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

SAMUEL ESCARCEGA, an individual, on
behalf of himself, the State of California, as a
private attorney general, and on behalf of all
others similarly situated,

Plaintiff,

v.

ONTRAC LOGISTICS, INC., a Delaware
corporation; HVFP EXPRESS INC., a California
corporation; and DOES 1 TO 50,

Defendants.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

OCT 24 2025

DAVID H. YAMASAKI, Clerk of the Court

BY: M. NEVAREZ, DEPUTY

Case Number: 30-2025-01490042-CU-OE-CXC

**Joint Stipulation and ~~Proposed~~ Order for
Leave to File Plaintiff's First Amended
Complaint**

Complaint Filed: June 13, 2025

Trial Date: None Set

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1. On June 13, 2025, Plaintiff filed his initial class action complaint (“Complaint”) in the Orange County Superior Court, wherein he alleged, on behalf himself and of all other similarly situated employees, causes of action against Defendants for: (1) willful misclassification, (2) failure to provide rest periods and pay missed rest period premiums, (3) failure to provide meal periods and pay missed meal period premiums, (4) failure to maintain accurate employment records, (5) failure to indemnify all necessary business expenditures, (6) failure to furnish accurate itemized wage statements, (7) violations of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210).

3. No notice was received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five calendar days of the postmark date of the PAGA notice.

5. Accordingly, Plaintiff and Defendants stipulate that Plaintiff may file the First Amended Complaint attached hereto as **Exhibit A**, without need for a formal motion to request leave from the Court.

1. Plaintiff shall be granted leave to file and serve the First Amended Complaint ("FAC"), in the form attached hereto as **Exhibit A**.

2. Defendants may file a responsive pleading to the First Amended Complaint within thirty (30) days of service of the order approving and entering this stipulation and the FAC. Otherwise, Defendants' answer on file shall constitute an answer to the FAC.

Dated: October 17, 2025

MELMED LAW GROUP P.C.



JONATHAN MELMED

Attorneys for Plaintiff, the Putative Class, and the Aggrieved Employees

Dated: October 17, 2025

SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, LLP

/s/ Damian M. Moos

DAMIAN M. MOOS

Attorneys for Defendant OnTrac Logistics, Inc.

Dated: October 17, 2025

EMILIO LAW GROUP, APC

/s/ Laurie M. Cortez

LAURIE M. CORTEZ

Attorneys for Defendant and HVFP Express Inc.

4914-9595-6595, v. 1

1 ~~[PROPOSED]~~ ORDER

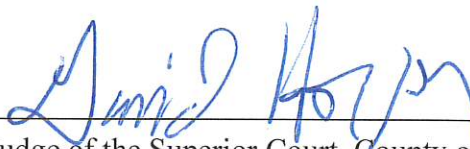
2 Pursuant to the stipulation of the parties and good cause appearing, the Court orders as follows:

3 1. Plaintiff is granted leave to file and serve a First Amended Complaint, in the form
4 attached as **Exhibit A**, and Plaintiff's First Amended Complaint is deemed filed as of the date that this
5 order is signed by the Court.

6 2. Defendants may file a responsive pleading to the First Amended Complaint within thirty
7 (30) days of being served with a copy of this order approving and entering this stipulation and the First
8 Amended Complaint. Otherwise, Defendants' answer on file to the original complaint shall constitute
9 an answer to the First Amended Complaint.

10 **IT IS SO ORDERED.**

11 10/24/25

12 
13 _____

14 Judge of the Superior Court, County of Orange

15 DAVID HOFFER
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Exhibit A

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

SAMUEL ESCARCEGA, an individual, on
behalf of himself, the State of California, as a
private attorney general, and on behalf of all
others similarly situated,

Plaintiff,

v.

ONTRAC LOGISTICS, INC., a Delaware
corporation; HVFP EXPRESS INC., a California
corporation; and DOES 1 TO 50,

Defendants.

Case Number: 30-2025-01490042-CU-OE-CXC

**First Amended Class and PAGA
Representative Action Complaint For:**

1. Willful Misclassification,
2. Failure to Provide Rest Periods and Pay Missed Rest Period Premiums,
3. Failure to Provide Meal Periods and Pay Missed Meal Period Premiums,
4. Failure to Maintain Accurate Employment Records,
5. Failure to Indemnify All Necessary Business Expenditures,
6. Failure to Furnish Accurate Itemized Wage Statements,
7. Violations of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200-17210), and
8. Penalties Pursuant to PAGA for Violations of California Labor Code Sections 226, 226.3, 226.7, 226.8, 512, 1174,

1174.5, 1198.5, 2775, 2802, 2084, and
Other Provisions of the Labor Code.

Demand for Jury Trial

1 Plaintiff Samuel Escarcega ("Plaintiff"), on behalf of himself, the State of California, as a
2 private attorney general, and all other similarly situated employees within the State of California,
3 complains and alleges of defendants OnTrac Logistics, Inc., HVFP Express Inc., and Does 1 to 50
4 (collectively, "Defendants"), and each of them, as follows:

5 **I. INTRODUCTION**

6 1. This is a class action complaint brought pursuant to California Code of Civil Procedure
7 section 382.

8 2. The "Class Period" as used herein, is defined as the period from June 13, 2021, and
9 continuing into the present and ongoing. Defendants' violations of California's laws as described more
10 fully below have been ongoing throughout the Class Period and are still ongoing.

11 3. Plaintiff brings this class action on behalf of himself and the following class: *All*
12 *individuals who are or were employed by Defendants as non-exempt employees in California during*
13 *the Class Period* (the "Class Members"). (Code Civ. Proc., § 382.)

14 4. Plaintiff brings this action on behalf of himself and the Class Members, as a class action,
15 against Defendants for:

- 16 A. Failure to provide rest periods and pay missed rest period premiums,
- 17 B. Failure to provide meal periods and pay missed meal period premiums,
- 18 C. Failure to maintain accurate employment records,
- 19 D. Failure to indemnify all necessary business expenditures,
- 20 E. Failure to furnish accurate itemized wage statements,
- 21 F. Violations of California's Unfair Competition Law ("UCL") (Bus. & Prof.
22 Code, §§ 17200–17210).

23 5. This action is also a representative action brought pursuant to the California Labor Code
24 Private Attorneys General Act of 2004 ("PAGA"), codified at California Labor Code sections 2698
25 through 2699.6.

26 6. The "PAGA Period" as used herein, is defined as the period from June 13, 2024, and
27 continuing into the present and ongoing.

1 7. This PAGA action is brought on behalf of Plaintiff, the State of California as private
2 attorney general, and on behalf of the following aggrieved employees: *All individuals who are or were*
3 *employed by Defendants as non-exempt employees in California during the PAGA Period* (the
4 “Aggrieved Employees”).

5 8. Plaintiff is informed and believes and thereon alleges that the California Industrial
6 Welfare Commission (“IWC”) Wage Order applicable to the facts of this case is IWC Wage Order 9-
7 2001 (the “Applicable Wage Order”) and possibly others that may be applicable. (Cal. Code of Regs.,
8 tit. 8, § 11090.) Plaintiff reserves the right to amend or modify the definition of “Applicable Wage
9 Order” with greater specificity or add additional IWC Wage Orders if additional applicable wage orders
10 are discovered in litigation.

11 **II. JURISDICTION & VENUE**

12 9. This Court has subject matter jurisdiction over all causes of action asserted herein
13 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure section
14 410.10 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds
15 \$25,000, and because each cause of action asserted arises under the laws of the State of California or
16 is subject to adjudication in the courts of the State of California.

17 10. This Court has personal jurisdiction over Defendants because Defendants have caused
18 injuries in the County of Orange and the State of California through their acts, and by their violation
19 of the California Labor Code and California state common law. Defendants transact millions of dollars
20 of business within the State of California. Defendants own, maintain offices, transact business, have an
21 agent or agents within the County of Orange, and/or otherwise are found within the County of Orange,
22 and Defendants are within the jurisdiction of this Court for purposes of service of process.

23 11. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of the
24 Code of Civil Procedure. Defendants operate within California and do business within Orange County,
25 California. The unlawful acts alleged herein have a direct effect on Plaintiff and all of Defendants’
26 employees identified above within Orange County and surrounding counties where Defendants may
27 remotely operate.
28

1 12. This matter is not appropriate for removal under the Class Action Fairness Act (28
2 U.S.C. § 1332) as the amount in controversy for Plaintiff's and the Class Members' claims, in
3 aggregate, is less than \$5 million. Additionally, all the allegations herein occurred in the State of
4 California. As such, even if the amount in controversy did exceed \$5 million this matter would still not
5 be appropriate for removal under the "local controversy" exception to the Class Action Fairness Act.
6 (28 U.S.C. § 1332, subd. (d)(4)(A).)

7 **III. THE PARTIES**

8 **A. PLAINTIFF**

9 13. At all relevant times, Plaintiff, who is over the age of 18, was and currently is a citizen
10 of California residing in the State of California. Defendants employed Plaintiff as a non-exempt hourly
11 employee.

12 14. Plaintiff brings this action on behalf of himself and the following class pursuant to
13 section 382 of the Code of Civil Procedure as follows: *All individuals who are or were employed by*
14 *Defendants as non-exempt employees in California during the Class Period* (the "Class Members").

15 15. Plaintiff also brings this action on behalf of himself and the State of California, as a
16 private attorney general, and on behalf of the following group of aggrieved employees: *All individuals*
17 *who are or were employed by Defendants as non-exempt employees in California during the PAGA*
18 *Period* (the "Aggrieved Employees").

19 16. The Class Members and the Aggrieved Employees, at all times pertinent hereto, are or
20 were employees of Defendants during the relevant statutory period.

21 **B. DEFENDANTS**

22 17. Plaintiff is informed and believes and thereon alleges that Defendants were authorized
23 to and doing business in Orange County and is and/or was the legal employer of Plaintiff, the other
24 Aggrieved Employees, and the other Class Members during the applicable statutory periods. Plaintiff,
25 the other Aggrieved Employees, and the other Class Members were, and are, subject to Defendants'
26 policies and/or practices complained of herein and have been deprived of the rights guaranteed to them
27 by: California Labor Code sections 226, 226.3, 226.7, 226.8, 512, 1174, 1198.5, 2775, 2802, 2804, and
28 others that may be applicable; California Business and Professions Code sections 17200 through 17210

1 (“UCL”); and the Applicable Wage Order (Cal. Code of Regs., tit. 8, § 11090).

2 18. Plaintiff is informed and believes, and based thereon alleges, that during the Class
3 Period and PAGA Period, Defendants did (and continue to do) business in the State of California,
4 County of Orange.

5 19. Plaintiff does not know the true names or capacities, whether individual, partner, or
6 corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said defendants
7 are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this
8 complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and
9 thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were
10 responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff,
11 the other Aggrieved Employees, and the other Class Members to be subject to the unlawful employment
12 practices, wrongs, injuries, and damages complained of herein.

13 20. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
14 herein, Defendants were and/or are the employers of Plaintiff, the other Aggrieved Employees, and the
15 other Class Members. At all times herein mentioned, each of said Defendants participated in the doing
16 of the acts hereinafter alleged to have been done by the named Defendants. Furthermore, the
17 Defendants, and each of them, were the agents, representatives, and employees of each and every one
18 of the other Defendants, and at all times herein mentioned were acting within the course and scope of
19 said agency, representation, and employment. Defendants, and each of them, approved of, condoned,
20 or otherwise ratified every one of the acts or omissions complained of herein.

21 21. Plaintiff is further informed, and believes, and thereon alleges, that at all times
22 mentioned herein, that Defendants, and each of them, are the alter egos of one another and that there
23 existed and now exists a unity of interest and ownership between them such that the individuality and
24 separateness of each of them has ceased. Plaintiff is further informed, and believes, and thereon alleges,
25 that at all times mentioned herein, that Defendants, and each of them, have been and now are mere
26 shells and naked frameworks that their principal uses for the conduct of that Defendant’s own business,
27 property, and affairs, for which Defendants, and each of them, have concealed and misrepresented their
28 identities as the entities responsible for their ownership, management, and financial interests.

1 22. Plaintiff is further informed, and believes, and thereon alleges, that at all times
2 mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture,
3 partnership, and common enterprise, and acting within the course and scope of and in pursuance of said
4 joint venture, partnership, and common enterprise. Further, Plaintiff is informed, and believes, and
5 thereon alleges, that all Defendants were joint employers for all purposes of Plaintiff, the other
6 Aggrieved Employees, and the other Class Members.

7 **IV. COMMON FACTS & ALLEGATIONS**

8 23. Plaintiff and the other Class Members (collectively, the “Class Members”) are, and were
9 at all relevant times, employed by the Defendants within the State of California.

10 24. Likewise, Plaintiff and the other Aggrieved Employees (collectively, the “Aggrieved
11 Employees”) are, and were at all relevant times, employed by the Defendants within the State of
12 California.

13 25. The Class Members and the Aggrieved Employees are, and were, at all relevant times,
14 non-exempt employees for the purposes of rest breaks, meal periods, and the other claims alleged in
15 this complaint.

16 26. Specifically, Plaintiff was employed by Defendants within the statutory Class Period
17 and PAGA Period, working as an hourly, non-exempt delivery driver for Defendants.

18 **A. WILLFUL MISCLASSIFICATION**

19 27. Labor Code section 2775, subdivision (b), provides the test for determining whether an
20 individual performing work for another is an independent contractor or an employee. It states as
21 follows:

22 “[A] person providing labor or services for remuneration shall be considered an
23 employee rather than an independent contractor unless the hiring entity
24 demonstrates that all of the following conditions are satisfied:

25 “(A) The person is free from the control and direction of the hiring entity in
26 connection with the performance of the work, both under the contract for
27 the performance of the work and in fact.
28

1 “(B) The person performs work that is outside the usual course of the hiring
2 entity’s business.

3 “(C) The person is customarily engaged in an independently established trade,
4 occupation, or business of the same nature as that involved in the work
5 performed.”

6 28. This standard is commonly referred to as the “ABC Test.” Under the ABC Test, the
7 alleged employer, rather than the worker, has the burden of establishing that the worker is an
8 independent contractor and not intended to be included within the relevant wage order’s coverage. “The
9 focus is not on the label attached to a worker’s position, but on how that individual’s job may
10 reasonably be viewed.” (*Gonzales v. San Gabriel Transit, Inc.* (2019) 40 Cal.App.5th 1131, 1154–
11 1155.) Further, the alleged employer must establish that the worker meets **all three** factors of the ABC
12 Test or falls within an exception to the ABC Test. (*Id.* at p. 1154 [“The ABC test is conjunctive, and
13 the hiring entity’s failure to establish *any* of the following three factors precludes a finding that the
14 worker is an independent contractor”].) Otherwise, Labor Code section 2775’s default
15 presumption applies and the worker must be treated as an employee. (See *Dynamex Operations W. v.*
16 *Superior Court* (2018) 4 Cal.5th 903, 955 [“The ABC test presumptively considers all workers to be
17 employees, and permits workers to be classified as independent contractors only if the hiring business
18 demonstrates that the worker in question satisfies each of three conditions.....”].)

19 29. Here, at all times during the Class Period and PAGA Period, Defendants treated the
20 Class Members and the Aggrieved Employees as independent contractors despite the fact that
21 Defendants failed to meet any of the prongs of the ABC Test, let alone all three. First, Defendants
22 retained the right to control the manner and method of how the Class Members and the Aggrieved
23 Employees performed their job duties, and Defendants retained all necessary control over the Class
24 Members and the Aggrieved Employees during their employment. Among other things, the Class
25 Members and the Aggrieved Employees were required to follow detailed requirements imposed by
26 Defendants governing the performance of their job. Further, Defendants set their compensation.

27 30. Second, the job duties performed by the Class Members and the Aggrieved Employees
28 fell within Defendants’ usual course of business. Specifically, the roles performed by the Class

1 Members and the Aggrieved Employees are clearly comparable to those of Defendants' employees
2 whose services are provided within the usual course of Defendants' business. Thus, the work of the
3 Class Members and the Aggrieved Employees was not merely incidental to Defendants' business, but
4 rather, was an integral and ordinary part of that business.

5 31. Finally, the Class Members and the Aggrieved Employees were not engaged in an
6 independently established trade, occupation, or business of the same nature as the work performed for
7 Defendants. The Class Members and the Aggrieved Employees did not, for example, take any of the
8 usual steps to establish and promote their businesses. Nor did the Class Members and the Aggrieved
9 Employees—through incorporation, licensure, advertisements, or routine offerings to provide services
10 to the public or to a number of potential customers—independently choose the burdens and benefits of
11 self-employment by engaging in an independently established trade, occupation, or business. Critically,
12 this last prong of the ABC Test requires that Defendants show the Class Members and the Aggrieved
13 Employees “*actually . . . engaged in an independent business, not merely that [they] could be.*”
14 (*Gonzales v. San Gabriel Transit, Inc.* (2019) 40 Cal.App.5th 1131, 1155, emphasis in original.) That
15 simply did not happen here: the Class Members and the Aggrieved Employees did not *actually engage*
16 in independent businesses. “A company that labels as independent contractors a class of workers who
17 are not engaged in an independently established business in order to enable the company to obtain the
18 economic advantages that flow from avoiding the financial obligations that a wage order imposes on
19 employers unquestionably violates the fundamental purposes of the wage order.” (*Dynamex*
20 *Operations W. v. Superior Court* (2018) 4 Cal.5th 903, 962.) Here, Defendants violated California law
21 by attempting to do so.

22 32. Labor Code section 226.8 provides, in pertinent part, as follows:

23 “(a) It is unlawful for any person or employer to engage in any of the following
24 activities:

25 “(1) Willful misclassification of an individual as an independent contractor.

26 “(2) Charging an individual who has been willfully misclassified as an
27 independent contractor a fee, or making any deductions from
28 compensation, for any purpose, including for goods, materials, space

1 rental, services, government licenses, repairs, equipment maintenance,
2 or fines arising from the individual's employment where any of the acts
3 described in this paragraph would have violated the law if the individual
4 had not been misclassified.

5 “(b) If the Labor and Workforce Development Agency or a court issues a
6 determination that a person or employer has engaged in any of the enumerated
7 violations of subdivision (a), the person or employer shall be subject to a civil
8 penalty of not less than five thousand dollars (\$5,000) and not more than fifteen
9 thousand dollars (\$15,000) for each violation, in addition to any other penalties
10 or fines permitted by law.

11 “(c) If the Labor and Workforce Development Agency or a court issues a
12 determination that a person or employer has engaged in any of the enumerated
13 violations of subdivision (a) and the person or employer has engaged in or is
14 engaging in a pattern or practice of these violations, the person or employer shall
15 be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and
16 not more than twenty-five thousand dollars (\$25,000) for each violation, in
17 addition to any other penalties or fines permitted by law.”

18 33. As explained above, Defendants’ treatment of the Class Members and the Aggrieved
19 Employees cannot meet any part of the ABC Test and Defendants knew it. Defendants thus
20 intentionally and willfully misclassified the Class Members and the Aggrieved Employees as
21 independent contractors in violation of Labor Code section 226.8, subdivision (a). Moreover, this
22 treatment was not merely occasional, but reflected Defendants’ pattern and practice of willfully
23 misclassifying Defendants’ employees as independent contractors. Defendants are thus liable, through
24 PAGA, for the civil penalties of up to \$25,000 for *each* violation as provided by Labor Code section
25 226.8, subdivisions (b) and (c). (Lab. Code, § 2699, subd. (a).)

26 **B. REST BREAK VIOLATIONS**

27 34. Pursuant to Labor Code section 226.7 and the Applicable Wage Order, Defendants were
28 and are required to provide the Class Members and the Aggrieved Employees with compensated, duty-

1 free rest periods of not less than ten minutes for every major fraction of four hours worked. Under the
2 Applicable Wage Order, an employer must authorize and permit all employees to take ten minute duty
3 free rest periods for every major fraction of four hours worked. (Cal. Code of Regs., tit. 8, § 11090.)

4 35. Likewise, Labor Code section 226.7 provides that “[a]n employer shall not require an
5 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,
6 or applicable regulation, standard, or order of the Industrial Welfare Commission.....” (Lab. Code, §
7 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay their employees one
8 additional hour of pay at the employee’s regular rate for each workday that a “meal or rest or recovery
9 period is not provided.” (Lab. Code, § 226.7, subd. (c).) The “regular rate” for these purposes must
10 factor in all nondiscretionary payments for work performed by the employee, including non-
11 discretionary bonuses, commissions, and other forms of wage payments exceeding the employees’ base
12 hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878.) Thus, the Wage
13 Orders set when and for how long the rest period must take place and the Labor Code establishes that
14 violations of the IWC Wage Orders are unlawful and sets forth the premium pay employer must pay
15 their employees when employers fail to provide rest periods.

16 36. The California Supreme Court has held that, during required rest periods, “employers
17 must relieve their employees of all duties and relinquish any control over how employees spend their
18 break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.) Relinquishing
19 control over employees during rest periods requires that employees be “free to leave the employer’s
20 premises” and be “permitted to attend to personal business.” (*Id.* at p. 275.) The *Brinker* Court
21 explained in the context of rest breaks that employer liability attaches from adopting an unlawful
22 policy:

23 “An employer is required to authorize and permit the amount of rest break time
24 called for under the wage order for its industry. If it does not—if, for example,
25 it adopts a uniform policy authorizing and permitting only one rest break for
26 employees working a seven-hour shift when two are required—it has violated
27 the wage order and is liable.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53
28 Cal.4th 1004, 1033.)

1 37. Here, Defendants periodically did not permit the Class Members and the Aggrieved
2 Employees to take compliant duty-free rest breaks, free from Defendants' control as required by Labor
3 Code section 226.7, the Applicable Wage Order, and applicable precedent. (See *Augustus v. ABM*
4 *Security Services, Inc.* (2016) 2 Cal.5th 257, 269 [concluding that "during rest periods employers must
5 relieve employees of all duties and relinquish control over how employees spend their time."].) At all
6 relevant times, the Class Members and the Aggrieved Employees were periodically not provided with
7 legally-compliant and timely rest periods of at least ten minutes for each four hour work period, or
8 major fraction thereof due to Defendants' unlawful rest period policies/practices. The Class Members
9 and the Aggrieved Employees were often expected and required to continue working through rest
10 periods to meet the expectations Defendants and finish the workday. In some cases when the Class
11 Members and the Aggrieved Employees worked more than ten hours in a shift, Defendants failed to
12 authorize and/or permit a third mandated rest period. As a result, the Class Members and the Aggrieved
13 Employees were periodically unable to take compliant rest periods.

14 38. In such cases where Defendants did not offer the Class Members and the Aggrieved
15 Employees the opportunity to receive a compliant off-duty rest period, "the court may not conclude
16 employees voluntarily chose to skip those breaks." (*Alberts v. Aurora Behavioral Health Care* (2015)
17 241 Cal.App.4th 388, 410 (2015) ["If an employer fails to provide legally compliant meal or rest
18 breaks, the court may not conclude employees voluntarily chose to skip those breaks."]; *Brinker Rest.*
19 *Corp. v. Superior Court, supra*, 53 Cal.4th at p. 1033 ["No issue of waiver ever arises for a rest break
20 that was required by law but never authorized; if a break is not authorized, an employee has no
21 opportunity to decline to take it."].)

22 39. In addition to failing to authorize and permit compliant rest periods, the Class Members
23 and the Aggrieved Employees were not compensated with one hour's worth of pay at their regular rate
24 of compensation when they were not provided with a compliant rest period in accordance with Labor
25 Code section 226.7, subdivision (c). Thus, Defendants have violated Labor Code section 226.7 and the
26 Applicable Wage Order.

27 40. Based on the foregoing, Plaintiff seeks to recover, on behalf of himself and other non-
28 exempt employees, rest period premiums and penalties.

1 **C. MEAL BREAK VIOLATIONS**

2 41. Labor Code section 512 and the Applicable Wage Order require employers to provide
3 employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of
4 work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for a work period of
5 more than five hours per day without providing the employee with a meal period of not less than 30
6 minutes.....”]; Cal. Code of Regs., tit. 8, § 11090 [“No employer shall employ any person for a work
7 period of more than five (5) hours without a meal period of not less than 30 minutes.....”].)
8 Additionally, an employee who works more than ten hours per day is entitled to receive a second thirty-
9 minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a) [“An employer shall not
10 employ an employee for a work period of more than 10 hours per day without providing the employee
11 with a second meal period of not less than 30 minutes.....”].)

12 42. “An on-duty meal period is permitted only when the nature of the work prevents an
13 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal
14 break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement must
15 include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the California
16 Department of Industrial Relations, Division of Labor Standards Enforcement (“DLSE”) and courts
17 have “found that the nature of the work exception applies: (1) where the work has some particular
18 external force that requires the employee to be on duty at all times, and (2) where the employee is the
19 sole employee of a particular employer.” (*Id.* at p. 945, internal quotation marks omitted; *Abdullah v.*
20 *U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is the employer’s obligation
21 to determine whether the nature of the work prevents an employee from being relieved before requiring
22 an employee to take an on-duty meal period.” (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at
23 p. 946.)

24 43. Here, the Class Members and the Aggrieved Employees were never asked to sign any
25 enforceable document agreeing to an on-duty meal period. Moreover, nothing in the nature of their
26 work involved the kind of “external force” that might justify on-duty meal breaks. (*Lubin v. The*
27 *Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 945.) Nevertheless, Defendants periodically did not
28 provide compliant off-duty meal periods within the first five hours of work for the Class Members and

1 the Aggrieved Employees.

2 44. As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v.*
3 *Superior Court* (2012) 53 Cal.4th 1004, 1035 [“The IWC’s wage orders have long made a meal period’s
4 duty-free nature its defining characteristic.”].) Relinquishing control over employees during meal
5 periods requires that employees be “free to leave the employer’s premises” and be “permitted to attend
6 to personal business.” (*Augustus v. ABM Security Services, Inc.*, *supra*, 2 Cal.5th at p. 275.) Under
7 Labor Code section 512, if an employer maintains a uniform policy that does not authorize and permit
8 the amount of meal time called for under the law (as specified in the Labor Code and/or applicable
9 IWC Wage Order), “it has violated the wage order and is liable.” (*Brinker Restaurant Corp. v. Superior*
10 *Court*, *supra*, 53 Cal.4th at p. 1033.)

11 45. During the applicable statutory periods here, the Class Members and the Aggrieved
12 Employees were periodically denied legally-compliant and timely off-duty meal periods of at least
13 thirty minutes due to Defendants’ unlawful meal period policy and practices. As a result of Defendants’
14 uniform meal period policies and practices, the Class Members and the Aggrieved Employees were
15 often not permitted to take compliant first meal periods before the end of the fifth hour of work. The
16 Class Members and the Aggrieved Employees were also periodically not permitted to take second meal
17 periods for shifts in excess of ten hours. Defendants thus violated Labor Code section 512 and the
18 Applicable Wage Order by failing to advise, authorize, or permit the Class Members and the Aggrieved
19 Employees to receive thirty-minute, off-duty meal periods within the first five hours of their shifts.

20 46. Labor Code section 226.7 provides that “[a]n employer shall not require an employee
21 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
22 applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab. Code, § 226.7,
23 subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage Order further obligate
24 employers to pay employees one additional hour of pay at the employee’s regular rate of compensation
25 for each workday that the meal period is not provided. (Lab. Code, § 226.7, subd. (c); Cal. Code of
26 Regs., tit. 8, § 11090 [“If an employer fails to provide an employee a meal period in accordance with
27 the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
28 employee’s regular rate of compensation for each workday that the meal period is not provided.”].)

1 The “regular rate” for these purposes must factor in all nondiscretionary payments for work performed
2 by the employee, including non-discretionary bonuses, commissions, and other forms of wage
3 payments exceeding the employees’ base hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021)
4 11 Cal.5th 858, 878.)

5 47. Accordingly, for each day that the Class Members and the Aggrieved Employees did
6 not receive compliant meal periods, they were and are entitled to receive meal period premiums
7 pursuant to Labor Code section 226.7 and the Applicable Wage Order. Defendants, however, failed to
8 pay the Class Members and the Aggrieved Employees applicable meal period premiums for many
9 workdays that the employees did not receive a compliant meal period. Thus, Defendants have violated
10 Labor Code section 226.7 and the Applicable Wage Order.

11 48. Based on the foregoing, Plaintiff seeks to recover, on behalf of himself and other non-
12 exempt employees, meal period premiums and penalties.

13 **D. FAILURE TO REIMBURSE BUSINESS EXPENSES**

14 49. At all relevant times herein, Defendants were subject to Labor Code section 2802, which
15 states that “an employer shall indemnify his or her employees for all necessary expenditures or losses
16 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her
17 obedience to the directions of the employer.” The purpose of this section is to “prevent employers from
18 passing along their operating expenses onto their employees.” (*Gattuso v. Harte-Hanks Shoppers, Inc.*
19 (2007) 42 Cal.4th 554, 562.)

20 50. At all relevant times herein, Defendants were subject to Labor Code section 2804, which
21 states that “any contract or agreement, express or implied, made by any employee to waive the benefits
22 of this article or any part thereof, is null and void, and this article shall not deprive any employee or his
23 personal representative of any right or remedy to which he is entitled under the laws of this State.”

24 51. Thus, the Class Members and the Aggrieved Employees were and are entitled to
25 reimbursement for the expenses they incurred during the course of their duties. The duty to reimburse
26 even extends to the use of equipment the employee may already own and would be required to pay for
27 anyway. (*Cochran v. Schwan’s Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 [“The threshold
28 question in this case is this: Does an employer always have to reimburse an employee for the reasonable

1 expense of the mandatory use of a personal cell phone, or is the reimbursement obligation limited to
2 the situation in which the employee incurred an extra expense that he or she would not have otherwise
3 incurred absent the job? The answer is that reimbursement is always required. Otherwise, the employer
4 would receive a windfall because it would be passing its operating expenses on to the employee.”].)

5 52. Here, Defendants failed to fully reimburse the Class Members and the Aggrieved
6 Employees for necessary expenditures incurred as a direct consequence and requirement of performing
7 their job duties, including the costs associated with their personal cell phone and mileage they required
8 to perform their work. Consequently, Defendants failed to comply with Labor Code section 2802.

9 **E. WAGE STATEMENT VIOLATIONS**

10 53. Defendants also failed to provide accurate itemized wage statements in accordance with
11 Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226, subdivision
12 (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
13 statement in writing showing:

- 14 (1) The gross wages earned;
- 15 (2) The total hours worked by the employee;
- 16 (3) The number of piece-rate units earned and any applicable piece rate if
17 the employee is paid on a piece rate basis;
- 18 (4) All deductions, provided that all deductions made on written orders of
19 the employee may be aggregated and shown as one item;
- 20 (5) The net wages earned;
- 21 (6) The inclusive dates of the period for which the employee is paid;
- 22 (7) The name of the employee and only the last four digits of his or her social
23 security number or an employee identification number other than a social
24 security number;
- 25 (8) The name and address of the legal entity that is the employer; and
- 26 (9) All applicable hourly rates in effect during the pay period and the
27 corresponding number of hours worked at each hourly rate by the
28 employee.

1 54. Due to Defendants' failure to pay the Class Members and the Aggrieved Employees
2 properly as described above, the wage statements issued do not indicate the correct amount of gross
3 wages earned, total hours worked, or the net wages earned, or the applicable hourly rates in effect
4 during the pay period and the corresponding number of hours worked at each hourly rate. Thus,
5 Defendants have violated Labor Code section 226, subdivisions (a)(1), (2), (5), and (9).

6 55. In addition to Labor Code section 226, subdivision (a), Defendants also knowingly and
7 intentionally failed to provide the Class Members and the Aggrieved Employees with accurate itemized
8 wage statements in violation of Labor Code section 226, subdivision (e). Defendants knew that they
9 were not providing the Class Members and the Aggrieved Employees with wage statements required
10 by California law but nevertheless failed to correct their unlawful practices and policies. (See *Garnett*
11 *v. ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d 1121, 1134 [finding the defendant knowingly and
12 intentionally violated Labor Code section 226 because the "[d]efendant knew that it was not providing
13 total hours worked to plaintiff or other employees paid on commission" even though it believed that
14 employees paid solely on commission or commission and salary "are exempt and therefore we do not
15 record hours on a wage statement."].)

16 **F. RECORDKEEPING VIOLATIONS**

17 56. Labor Code section 226, subdivision (a), requires employers to keep an accurate record
18 of, among other things, all hours worked by employees. Labor Code section 226.3 provides, in pertinent
19 part, as follows:

20 "Any employer who violates subdivision (a) of Section 226 shall be subject to a
21 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per
22 violation in an initial citation and one thousand dollars (\$1,000) per employee
23 for each violation in a subsequent citation, for which the employer fails to
24 provide the employee a wage deduction statement or fails to keep the records
25 required in subdivision (a) of Section 226. The civil penalties provided for in
26 this section are in addition to any other penalty provided by law." (Lab. Code, §
27 226.3, emphasis added.)
28

1 57. Likewise, Labor Code section 1174, subdivision (d), requires every employer, including
2 Defendants, to:

3 “Keep, at a central location in the state or at the plants or establishments at which
4 employees are employed, payroll records showing the hours worked daily by
5 and the wages paid to, and the number of piece-rate units earned by and any
6 applicable piece rate paid to, employees employed at the respective plants or
7 establishments. These records shall be kept in accordance with rules established
8 for this purpose by the commission, but in any case shall be kept on file for not
9 less than three years. An employer shall not prohibit an employee from
10 maintaining a personal record of hours worked, or, if paid on a piece-rate basis,
11 piece-rate units earned.” (Lab. Code, § 1174, subd. (d), emphasis added.)

12 58. As explained in detail above, Defendants failed to provide the Class Members and the
13 Aggrieved Employees with accurate itemized wage statements. Defendants did so, in part, because they
14 failed to accurately track hours worked by the Class Members and the Aggrieved Employees.
15 Defendants have thus failed to keep accurate records of the “total hours worked by the employee[s]”
16 in violation of Labor Code section 226, subdivision (a), and are therefore subject to the penalties
17 provided by Labor Code section 226.3. These penalties are “in addition to any other penalty provided
18 by law.” (Lab. Code, § 226.3.)

19 59. The failure to accurately track hours worked also resulted in a failure of Defendants to
20 keep a record of all “payroll records showing the hours worked daily by” Defendants’ employees,
21 including Plaintiff and the other Class Members, in violation of Labor Code section 1174, subdivision
22 (d).

23 **V. CLASS ACTION ALLEGATIONS**

24 60. As mentioned above, Plaintiff brings this action on behalf of himself and the Class
25 Members pursuant to section 382 of the Code of Civil Procedure.

26 61. **Numerosity/Ascertainability:** The Class Members are so numerous that joinder of all
27 members would be unfeasible and not practicable. The membership of the class is unknown to Plaintiff
28 at this time; however, it is estimated that the number of Class Members is greater than 100 individuals.

1 The identity of such membership is readily ascertainable via inspection of Defendants' employment
2 records.

3 **62. Common Questions of Law and Fact Predominate/Well Defined Community of**
4 **Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated
5 non-exempt employees, which predominate over questions affecting only individual members
6 including, without limitation to:

7 A. Whether Defendants' rest period policies and practices afforded legally
8 compliant rest periods or compensation in lieu thereof;

9 B. Whether Defendants' meal period policies and practices afforded legally
10 compliant meal periods or compensation in lieu thereof;

11 C. Whether Defendants maintained accurate employment records;

12 D. Whether Defendants indemnified their employees for all necessary business
13 expenditures;

14 E. Whether Defendants furnished legally-compliant wage statements to the Class
15 Members pursuant to Labor Code section 226;

16 F. Whether Defendants' violations of the Labor Code and the Applicable Wage
17 Order amounted to a violation of California's UCL.

18 **63. Predominance of Common Questions:** Common questions of law and fact
19 predominate over questions that affect only individual Class Members. The common questions of law
20 set forth above are numerous and substantial and stem from Defendants' uniform policies and practices
21 applicable to each individual class member, such as Defendants' uniform policies and practices which
22 failed to provide compliant rest periods, Defendants' uniform policies and practices which failed to
23 provide compliant meal periods, Defendants' failure to provide accurate itemized wage statements, and
24 others. As such, the common questions predominate over individual questions concerning each
25 individual class member's showing as to his or her eligibility for recovery or as to the amount of his or
26 her damages.

27 **64. Typicality:** The claims of Plaintiff are typical of the claims of the Class Members
28 because Plaintiff was employed by Defendants as a non-exempt employee in California during the

1 statute(s) of limitation applicable to each cause of action pleaded in this complaint. As alleged herein,
2 Plaintiff, like the other Class Members, was deprived of rest periods and premium wages in lieu thereof,
3 was deprived of meal periods and premium wages in lieu thereof, was subject to Defendants' uniform
4 rest period policies and practices, was subject to Defendants' uniform meal period policies and
5 practices, was not provided accurate itemized wage statements, , , and was subject to other similar
6 policies and practices to which the Class Members were subject.

7 **65. Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
8 represent fairly and adequately the interests of the Class Members. Moreover, Plaintiff's attorneys are
9 ready, willing, and able to fully and adequately represent the Class Members and Plaintiff. Plaintiff's
10 attorneys have prosecuted numerous wage-and-hour class actions in state and federal court in the past
11 and are committed to vigorously prosecuting this action on behalf of the Class Members.

12 **66. Superiority:** The California Labor Code is broadly remedial in nature and serves an
13 important public interest in establishing minimum working conditions and standards in California.
14 These laws and labor standards protect the average working employee from exploitation by employers
15 who have the responsibility to follow the laws and who may seek to take advantage of superior
16 economic and bargaining power in setting onerous terms and conditions of employment. The nature of
17 this action and the format of laws available to Plaintiff and the Class Members make the class action
18 format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each
19 employee were required to file an individual lawsuit, Defendants would necessarily gain an
20 unconscionable advantage since they would be able to exploit and overwhelm the limited resources of
21 each individual plaintiff with their vastly superior financial and legal resources.

22 **67.** Moreover, requiring each Class Member to pursue an individual remedy would also
23 discourage the assertion of lawful claims by employees who would be disinclined to file an action
24 against their former or current employer for real and justifiable fear of retaliation and permanent
25 damages to their careers at subsequent employment. Further, the prosecution of separate actions by the
26 individual Class Members, even if possible, would create a substantial risk of inconsistent or varying
27 verdicts or adjudications with respect to the individual Class Members against Defendants herein, and
28 which would establish potentially incompatible standards of conduct for Defendants or legal

1 determinations with respect to individual Class Members which would, as a practical matter, be
2 dispositive of the interest of the other Class Members not parties to adjudications or which would
3 substantially impair or impede the ability of the Class Members to protect their interests.

4 68. Further, the claims of the individual Class Members are not sufficiently large to warrant
5 vigorous individual prosecution considering the concomitant costs and expenses attending thereto. As
6 such, the Class Members identified above are maintainable as a class under section 382 of the Code of
7 Civil Procedure.

8 **VI. EXHAUSTION OF REMEDIES**

9 69. Plaintiff has fully and completely exhausted administrative remedies under PAGA prior
10 to proceeding with the PAGA claims stated in this complaint. Plaintiff filed a PAGA notice online with
11 the Labor Workforce Development Agency ("LWDA") and sent a letter by certified mail to Defendants
12 setting forth the facts and theories of the violations alleged against Defendants, as prescribed by PAGA.
13 (Lab. Code, §§ 2698–2699.6.)

14 70. As required by PAGA, Plaintiff submitted the \$75.00 filing fee with the LWDA by
15 regular mail. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), no notice was received by
16 Plaintiff from the LWDA evidencing its intention to investigate within sixty-five calendar days of the
17 postmark date of the PAGA notice. Plaintiff is therefore entitled to commence and proceed with a civil
18 action pursuant to Labor Code section 2699.

19 **VII. CAUSES OF ACTION**

20 **First Cause of Action**

21 *Penalties Pursuant to PAGA for Willful Misclassification in Violation of*

22 *Labor Code sections 226.8 and 2775*

23 *(Against All Defendants)*

24 71. Plaintiff realleges and incorporates by reference all previous paragraphs.

25 72. As explained in more detail above, at all times during the Class Period and PAGA
26 Period, Defendants treated the Class Members and the Aggrieved Employees as independent
27 contractors despite the fact that Defendants failed to meet the standards required by the ABC Test to
28 classify the Class Members and the Aggrieved Employees as independent contractors. Put simply,

1 Defendants' treatment of the Class Members and the Aggrieved Employees cannot meet any part of
2 the ABC Test and Defendants knew it. Plaintiff and the Aggrieved Employees are thus "aggrieved
3 employees" within the meaning of PAGA, as they were employed by Defendants during the PAGA
4 Period and suffered the Labor Code violations alleged herein.

5 73. At all relevant times, Plaintiff and the other Aggrieved Employees were "employees"
6 for purposes of the California Labor Code, as defined in section 2775, although they were knowingly,
7 willfully, and intentionally misclassified by Defendants' as independent contractors as part of
8 Defendants' unlawful scheme to obtain the economic advantages that flow from avoiding the financial
9 obligations that the Labor Code and Applicable Wage Order imposes on employers. This was part of a
10 pattern as practice of willful misclassification of all, or virtually all, of Defendants' employees who
11 meet the definition of "Aggrieved Employees" provided above, thereby triggering heightened penalties
12 under Labor Code section 226.8, subdivisions (b) and (c).

13 74. Plaintiff by this action seeks to recover, on behalf of himself and all other Aggrieved
14 Employees, the civil penalties provided by Labor Code section 226.8 and by PAGA, as specified in
15 Labor Code section 2699, subdivision (f). Plaintiff seeks to recover the civil penalties through a
16 representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior*
17 *Court* (2009) 46 Cal.4th 969, 986.

18 75. In addition to the penalties sought as described above, Plaintiff was compelled to retain
19 the services of counsel to file this action to protect his interests and those of the Aggrieved Employees,
20 and to assess and collect the penalties owed by Defendants. Plaintiff has thereby incurred attorneys'
21 fees and costs, which Plaintiff is also entitled to recover under Labor Code section 2699, subdivision
22 (g)(1).

23 **Second Cause of Action**

24 *Failure to Provide Rest Periods and Pay Missed Rest Period Premiums*

25 *(Against All Defendants)*

26 76. Plaintiff realleges and incorporates by reference all previous paragraphs.

27 77. Section 12 of the Applicable Wage Order, and Labor Code section 226.7 establish the
28 right of employees to be provided with a rest period of at least ten minutes for each four hour period

1 worked, or major fraction thereof. (See Cal. Code of Regs., tit. 8, § 11090.)

2 78. Due to Defendants' unlawful rest period policies and practices described in detail above,
3 Defendants did not authorize and permit Plaintiff and the other Class Members to take all rest periods
4 to which they were legally entitled. Despite Defendants' violations, Defendants have not paid an
5 additional hour of pay to Plaintiff and the other Class Members at their respective regular rates of pay
6 for each violation, in accordance with California Labor Code section 226.7.

7 79. The foregoing violations create an entitlement to recovery by Plaintiff and the other
8 Class Members in a civil action for the unpaid amount of rest period premiums owing, including interest
9 thereon, statutory penalties, and costs of suit pursuant to the Applicable Wage Order, and California
10 Labor Code section 226.7.

11 **Third Cause of Action**

12 *Failure to Provide Meal Periods and Pay Missed Meal Period Premiums*

13 *(Against All Defendants)*

14 80. Plaintiff realleges and incorporates by reference all previous paragraphs.

15 81. Plaintiff is informed and believes and thereon alleges, that Defendants failed in their
16 affirmative obligation to provide their hourly non-exempt employees, including Plaintiff and the other
17 Class Members, with all required meal periods in accordance with the mandates of the Labor Code and
18 the Applicable Wage Order, for the reasons set forth herein above. Despite Defendants' violations,
19 Defendants have not paid an additional hour of pay to Plaintiff and the other Class Members at their
20 respective regular rates of pay for each violation, in accordance with California Labor Code section
21 226.7.

22 82. As a result, Defendants are responsible for paying premium compensation for meal
23 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the
24 Applicable Wage Order and Labor Code sections 226.7 and 512, and Civil Code sections 3287,
25 subdivision (b), and 3289. (See Cal. Code of Regs., tit. 8, § 11090.)
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89. Here, Plaintiff and the other Class Members paid out of pocket for necessary business expenditures incurred as a direct consequence and requirement of performing their job duties, including the costs associated with their personal cell phone and mileage they required to perform their work. Despite knowing that Plaintiff and the other Class Members incurred these necessary business expenses, and requiring Plaintiff and the other Class Members to use such items, Defendants did not reimburse them.

90. Thus, Plaintiff and the other Class Members are entitled to recover the cost of such necessary business expenses, plus interest from the date each incurred such business expenses, plus fees and costs. (Lab. Code, § 2802, subds. (b), (c).)

Sixth Cause of Action

Failure to Furnish Accurate Itemized Wage Statements

(Against All Defendants)

91. Plaintiff realleges and incorporates by reference all previous paragraphs.

92. Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) The gross wages earned;
- (2) The total hours worked by the employee;
- (3) The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate basis;
- (4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) The net wages earned;
- (6) The inclusive dates of the period for which the employee is paid;
- (7) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) The name and address of the legal entity that is the employer; and

1 (9) All applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate by the
3 employee.

4 93. As set forth above, Defendants issued and continues to issue wage statements to its non-
5 exempt employees including Plaintiff and the other Class Members that are inadequate under Labor
6 Code section 226, subdivision (a). By failing to pay Plaintiff and the other Class Members properly as
7 described above, Defendants failed to include required information on their wage statements, including,
8 but not limited to, the gross wages earned, the net wages earned in violation of Labor Code section
9 226, subdivision (a).

10 94. Defendants' failure to comply with Labor Code section 226, subdivision (a), of the
11 Labor Code was knowing and intentional. (Lab. Code, § 226, subd. (e)).

12 95. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff
13 and the other Class Members in violation of Labor Code section 226, subdivision (a), Plaintiff and the
14 other Class Members are each entitled to recover an initial penalty of \$50, and subsequent penalties of
15 \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per each Class
16 Member from Defendants pursuant to Labor Code section 226, subdivision (e), along with costs and
17 reasonable attorneys' fees.

18 **Seventh Cause of Action**

19 *Violations of California's Unfair Competition Law*

20 *(Against All Defendants)*

21 96. Plaintiff realleges and incorporates by reference all previous paragraphs.

22 97. Defendants have engaged and continue to engage in unfair and/or unlawful business
23 practices in California in violation of California Business and Professions Code section 17200 through
24 17210, by committing the unlawful acts described above. Defendants' utilization of these unfair and
25 unlawful business practices deprived and continue to deprive Plaintiff and the other Class Members of
26 compensation to which they are legally entitled. These practices constitute unfair and unlawful
27 competition and provide an unfair advantage over Defendants' competitors who have been and/or are
28 currently employing workers and attempting to do so in honest compliance with applicable wage and

1 hour laws.

2 98. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct alleged herein,
3 Plaintiff for himself and on behalf of the Class Members, seeks full restitution of monies, as necessary
4 and according to proof, to restore any and all monies withheld, acquired and/or converted by
5 Defendants pursuant to Business and Professions Code sections 17203 and 17208.

6 99. The acts complained of herein occurred within the four years prior to the initiation of
7 this action and are continuing into the present and ongoing.

8 100. Plaintiff was compelled to retain the services of counsel to file this Court action to
9 protect his interests and those of the Class Members, to obtain restitution and injunctive relief on behalf
10 of Defendants' current non-exempt employees and to enforce important rights affecting the public
11 interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which Plaintiff
12 is entitled to recover under Code of Civil Procedure section 1021.5.

13 **Eighth Cause of Action**

14 *Penalties Pursuant to PAGA for Violations of California Labor Code Sections 226,*
15 *226.3, 226.7, 226.8, 512, 1174, 1174.5, 1198.5, 2775, 2802, 2084, and Other*

16 *Provisions of the Labor Code*

17 *(Against All Defendants)*

18 101. Plaintiff realleges and incorporates by reference all previous paragraphs.

19 102. Based on the above allegations incorporated by reference, Defendants violated Labor
20 Code sections 226, 226.3, 226.7, 226.8, 512, 1174, 1198.5, 2775, 2802, 2804, and others that may be
21 applicable; and the Applicable Wage Order (Cal. Code of Regs., tit. 8, § 11090), and others that may
22 be applicable.

23 103. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code sections
24 2698 through 2699.6 because of Defendants' violation of Labor Code sections 226, 226.3, 226.7, 226.8,
25 512, 1174, 1198.5, 2775, 2802, 2804, and others that may be applicable; and the Applicable Wage
26 Order (Cal. Code of Regs., tit. 8, § 11090), and others that may be applicable.

27 104. Under Labor Code section 2699, subdivision (f)(2), and 2699.5, for each such violation,
28 Plaintiff and the Aggrieved Employees are entitled to penalties in an amount to be shown at the time

1 of trial subject to the following formula:

2 A. \$100 for the initial violation per employee per pay period; and

3 B. \$200 for each subsequent violation per employee per pay period.

4 105. These penalties must be allocated seventy-five percent to the Labor and Workforce
5 Development Agency ("LWDA") and twenty-five percent to the affected employees. These penalties
6 may be stacked separately for each of Defendants violations of the California Labor Code. (*Lopez v.*
7 *Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 780–781 [citing with approval *Stoddart v.*
8 *Express Services, Inc.* (E.D. Cal., Sept. 16, 2015, No. 2:12-CV-01054-KJM) 2015 WL 5522142, at *9,
9 for the proposition that plaintiff could pursue separate claims for penalties under Labor Code section
10 226, subdivision (e), and penalties for Labor Code section 226, subdivision (a), violations]; see also
11 *Hernandez v. Towne Park, Ltd.* (C.D. Cal., June 22, 2012, No. CV 12-02972 MMM JCGX) 2012 WL
12 2373372, at *17 fn. 70 [noting that federal courts applying California law have found that "PAGA
13 penalties can be stacked, i.e., multiple PAGA penalties can be assessed for the same pay period for
14 different Labor Code violations."], internal quotation marks omitted).

15 106. In addition, to the extent permitted by law, Defendants failed to provide Plaintiff and all
16 Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code section
17 226, subdivision (a). Plaintiff seeks separate PAGA penalties for Defendants' violations of Labor Code
18 section 226, subdivisions (a) and (e). (*Lopez v. Friant & Associates, LLC, supra*, 15 Cal.App.5th at pp.
19 780, 788.)

20 107. For violations of Labor Code section 226, subdivision (a), Plaintiff seeks the default
21 penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that "[a]ny
22 employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount
23 of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand
24 dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails
25 to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of
26 Section 226." Accordingly, through PAGA and to the extent permitted by law Plaintiff and the
27 Aggrieved Employees are entitled to recover penalties for violations of Labor Code section 226.3 and
28 seeks default PAGA penalties for each of Defendants' numerous violations of Labor Code section 226,

1 subdivision (e).

2 108. Labor Code section 210 provides that “in addition to, an entirely independent and apart
3 from, any other penalty provided in this article, every person who fails to pay the wages of each
4 employee as provided in Sections . . . 204 . . . shall be subject to a civil penalty as follows: (1) For any
5 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
6 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure
7 to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty
8 compensation policies and practices, Plaintiff and the Aggrieved Employees are also entitled to recover
9 penalties under Labor Code section 210 through PAGA.

10 109. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
11 liquidated damages, in the amount of: (1) one hundred dollars (\$100) for any initial violation that is
12 intentionally committed for each underpaid employee for each pay period for which the employee is
13 underpaid, and (2) two hundred fifty dollars (\$250) for each subsequent violation for the same specific
14 offense for each underpaid employee for each pay period for which the employee is underpaid
15 regardless of whether the initial violation is intentionally committed. Accordingly, through PAGA and
16 to the extent permitted by law, Plaintiff and the Aggrieved Employees are entitled to recover pursuant
17 to Labor Code section 1197.1.

18 110. Plaintiff was compelled to retain the services of counsel to file this action to protect his
19 interests and those of the Aggrieved Employees, and to assess and collect the wages and penalties owed
20 by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which Plaintiff is also entitled
21 to recover under Labor Code section 2699, subdivision (g)(1).

22 **VIII. DEMAND FOR JURY TRIAL**

23 111. Plaintiff hereby demands trial by jury of Plaintiff’s and the Class Members’ claims
24 against Defendants.

25 **IX. PRAYER FOR RELIEF**

26 Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought
27 against Defendants, as follows:

- 28 1. For an order certifying the proposed class;

2. For an order appointing Plaintiff as representative of the class;
3. For an order appointing Plaintiff's counsel as counsel for the class;
4. For willful misclassification, penalties as provided by Labor Code section 226.8, subdivisions (b) and (c), any other penalties applicable under Labor Code section 2699, and attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g)(1);
5. For the failure to provide rest periods and pay missed rest period premiums, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code section 226.7;
6. For the failure to provide meal periods and pay missed meal period premiums, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code sections 226.7 and 512;
7. For the failure to maintain accurate employment records, penalties pursuant to Labor Code sections 226.3, 1174.5, and others that may be applicable;
8. For the failure to indemnify all necessary business expenditures, all unreimbursed business expenses, and interest thereon, that are owed, pursuant to Labor Code section 2802, and attorney fees, pursuant to Labor Code section 2802, subdivision (c);
9. For the violations of California's Unfair Competition Law, restitution to Plaintiff and the other Class Members of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code sections 17200 through 17210;
10. For the claim of penalties pursuant to PAGA and other provisions of the California Labor Code, a civil penalty in the amount of \$100 for the initial violation and \$200 for each subsequent violation as specified in Labor Code section 2699, subdivision (f)(2), in the representative action brought on behalf of Plaintiff and the Aggrieved Employees pursuant the Labor Code Private Attorneys General Act of 2004, and for civil penalties available under Labor Code section 210;
11. Prejudgment interest on all due and unpaid wages pursuant to Labor Code section 218.6 and Civil Code sections 3287 and 3289;

- 1 **12.** On all causes of action for which attorneys' fees may be available, for attorneys' fees
2 and costs as provided by Labor Code sections 218.5, 226, Code of Civil Procedure
3 section 1021.5, and others as may be applicable;
- 4 **13.** For an order enjoining Defendants, and each of them, and their agents, servants, and
5 employees, and all persons acting under, in concert with, or for them, from acting in
6 derogation of any rights or duties adumbrated in this complaint; and
- 7 **14.** For such other and further relief, this Court may deem just and proper.

8 Dated: October 17, 2025

MELMED LAW GROUP P.C.



JONATHAN MELMED

Attorneys for Plaintiff, the Putative Class, and the
Aggrieved Employees