

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Misty M. Lauby, Esq. [CSB No. 243009]
misty@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

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

EMILIO ROSAS, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

FURNITURE AVE, INC., a California
Corporation; FURNITURE AVE CITY, a
California Corporation; FURNITURE CITY
WEST, a California Corporation; FARIS
ESCHEIK, an individual; FAWZI SAED, an
individual; OMAR RAHMAN, an individual;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: 30-2022-01284958-CU-OE-CXC
*[Assigned to Hon. Judge Randall J. Sherman,
Dept CX-105, 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 Timely Pay Final Wages;
- (6) Failure to Provide Accurate Itemized Wage Statements;
- (7) Unfair and Unlawful Competition;

PAGA CLAIMS

- (8) PAGA Assessment for Failure to Pay Minimum Wages;
- (9) PAGA Assessment for Failure to Pay Overtime Wages;
- (10) PAGA Assessment for Failure to Provide Meal Periods;
- (11) PAGA Assessment for Failure to Provide Rest Breaks;
- (12) PAGA Assessment for Failure to Pay Wages Each Period;
- (13) PAGA Assessment for Failure to Timely Pay Final Wages;
- (14) PAGA Assessment for Failure to Provide Accurate Itemized Wage Statements

Complaint filed: 10/7/2022

1 Plaintiff Emilio Rosas (“Plaintiff”) on behalf of himself, on a representative basis, and on
2 behalf of others similarly situated, complains and alleges as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against his former employer(s), Defendants Furniture
5 Ave, Inc., Furniture Ave City, Furniture City West, Faris Escheik, Fawzi Saed, Omar Rahman,
6 and DOES 1 through 20, inclusive, (collectively, “Defendants”) on behalf of all current and
7 former nonexempt employees employed by Defendants in California (the “Class” or
8 “Represented Employees”), for Labor Code violations stemming from Defendants’ failure to pay
9 all wages owed, including minimum, regular, and overtime wages, failure to provide meal
10 periods, failure to provide rest breaks, failure to timely pay wages upon separation of
11 employment, and failure to provide accurate itemized wage statements.

12 2. Plaintiff was employed by Defendants from approximately December 2019
13 through August 2022.

14 3. Plaintiff alleges 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 Plaintiff was subjected during employment.

17 4. Plaintiff and the Represented Employees were not provided all minimum, regular,
18 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
19 worked. For example, time reflected in the paystubs did not match the time on the timekeeping
20 system. Often times, this was due to the deliberate alterations to time records by Defendants.
21 And the Represented Employees were also frequently required to perform work for Defendant
22 while clocked out for meal periods. These practices violate California law and led to
23 uncompensated time and minimum and overtime wage violations. See *Troester v. Starbucks*
24 *Corporation* (2018) 5 Cal.5th 829 (California law “do[es] not allow employers to require
25 employees to routinely work for minutes off the clock without compensation”); See also *Frlekin*
26 *v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when employee is under company’s
27 control and where the tasks served the employer’s interests).

28 ///

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

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

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

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

24 9. Plaintiff alleges that Defendants' violations of the wage and hour components of
25 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their
26 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
27 its competitors.

28 ///

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

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

14 12. Pursuant to Labor Code § 2699.3(a), Plaintiff is in the process of giving written
15 notice the Labor and Workforce Development Agency ("LWDA") and to Defendants of the
16 specific provisions of the Labor Code alleged to have been violated, including the facts and
17 theories to support the alleged violations. As such, Plaintiff reserves the right to amend this
18 complaint or bring a complaint for the PAGA claims pursuant to Labor Code § 2699.3(a)(2)(C).

19 **II. JURISDICTION**

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

22 **III. VENUE**

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

28 ///

1 **IV. PARTIES**

2 **Plaintiff**

3 15. Plaintiff and Class Representative Emilio Rosas III was employed by Defendants
4 from approximately December 31, 2019 to August 2022 and performed work for Defendants in
5 Orange County.

6 **Defendants**

7 16. Plaintiff is informed and believes and thereon alleges that Defendant Furniture
8 Ave, Inc. is a California corporation authorized to and doing business in Orange County,
9 California, with its principal place of business in Santa Ana, California. Plaintiff is also
10 informed and believes that Defendant Furniture Ave, Inc. is and/or was the legal employer of
11 Plaintiff and the Represented Employees during the applicable statutory periods.

12 17. Plaintiff is informed and believes and thereon alleges that Defendant Furniture
13 Ave City is a California corporation authorized to and doing business in Orange County,
14 California, with its principal place of business in Santa Ana, California. Plaintiff is also
15 informed and believes that Defendant Furniture Ave City is and/or was the legal employer of
16 Plaintiff and the Represented Employees during the applicable statutory periods.

17 18. Plaintiff is informed and believes and thereon alleges that Defendant Furniture
18 City West is a California corporation authorized to and doing business in Orange County,
19 California, with its principal place of business in Santa Ana, California. Plaintiff is also
20 informed and believes that Defendant Furniture City West is and/or was the legal employer of
21 Plaintiff and the Represented Employees during the applicable statutory periods.

22 19. Plaintiff is informed and believes and thereon alleges that Defendant Faris
23 Escheik is an individual authorized to and doing business in Orange County, California, with his
24 principal place of business in Santa Ana, California. Plaintiff is also informed and believes that
25 Defendant Faris Escheik is and/or was the legal employer of Plaintiff and the Represented
26 Employees during the applicable statutory periods.

27 20. Plaintiff is informed and believes and thereon alleges that Defendant Fawzi Saed
28 is an individual authorized to and doing business in Orange County, California, with his principal

1 place of business in Santa Ana, California. Plaintiff is also informed and believes that Defendant
2 Fawzi Saed is and/or was the legal employer of Plaintiff and the Represented Employees during
3 the applicable statutory periods.

4 21. Plaintiff is informed and believes and thereon alleges that Defendant Omar
5 Rahman is an individual authorized to and doing business in Orange County, California, with his
6 principal place of business in Santa Ana, California. Plaintiff is also informed and believes that
7 Defendant Omar Rahman is and/or was the legal employer of Plaintiff and the Represented
8 Employees during the applicable statutory periods.

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

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

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

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

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

18 **V. CLASS ACTION ALLEGATIONS**

19 27. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
20 alleged herein.

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

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

25 30. The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to
26 represent is defined as follows:

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

31. Plaintiff also seeks to represent the following subclasses:

Meal Break Subclass

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

Rest Break Subclass

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

Waiting Time Penalties Subclass

All Represented Employees who separated from their
employment with Defendants during the period three years
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.

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

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

34. 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.

35. **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.

///

///

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

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

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

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

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

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

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

26 vii. Whether Defendants violated California Business & Professions Code §§
27 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest
28 breaks, failure to provide mandated meal periods, and failure to timely pay final wages; and

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

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

38. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly and adequately represent and protect the interests of the Class. Plaintiff's interests are not in conflict with those of the Class. Class Representative's counsel are competent and experienced in litigating large employment class actions and other complex litigation matters, including cases like this case.

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

///

///

///

///

///

///

///

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

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

4 *Plaintiff and the Represented Employees Against All Defendants*

5 40. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
6 alleged herein.

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

10 42. Plaintiff and the Represented 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, Plaintiff and the Represented Employees were
13 required to perform off-the-clock work that Defendants either knew or should have known they
14 were performing.

15 43. For example, Defendants required Plaintiff and the Represented Employees to
16 perform routine and recurring tasks at the beginning of the shift (before being allowed to clock
17 in) and at the end of the shift (after being allowed to clock out). And the Represented Employees
18 were also frequently required to perform work for Defendant while clocked out for meal periods.
19 Moreover, Defendants would habitually adjust time records to avoid meal premiums and/or other
20 wages. This often resulted in unpaid compensable time. These practices violate California law
21 and led to uncompensated time and minimum wage violations. See *Troester v. Starbucks*
22 *Corporation* (2018) 5 Cal.5th 829 (California law "do[es] not allow employers to require
23 employees to routinely work for minutes off the clock without compensation"); See also *Frlekin*
24 *v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when employee is under company's
25 control and where the tasks served the employer's interests).

26 44. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
27 Represented Employees for all hours worked.

28 ///

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

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

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

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

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

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

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

23 **SECOND CAUSE OF ACTION**

24 **FAILURE TO PAY OVERTIME WAGES**

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

26 *Plaintiff and the Represented Employees Against All Defendants*

27 52. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
28 alleged herein.

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

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

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

13 56. For example, Defendants required Plaintiff and the Represented Employees to
14 perform routine and recurring tasks at the beginning of the shift (before being allowed to clock
15 in) and at the end of the shift (after being allowed to clock out). And the Represented Employees
16 were also frequently required to perform work for Defendant while clocked out for meal periods.
17 Moreover, Defendants would habitually adjust time records to avoid meal premiums and/or other
18 wages. This often resulted in unpaid compensable time. These practices violate California law
19 and led to uncompensated time and minimum wage violations. See *Troester v. Starbucks*
20 *Corporation* (2018) 5 Cal.5th 829 (California law "do[es] not allow employers to require
21 employees to routinely work for minutes off the clock without compensation"); See also *Frlekin*
22 *v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when employee is under company's
23 control and where the tasks served the employer's interests).

24 57. Additionally, Defendants paid Plaintiff and the Represented Employees on an
25 hourly basis but also paid additional nondiscretionary compensation (such as commissions
26 and/or bonuses). However, during workweeks where the Represented Employees worked
27 overtime hours and earned additional nondiscretionary compensation, Defendants failed to
28 include that compensation in the calculations for the regular rate of pay – violating the well-

1 established rule that overtime must always be paid at time and one-half the regular rate of pay.

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

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

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

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

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

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

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

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

26 ///

27 ///

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

0
1
2
3
4
5
6
7
8
9
20
21
22
23
24
25
26
27
28

2
3
4
5
6
7
8
9
20
21
22
23
24
25
26
27
28

9
20
21
22
23
24
25
26
27
28

22
23
24
25
26
27
28

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

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

8 74. On information and belief, Plaintiff 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 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 and the Meal Break Subclass
13 to take meal periods in accordance with California law.

14 75. By their failure to provide Plaintiff 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 76. 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 and the Meal
22 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 and the Rest Break Subclass Against All Defendants*

27 77. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
28 alleged herein.

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

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

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

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

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

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

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

28 ///

85. By their failure to provide Plaintiff 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.

86. 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 and the Rest Break Subclass for unpaid wage premiums, penalties, costs, and interest.

FIFTH CAUSE OF ACTION

FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201 – 203)

Plaintiff and the Waiting Time Penalties Subclass against All Defendants

87. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

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

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

90. 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.

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

4 93. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
5 wages due and owing to Plaintiff and the Waiting Time Penalties Subclass upon separation of
6 employment, including, but not limited to, minimum, regular, and overtime wages, meal and rest
7 period premiums, and vested vacation wages.

8 94. Additionally, at all relevant times, Defendants failed to pay all mandated sick
9 wages owed to the Waiting Time Penalties Subclass at the proper rate of pay.

10 95. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees
11 must be “calculated in the same manner as the regular rate of pay for the workweek in which the
12 employee uses paid sick time, whether or not the employee actually works overtime in that
13 workweek.” Additionally, Labor Code § 246(l)(2) states that the paid sick time must be
14 “calculated by dividing the employee’s total wages, not including overtime premium pay, by the
15 employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

16 96. Here, Plaintiff and the Waiting Time Penalties Subclass were compensated on an
17 hourly basis plus additional compensation in the form of commissions and/or bonuses.
18 However, on the occasions that the Waiting Time Penalties Subclass took sick time and received
19 paid sick leave, Defendants only paid sick time at the base rate of pay (not factoring in the
20 additional compensation as required by Labor Code §§ 246(l)(1-2)), leading to unpaid wages at
21 the time of separation of employment.

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

28 ///

1 **SIXTH CAUSE OF ACTION**

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

3 (Labor Code § 226)

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

5 98. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
6 alleged herein.

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

10 100. 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.

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

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

28 ///

1 103. Defendants' failure to provide the required writing deprived Plaintiff 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 Plaintiff 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, Plaintiff and the Wage Statement Penalties Subclass have suffered
7 and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost
8 interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully
9 perform its obligation under state law, all to their respective damages in amounts according to
10 proof at trial.

11 104. As a result of Defendants' knowing and intentional failure to comply with Labor
12 Code § 226(a), Plaintiff 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, Plaintiff 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 Plaintiff 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.

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

23 106. 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 Plaintiff 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 **SEVENTH CAUSE OF ACTION**

2 **UNFAIR AND UNLAWFUL COMPETITION**

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

4 *Plaintiff and the Represented Employees against All Defendants*

5 107. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
6 alleged herein.

7 108. 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.

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

13 110. 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.

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

20 112. As a result of Defendants’ failure to comply with the Labor Code and IWC
21 Orders, Represented Employees, including Plaintiff, 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.*

24 113. 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 Plaintiff and all others similarly situated.

28 ///

1 114. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
2 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
3 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of
4 Code of Civil Procedure § 1021.5.

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

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

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

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

1 119. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff 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 Plaintiff 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)**

8 120. Plaintiff is an “aggrieved employee” under the PAGA as he was employed by
9 Defendants during the applicable statutory period and suffered one or more of the Labor Code
10 violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil
11 action filed on behalf of himself 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”).

14 121. Plaintiff seeks 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, Plaintiff is not required to, nor
18 does he, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

19 122. Pursuant to Labor Code § 2699.3(a), Plaintiff 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 Plaintiff provided the written notice of the claims alleged herein without
24 the LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiff has fully
25 satisfied the administrative prerequisites to suit under the PAGA.

26 ///

27 ///

28 ///

1 **EIGHTH 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 *Plaintiff and the Aggrieved Employees against All Defendants*

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

7 124. Plaintiff 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.

10 125. Plaintiff 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, Plaintiff 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.

15 126. For example, Defendants required Plaintiff and the Represented Employees to
16 perform routine and recurring tasks at the beginning of the shift (before being allowed to clock
17 in) and at the end of the shift (after being allowed to clock out). And the Represented Employees
18 were also frequently required to perform work for Defendant while clocked out for meal periods.
19 Moreover, Defendants would habitually adjust time records to avoid meal premiums and/or other
20 wages. This often resulted in unpaid compensable time. These practices violate California law
21 and led to uncompensated time and minimum wage violations. See *Troester v. Starbucks*
22 *Corporation* (2018) 5 Cal.5th 829 (California law "do[es] not allow employers to require
23 employees to routinely work for minutes off the clock without compensation"); See also *Frlekin*
24 *v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when employee is under company's
25 control and where the tasks served the employer's interests).

26 127. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
27 Aggrieved Employees for all hours worked.

28 ///

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

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

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

10 **NINTH CAUSE OF ACTION**

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

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

13 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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

28 ///

1 135. For example, Defendants required Plaintiff and the Represented Employees to
2 perform routine and recurring tasks at the beginning of the shift (before being allowed to clock
3 in) and at the end of the shift (after being allowed to clock out). And the Represented Employees
4 were also frequently required to perform work for Defendant while clocked out for meal periods.
5 Moreover, Defendants would habitually adjust time records to avoid meal premiums and/or other
6 wages. This often resulted in unpaid compensable time. These practices violate California law
7 and led to uncompensated time and minimum wage violations. See *Troester v. Starbucks*
8 *Corporation* (2018) 5 Cal.5th 829 (California law “do[es] not allow employers to require
9 employees to routinely work for minutes off the clock without compensation”); See also *Frlekin*
10 *v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when employee is under company’s
11 control and where the tasks served the employer’s interests).

12 136. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
13 Aggrieved Employees for all overtime hours worked.

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

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

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

24 ///

25 ///

26 ///

27 ///

28 ///

PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS

Plaintiff and the Aggrieved Employees against All Defendants

///

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

5 147. On information and belief, Plaintiff and the Aggrieved Employees did not
6 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
7 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not
8 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
9 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved
10 Employees to take meal periods in accordance with California law.

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

14 **ELEVENTH CAUSE OF ACTION**

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

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

17 *Plaintiff and the Aggrieved Employees against All Defendants*

18 149. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
19 as if fully alleged herein.

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

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

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

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

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

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

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

19 **TWELFTH CAUSE OF ACTION**

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

21 (Labor Code § 204)

22 *Plaintiff and the Aggrieved Employees against All Defendants*

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

25 158. Plaintiff and the Aggrieved Employees are and/or were "nonexempt" employees
26 of Defendants who did not receive proper protections and benefits of the laws regarding the
27 timing of payment of wages each period.

28 ///

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

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

9 161. At all relevant times herein, Defendants did not provide Plaintiff and the
10 Aggrieved Employees with all wages due and owing each period within the time required by
11 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Aggrieved
12 Employees with all wages due and owing each pay period, including, but not limited to,
13 minimum, regular, and overtime wages, as well as meal and rest period premiums and sick time
14 at the proper rate, within the time specified by Labor Code § 204.

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

18 **THIRTEENTH CAUSE OF ACTION**

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

20 (Labor Code §§ 201 – 203)

21 *Plaintiff and the Aggrieved Employees against All Defendants*

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

24 164. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees
25 of Defendants who did not receive proper protections and benefits of the laws governing the
26 timing and payment of final wages.

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

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

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

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

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

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

17 **FOURTEENTH CAUSE OF ACTION**

18 **PAGA ASSESSMENT FOR**

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

20 (Labor Code § 226)

21 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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

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

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

16 **PRAYER FOR RELIEF**

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

- 20 1. As to the Eighth through Fourteenth Causes of Action, the assessment of all
21 applicable and available remedies under the PAGA'
- 22 2. For reasonable attorneys' fees and costs as permitted under the PAGA;
- 23 3. That the First through Seventh Causes of Action be certified as a class action;
- 24 4. That Plaintiff be appointed as Class Representative;
- 25 5. That counsel for Plaintiff be appointed Class Counsel;
- 26 6. For all applicable statutory penalties recoverable under the First through Seventh
27 Causes of Action to the extent permitted by law, including those pursuant to Labor Code and
28 Orders of the Industrial Welfare Commission;

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

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

5 9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
6 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 246, 510, 512, 558, 1194, 1197,
7 1198, and 1199, among other sections inadvertently omitted;

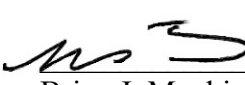
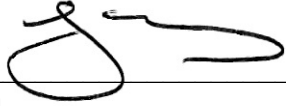
8 10. For an award of damages in the amount of unpaid compensation including, but
9 not limited to, unpaid wages, benefits, and penalties according to proof, including interest
10 thereon;

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

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

13
14 Dated: January 4, 2023

LAUBY, MANKIN & LAUBY LLP

15
16 BY:  
17 Brian J. Mankin, Esq.
18 Misty M. Lauby, Esq.
19 Attorneys for Plaintiff
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

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

On January 10, 2023, I caused to be served the foregoing document(s) described as follows:

FIRST AMENDED COMPLAINT

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

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

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

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

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

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

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

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 10, 2023, Riverside, California.

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


Tracie Chiarito, Declarant

SERVICE LIST

Isaac R. Zfaty, Esq.
Jonathan D. Yank, Esq.
MUCH SHELIST, P.C.
660 Newport Center Drive, #900
Newport Beach, CA 92660
949-767-2200
izfaty@muchlaw.com
jyank@muchlaw.com
Attorneys for Defendants