount in controversy exceeds the jurisdictional minimum of this Court. At all times alleged herein, one or more Defendants were residents of or were doing business in, the State of California, County of Placer.

3. Venue in Placer County is proper pursuant to sections 395 and 395.5 of the Code of Civil Procedure in that at all relevant times herein, at least some of the violations of law alleged to have been committed herein occurred in Placer County and/or because each Defendant is found, maintains offices, or conducts substantial business in the County of Placer.

4. As a result of the violations alleged herein, all Defendants are subject to PAGA

1 penalties, which Plaintiff seeks for himself and other aggrieved current and former employees of
2 Defendants, and the State of California. Plaintiff is an aggrieved employee within the meaning
3 of Labor Code section 2698, *et seq.* and has complied with the pre-filing requirements of PAGA.
4 Pursuant to Labor Code section 2699.3 (a), Plaintiff gave written notice of the facts and legal
5 basis for his claims, as alleged herein, via online submission to the California Labor &
6 Workforce Development Agency (“LWDA”) on October 11, 2022, and send notice via certified
7 mail to Defendants the same day. To date, the LWDA has not provided a response to Plaintiff’s
8 notice. As such, Plaintiff has exhausted his administrative remedies and may bring an action on
9 behalf of himself and all other similarly situated employees (*i.e.* Aggrieved Employees).
10 Plaintiff is clearly entitled to bring a PAGA’ claim for civil penalties on behalf of these
11 individuals pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745,
12 757 (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the
13 plaintiff need not have personally experienced all the violations pursued in PAGA action).
14 Similarly situated employees includes but are not limited to: all non-exempt employees who
15 have or continue to work for Defendants in California from October 11, 2021 to the present.

16 **PARTIES**

17 5. Plaintiff TODD KERN is an individual over the age of 18 and a resident of the
18 State of California. At all times relevant to this Complaint, Plaintiff was employed by
19 Defendants as a non-exempt electrician.

20 6. On Plaintiff’s information and belief, Defendant VEXILLUM, INC. d/b/a EZ
21 ELECTRIC is a California Corporation organized and existing under the laws of California.

22 7. On Plaintiff’s information and belief, Defendant CLIFFORD ZACHMAN is an
23 individual and during all times relevant to this Complaint is and was the owner of Defendant
24 VEXILLUM, INC. d/b/a EZ ELECTRIC and, as such, Defendant CLIFFORD ZACHMAN is
25 believed to be an “other person acting on behalf of an employer” within the meaning of Labor
26 Code sections 558 and 558.1.

27 8. Plaintiff does not know the true names and capacities of Defendants sued in this
28 Complaint as DOES 1 through 20, inclusive, and therefore sues these Defendants by fictitious

1 names. Plaintiff will amend this Complaint to allege the true names and capacities of DOES 1
2 through 10, inclusive when ascertained. Plaintiff is informed, believe, and thereupon alleges that
3 each of the Defendants named herein as DOES 1 through 10, inclusive, is responsive in some
4 manner for the occurrence, injury, and other damages alleged in this Complaint.

5 9. Plaintiff is informed, believe, and thereupon allege, that each Defendant was in
6 some manner responsible for the acts and damages alleged herein, and/or are indebted to
7 Plaintiff as alleged herein, and that each Defendant was the agent, employer, and co-conspirator
8 of each other Defendant, and was acting in the course and scope of such agency and conspiracy.
9 In this Complaint where Plaintiffs refer to Defendant singularly, such reference shall be
10 construed to be a reference to all Defendants named herein, including those named fictitiously.

11 **CLASS ALLEGATIONS**

12 10. Plaintiff brings the First through Ninth Causes of Action on behalf of himself and
13 all others similarly situated as a class action pursuant to California Code of Civil Procedure
14 section 382. The class Plaintiff seeks to represent is composed of, and defined as follows:

15 Plaintiff and all non-exempt employees who have or continue to be employed by
16 Defendants in California from October 26, 2018 to the present.

17 11. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend
18 or modify the class description with greater specificity to further divide into subclasses or to
19 limit to particular issues.

20 12. This action has been brought and is properly maintained in a class action,
21 pursuant to the provision of the California Code of Civil Procedure section 382 because there is
22 a well-defined community of interests in the litigation and the proposed class is easily
23 ascertainable.

24 **A. Numerosity**

25 13. The punitive class is so numerous that the individual joinder of all members is
26 impracticable under the circumstances of this case. While the exact number of class members is
27 unknown to Plaintiff, he is informed and believes that Defendants have employed as many as
28

1 100 individuals failing within the above-stated class definition through the State of California
2 during the applicable statute of limitations, who were subjected to the policies and practices
3 outlined in this complaint. As such, the joinder of all members of the punitive class is not
4 practicable.

5 14. Upon information and belief, Plaintiff alleges that Defendants' employment
6 records would provide information as to the number and location of all class members.

7 **B. Commonality**

8 15. Common questions of law and fact exist as to all members of the putative class
9 and predominate over questions that affect only individual members of the class. These
10 common questions of law and fact include, without limitation, the following:

- 11 1. Whether Defendants violated the California Labor Code and wage orders,
12 by failing to pay all overtime wages due;
- 13 2. Whether Defendants violated the California Labor Code and wage orders
14 by failing to pay all minimum wages due;
- 15 3. Whether Defendants had a policy and/or practice of failing to pay Plaintiff
16 and members of the putative class all overtime wages due for hours
17 worked over eight (8) hours per day and forty (40) hours per week;
- 18 4. Whether Defendants had a policy and/or practice of failing to pay Plaintiff
19 and members of the putative class minimum wages for all hours worked;
- 20 5. Whether Defendants had a policy and/or practice of failing to allow for,
21 and provide, Plaintiff and members of the putative class meal periods, as
22 required by law;
- 23 6. Whether Defendants had a policy and/or practice of failing to allow for,
24 and provide, Plaintiff and members of the putative class rest periods, as
25 required by law;
- 26 7. Whether Defendants had a policy and/or practice of failing to provide
27 reimbursement for business expenses to Plaintiff and members of the
28 putative class;

- 1 8. Whether Defendants violated the California Labor Code and wage orders
2 by failing to maintain and provide Plaintiff and putative class members
3 accurate records of Plaintiff and putative class members earned wages and
4 hours worked; and
- 5 9. Whether as a result of Defendants' policies and practices, Plaintiff and
6 putative class members timely received all wages due and owing during
7 their employment and at the time of their termination or separation.

8 **C. Typicality**

9 16. Plaintiff's claims are typical of the claims of the members of the putative class.
10 The putative class also sustained damages arising out of Defendants' common course of conduct
11 in violation of the law as complained of herein. Plaintiff and all members of the putative class
12 were non-exempt employees who were not paid minimum and overtime wages for all hours
13 worked, were not provided meal and rest periods, and were not paid reimbursements for
14 business expenses, as required by law. Additionally, Defendants issued Plaintiff and all
15 members of the putative class wage statements that did not comply with labor code section 226.
16 As a result, Plaintiff and each member of the putative class have suffered the same type of harm
17 and seek the same type of recovery based on the same legal theories.

18 **D. Adequacy**

19 17. Plaintiff will fairly and adequately protect the interest of the members of the
20 putative class. For all relevant times, Plaintiff resided in California and worked for Defendants
21 in California. Moreover, Plaintiff will adequately represent the putative class as he has no
22 interests that are adverse to those of the putative class members. Additionally, Plaintiff has
23 retained counsel who has substantial experience in wage and hour matters.

24 **E. Superiority**

25 18. A class action is superior to other available means for the fair and efficient
26 adjudication of the controversy since the individual joinder of all members of the putative calls
27 is impracticable. Class action treatment will permit a larger number of similarly situated persons
28 to prosecute their common claims in a single forum simultaneously, efficiently, and without the

unnecessary duplication of effort and expense that numerous individual actions would have. Moreover, as damages suffered by each individual member of the class may be relatively small, the expense and burden of the individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them, and an important public interest will be severed by addressing the matter as a class action. The cost to the court system of adjudication of such individual litigation would be substantial. Individual litigation would also present the potential for inconsistent or contradictory judgments.

19. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

FACTUAL ALLEGATIONS

20. Plaintiff worked as a non-exempt electrician for Defendants from approximately September 23, 2020 to December 16, 2021, making \$22.00 dollars per hour. EZ Electric is a Northern California company specializing in designing, installing and retrofitting the wiring systems in homes and businesses, and in providing energy products and technologies, including electrical, solar and power systems.

21. When Plaintiff was first hired by Defendants, he was informed that registration with I-TAP electrical apprenticeship program in Sacramento was a mandatory condition of his employment. Despite the fact that enrollment in I-TAP was mandatory, he was not reimbursed for the costs of tuition, books, and tools required for the program. With tuition, books and tools, the costs of the program alone were upwards of \$20,000, which Plaintiff paid in monthly installments out of his own pocket. Plaintiff is informed and believes that similarly situated employees were also required to attend this mandatory training/apprenticeship program and were not reimbursed for these costs.

22. In addition to these costs, participation in the mandatory I-TAP program required Plaintiff and similarly situated employees to attend two weeks of training classes at I-TAP every six months of their employment. Plaintiff and similarly situated employees were not paid their regular wages, or any wages, for these two weeks of missed work.

23. In addition to not being reimbursed for the mandatory I-TAP program and

1 associated lost wages, Plaintiff and similarly situated employees also used their personal tools
2 and cell phones for work purposes and were not reimbursed for this use. Although Plaintiff and
3 similarly situated employees were provided some power tools, they were expected to use, and
4 transport, their own tools from their homes to the pick-up or worksite location. Plaintiff and
5 similarly situated employees also used their own cell phones for work purposes, including to
6 send pictures and timesheets.

7 24. Although transportation to the worksite varied depending on the project and
8 project location, all employees were required to transport their work equipment to the worksite.
9 In Plaintiff's case, this meant he transported himself and his required tools from his home in
10 Dutch Flat to the pick-up location in Auburn, California. This was approximately a 40-minute
11 drive. In Auburn, he and other similarly situated employees in his division were required to park
12 their vehicles and then load into a company-marked van at approximately 5:00 a.m. From there,
13 they drove to worksite locations in Orinda, Lafayette, and Sugar Bowl, which was an additional
14 1.5 to 2 hours of traveling, one-way. Approximately every fourth trip, the company van stopped
15 at the shop location in Roseville to pick up additional tools before heading off to the worksite. It
16 was only after Plaintiff and similarly situated employees arrived at the worksite location, at
17 approximately 7:00 a.m., that they were then permitted to clock in for the day. As such, the
18 existing time records reflect a start time of 7:00 a.m. when, in fact, the start time was closer to
19 4:00 or 5:00 a.m.

20 25. After completing an eight (8) hour workday, and before leaving to return home
21 (via a company van in Plaintiff's case), Plaintiff and similarly situated employees were directed
22 to clock out. Despite the fact that Plaintiff and similarly situated employees were clocked out
23 and not being paid, they, nonetheless, spent another 1.5 to 2 hours driving back to the drop-off
24 location, if applicable, and then back home. Again, even though Plaintiff and similarly situated
25 employees were required to spend approximately 3-4 hours driving in a company van to and
26 from his work-site location in the Bay Area, he and other similarly situated employees were not
27 paid minimum or overtime wages for this time.

28 26. In addition to time spent driving in the company van, Plaintiff and similarly

1 situated employees also spent additional time driving themselves and their tools to and from
2 their homes to either the worksite, or, in Plaintiff's case, the pick-up and drop-off location in
3 Auburn, California.

4 27. Defendants' failure to pay for all regular and overtime hours worked also resulted
5 in Defendants' failure to pay Plaintiff and similarly situated employees all wages they were
6 owed during the applicable pay period.

7 28. Defendants further did not have a policy or practice to authorize Plaintiff and
8 similarly situated employees to take all meal periods and paid rest periods owed to them.
9 Although Plaintiff and similarly situated employees did generally receive one meal period
10 beginning at 11:00 a.m., this meal period was untimely due to the fact that Plaintiff and similarly
11 situated employees started their workday much early than the recorded start time reflected (*e.g.*
12 5:00 a.m.) Furthermore, Plaintiff similarly situated employees did not receive a second meal
13 period after ten (10) hours of work.

14 29. In addition to the lack of policies authorizing timely meal periods, Plaintiff and
15 similarly situated employees virtually never received 10-minute rest periods, as it was stated
16 company practice to provide only one thirty-minute meal period. Defendants did not pay
17 Plaintiff and similarly situated employees any meal or rest period premiums.

18 30. The policies and practices described above resulted in Plaintiff and similarly
19 situated employees being owed wages at the time of their separation or termination that went
20 unpaid by Defendants. Defendants failed to issue Plaintiff and similarly situated employees
21 wage statements that accurately stated their total hours worked, and the number of regular and
22 overtime hours they worked and corresponding applicable hourly rates, the correct amount of
23 gross and net wages, and amounts for meal and rest period premiums.

24 31. At all times relevant herein, Defendant CLIFFORD ZACHMAN was an and/or
25 managing agent of Defendant EZ ELECTRIC and was acting on behalf of EZ ELECTRIC when
26 he violated and caused to be violated the below provisions of the California Labor Code.

27 //

1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Failure to Pay Minimum Wage**

4 **(Lab. Code, §§ 1194, 1194.2, Wage Order 16)**

5 **(As to All Defendants)**

6 32. Plaintiff incorporates in this cause of action each and every allegation of the
7 preceding paragraphs, as though fully set forth herein.

8 33. Labor Code §§ 1194, 1197, 1197.1 and Industrial Welfare Commission ("IWC")
9 Wage Order 16 require employers to pay an amount equal to or greater than the minimum wage
10 for each hour worked.

11 34. Defendants failed to pay Plaintiff and similarly situated employees at least the
12 minimum wage for each hour worked, including their time driving to work locations, mandatory
13 training, and other tasks necessary to do their jobs, as required by Defendants.

14 35. As a direct and proximate result of Defendants' unlawful conduct, as set forth
15 herein, Plaintiff and similarly situated employees have suffered damages, including loss of
16 earnings for time worked on behalf of Defendants.

17 36. Plaintiff and similarly situated employees request relief as described below.

18 **SECOND CAUSE OF ACTION**

19 **Failure to Pay Overtime**

20 **(Lab. Code, §§ 510, 1194; Wage Order 16)**

21 **(As to all Defendants)**

22 37. Plaintiff incorporates in this cause of action each and every allegation of the
23 preceding paragraphs, as though fully set forth herein.

24 38. Labor Code § 510 requires employers to pay overtime compensation to all
25 employees, unless they are exempt from the overtime pay requirements. During all periods of
26 employment, Plaintiff was a non-exempt employee.

27 39. Plaintiff and similarly situated employees worked in excess of eight (8) hours in a
28 workday and forty (40) hours in a workweek.

40. Defendants failed or otherwise refused to pay Plaintiff and similarly situated
employees overtime compensation for all overtime hours worked in the manner required by

1 California law.

2 41. As a direct and proximate result of Defendants' unlawful conduct, as set forth
3 herein, Plaintiff and similarly situated employees have suffered damages, including loss of
4 earnings for hours of overtime worked on behalf of Defendants.

5 42. Plaintiff and similarly situated employees request relief as described below.

6 **THIRD CAUSE OF ACTION**
7 **Failure to Provide Meal Breaks**
8 **(Lab. Code, § 512, Wage Order 16)**
9 **(As to All Defendants)**

10 43. Plaintiff incorporates in this cause of action each and every allegation of the
11 preceding paragraphs, as though fully set forth herein.

12 44. Wage Order 16 and Labor Code section 512 provide that all non-exempt
13 employees are entitled to a 30-minute, uninterrupted meal break for every 5-hour shift worked
14 by the employee and a second meal period for shifts lasting over ten (10) hours.

15 45. An employer's failure to provide an opportunity to take a meal break entitles the
16 employee to an hour of pay for each day an employer fails to provide an opportunity to take a
17 meal break.

18 46. At all times herein relevant, Plaintiff and similarly situated employees were non-
19 exempt and entitled to meal breaks.

20 47. At all times herein relevant, Defendants employed Plaintiff and similarly situated
21 employees for periods of five (5) hours or more without providing meal breaks of at least thirty
22 (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiff and similarly
23 situated employees worked more than ten (10) hours in a day. Plaintiff and similarly situated
24 employees did not waive their right to meal periods throughout their employment.

25 48. Defendants further failed to compensate Plaintiff and similarly situated
26 employees for the premium wage(s) owed resulting from their failure to provide the opportunity
27 to take a meal break.

28 49. As a direct and proximate result of Defendants' unlawful conduct, as set forth

1 herein, Plaintiff and similarly situated employees have suffered damages, including a loss of
2 wages.

3 50. Plaintiff and similarly situated employees request relief as described below.

4 **FOURTH CAUSE OF ACTION**
5 **Failure to Provide Rest Breaks**
6 **(Labor Code § 226.7, Wage Order 16)**
7 **(As to All Defendants)**

8 51. Plaintiff incorporates in this cause of action each and every allegation of the
9 preceding paragraphs, as though fully set forth herein.

10 52. Wage Order 16 and Labor Code section 226.7 provides that all non-exempt
11 employees are entitled to at least a 10-minute rest break for each work period of more than four
12 (4) hours, or major fraction thereof.

13 53. An employer's failure to provide an opportunity to take a rest break entitles the
14 employee an hour of pay for each day an employer fails to provide an opportunity to take a rest
15 break.

16 54. At all times relevant, Plaintiff and similarly situated employees were non-exempt
17 and entitled to rest breaks.

18 55. At all times relevant, Defendants failed to authorize and permit Plaintiff and
19 similarly situated employees to take rest periods of at least 10 minutes for each work period of
20 more than four (4) hours, or major fraction thereof.

21 56. Defendants further failed to compensate Plaintiff and similarly situated
22 employees for the premium wage(s) owed resulting from their failure to provide the opportunity
23 to take rest breaks.

24 57. As a direct and proximate result of Defendants' unlawful conduct, as set forth
25 herein, Plaintiff and similarly situated employees have suffered damages, including loss a loss of
26 wages.

27 58. Plaintiff and similarly situated employees request relief as described below.

28 //

FIFTH CAUSE OF ACTION
Inaccurate Wage Statement Penalties
(Lab. Code, § 226)
(As to All Defendants)

59. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, as though fully set forth herein.

60. Labor Code § 226(a) requires employers to provide employees with regular itemized written statements showing, among other things, total hours worked, all applicable hourly rates during the pay period, and the corresponding number of hours worked at each rate by the employee. Defendants knowingly and intentionally failed to provide timely, accurate itemized wage statements including this required information.

61. Labor Code § 226(e) provides that an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with section 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, up to a maximum amount of \$4,000.

62. Labor Code § 226(e)(2) provides that an employee is deemed to suffer injury for the purposes of Labor Code § 226 if the employer fails to provide the employee his or her wage statement.

63. Defendants knowingly and intentionally failed to provide Plaintiffs and similarly situated employees with their accurate itemized wage statements.

64. Plaintiff and similarly situated employees request relief as described below.

SIXTH CAUSE OF ACTION
Failure to Timely Pay Wages During Employment
(Lab. Code, §§ 204, 210)
(As to All Defendants)

65. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, as though fully set forth herein.

66. Labor Code section 204 requires employees to be paid wages at least twice per month. If an employer fails to pay wages during the proper pay period, the employee is entitled

1 to a penalty of \$100 for an initial violation and \$200 for each subsequent or willful, or
2 intentional violation. Additionally, the employee is entitled to 25% of the amount unlawfully
3 withheld.

4 67. Defendants failed to properly and timely compensate Plaintiff and similarly
5 situated employees all wages earned during Plaintiff's and similarly situated employees' pay
6 period(s).

7 68. Defendants' acts were willful and/or intentional.

8 69. As a result of Defendants' conduct, Plaintiff and similarly situated employees are
9 entitled to the penalty set forth in section 210 of the Labor Code.

10 70. Plaintiff and similarly situated employees request relief as described below.

11 **SEVENTH CAUSE OF ACTION**

12 **Unlawful Competition**
13 **(Bus. & Prof. Code, § 17200)**
14 **(As to All Defendants)**

15 71. Plaintiff incorporates in this cause of action each and every allegation of the
16 preceding paragraphs, as though fully set forth herein.

17 72. Defendants' conduct, as alleged herein, constitutes an unlawful, unfair, and/or
18 fraudulent business practices, as set forth in Business & Professions Code § 17200. Defendants
19 conducted business activities while failing to comply with the legal mandates cited herein.
20 Plaintiffs and others similarly situated suffered injury in fact and lost money as a result of
21 Defendants' unfair competition.

22 73. As a result of Defendants' unlawful and unfair business practices, Plaintiff and
23 similarly situated employees are entitled to and do seek restitution, and other appropriate relief
24 available under Business & Professions Code § 17203, on their own behalf, and on behalf of
25 others similarly situated, according to proof, for four (4) years from the filing of this Action.

26 74. Plaintiff and similarly situated employees request relief as described below.

27 //

28 //

1 **EIGHTH CAUSE OF ACTION**

2 **Waiting-Time Penalties**

3 **(Lab. Code, §§ 201-203)**

4 **(As to All Defendants)**

5 75. Plaintiff incorporates in this cause of action each and every allegation of the
6 preceding paragraphs, as though fully set forth herein.

7 76. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages
8 due immediately upon discharge, or within seventy-two (72) hours of quitting without notice.
9 Labor Code § 203 provides that where an employer willfully fails to make such timely payment,
10 the employer must, as a penalty, continue to pay the subject employees' wages until the back
11 wages are paid in full or an action is commenced, up to a maximum of thirty (30) days' wages.

12 77. Plaintiff and similarly situated employees resigned or were discharged from their
13 employment without being paid all wages that were due to them within the time required by
14 Labor Code §§ 201 and 202. Defendants' failure to pay these wages has been and continues to
15 be willful.

16 78. As a result of Defendants' conduct, Plaintiff and similarly situated employees are
17 entitled to waiting time penalties in the amount of up to thirty (30) days' wages under Labor
18 Code § 203.

19 79. Plaintiff and similarly situated employees request relief as described below.

20 **NINTH CAUSE OF ACTION**

21 **Failure to Reimburse Expenses**

22 **(Lab. Code, § 2802)**

23 **(As to All Defendants)**

24 80. Plaintiff incorporates in this cause of action each and every allegation of the
25 preceding paragraphs, as though fully set forth herein.

26 81. California Labor Code section 2802(a) states that "An employer shall indemnify
27 his or her employee for all necessary expenditures or losses incurred by the employee in direct
28 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
the employer, even though unlawful, unless the employee, at the time of obeying the directions,
believed them to be unlawful."

82. Defendants required Plaintiff and similarly situated employees to use their own funds to pay for mandatory training, tools, books and other supplies and did not reimburse them for this use. Defendants further required Plaintiff and similarly situated employees to use their personal cell phones for work-related purposes, but failed to reimburse them for such use.

83. Plaintiff and similarly situated employees request relief as described below.

TENTH CAUSE OF ACTION

Private Attorneys General Act

(Lab. Code, §§ 2698, *et seq*)

(As to All Defendants)

84. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, as though fully set forth herein.

85. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff other Aggrieved Employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 16, § 3 (Failure to Pay Overtime Wages);
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 16, § 4, (Failure to Pay Minimum Wages);
- Violation of Labor Code §§ 512 and 226.7; IWC Wage Order 16, § 10(A) and 10(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof);
- Violation of Labor Code § 226.7; IWC Wage Order 16, § 11(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof);
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements);
- Violation of Labor Code §§ 204, 210 (Failure to Pay All Wages During Pay Period);
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages);
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave at the correct rate of pay);
- Violation of Labor Code § 2802 (Failure to Reimburse Business Expenses);
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work

1 in Any Industrial Welfare Commission Order); and

- 2 • Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records).

3 86. Plaintiff seek civil penalties against Defendants as provided in the California
4 Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor
5 Code section 2699(f)(2).

6 87. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor
7 Code sections 2699(a) and 2699.3.

8 88. As a proximate result of the Defendants' conduct, Plaintiff and Aggrieved
9 Employees have been damaged and request relief as described below.

10 **PRAYER**

- 11 1. For wages according to proof;
12 2. For special damages according to proof;
13 3. For liquidated damages pursuant to Labor Code section 1194.2;
14 4. For civil and statutory penalties according to statute;
15 5. For attorneys' fees and costs according to statute including, but not limited to,
16 under Labor Code sections 218.5, 1194, 226(e), 2802 (c), 2699 and Code of Civil Procedure
17 section 1021.5
18 6. For pre-judgment, post-judgment, and statutory interest and all amounts subject
19 herein;
20 7. For injunctive and equitable relief; and
21 8. For all other relief that this Court deems just and proper.

22
23
24 **DREW LEWIS, PC**

25 Dated: January 18, 2023

26 By: 

27 Drew Lewis
28 Attorney for Plaintiff