

MICHAEL R. CROSNER, ESQ. (SBN 41299)
mike@crosnerlegal.com
ZACHARY M. CROSNER, ESQ. (SBN 272295)
zach@crosnerlegal.com
JAMIE SERB, ESQ. (SBN 289601)
jamie@crosnerlegal.com
CROSNER LEGAL, PC
9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
Tel: (310) 496-5818
Fax: (310) 510-6429

Assigned for All Purposes
Judge Peter Wilson
CX-101

Attorneys for Plaintiff JOHNNY GARCIA
As an individual and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

JOHNNY GARCIA, as an individual on
behalf of himself and on behalf of all others
similarly situated,

Case No.: 30-2022-01290278-CU-OE-CXC

CLASS ACTION COMPLAINT FOR:

1. **Recovery of Unpaid Minimum Wages and Liquidated Damages**
2. **Recovery of Unpaid Overtime Wages**
3. **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
4. **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
5. **Failure to Furnish Accurate Itemized Wage Statements**
6. **Failure to Timely Pay All Wages Due Upon Separation of Employment**
7. **Failure to Reimburse Business Expenses and**
8. **Unfair Competition**

Plaintiff,

v.

WIN-DOR, INC., a California corporation;
and DOES 1-100, inclusive,

Defendants.

DEMAND FOR JURY TRIAL

1 Plaintiff, JOHNNY GARCIA (“PLAINTIFF”), an individual on behalf of himself and all
2 other similarly situated Class Members (as defined below), hereby files this Complaint against
3 Defendants WIN-DOR, INC., a California corporation; and DOES 1-100, inclusive, (collectively
4 referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges
5 as follows:

6 **JURISDICTION AND VENUE**

7 1. This court possesses original subject matter jurisdiction over this matter. Venue is
8 proper in the County of Orange pursuant to California Code of Civil Procedure section 395.5
9 because DEFENDANTS transact business within this judicial district, DEFENDANTS employed
10 PLAINTIFF to work in this judicial district and some of the acts, omissions, and conduct alleged by
11 PLAINTIFF herein occurred in this this judicial district.

12 **THE PARTIES**

13 2. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
14 California and a citizen of the State of California. PLAINTIFF was employed by DEFENDANTS
15 in the State of California as a non-exempt employee during the relevant period. PLAINTIFF worked
16 for DEFENDANTS, as a non-exempt employee from in or around late May 2022 until on or about
17 July 25, 2022.

18 3. PLAINTIFF worked for DEFENDANTS as a general laborer, warehouse worker
19 and/or other similar title at DEFENDANTS’ facility located in Brea, California

20 4. Defendant WIN-DOR, INC is a California corporation that, at all relevant times, was
21 authorized to do business within the State of California and is doing business in the State of
22 California.

23 5. DEFENDANTS own, operate, or otherwise manage a business that manufactures
24 and supplies vinyl windows and doors.¹

25 6. The true names and capacities of the DOE Defendants sued herein as DOES 1
26 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
27 Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally

28 ¹ See: <https://www.windorsystems.com/>. Last visited on November 4, 2022.

1 responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this
2 Complaint to reflect the true names and capacities of the Doe Defendants when such identities
3 become known.

4 7. PLAINTIFF is further informed and believes that, at all relevant times, each
5 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
6 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
7 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
8 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
9 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
10 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
11 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
12 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
13 controlled, aided and abetted the conduct of all other Defendants.

14 **JOINT LIABILITY**

15 8. Under California law, the definition of the terms “to employ” are broadly construed
16 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
17 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)
18 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49
19 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
20 was to reach situations in which multiple entities control different aspects of the employment
21 relationship. Supervision of the work, in the specific sense of exercising control over how services
22 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
23 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
24 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
25 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
26 California, applying a less stringent standard to what constitutes sufficient control by a business
27 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
28 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative

1 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
2 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
3 employment,” *Id.* at 875 [emphasis added].

4 9. During PLAINTIFF’s employment by DEFENDANTS, PLAINTIFF and the Class
5 Members (defined below) were jointly employed by DEFENDANTS for purposes of the Wage
6 Orders, under the alternative definitions of “to employ” adopted by the California Supreme Court
7 in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control over wages,
8 hours and working conditions of PLAINTIFF and the Class Members; (2) suffered or permitted
9 PLAINTIFF and Class Members to work for them; and (3) engaged PLAINTIFF and Class
10 Members to work for them.

11 10. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
12 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
13 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
14 across all of their locations/facilities and subjected all of the Class Members to these same policies
15 and practices regardless of the location(s) where they worked. Among other things, PLAINTIFF is
16 informed and believes that: (1) there is common ownership in, and financial control, in
17 DEFENDANTS’ companies, (2) DEFENDANTS utilize common management, who have control
18 over the day-to-day operations and employment matters, including the power to hire and fire, set
19 schedules, issue employee policies, and determine rates of compensation across its locations in
20 California; (3) DEFENDANTS utilize the same policies and procedures for all California
21 employees, including issuing the same employee handbooks and other form agreements; (4)
22 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee
23 employment matters; and, (6) DEFENDANTS share employees.

24 11. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
25 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Class Members
26 upon whose behalf PLAINTIFF brings these allegations and causes of action, in that
27 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Class Members’ wages,
28 hours and working conditions, and/or suffered or permitted PLAINTIFF and the Class Members to

1 work so as to be considered the joint employers of PLAINTIFF and the Class Members.

2 12. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
3 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
4 time-keeping practices, meal and rest periods, reimbursement of business expenses and other
5 working conditions that were distributed to, and/or applied to PLAINTIFF and the Class Members,
6 and further that DEFENDANTS uniformly compensated and controlled the wages of PLAINTIFF
7 and the Class Members in a uniform manner. DEFENDANTS collectively represented to
8 PLAINTIFF and the Class Members that each was an "at-will" employee of DEFENDANTS, and
9 that DEFENDANTS collectively retained the right to terminate PLAINTIFF's and Class Members'
10 employment with or without cause. Upon information and belief, DEFENDANTS further
11 collectively represented to PLAINTIFF and Class Members in writing the details of their
12 compensation, and the manner in which they were to take meal and rest periods, the procedures
13 required by DEFENDANTS collectively for recordation of hours worked and the policies applicable
14 to PLAINTIFF and Class Members by which DEFENDANTS collectively would evaluate the wage
15 rates of PLAINTIFF and Class Members.

16 13. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
17 and working conditions of PLAINTIFF and Class Members. As such, DEFENDANTS collectively
18 held the right to control virtually every aspect of PLAINTIFF's and the Class Members'
19 employment, including the instrumentality that resulted in the illegal conduct for which PLAINTIFF
20 seeks relief in this Complaint.

21 14. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
22 control over, applied the same policies and practices, and engaged in the same acts and omissions
23 with regard to the other Class Members.

24 **CLASS ALLEGATIONS**

25 15. PLAINTIFF brings this action on behalf of himself, and all others similarly situated
26 as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF seeks to
27 represent are defined as follows and referred to as the "Class" or "Class Members":
28

1 All current and former non-exempt employees that worked either
2 directly or via a staffing agency for DEFENDANTS at any location
3 in California at any time within the four years and 178 days prior to
4 the filing of the initial Complaint (“Class Period”).²

- 5 a. Numerosity. While the exact number of Class Members is unknown to
6 PLAINTIFF at this time, the Class is so numerous that the individual joinder of
7 all members is impractical under the circumstances of this case. PLAINTIFF is
8 informed and believes the Class consists of at least 100 individuals.
- 9 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
10 because common questions of law and fact predominate over individual issues.
11 Common questions include, but are not limited to, the following: (1) whether
12 DEFENDANTS understated hours worked and failed to pay all amounts due to
13 PLAINTIFF and the Class Members for wages earned, including minimum and
14 overtime wages, under California law; (2) whether DEFENDANTS provided
15 PLAINTIFF and the Class Members with all meal periods or premium payments
16 in lieu thereof in compliance with California law; (3) whether DEFENDANTS
17 provided PLAINTIFF and the Class Members with all rest periods or premium
18 payments in lieu thereof, in compliance with California law; (4) whether
19 DEFENDANTS provided PLAINTIFF and Class Members with accurate,
20 itemized wage statements in compliance with California law, displaying,
21 including but not limited to, the total hours worked during the pay period; (5)
22 whether DEFENDANTS timely paid PLAINTIFF and the Class Members all
23 wages due upon separation of employment; (6) whether DEFENDANTS failed
24 to reimburse PLAINTIFF and the Class Members for all business expenses; and
25

26 ² In response to the COVID-19 pandemic, the Judicial Council of California
27 adopted Emergency Rule 9(a) (California Rules of Court), whereby “statutes of limitations and
28 repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 to October 1,
2020.”

1 (7) whether DEFENDANTS violated California Business and Professions Code
2 sections 17200, *et seq.*

- 3 c. Ascertainable Class. The proposed Class is ascertainable as members can be
4 identified and located using information in DEFENDANTS' business, payroll
5 and personnel records.
- 6 d. Typicality. PLAINTIFF's claims are typical of the claims of the Class Members.
7 PLAINTIFF suffered a similar injury as members of the Class as a result of
8 DEFENDANTS' common practices regarding, *inter-alia*, failure to calculate
9 and pay all owed minimum and overtime wages, failure to provide proper meal
10 periods and rest periods or premium compensation in lieu thereof, failure to
11 provide accurate wage statements, failure to reimburse business expenses, and
12 failure to timely pay all wages due upon separation of employment.
- 13 e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the
14 Class Members. PLAINTIFF has no interests adverse to the interests of the other
15 Class Members. Counsel who represent PLAINTIFF are competent and
16 experienced in litigating similar class action cases and are California lawyers in
17 good standing. Counsel for PLAINTIFF have the experience and resources to
18 vigorously prosecute this case.
- 19 f. Superiority. A class action is superior to other available means for the fair and
20 efficient adjudication of this controversy since individual joinder of all members
21 of the class is impractical. Class action treatment will permit a large number of
22 similarly situated persons to prosecute their common claims in a single forum
23 simultaneously, efficiently, and without the unnecessary duplication of effort
24 and expense that numerous individual actions would engender. Furthermore, as
25 the damages suffered by each individual member of the Class may be relatively
26 small, the expenses and burden of individual litigation would make it difficult
27 or impossible for individual members of the Class to redress the wrongs done to
28 them, while an important public interest will be served by addressing the matter

1 as a class action. The cost to the court system of adjudication of such
2 individualized litigation would be substantial. Individualized litigation would
3 also present the potential for inconsistent or contradictory judgments. Finally,
4 the alternative of filing a claim with the California Labor Commissioner is not
5 superior, given the lack of discovery in such proceedings, the fact that there are
6 fewer available remedies, and the losing party has the right to a trial de novo in
7 the Superior Court.

8 **FACTUAL AND LEGAL ALLEGATIONS**

9 16. During the relevant period, PLAINTIFF, and each of the Class Members worked for
10 DEFENDANTS in the State of California. At all times referenced herein, DEFENDANTS exercised
11 control over PLAINTIFF and Class Members, and suffered and/or permitted them to work.

12 17. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
13 PLAINTIFF worked for DEFENDANTS as a general laborer, warehouse worker and/or other
14 similar title at DEFENDANTS' warehouse facility located in Brea, California, from in or around
15 late May 2022 through on or about July 25, 2022. PLAINTIFF regularly worked at least eight (8)-
16 eleven (11) hours per day, at least five (5) days per week.

17 18. At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an
18 hourly basis for time counted by DEFENDANTS as hours worked.

19 19. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
20 PLAINTIFF and Class Members for all hours worked, resulting in the underpayment of minimum
21 and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Class Members for all
22 hours worked by virtue of, DEFENDANTS' automatic deduction and time rounding policies, and
23 failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise
24 unlawful practices for missed or improper meal periods, as explained below.

25 20. Based on information and belief, DEFENDANTS implemented a policy and/or
26 practice of rounding meal period start and end times and/or automatically deducting at least thirty
27 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
28 PLAINTIFF and other Class Members were subject to DEFENDANTS' control during purported

1 meal periods and/or were otherwise not afforded lawful meal periods, depriving PLAINTIFF and
2 Class Members of all wages owed.

3 21. Based on information and belief, Class Members were not paid for all hours worked
4 due to DEFENDANTS' policy and/or practice of rounding time entries or paying according to
5 scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies
6 and/or practices. Based on information and belief, at times, Class Members were required to stand
7 in line behind other employees to access DEFENDANTS' biometric/electronic employee time-
8 keeping system and/or were required to undergo security screenings and/or had to spend time
9 reinitiating DEFENDANTS' fingerprint/electronic time-keeping system before they could clock in
10 for the start of their shifts. This off-the-clock work, including but not limited to, time spent waiting
11 for other employees to clock in for their shifts, undergoing security screenings and/or reinitiating
12 the time-keeping mechanism, was not compensated, resulting in the underpayment of minimum and
13 overtime wages owed to Class Members.

14 22. Based on information and belief, DEFENDANTS did not compensate Class
15 Members for time spent donning and doffing personal protective equipment and/or uniforms/work
16 clothing (e.g., steel-toed boots, reflective vests, protective eyewear grip gloves and/or face masks)
17 during meal periods, before the start of a scheduled shift, and/or after completing a scheduled shift,
18 resulting in off-the-clock work and the underpayment of wages owed to Class Members.

19 23. Based on information and belief, PLAINTIFF and other Class Members were
20 required to complete other off-the-clock work tasks after clocking out for the end of their shifts
21 and/or during uncompensated meal periods, resulting in the underpayment of minimum and
22 overtime wages owed to PLAINTIFF and other Class Members.

23 24. Based on information and belief, at times, DEFENDANTS' biometric/electronic
24 time-keeping system malfunctioned such that Class Members were required to either reinitiate
25 and/or otherwise troubleshoot the system prior to being able to clock in and/or were unable to clock
26 in at all for the start of their shifts and/or clock back in from meal periods, resulting in off-the-clock
27 work and the underpayment of wages owed to Class Members. Based on information and belief,
28 Class Members experienced the same issues when clocking out for shifts and/or back in for meal

1 periods. This time spent under DEFENDANTS' control was not recorded and not compensated and
2 resulted in unpaid minimum wages owed to Class Members.

3 25. Based on information and belief, DEFENDANTS failed to pay Class Members for
4 time they were required to spend completing orientation, policy questionnaires, and/or time spent
5 completing the onboarding process including but not limited to reviewing various documents and
6 policies provided by DEFEDANTS. Based on information and belief, this work time was completed
7 off-the-clock and was not compensated.

8 26. Based on further information and belief, DEFENDANTS implemented a time-
9 rounding system that as applied systematically deprived PLAINTIFF and other Class Members of
10 compensable time because the time-rounding system implemented by DEFENDANTS would
11 almost always, if not always, result in understating actual compensable work time. For example,
12 DEFENDANTS' time records for PLAINTIFF beginning on 7/18/22 through 7/25/22 show a
13 consistent shift start or "in" time of precisely 5:00 a.m. for each shift worked from 7/18/22 through
14 7/25/22 and a shift end/ "out" time that is rounded to the nearest quarter hour. For example, from
15 7/18/22 through 7/25/22, PLAINTIFF's shift end times are rounded to nearest quarter hour and
16 recorded as included but not limited to 1:30 p.m., 2:15 p.m., or 2:45 p.m. Similarly,
17 DEFENDANTS' time records for PLAINTIFF for the same period consistently reflect a meal period
18 taken from precisely 10:15 a.m. to exactly 10:45 a.m. for each shift worked from 7/18/22 to 7/25/22.
19 Likewise, DEFENDANTS' time records as listed on PLAINTIFF's wage statement for PLAINTIFF
20 for the previous pay period, i.e., pay period beginning on 7/4/22 and ending on 7/17/22 evidence
21 that each recorded time entry is rounded to the nearest quarter hour. DEFENDANTS' failure to pay
22 for all time worked by virtue of its time rounding, auto-deduction policies and practices for unlawful
23 meal periods, failure to provide lawful meal periods, and/or other off-the-clock work practices and
24 policies, resulted in the underpayment of minimum wages owed to PLAINTIFF and Class Members
25 as well as unpaid overtime wages for those Class Members who worked more than eight (8) hours
26 in a day and/or more than forty (40) hours in a week.

27 27. Based on information and belief, DEFENDANTS had actual and/or constructive
28 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to

1 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
2 underpayment of minimum wages owed to PLAINTIFF and other Class Members, in violation of
3 California's minimum and overtime wage laws.

4 28. Based on information and belief, DEFENDANTS failed and continue to fail to pay
5 Class Members two times their regular rate of pay for time worked beyond twelve (12) hours per
6 workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a
7 work week, in violation of California's overtime laws.

8 29. Based on information and belief, DEFENDANTS failed to incorporate all non-
9 discretionary remuneration, including but not limited to, shift differential pay, bonus pay, multiple
10 base rates of pay and/or other non-discretionary pay into the regular rate of pay used to calculate the
11 owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed
12 to PLAINTIFF and other Class Members.

13 30. **Meal Period Violations.** PLAINTIFF and other Class Members consistently worked
14 shifts of at least five and one-half hours or more, entitling them to at least one meal period. However,
15 PLAINTIFF and other Class Members would not receive legally compliant thirty (30) minute first
16 and second meal periods. Based on information and belief, Class Members were consistently unable
17 to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late
18 meal periods, interrupted meal periods, and/or work through part or all their meal periods due to
19 understaffing, the nature and constraints of their job duties and/or commentary from supervisors
20 pressuring them to take non-compliant meal periods or skip meal periods completely.

21 31. Based on information and belief, other Class Members were consistently suffered
22 and permitted to take meal periods past the fifth hour of work and/or had their meal periods
23 interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise on duty due to
24 commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or
25 the need to meet DEFENDANTS' goals and expectations. For example, oftentimes, PLAINTIFF
26 was forced to take an interrupted meal period and/or take his meal period late (i.e. after working
27 more than five hours) due to lack of relief workers, the need to keep up with warehouse deadlines,
28 load the carts and/or trucks, and/or complete other work tasks. Even when PLAINTIFF was required

1 to work through part or all of his owed thirty-minute meal period, DEFENDANTS performed an
2 automatic deduction of at least thirty minutes per shift as though a full thirty-minute off-duty meal
3 period had been taken, when it had not. For instance, DEFENDANTS' time records for PLAINTIFF
4 consistently show that a 30-minute meal period deduction from 10:15 am to 10:45 am, resulting in
5 meal period violations and unpaid wages for off-the-clock work performed during the unpaid meal
6 period. Moreover, the time records as displayed on PLAINTIFF's wage statements show that meal
7 periods were consistently provided after the end of the fifth hour of work in violation of California
8 law.

9 32. Based on information and belief, DEFENDANTS implemented policies and/or
10 practices that failed to relieve Class Members of all duties and DEFENDANTS' control during
11 unpaid meal periods.

12 33. Based on information and belief, DEFENDANTS required Class Members to
13 complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take
14 into account when scheduling meal periods for Class Members. Based on information and belief,
15 meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

16 34. Based on information and belief, despite DEFENDANTS' failure to provide lawful
17 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
18 times of PLAINTIFF's and other Class Members' meal periods and/or automatically deducting at
19 least thirty minutes per shift for missed and/or otherwise unlawful meal periods despite having
20 actual and/or constructive knowledge that PLAINTIFF and other Class Members did not receive
21 lawful meal periods.

22 35. Moreover, per DEFENDANTS' uniform policy and practice, Class Members who
23 worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute
24 second meal period. For example, when PLAINTIFF worked shifts lasting longer than ten (10)
25 hours, he was not afforded any version of a second meal period. For example, on 7/18/22,
26 PLAINTIFF's time records show a shift start time of 5:00 am and a shift end time of 5:00 pm, but
27 the records indicate that only a single purported meal period was provided from 10:15 am to 10:45
28 am.

1 36. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
2 other Class Members as to the timing and duty-free nature of meal periods. Based on further
3 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor
4 did DEFENDANTS have any sort of compliant policy in practice.

5 37. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
6 records of the true start and end times of PLAINTIFF's and Class Members' meal periods. Based
7 on information and belief, to the extent meal period were recorded, DEFENDANTS illegally
8 rounded the start and end times of purported meal periods resulting in PLAINTIFF and other Class
9 Members not being paid for all time worked as well as late and/or shortened meal periods. *See*
10 *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

11 38. Based on information and belief, DEFENDANTS had actual and/or constructive
12 knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which
13 were free of DEFENDANTS' control owed to PLAINTIFF and other Class Members, in violation
14 of California's meal period laws.

15 39. DEFENDANTS failed to pay PLAINTIFF and other Class Members, an additional
16 hour of wages at their respective regular rates of compensation for each workday a lawful meal
17 period was not provided. DEFENDANTS either failed to pay a meal period premium at all for each
18 workday a lawful meal period was not provided and/or failed to pay the proper meal period premium
19 for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses,
20 shift differential pay and/or other non-discretionary compensation into the regular rate or
21 compensation for purposes of calculating the owed meal period premium.

22 40. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide
23 PLAINTIFF and other Class Members with legally compliant rest periods at a rate of every four (4)
24 hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the
25 work period, as required by law.

26 41. PLAINTIFF and other Class Members were not adequately informed, authorized,
27 instructed about, nor permitted an opportunity to take proper rest periods per California law. Based
28 on information and belief, DEFENDANTS had no policy in place nor instruction as to the taking of

1 duty-free rest periods.

2 42. Based on information and belief, DEFENDANTS did not have a have a compliant
3 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
4 practice. For example, DEFENDANTS did not afford PLAINTIFF the opportunity to take any
5 version of a third rest period when he worked shifts that lasted longer than ten (10) hours.

6 43. Based on information and belief, Class Members' rest periods were interrupted, cut
7 short, on duty, restricted to work premises and/or late due to understaffing, the nature and constraints
8 of their job duties, and/or due to commentary from supervisors/managers pressuring them to skip
9 rest periods completely or otherwise take non-compliant rest periods.

10 44. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
11 lasting longer than ten hours.

12 45. Based on information and belief, DEFENDANTS implemented policies and/or
13 practices that failed to relieve PLAINTIFF and other Class Members of all duties and
14 DEFENDANTS' control during rest periods.

15 46. Based on information and belief, Class Members were pressured to complete their
16 work duties according to a designated schedule such that rest periods were only taken once tasks
17 were completed, and/or as time permitted.

18 47. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
19 which PLAINTIFF and Class Members experienced a missed/unlawful rest period in violation of
20 California law. DEFENDANTS either failed to pay a rest period premium at all for each workday a
21 proper rest period was not provided and/or failed to pay the proper rest period premium for failure
22 to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift
23 differential pay, and/or other non-discretionary compensation into the regular rate of compensation
24 for purposes of calculating the owed rest period premium.

25 48. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
26 provide PLAINTIFF and other Class Members with accurate wage statements that complied with
27 Labor Code section 226. As DEFENDANTS failed to provide PLAINTIFF and Class Members with
28 meal and rest periods that complied with Labor section 226.7, the wage statements DEFENDANTS

1 issued to PLAINTIFF and Class Members failed and continue to fail to correctly set forth the gross
2 wages earned, the total hours worked, the net wages earned, and all applicable hourly rates in effect
3 during the pay period and the corresponding number of hours worked at each hourly rate by the
4 employee.

5 49. DEFENDANTS issued wage statements to PLAINTIFF and Class Members that also
6 failed to indicate the earned gross and net wages earned during the pay period, the correct applicable
7 rates of pay for all hours worked, and the total hours worked by PLAINTIFF and Class Members
8 (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve Class
9 Members of all duties and employer control during unpaid meal periods, payment according to
10 scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies
11 and practices) which results in a violation of Labor Code section 226(a).

12 50. As described herein, based on information and belief, DEFENDANTS also failed to
13 incorporate all forms of non-discretionary compensation earned during the pay period into the
14 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
15 of overtime worked by PLAINTIFF and other Class Members.

16 51. Moreover, based on information and belief, DEFENDANTS issued wage statements
17 to PLAINTIFF and Class Members that further violate Labor Code section 226(a), by among other
18 things, failing to list the correct name and/or address of the legal entity that is the employer.

19 52. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Class
20 Members that were not accurate and did not include all of the statutorily required information. As
21 such, DEFENDANTS violated Labor Code section 226.

22 53. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
23 information and belief, DEFENDANTS failed to timely pay Class Members all wages that were due
24 and owing upon termination or resignation. Based on information and belief, DEFENDANTS
25 untimely provide final wages to Class Members without regard to the timing requirements of Labor
26 Code sections 201-202.

27 54. Upon separation of employment, Class Members' final paychecks were not timely
28 provided and/or were not timely provided with all owed vacation pay and/or paid time off.

1 Moreover, PLAINTIFF's and Class Members' final paychecks, once provided, did not include all
2 wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime
3 wages, premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the
4 properly accrued rates.

5 55. These violations subject DEFENDANTS to civil penalties under Labor Code section
6 203, 210, and/or 256.

7 56. **Unreimbursed Business Expenses.** Based on information and belief,
8 DEFENDANTS required PLAINTIFF and Class Members to incur business expenses as a direct
9 consequence of the performance of their job duties without providing reimbursement, in violation
10 of Labor Code section 2802. Based on information and belief, PLAINTIFF and Class Members
11 were improperly required to provide and maintain work tools that are supposed to be the
12 responsibility of the employer.

13 57. Based on information and belief, DEFENDANTS shifted the costs of doing business
14 onto Class Members by requiring them to pay for business expenses, including but not limited to,
15 the use of Class Members' personal mobile phone and data usage for work related purposes to
16 receive and respond to work related messages and/or phone calls and uniforms/work clothing/shoes,
17 and/or protective equipment/safety gear. For example, DEFENDANTS required that PLAINTIFF
18 supply his own steel-toed boots, reflective vests, protective eyewear and grip gloves to wear for
19 work without reimbursing PLAINTIFF for the expenses he incurred in connection therewith

20 58. Based on information and belief, DEFENDANTS regularly failed to reimburse and
21 indemnify Class Members for business expenses. Pursuant to California Labor Code section 2802,
22 PLAINTIFF and Class Members were entitled to be reimbursed for all reasonable expenses
23 associated with carrying out DEFENDANTS' orders and/or carrying out the duties assigned by
24 DEFENDANTS.

25 59. DEFENDANTS' failure to provide Class Members with full reimbursement for all
26 reasonable expenses associated with carrying out their duties required that Class Members
27 subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

28 60. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS

engaged in these same herein described unlawful practices and that DEFENDANTS applied these same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

FIRST CAUSE OF ACTION

**Recovery of Unpaid Minimum Wages and Liquidated Damages
(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

61. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

62. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage Commission (“IWC”) Wage Orders, an employer must pay its employees for all hours worked, up to 40 hours per week or 8 hours per day, at a regular rate no less than the mandated minimum wage. Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

63. DEFENDANTS violated California’s minimum wage laws by failing to compensate PLAINTIFF and the Class Members for all hours worked by virtue of, among other things, DEFENDANTS’ time rounding, automatic deduction for meal periods, off-the-clock/unpaid work completed during meal periods, other pre-shift, post-shift and/or otherwise off-the-clock work, and/or payment according to scheduled hours worked rather than actual hours worked (described above), which resulted in the failure to account for all hours worked and thus the denial of minimum wages.

64. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and Class Members for all hours worked.

65. Based on information and belief, DEFENDANTS had actual or constructive knowledge that its time-rounding policies and practices, auto-deduction policies and practices for meal periods, failure to relieve employees of all duties and employer control during unpaid meal periods, policy and practice of payment according to scheduled work time rather than actual work time, and/or other mandated off-the-clock work resulted in the underpayment of minimum wages owed to PLAINTIFF and other Class Members.

66. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFF and the Class Members are entitled to recover all unpaid minimum wages and liquidated damages thereon, plus attorney's fees and costs, in an amount to be proved at trial.

1
2 **SECOND CAUSE OF ACTION**

3 **Recovery of Unpaid Overtime Wages**
4 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

5 67. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

6 68. Employees in California must be paid overtime, equal to one and one-half times the
7 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
8 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
9 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
10 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
11 consecutive day of work in a workweek, unless they are exempt.

12 69. As explained above, PLAINTIFF and the Class Members worked overtime hours for
13 which they were not compensated by DEFENDANTS by virtue of, among other things,
14 DEFENDANTS' time rounding, automatic deduction for meal periods, off-the-clock/unpaid work
15 completed during meal periods, other pre-shift, post-shift and/or otherwise off-the-clock work,
16 and/or payment according to scheduled hours worked rather than actual hours worked (described
17 above), which resulted in the failure to account for all hours worked and thus the denial of all owed
18 overtime wages.

19 70. Based on information and belief, DEFENDANTS failed to pay twice Class
20 Members' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for
21 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in
22 violation of California's overtime laws.

23 71. Based on information and belief, DEFENDANTS further violated California's
24 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
25 limited to, non-discretionary bonus compensation, shift differentials, multiple base rates of pay
26 and/or other non-discretionary compensation into the regular rate of pay used to calculate the
27 overtime rate of pay. Failing to include non-discretionary compensation into the regular rate of pay
28 resulted in a miscalculation of the overtime wage rate, resulting in the underpayment of overtime
wages owed to PLAINTIFF and other Class Members.

1 72. DEFENDANTS' conduct described above is in violation of California Labor Code
2 sections 510 and 1194 and all applicable Wage Orders.

3 73. PLAINTIFF and the Class Members are entitled to recover all unpaid overtime
4 wages, plus attorney's fees and costs, in an amount to be proved.

5 **THIRD CAUSE OF ACTION**

6 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
7 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

8 74. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

9 75. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
10 DEFENDANTS were required to provide PLAINTIFF and the Class Members with one 30-minute
11 meal break free from all duties and employer control for all shifts longer than 5 hours, and a second
12 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be
13 waived, but only under the following circumstances: (1) if an employee's total work period in a day
14 is over five (5) hours but no more than six (6) hours, the required meal period may be waived by
15 mutual consent of the employer and employee, and (2) if an employee's total work period in a day
16 is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be
17 waived by mutual consent of the employer and employee, but only if the first meal period was not
18 waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their
19 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
20 done so.

21 76. Employers must pay employees an additional hour of wages at the employees'
22 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
23 meal period, first meal period provided after five (5) hours, second meal period provided after 10
24 hours). Lab. Code § 226.7.

25 77. As explained above, PLAINTIFF and other Class Members were consistently unable
26 to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being
27 forced to take late meal periods, interrupted meal periods, and/or work through part or all of their
28 meal periods due to understaffing, the nature and constraints of their job duties, and/or commentary
from supervisors pressuring them to take non-compliant meal periods or skip meal periods

1 completely.

2 78. As explained above, DEFENDANTS had and continue to have a policy of rounding
3 the start and end times of employees' meal periods and automatically deducting thirty minutes per
4 shift despite having actual and/or constructive knowledge that PLAINTIFF and Class Members did
5 not receive compliant meal periods.

6 79. Moreover, based on information and belief, Class Members did not receive a timely,
7 uninterrupted second meal period when working shifts over ten (10) hours in a workday.

8 80. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
9 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
10 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in
11 violation of California's meal period laws.

12 81. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
13 periods in violation of California law and/or failed to pay the proper meal period premium for failure
14 to incorporate all non-discretionary remuneration including but not limited to, bonuses, shift
15 differential pay and/or other non-discretionary compensation into the regular rate or compensation
16 for purposes of calculating the owed meal period premium.

17 82. As a result, under Labor Code section 226.7, PLAINTIFF and the Class Members
18 are entitled to one additional hour's pay at the employee's regular rate of compensation for each day
19 a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and costs,
20 all in an amount to be proved at trial.

21 **FOURTH CAUSE OF ACTION**

22 **Failure to Provide Rest Periods or Compensation in Lieu Thereof (By PLAINTIFF and the Class Members Against all DEFENDANTS)**

23 83. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

24 84. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
25 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
26 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
27 "insofar as practicable." In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the
28 California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts

1 from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10
2 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029).
3 The rest period requirement obligates employers to permit and authorize employees to take off-duty
4 rest periods, meaning employers must relieve employees of all duties and relinquish control over
5 how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257.

6 85. If the employer fails to provide any required rest period, the employer must pay the
7 employee one hour of pay at the employee's regular rate of compensation for each workday the
8 employer did not provide at least one legally required rest period, pursuant to Labor Code section
9 226.7.

10 86. PLAINTIFF and the Class Members did not receive legally compliant, timely 10-
11 minute rest periods for every four (4) hours worked or major fraction thereof. As explained above,
12 any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject to
13 DEFENDANTS' control due to the nature and constraints of Class Members' job duties,
14 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Class Members to
15 skip rest periods completely or otherwise take non-compliant rest periods.

16 87. Based on information and belief, DEFENDANTS implemented policies and/or
17 practices that failed to relieve PLAINTIFF and other Class Members of all duties and employer
18 control during rest periods. Based on further information and belief, Class Members were pressured
19 to complete their work duties according to a designated schedule such that rest periods were only
20 taken once tasks were completed, and/or as time permitted.

21 88. As a result, PLAINTIFF and Class Members did not receive legally compliant first,
22 second, or third rest periods as required by California law.

23 89. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
24 period premium to PLAINTIFF and other Class Members for each workday in which there was a
25 missed or otherwise unlawful rest period. Based on further information and belief, when a rest
26 premium was paid, DEFENDANTS failed to include non-discretionary compensation including but
27 not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
28 regular rate of compensation for purposes of determining the owed rest period premium.

1 90. DEFENDANTS are therefore liable to PLAINTIFF and the Class Members for one
2 hour of additional pay at the regular rate of compensation for each workday that a required rest
3 period was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage
4 Order, plus pre-judgment interest, plus attorneys' fees and costs, all in an amount to be proved at
5 trial.

6 **FIFTH CAUSE OF ACTION**

7 **Failure to Furnish Accurate Itemized Wage Statements**
8 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

9 91. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

10 92. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFF and the Class
11 Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized
12 wage statement accurately stating the following:

13 (1) gross wages earned, (2) total hours worked by the employee,
14 except for any employee whose compensation is solely based on a
15 salary and who is exempt from payment of overtime under
16 subdivision (a) of Section 515 or any applicable order of the Industrial
17 Welfare Commission, (3) the number of piece-rate units earned and
18 any applicable piece rate if the employee is paid on a piece-rate basis,
19 (4) all deductions, provided that all deductions made on written orders
20 of the employee may be aggregated and shown as one item, (5) net
21 wages earned, (6) the inclusive dates of the period for which the
22 employee is paid, (7) the name of the employee and his or her social
23 security number, except that by January 1, 2008, only the last four
24 digits of his or her social security number or an employee
25 identification number other than a social security number may be
26 shown on the itemized statement, (8) the name and address of the
27 legal entity that is the employer, and (9) all applicable hourly rates in
28 effect during the pay period and the corresponding number of hours
worked at each hourly rate by the employee.

93. As DEFENDANTS failed to provide PLAINTIFF and other Class Members with
meal and rest periods that complied with Labor Code section 226.7, the wage statements
DEFENDANTS issued to PLAINTIFF and other Class Members failed and continue to fail to
correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the
total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages
earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect
during the pay period and the corresponding number of hours worked at each hourly rate by the
employee, in violation of Labor Code section 226(a)(9).

1 94. Moreover, due to violations detailed above, including but not limited to,
2 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide
3 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
4 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
5 PLAINTIFF and other Class Members with accurate, itemized wage statements that listed the gross
6 and net wages earned and the correct applicable rates of pay for all hours worked. Based on
7 information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
8 compensation earned during the pay period into the regular rate of pay for purposes of calculating
9 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
10 overtime worked by PLAINTIFF and other Class Members.

11 95. As explained above, wage statements issued by DEFENDANTS failed to list the
12 "total hours worked" by PLAINTIFF and Class Members (by virtue of rounded time entries,
13 automatic deduction for meal periods/failure to relieve Class Members of all duties and employer
14 control during unpaid meal periods, payment according to scheduled hours worked rather than actual
15 hours worked, and/or other off-the-clock work policies and practices all described in greater detail
16 *supra*), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on
17 a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v.*
18 *Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

19 96. Separately, and independent from the above allegations, based on information and
20 belief, DEFENDANTS issued wage statements to PLAINTIFF and Class Members that violate
21 Labor Code section 226(a)(8), by failing to list the correct name and/or address of the legal entity
22 that is the employer.

23 97. DEFENDANTS' failure to accurately list all hours worked on all wage statements
24 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Class
25 Members over whether they received all wages owed to them.

26 98. As a result, PLAINTIFF and other Class Members have suffered injury as they could
27 not easily determine whether they received all wages owed to them and whether they were paid for
28 all hours worked.

1 99. Moreover, as a result of DEFENDANTS' failure to list the correct name and/or
2 address of the legal entity that is the employer, PLAINTIFF and Class Members have suffered injury
3 as they could not contact their employer regarding any question(s) they had about wages paid.

4 100. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
5 Class Members with accurate, itemized wage statements.

6 101. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Class Members
7 have suffered injury. The absence of accurate information on their wage statements has prevented
8 earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
9 mathematical computations to determine the amount of wages owed, and will cause difficulty and
10 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
11 submission of inaccurate information about wages and amounts deducted from wages to state and
12 federal government agencies. As a result, PLAINTIFF and Class Members are required to
13 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
14 and pay records than if DEFENDANT had complied with its legal obligations.

15 102. Pursuant to California Labor Code section 226(e), PLAINTIFF and Class Members
16 are entitled to recover fifty dollars per employee for the initial pay period in which a Section 226
17 violation occurred and one hundred dollars per employee per violation for each subsequent pay
18 period, not to exceed an aggregate penalty of four thousand dollars per employee.

19 103. Pursuant to California Labor Code § 226(h), PLAINTIFF and Class Members are
20 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
21 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
22 provide currently employed Class Members with inaccurate wage statements in violation of
23 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
24 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
25 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
26 with California Labor Code § 226(a).

27 104. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFF and Class
28 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable

1 attorneys' fees, and costs of suit.

2 **SIXTH CAUSE OF ACTION**

3 **Failure to Timely Pay All Wages Due Upon Separation of Employment**

4 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

5 105. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

6 106. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
7 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
8 payable immediately."

9 107. California Labor Code section 202(a) provides, in relevant part, that "[i]f an
10 employee not having a written contract for a definite period quits his or her employment, his or her
11 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
12 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
13 to his or her wages at the time of quitting."

14 108. Based in information and belief, DEFENDANTS failed and continue to fail to timely
15 pay final wages to Class Members upon separation of employment in violation of Labor Code
16 section 201-202. Moreover, final paychecks once provided to Class Members do not include all
17 wages owed as they are devoid of, including but not limited to, all owed minimum wages, overtime
18 wages, premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the
19 properly accrued rates.

20 109. Under Labor Code section 203, Class Members who are no longer employed by
21 DEFENDANTS are entitled to recover waiting time penalties of up to 30 days' pay, plus attorney's
22 fees and costs, in an amount to be proved at trial.

23 **SEVENTH CAUSE OF ACTION**

24 **Failure to Reimburse Business Expenses**

25 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

26 110. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

27 111. California law requires employers to indemnify their employees for all necessary
28 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable
Wage Orders section 9(b). Furthermore, "for purposes of [section 2802], the term 'necessary

1 expenditure or losses' shall include all reasonable costs, including, but not limited to, attorneys' fees
2 incurred by the employee enforcing the rights granted by this section."

3 112. Among other things, under California law, when employees must use their personal
4 cellphones for work-related purposes, the employer must reimburse them for a reasonable
5 percentage of their cell phone bills. See *Cochran v. Schwan's Home Services, Inc.* (2014) 228
6 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
7 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
8 Id. 1144-1145. California law also requires employers to reimburse employees for automobile
9 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
10 and tear on the vehicle. See *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

11 113. As described above, Class Members were improperly required to pay for business
12 expenses that are legally the responsibility of the employer.

13 114. DEFENDANTS' failure to provide PLAINTIFF and the Class Members with full
14 reimbursement for all reasonable expenses associated with carrying out their duties required that
15 PLAINTIFF and the Class Members subsidize and/or carry the burden of business expenses in
16 violation of Labor Code section 2802.

17 115. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Class
18 Members have suffered injury in that they were not completely reimbursed as mandated by
19 California law.

20 116. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members
21 are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable
22 attorneys' fees, and costs of suit.

23 **EIGHTH CAUSE OF ACTION**

24 **Unfair Competition**

25 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

26 117. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

27 118. DEFENDANTS' unlawful conduct alleged herein constitutes unfair competition
28 within the meaning of California Business and Professions Code section 17200 *et seq.* This unfair
conduct includes all unlawful conduct alleged herein, including but not limited to: DEFENDANTS'

1 failure to pay minimum and overtime wages by virtue of its illegal policies and practices;
2 DEFENDANTS' failure to authorize or permit, or provide, all required meal and rest periods or pay
3 proper premiums in lieu thereof; DEFENDANTS' failure to furnish complete and accurate itemized
4 wage statements; DEFENDANTS' failure to reimburse business expenses; DEFENDANTS' failure
5 to timely pay all wages owed upon separation of employment; and DEFENDANTS' failure to
6 provide paid sick leave (or paid time off in lieu thereof) at the properly accrued rates (due to,
7 including but not limited to, DEFENDANTS' failure to incorporate all non-discretionary
8 compensation into the sick pay calculation and failure to base the accrued sick leave on the correct
9 number of hours worked as a result of DEFENDANTS' time-rounding/auto deduction policies and
10 practices, payment according to scheduled hours worked and/or other off-the-clock work policies
11 and practices).

12 119. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
13 California Labor Code, DEFENDANTS have gained a competitive advantage over other
14 comparable companies doing business in the State of California that comply with their obligations
15 to authorize or permit rest periods and meal periods or pay proper meal and rest period premiums
16 in lieu thereof, to properly accrue and pay sick time benefits, to provide complete and accurate
17 itemized wage statements, to reimburse employees for all business expenses, to pay all owed
18 minimum and overtime wages and to pay all wages due upon separation of employment of their
19 employees.

20 120. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFF
21 and Class Members have suffered injury in fact and lost money or property, as described in more
22 detail above. Pursuant to California Business and Professions Code section 17200, *et seq.*,
23 PLAINTIFF and Class Members are entitled to restitution of all wages and other monies rightfully
24 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of their
25 unlawful and unfair business practices.

26 121. PLAINTIFF also seeks an injunction against DEFENDANTS on behalf of the Class
27 Members, enjoining DEFENDANTS and any and all persons acting in concert with them from
28 engaging in each of the unlawful practices and policies set forth herein.

122. PLAINTIFF also seeks an award of attorney's fees pursuant to Code Civ. Proc Section 1021.5 and as permitted by law, and an award for costs reasonably incurred, as permitted by law.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for relief and judgment, on behalf of PLAINTIFF and Class Members as follows:

1. For an order that the action be certified as a class action;
2. For an order that PLAINTIFF be appointed as class representative;
3. For an order that counsel for PLAINTIFF be appointed as class counsel;
4. For compensatory damages according to proof;
5. For liquidated damages according to proof;
6. For penalties according to proof;
7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully withheld from PLAINTIFF and the Class Members;
8. For an order finding DEFENDANTS have engaged in unfair competition in violation of section 17200, *et seq.*, of the California Business and Professions Code;
9. For an order enjoining DEFENDANTS from further acts of unfair competition;
10. For pre-judgment interest as permitted by law;
11. For attorney's fees and costs reasonably incurred; and
12. For such other and further relief that the Court deems just and proper.

Dated: November 4, 2022

CROSNER LEGAL, PC

By: _____

Michael R. Crosner, Esq.
Zachary M. Crosner, Esq.
Jamie Serb, Esq.
Attorneys for Plaintiff,
JOHNNY GARCIA

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DEMAND FOR JURY TRIAL

PLAINTIFF demands a trial by jury on all claims so triable.

Dated: November 4, 2022

CROSNER LEGAL, PC

By: 

Michael R. Crosner, Esq.
Zachary M. Crosner, Esq.
Jamie Serb, Esq.
Attorneys for Plaintiff,
JOHNNY GARCIA