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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **FOR THE COUNTY OF LOS ANGELES**

10 **Alejandro Aguilar**, individually and on behalf
 11 of all similarly situated individuals

12 Plaintiff,

13 vs.

14 **Midas Trucking**, a California corporation;
 15 and **Does 1-10**, inclusive;

16 Defendant.

CASE NO. **22STCV39767**

CLASS ACTION COMPLAINT FOR:

- 1) **Failure to Pay Minimum Wage for All Hours Worked (Lab. Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198);**
- 2) **Failure to Pay Overtime Wages (Lab. Code §§ 510 and 1198);**
- 3) **Failure to Provide Rest Periods (Cal. Lab. Code §§ 226.7 and 1198);**
- 4) **Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7 and 1198);**
- 5) **Failure to Provide and Maintain Accurate Records;**
- 6) **Failure to Timely Pay Wages When Due**
- 7) **Unfair Business Practices (Bus. & Prof. Code §§ 17200, *et seq.*); and**
- 8) **PAGA Penalties (Labor Code § 558, 2698, *et seq.*)**

INDIVIDUAL COMPLAINT FOR:

- 9) **Wrongful Termination in Violation of Public Policy;**
- 10) **Defamation;**
- 11) **Unlawful Retaliation for Complaints About Labor Code Violations (Lab. Code § 98.6);**
- 12) **Whistleblower Retaliation (Lab. Code §**

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Demand for Jury Trial

1 Plaintiff Alejandro Aguilar, hereby brings this action, on behalf of himself and all similarly
2 situated individuals, and alleges as follows, by and through his counsel of record:

3 **PARTIES**

4 1. Plaintiff Alejandro Aguilar (“Aguilar”) is a resident of the County of Los Angeles.
5 Starting from June 2021, Mr. Aguilar worked for Defendant Midas Trucking as a truck driver until
6 his wrongful termination on April 7, 2022. Mr. Aguilar was paid an hourly wage of \$18.50 per hour.

7 2. Defendant Midas Trucking (“Midas”) is a California corporation with its principal
8 business location at 6901 Topanga Canyon Blvd., #201, Canoga Park, CA 91303.

9 3. Mr. Aguilar is not currently aware of the names and true identities of Does 1-10 (here-
10 inafter “Defendants,” collectively with Midas). Accordingly, Plaintiff brings this suit against them
11 by fictitious names pursuant to California Code of Civil Procedure section 474. Mr. Aguilar reserves
12 the right to amend this complaint to show their true names and capacities once this information is
13 ascertained. Each Doe Defendant is responsible for the damages alleged pursuant to each of the
14 causes of action asserted, either through its own conduct, or vicariously through the conduct of oth-
15 ers. All further references in this complaint to the named Defendant includes the fictitiously named
16 Defendants.

17 4. At all times alleged herein, except as otherwise noted herein, Defendants participated
18 in the acts alleged herein and/or were the agents, servants, employees, or representatives of the other
19 Defendant. At all times relevant to this complaint, Defendants were acting within the course, scope,
20 and authority of their agency and employment such that the acts of one Defendant are legally attribut-
21 able to the other Defendant. Defendants, in all respects, acted as employers and/or joint employers
22 of Plaintiff in that each of them exercised control over the wages, hours, and/or working conditions
23 of Plaintiff. Moreover, the conduct of every Defendant was ratified by each other Defendant.

24 **VENUE AND JURISDICTION**

25 5. This Court has subject matter jurisdiction over any and all causes of action asserted
26 herein pursuant to Article VI, section 10 of the California Constitution and California Code of Civil
27 Procedure sections 88 and 410.10 by virtue of the fact that this is a civil action in which the matter in
28 controversy, not including attorneys’ fees, interests, and costs, exceeds \$25,000, and because each

1 cause of action asserted arises under the laws of the State of California or is subject to adjudication in
2 the courts of the State of California.

3 6. This Court has personal jurisdiction over Defendant because Defendant is either a
4 resident of or has caused injuries in the County of Los Angeles and State of California through its
5 acts, and by its violations of the California Labor Code, California state common law, and California
6 Business & Professions Code sections 17200, *et seq.* Venue is proper in Los Angeles County, pursuant
7 to Code of Civil Procedure section 395(a), because Defendant does business in Los Angeles County
8 and because Mr. Aguilar resided, earned wages, and suffered the harms set forth herein in Los Ange-
9 les County at all times relevant to this complaint.

10 **FACTUAL ALLEGATIONS**

11 7. As a matter of uniform and systemic policy, Defendant failed to authorize and/or per-
12 mit non-exempt employees to take bona fide meal and rest breaks pursuant to Labor Code § 226.7
13 based on several uniform policies and practices. Due to Defendant's expectations regarding the vol-
14 ume and timing of deliveries despite long travel routes, Defendant's employees were unable to take
15 off-duty, uninterrupted meal and rest periods in accordance with California law. If a driver failed to
16 complete his assigned deliveries, they would be subject to discipline by Defendant, but in order to
17 complete all assigned deliveries in a shift meant that drivers had to forego or shorten their breaks.

18 8. Although Plaintiff was expected to clock out for his meal periods, his meal periods
19 were often interrupted by communications from his supervisors instructing him to continue making
20 deliveries during his meal period in order to meet Defendant's quotas and ensure all scheduled de-
21 liveries were made on time.

22 9. Plaintiff was similarly unable to take his rest periods in light of Defendant's expecta-
23 tions regarding the quantity and timing of deliveries and any attempts to take a brief rest period were
24 met with further communications from his supervisor instructing him to continue working. Plaintiff
25 complained of these issues to his supervisors and to Defendant's Human Resources Department.

26 10. However, on information and belief, Plaintiff's complaints were dismissed. Moreover,
27 his supervisors instructed him to continue working through his meal and rest periods.

28 11. Additionally, Defendant required employees to continue working through their meal

1 periods even when clocked out, denying them both an off-duty, uninterrupted meal period or pre-
2 mium pay in lieu thereof.

3 12. Moreover, in failing to authorize and/or permit meal and rest periods, Defendant has
4 also implemented a uniform policy of denying compensation in lieu of meal and rest periods to its
5 non-exempt employees in the form of meal and rest period premiums and compensation for work
6 conducted off-the-clock when employees were forced to work through their meal periods while
7 clocked out.

8 13. Furthermore, because Defendant's non-exempt employees regularly worked shifts in
9 excess of 8 hours a day, or amounting to more than 40 hours a week, on the clock, most uncompen-
10 sated work performed off-the-clock qualified for overtime compensation. Therefore, Defendant
11 failed to compensate its non-exempt employees for all overtime hours worked.

12 CLASS ACTION ALLEGATIONS

13 14. Class Definitions: Plaintiff brings this action on behalf of himself and as a class action
14 on behalf of the following defined Class:

15 **Non-Exempt Hourly Class:**

16 All current and former non-exempt, hourly employees of Defendant who worked at least one
17 shift in California during the four years immediately preceding the filing of this complaint
18 until the date of trial ("Class").

19 15. Numerosity: The Class Members are so numerous that joinder of all members would
20 be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff and the
21 Class at this time; however, the class is estimated to be greater than 50 individuals and the identity of
22 such membership is readily ascertainable by inspection of Defendant's employment records.

23 16. Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests
24 of each class member with whom they have a well-defined community of interest, and Plaintiff's
25 claims (or defenses, if any) are typical of all Class Members.

26 17. Commonality: The Class' claims involve substantially similar questions of law and
27 fact that predominate over questions affecting individual Class Members. These common questions
28 include, but are not limited to, the following:

- a. Whether Defendant had a policy or practice of requiring

employees to work off the clock;

b. Whether Defendant had a policy of failing to pay all required overtime pay to Class Members;

c. Whether Defendant had a practice of failing to pay all required overtime pay to Class Members;

d. Whether Defendant had a policy of failing to pay all required double-time pay to Class Members;

e. Whether Defendant had a practice of failing to pay all required double-time pay to Class Members;

f. Whether Defendant had a policy of failing to provide uninterrupted, off-duty meal periods to Class Members;

g. Whether Defendant had a practice of failing to provide uninterrupted, off-duty meal periods to Class Members;

h. Whether Defendant had a policy of failing to pay premium pay for failures to provide uninterrupted, off-duty meal periods to Class Members;

i. Whether Defendant had a policy of failing to provide uninterrupted, off-duty rest periods to Class Members;

j. Whether Defendant had a practice of failing to provide uninterrupted, off-duty rest periods to Class Members;

k. Whether Defendant had a policy of failing to pay premium pay for failures to provide uninterrupted, off-duty rest periods to Class Members;

l. Whether Defendant failed to provide Class Members with complete and accurate wage statements as required by Labor Code § 226;

m. Whether Defendant failed to pay Class Members all wages due;

n. Whether Defendant failed to pay Class Members all wages due upon separation;

o. Whether Defendant engaged in unlawful and unfair business practices in violation of Business & Professions Code §§ 17200, *et seq.*;

1 p. Whether Defendant is liable for penalties under the Private At-
2 torney's General Act for the foregoing violations.

3 18. Common methods of proof exist for determining these issues on a class-wide basis,
4 including but not limited to, Defendant's written policies, Defendant's time-keeping records, De-
5 fendant's payroll and payment records; and oral testimony from Plaintiff, certain Class Members,
6 and Defendant's corporate designees.

7 19. There is a well-defined community of interest among the Class and Class Members
8 are readily ascertainable. The proposed Classes satisfies numerosity, typicality, adequacy, and supe-
9 riority requirements.

10 20. Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests
11 of each class member with whom they have a well-defined community of interest and typicality of
12 claims. There are no material conflicts between the claims of the representative Plaintiff and Class
13 Members that would make class certification inappropriate. Plaintiff understands his obligation to
14 inform the Court of any relationship, conflicts, or differences with any Class Member. Plaintiff will
15 fairly and adequately represent and protect the interests of the Class and have retained as counsel
16 trial lawyers who are competent and skilled in complex and class action litigation. Plaintiff's attor-
17 neys, the proposed class counsel, are versed in the rules governing class action discovery, certifica-
18 tion, and settlement, and will vigorously assert the claims of all Class Members. Plaintiff has incurred,
19 and throughout the duration of this action, will continue to incur costs and attorneys' fees that have
20 been, are, and will be necessarily expended for the prosecution of this action for the substantial ben-
21 efit of each class member.

22 21. Superiority: Questions of law and fact common to the Class predominate over the
23 questions affecting only individual members of the Class and a class action is superior to other avail-
24 able means for the fair and efficient adjudication of this dispute. The damages suffered by individual
25 Class Members, while substantial, are small compared to the burden and expense of individual pros-
26 ecution of the complex and expensive litigation necessary to address Defendant's conduct. Even if
27 Class Members themselves could afford such individual litigation, the court system would be over-
28 whelmed by the individual lawsuits. In addition, individualized litigation increases the delay and

22. Public Policy Considerations: Employers in the State of California routinely violate employment and labor laws. Current and former employees are often afraid to assert their rights due to the power wielded by employers over their livelihoods. Class actions provide the Class Members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy and providing for a method of adjudication that allows individuals to assert claims that could not be brought individually due to cost and other public policy considerations.

FIRST CAUSE OF ACTION

Unpaid Minimum Wages

23. Plaintiff incorporates by reference every allegation in this complaint as if fully set forth herein.

24. California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that payment of a wage less than the minimum wage as set by statute, commission, or by the general prevailing rate is unlawful. Compensable work time is defined in Wage Order No. 4 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Code. Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

25. Defendant failed to compensate Plaintiff and the Class for all hours worked because Defendant had a policy and/or practice whereby non-exempt employees were forced to work through

1 their meal periods without otherwise compensating its employees with premium pay in lieu of a com-
2 pliant meal period. This policy and/or practice also required employees to work through their meal
3 periods after having already clocked out without compensating them for this off-the-clock work.

4 26. Defendant's failure to pay Plaintiff and Class Members minimum wages for all hours
5 worked violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

6 27. Pursuant to California Labor Code section 1194.2, Plaintiff and Class Members are
7 entitled to recover the amount of underpaid wages, plus liquidated damages in an amount equal to
8 the wages unlawfully unpaid and interest thereon, along with other applicable penalties.¹

9 **SECOND CAUSE OF ACTION**

10 ***California Labor Code §§ 510 and 1198***

11 ***Unpaid Overtime***

12 **(Plaintiff and Class Against Defendant)**

13 28. Plaintiff incorporates by reference every allegation in this complaint as if fully set forth
14 herein.

15 29. California Labor Code sections 510, 1198, and Industrial Wage Order No. 4 provide
16 that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-
17 half or two-times that person's regular rate of pay, depending on the number of hours worked by the
18 person on a daily or weekly basis.

19 30. Specifically, Industrial Wage Order No. 4 provides that Defendant are required to pay
20 Plaintiff and Class Members working more than eight hours in a day or more than forty hours in a
21 workweek, at the rate of time and one-half (1½) for all hours worked in excess of eight hours in a day
22 or more than forty hours in a workweek.

23 31. Throughout the Class Period, Plaintiff and other Class Members were not paid over-
24 time premiums for all of the hours they worked in excess of eight hours in a day, in excess of twelve
25 hours in a day, in excess of eight hours on the seventh consecutive day of work in a workweek, and in
26

27 ¹ Defendant is liable for civil penalties in the amount of \$100 per initial violation and \$250 for
28 each subsequent pay period, plus injunctive relief and reasonable attorney's fees and costs. Lab. Code
§ 1197.1.

1 excess of forty hours in a week, because all hours worked were not recorded as compensable time as
2 a direct consequence of Defendant's policies and practices.

3 32. Defendant knew or should have known that its policies and practices forced Plaintiff
4 and Class Members to work off the clock. Defendant also knew, or should have known, that it did not
5 compensate Plaintiff and other Class Members for their off-the-clock work. Because Plaintiff and
6 Class Members sometimes worked shifts of eight hours a day or forty hours a week on the clock, some
7 of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and Class Mem-
8 bers were not paid overtime wages for all of the overtime hours they worked.

9 33. Pursuant to Labor Code section 1194, Plaintiff and Class Members are entitled to re-
10 cover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees, and appli-
11 cable civil penalties.

12 **THIRD CAUSE OF ACTION**

13 ***California Labor Code §§ 226.7, 512(a), and 1198***

14 ***Meal Period Violations***

15 **(Plaintiff and Class Against Defendant)**

16 34. Plaintiff incorporates by reference every allegation in this complaint as if fully set forth
17 herein.

18 35. Labor Code section 512(a) provides that an employer may not require, cause, or per-
19 mit an employee to work for a period of more than five hours per day without providing the employee
20 with a meal period of not less than thirty minutes, except that if the total work period per day of the
21 employee is not more than six hours, the meal period may be waived by mutual consent of both the
22 employer and the employee. Under California law, first meal periods must start after no more than
23 five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-104 (2012). An employee is
24 also entitled to a second meal period for shifts in which the employee works in excess of ten hours.

25 36. Labor Code section 226.7, 512(a), and 1198 provide that no employer shall require an
26 employee to work during any meal period mandated by an applicable order of the IWC, including
27 Industrial Wage Order No. 4. "An off-duty meal period, therefore, is one in which the employee is
28 relieved of all duty during the 30-minute meal period . . . an employer's obligation is to provide an

off-duty meal period: an uninterrupted 30-minute period during which the employee is relieved of all duty.” *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1035 (2012). The employee must also be “free to leave the premises.” *Id.* at 1036.

37. Defendant failed to relieve Plaintiff and Class Members from all duty when on their meal period by instructing, requiring, or pressuring them to continue working through their meal periods in order to keep up with delivery quotas and ensure timely deliveries were made.

38. Defendant did not pay Plaintiff and Class Members all meal period premium wages when meal periods were missed, interrupted by work, and taken late, in violation of Wage Order No. 4 and Labor Code sections 226.7 and 512(a).

39. Defendant’s conduct violates Wage Order No. 4 and Labor Code sections 512(a), 226.7, and 1198. Plaintiff and Class Members are entitled to one additional hour of pay at their regular rate of compensation for each workday that a compliant meal period was not provided, and interest thereon, along with applicable civil penalties.

FOURTH CAUSE OF ACTION

Labor Code §§ 226.7 and 1198

Failure to Provide Rest Periods or Premium Pay in Lieu Thereof

(Plaintiff and Class Against Defendant)

40. Plaintiff incorporates by reference every allegation in this complaint as if fully set forth herein.

41. At all times relevant to this complaint, Defendant knew it was obligated to provide compliant rest breaks to its non-exempt employees pursuant to Labor Code § 226.7.

42. Labor Code § 226.7 provides:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If any employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.

43. Labor Code § 226.7, 512(a), and 1198 provide that no employer shall require an employee to work during any rest or meal period mandated by an applicable order of the IWC, including Wage Order No. 1. Employers must authorize and permit employees to be relieved of all duty during their rest and meal periods: “A rest period, in short, must be a period of rest.”² *Augustus v. ABM Sec. Servs., Inc.*, 385 P.3d 823, 834 (2016).

44. Defendant failed to implement a lawful rest period policy that relieved Plaintiff and Class Members from all duties during their rest breaks. Numerous Class Members, including Plaintiff, were required to skip their breaks or remain on duty due to the combination of Defendant’s scheduling practices and policies and expectations surrounding the quantity and timing of deliveries.

45. As a direct and proximate result of Defendant’s willful and unlawful conduct, Plaintiff and Class Members have sustained damages, including lost compensation resulting from missed or non-compliant rest periods, in an amount to be established at trial.

46. Pursuant to Wage Order No. 4 and Labor Code § 226.7(b), Plaintiff and Class Members are entitled to recover from Defendant an additional hour of pay at their regular rates of pay for each shift that a compliant rest period was not provided. Defendant was aware that its actions were a violation of applicable law but consistently refused to pay premium pay as required by law.

FIFTH CAUSE OF ACTION

California Labor Code §§ 226(a), 226.3, and 1174(d)

Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

(Plaintiff and Class Against Defendant)

47. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

48. Labor Code § 226 requires employers to furnish employees with an accurate, itemized

² Employees must also be free to leave the premises. *Augustus*, 2 Cal. 5th at 270; see also Department of Industrial Relations, “Rest Periods/Lactation Accommodations,” available at https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm (“Q. Can my employer require that I stay on the work premises during my rest period? A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself.”)

1 statement in writing showing, among other things, (1) gross wages earned; (2) total hours worked by
2 the employee (for hourly-paid, non-exempt employees); (3) all deductions; (4) net wages earned; (5)
3 the inclusive dates of the period for which the employee is paid; (6) the name of the employee and
4 the last four digits of his or her social security number; (7) the name and address of the legal entity
5 that is the employer; *and* (8) all applicable hourly rates in effect during the pay period and the corre-
6 sponding number of hours worked at each hourly rate by the employee.

7 49. At all times relevant to this complaint, Defendants' failure to pay premium wages for
8 meal and rest periods and minimum and/or overtime wages rendered Class Members' wage state-
9 ments inaccurate by failing to accurately reflect gross and net wages earned.

10 50. Injury. Defendant knowingly and intentionally failed to comply with Labor Code
11 § 226, causing injury and damages to Plaintiff and Class Members. Plaintiff and all those similarly
12 situated were injured by these failures because, among other things, they were confused about
13 whether they were paid properly and/or they were misinformed about how much compensation was
14 owed.

15 51. Relief. Labor Code § 226(e)(1) provides that an employee suffering injury as a result
16 of not being provided with an accurate itemized wage statement is entitled to recover the greater of
17 all actual damages suffered or fifty (\$50) dollars for the initial violation and one-hundred (\$100) dol-
18 lars for each subsequent violation, up to \$4,000. Pursuant to Labor Code §§ 226(e) and (g), Plaintiff
19 and all others similarly situated are entitled to injunctive relief to ensure Defendants' compliance
20 with Labor Code § 226, as well as attorney's fees and costs of suit.

21 **SIXTH CAUSE OF ACTION**

22 ***California Labor Code §§ 201, 202, 203, and 204***

23 **Failure to Pay Wages When Due**

24 **(Plaintiff and Class Against Defendants)**

25 52. Plaintiff incorporates by reference all allegations contained in the preceding para-
26 graphs as if fully set forth herein.

27 53. Labor Code § 201 provides, in relevant part, that:

28 If an employee not having a written contract for a definite period quits his or

her employment, his or her wages³ shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of quitting.

54. Defendant does not include definite periods of service in their contracts of employment for Class Members employed at their California plant(s). Plaintiff's contract of employment did not include a definite term.

55. Labor Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with § 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

56. Labor Code § 204 provides that all wages, other than those mentioned in Section 201 and 202, are due and payable twice during each calendar month, on days designated in advance by the employer as regular paydays.

57. Failure to Timely Pay Wages Due. As set forth above, Defendant failed to timely pay the minimum wages, overtime wages, and meal and rest period premiums resulting from its deficient timekeeping and meal and rest period policies.

³ Labor Code § 200 defines "wages" as "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation." "Labor" is defined as "labor, work, or service . . . if the labor to be paid for is performed personally by the person demanding payment."

6 59. Relief. Defendant's failure to pay Plaintiff and those Class Members who are no longer
7 employed by Defendant their wages earned and unpaid at the time of discharge, or within seventy-
8 two (72) hours of their leaving Defendant's employment, violates Labor Code §§ 201 and 202. Plain-
9 tiff and Class Members are therefore entitled to recover from Defendant the statutory penalty wages
10 for each day they were not paid, at their regular rate of pay, up to a 30-day maximum penalty under
11 Labor Code § 203.

12 60. Plaintiff, on behalf of themselves and all others similarly situated, also request further
13 relief as described below.

14 SEVENTH CAUSE OF ACTION

15 *Violation of California Business & Professions Code §§ 17200, et seq.*
16 *Unlawful Business Practices*
17 **(Plaintiff and Class Against Defendant)**

18 61. Plaintiff repeats, repleads and incorporates by reference and re-alleges as if fully stated
19 herein each and every allegation set forth above.

20 62. Defendant is a “person” as defined by California Business & Professions Code sec-
21 tions 17201, as it is a corporation.

63. Defendant's conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff and the Class, Class Members, and to the general public. Plaintiff and the Class have suffered injury in fact and have lost money as a result of Defendant's unlawful business practices. Plaintiff and the Class seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

64. Defendant's activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code

1 sections 17200, et seq.

2 65. A violation of California Business & Professions Code sections 17200, *et seq.* may be
3 predicated on the violation of any state or federal law. In the instant case, Defendant's policies and
4 practices have violated state law as described above.

5 66. As a result of the violations of California law herein described, Defendant unlawfully
6 gained an unfair advantage over other businesses. Plaintiff and Class Members have suffered pecuni-
7 ary loss by Defendant's unlawful business acts and practices alleged herein.

8 67. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff
9 and Class Members are entitled to restitution of the wages withheld and retained by Defendant during
10 a period that commences four years prior to the filing of this complaint; requiring Defendant to pay
11 all outstanding wages due to Plaintiff and Class Members; and an award of attorneys' fees pursuant
12 to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

13 **EIGHTH CAUSE OF ACTION**

14 ***Labor Code §§ 558, 2698, et seq.***

15 ***Private Attorneys General Act ("PAGA") Penalties***

16 **(Plaintiff and Class Against Defendant)**

17 68. Plaintiff repeats, repleads and incorporates by reference and re-allege as if fully stated
18 herein each and every allegation set forth above.

19 69. Entitlement to Penalties. Under the California Private Attorneys General Act
20 ("PAGA"), Labor Code § 2698, *et seq.*, an aggrieved employee may bring a representative action as
21 a private attorney general, on behalf of himself and other current or former employees as well as the
22 general public, to recover penalties for an employer's violations of the Labor Code and IWC Wage
23 Orders. These penalties are in addition to any other relief available under the Labor Code and are
24 allocated seventy-five percent to the Labor and Workforce Development Agency and twenty-five
25 percent to the affected employees.

26 70. These penalties may be "stacked" separately for each of Defendant's violations of the
27 Labor Code. *See, e.g., Hernandez v. Towne Park, Ltd.*, No. CV 12-02972, 2012 WL 2373372, at *17,
28 n.77 (C.D. June 22, 2012) ("[F]ederal courts applying California law have concluded that stacking is

appropriate.”); *see also O’Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, 2016 WL 3548370, at *7 (N.D. Cal. June 30, 2016) (“Finally, Plaintiff ignore[s] the potential for stacking of PAGA penalties related to wage-and-hour claims other than the gratuities and expense reimbursement claim, i.e., meal and rest breaks, minimum wage and overtime, and workers’ compensation.”).

71. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by Defendant during the applicable statutory period and suffered the Labor Code violations alleged herein. Accordingly, he seeks to recover, on behalf of himself and all other current and former aggrieved employees of Defendant, the civil penalties provided by PAGA, including civil penalties for Defendant’s violations of Labor Code §§ 201-204, 210, 226, 226.3, 510, 558, 1174, 1194, 1198 and Industrial Wage Order No. 1, plus attorneys’ fees and costs.

72. Representative Action. Plaintiff seeks to recover the PAGA civil penalties through a representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not required, but Plaintiff and the Class may choose to seek certification of the PAGA claims.

73. Penalties. Plaintiff, the Aggrieved Employees, and the State of California are entitled to recover the maximum civil penalties allowed by law for the violations of the Labor Code and IWC Wage Order No. 9 as alleged in this Complaint. Based on the foregoing, Plaintiff and aggrieved employees are entitled to civil penalties, to be paid by Defendant and allocated as required by PAGA in the following formula: (a) in an amount set forth as a civil penalty in the underlying statute; or (b) \$100 per initial violation per employee per pay period, and \$200 for each subsequent violation per employee per pay period. Labor Code § 2699(a)/(f).

74. Based on the foregoing, Plaintiff and aggrieved employees are entitled to civil penalties, to be paid by Defendant and allocated as required by PAGA or other statute, in an amount to be shown at trial subject to the following formula: (a) in an amount set forth as a civil penalty in the underlying statute; or (b) \$100 per initial violation per employee per pay period, and \$200 for each subsequent violation per employee per pay period.

75. Plaintiff is also entitled to recover for himself, other aggrieved employees, and the State of California, civil penalties pursuant to Labor Code § 210 (entirely independent and apart from,

any other penalty provided in this article) in the amount of \$100 per employee per initial violation of the timely payment requirements of Labor Code § 204 (semimonthly payments) and \$200 per employee for each subsequent violation, plus 25% of the amount unlawfully withheld.

76. Plaintiff, the aggrieved employees, and the State of California are entitled to recover the maximum civil penalties allowed by law for the violations of the Labor Code and IWC Wage Order No. 1 as alleged in this Complaint. Plaintiff and the Class are also entitled to an award of attorney's fees and costs of suit per Labor Code § 2699(g).

77. Procedural Requirements Met. On December 21, 2022, Plaintiff filed a notice of claims with the LWDA. As of 65 days from the date of that filing, should the LWDA not take action in response to Plaintiff's filing, Plaintiff will have met all procedural requirements necessary to bring this claim. Accordingly, Plaintiff is entitled to assert this claim. Labor Code § 2699.3(a)(2).

NINTH CAUSE OF ACTION

Wrongful Termination in Violation of Public Policy

(Plaintiff Against Defendant)

78. Plaintiff repeats, repleads, and incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

79. As set forth herein, Defendant wrongfully terminated Plaintiff's employment in violation of various fundamental public policies of the United States and the State of California. These fundamental public policies are embodied in FEHA and among others.

80. Defendant retaliated against Plaintiff by terminating him for reporting rest and meal break violations and for his complaints regarding being forced to work through his meal and rest periods and off-the-clock during his meal periods at Defendant's instruction.

81. This conduct constitutes an unlawful employment practice in violation of California's well-established public policy.

82. As a proximate result of Defendant's conduct, Plaintiff has suffered special damages in the form of lost earnings, benefits, and/or out-of-pocket expenses in an amount subject to proof at trial. As further direct and proximate result of Defendant's conduct, Plaintiff continues to suffer damages in the form of lost future earnings, benefits, and/or other prospective damages in an amount

1 to be proven at trial.

2 83. Defendant's conduct has further caused Plaintiff to lose financial stability, peace of
3 mind, and future security, and has caused him severe embarrassment, humiliation, and mental and
4 emotional distress and discomfort in an amount not fully ascertained but subject to proof at trial.

5 84. Defendant's conduct has been intentional, deliberate, willful, malicious, reckless, and
6 conducted in callous disregard for Plaintiff's rights, entitling him to punitive damages.

7 **TENTH CAUSE OF ACTION**

8 ***Defamation***

9 **(Plaintiff Against Defendant)**

10 85. Plaintiff incorporates by reference all allegations contained in this complaint as if fully
11 set forth herein.

12 86. On or around April 7, 2022, while on a route with Plaintiff, another employee was seen
13 to be in possession of what Defendant referred to as "drug paraphernalia." Although Plaintiff, him-
14 self, was not in possession of any similar or related items, Defendant terminated Plaintiff along with
15 the other employee immediately upon discovering the presence of this "drug paraphernalia." When
16 Plaintiff and the other employee objected to the termination, Defendant alluded to conducting a drug
17 test of both employees if they took issue with the termination, heavily implying that Plaintiff would
18 test positive for having taken drugs.

19 87. On information and belief, in terminating Plaintiff, Defendant spread false infor-
20 mation that Plaintiff had engaged in drug related misconduct such that he would not pass Defendant's
21 drug test. This was false, as Defendant knew; Plaintiff was terminated in retaliation for his complaints
22 of the Company's illegal practices. This information was spread, at minimum, to Plaintiff's supervi-
23 sors as well as HR.

24 88. Defendant's statements suggesting Plaintiff was terminated because of drug use or
25 related conduct is per se defamatory because it ordinarily would injure him with respect to his trade,
26 profession, or business.

4 90. Defendant acted with conscious and malicious disregard for Plaintiff's rights. Accord-
5 ingly, Plaintiff seeks punitive damages in an amount appropriate to punish Defendant for its wrongful
6 conduct and set an example for similarly situated employers.

11 91. Plaintiff repeats, repleads, and incorporates by reference and re-alleges as if fully
12 stated herein each and every allegation set forth above.

13 92. Labor Code § 98.6 prohibits discrimination, discharging or retaliating against an em-
14 ployee who has (1) made a written or oral complaint that he is owed unpaid wages, (2) complained
15 about any practice prohibited by the Labor Code, (3) initiated a notice pursuant to PAGA, or (4)
16 exercised any Labor Code right afforded to him. Labor Code § 98.6(e) also prohibits discrimination,
17 discharging or retaliating against an employee because the employee is a family member of a person
18 who has, or is perceived to have, engaged in [...any of the aforementioned conduct].”

19 93. Defendant retaliated against Plaintiff by terminating him for reporting rest and meal
20 break violations and for his complaints regarding being forced to work off-the-clock during his meal
21 periods at Defendant's instruction.

94. As a result of Plaintiff's complaints about Defendant's unlawful practices in violation of the Labor Code, Defendant have engaged in a concerted campaign of retaliation against Plaintiffs in order to punish Plaintiff for asserting his rights under the Labor Code, including but not limited to terminating him.

26 95. Plaintiff is entitled to lost wages, back pay, front pay, and reasonable attorney's fees.
27 Moreover, Defendant are subject to a civil penalty of \$10,000 per employee payable to each Plaintiff
28 pursuant to Labor Code § 98.6.

TWELFTH CAUSE OF ACTION***Whistleblower Retaliation******Lab. Code § 1102.5*****(Plaintiff Against Defendant)**

96. Plaintiff repeats, repleads, and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

97. Labor Code § 1102.5(b) makes it unlawful for an employer to retaliate against an employee because the employer believes that the employee disclosed or will disclose information “to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discovery, or correct the violation or noncompliance [...] if the employee has reasonable cause to believe that the information discloses [a violation of law].”

98. Labor Code § 1102.5 also makes it unlawful for an employer to “retaliate against an employee for refusing to participate in an activity that would result in a [violation of law].” Labor Code § 1102.5(c).

99. Defendant retaliated against Plaintiff by terminating him for reporting rest and meal break violations and for his complaints regarding being forced to work off-the-clock during his meal periods at Defendant’s instruction. As a result of Plaintiff’s complaints about Defendant’s unlawful practices in violation of the Labor Code, Defendant have engaged in a concerted campaign of retaliation against Plaintiff in order to punish Plaintiff for asserting his rights under the Labor Code, including but not limited to terminating him.

100. As a direct and proximate result of the violation of his rights under Labor Code § 1102.5, Plaintiff has suffered and will continue to suffer general damages in amounts to be proven at trial. Defendant’s conduct was a substantial factor in causing those damages.

101. As a direct and proximate result of Defendant’s violation of his rights under Labor Code § 1102.5, Plaintiff has suffered and will continue to suffer financial losses, including a loss of earnings and other employment benefits and job opportunities. Plaintiff is thereby entitled to special

1 damages in amounts to be proven at trial. Defendant's conduct was a substantial factor in causing
2 those damages.

3 102. As a further, direct, and proximate result of Defendant's violation of Labor Code
4 §§ 1102.5, as heretofore described, Plaintiff has been compelled to retain the services of counsel in
5 an effort to enforce the terms and conditions of his employment relationship with Defendant, and has
6 thereby incurred, and will continue to incur, legal fees and costs, the full nature and extent of which
7 are presently unknown to him. Plaintiff therefore requests that attorneys' fees be awarded pursuant
8 to Labor Code §§ 1102.

9 103. Plaintiff is informed and believes and based thereon alleges that the outrageous con-
10 duct of Defendant described above was done with malice, fraud, and oppression and with conscious
11 disregard for his rights and with the intent, design, and purpose of injuring her. By reasons thereof,
12 Plaintiff is entitled to punitive or exemplary damages from Defendant in a sum according to proof at
13 trial.

14 **DEMAND FOR JURY TRIAL**

15 Pursuant to California Code of Civil Procedure section 631 and Section 16 of Article I of the
16 California Constitution, Plaintiff demand a trial by jury on all issues so triable.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully prays judgment as follows:

19 A. For an Order:

- 20 a. Certifying the Class;
21 b. Appointing Plaintiff as representative of the Class;
22 c. Appointing Plaintiff's Counsel as Class Counsel;

23 B. For actual and liquidated damages according to proof at trial;

24 C. For statutory and civil penalties and special damages, according to proof at trial;

25 D. For punitive and exemplary damages according to proof;

26 E. For preliminary and final injunctive relief;

27 F. For pre- and post-judgment interest on monetary damages;

28 G. For reasonable attorneys' fees and costs and expert fees and costs as allowed by law;

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and

H. For such other relief as this Court deems just and proper.

Dated: December 21, 2022

Respectfully submitted,

KING & SIEGEL LLP

By: Elliot J. Siegel
Elliot J. Siegel
Zachary Tucker
Attorneys for Plaintiff