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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
02/15/2023 at 05:56:00 AM
Clerk of the Superior Court
By Lee McAlister, Deputy Clerk

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

SAMUEL JOHNSON, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

THE J.G WENTWORTH COMPANY, a
California Corporation; SETTLEMENT
FUNDING LLC, a California Corporation;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: 37-2022-00048277-CU-OE-CTL
*[Assigned to Hon. Judge Katherine Bacal,
Dept C-69, for all purposes]*

FIRST AMENDED COMPLAINT

CLASS ACTION CLAIMS

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Meal Periods;
- (4) Failure to Provide Rest Breaks;
- (5) Failure to Timely Pay Final Wages;
- (6) Failure to Provide Accurate Itemized Wage Statements;
- (7) Unfair and Unlawful Competition;

PAGA CLAIMS

- (8) Failure to Pay Minimum Wages;
- (9) Failure to Pay Overtime Wages;
- (10) Failure to Provide Meal Periods;
- (11) Failure to Provide Rest Breaks;
- (12) Failure to Timely Pay Wages (§ 204);
- (13) Failure to Timely Pay Final Wages;
- (14) Failure to Provide Accurate Itemized Wage Statements

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

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against his employer(s), Defendants The J.G.
5 Wentworth Company, Settlement Funding, LLC, and DOES 1 through 20, inclusive,
6 (collectively, “Defendants”) on behalf of all current and former nonexempt employees employed
7 by Defendants in California (the “Class” or “Represented Employees”), for Labor Code
8 violations stemming from Defendants’ failure to pay all wages owed, including minimum,
9 regular, and overtime wages, failure to provide meal periods, failure to provide rest breaks,
10 failure to timely pay wages each period and upon separation of employment, and failure to
11 provide accurate itemized wage statements.

12 2. Plaintiff has been employed by Defendants since September 2022 as an agent
13 tasked with enrolling clients in a debt payoff program. Plaintiff and the Represented Employees
14 were paid an hourly wage plus tiered commission structure for hitting specified client enrollment
15 dollar figures.

16 3. Plaintiff alleges on information and belief that the Represented Employees were
17 subjected to the same policies, working conditions, and corresponding wage and hour violations
18 to which Plaintiff was subjected during employment.

19 4. Plaintiff and the Represented Employees were not provided all minimum, regular,
20 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
21 worked. As one specific example, Plaintiff and the Represented Employees were frequently
22 pressured to work off-the-clock to make company dictated quotas and to increase commissions
23 both for themselves and their superiors. Moreover, Plaintiff and Represented employees were
24 instructed to change their time entries for the Defendants to avoid paying overtime premiums.
25 Instead, the Defendants instructed the Plaintiff and Represented Employees that they could take
26 time off in a subsequent week and record the time as regular, base rate hours. This had an added
27 effect of decreasing overtime premiums that should have been paid on commissions earned
28 during weeks where the overtime was actually worked. Moreover, Plaintiff and the Represented

1 Employees were required to perform off-the-clock work at the beginning and end of shifts
2 without compensation. Because this time was spent under Defendants' control without
3 compensation, this violates California law and led to minimum and overtime wage violations.
4 See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law "do[es] not allow
5 employers to require employees to routinely work for minutes off the clock without
6 compensation").

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

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

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

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

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

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

11 11. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
12 monetary relief against Defendants and each of them, on behalf of himself and the Represented
13 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
14 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
15 210, 218.6, 226, 226.3, 226.7, 246, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199,
16 among possibly other sections inadvertently omitted. Plaintiff also reserves the right to name
17 additional representatives throughout the State of California.

18 **II. JURISDICTION**

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

21 **III. VENUE**

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

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1 **IV. PARTIES**

2 **Plaintiff**

3 14. Plaintiff and Class Representative Samuel Johnson has been employed by
4 Defendants since September 2022 and performed work for Defendants in San Diego County.

5 **Defendants**

6 15. Plaintiff is informed and believes and thereon alleges that Defendant The J.G.
7 Wentworth Company is a Delaware corporation authorized to and doing business in San Diego
8 California. Plaintiff is also informed and believes that Defendant The J.G. Wentworth Company
9 is and/or was the legal employer of Plaintiff and the Represented Employees during the
10 applicable statutory periods.

11 16. Plaintiff is informed and believes and thereon alleges that Defendant Settlement
12 Funding LLC is a Virginia corporation authorized to and doing business in San Diego California.
13 Plaintiff is also informed and believes that Defendant Settlement Funding, LLC is and/or was the
14 legal employer of Plaintiff and the Represented Employees during the applicable statutory
15 periods.

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

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

1 a single employer of Plaintiff and other Represented Employees.

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

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

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

25 **V. CLASS ACTION ALLEGATIONS**

26 22. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
27 alleged herein.

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

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

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

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

9 26. Plaintiff also seeks to represent the following subclasses:

10 **Meal Break Subclass**

11 All Represented Employees who worked a shift in excess of
12 5 hours during the Relevant Time Period.

13 **Rest Break Subclass**

14 All Represented Employees who worked a shift of at least
15 3.5 hours during the Relevant Time Period.

16 **Waiting Time Penalties Subclass**

17 All Represented Employees who separated from their
18 employment with Defendants during the period three years
19 before the filing of this action and ending when final
20 judgment is entered.

21 **Wage Statement Penalties Subclass**

22 All Represented Employees during the period one year
23 before the filing of this action and ending when final
24 judgment is entered.

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

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

1 29. This action has been brought and may properly be maintained as a class action
2 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
3 litigation and the proposed class is easily ascertainable from Defendants' records.

4 30. **Numerosity:** The potential members of the Class as defined are so numerous that
5 a joinder of all Represented Employees is impracticable. Although the exact number is currently
6 unknown to Plaintiff, this information is easily ascertainable from Defendants' records.

7 31. **Commonality:** There are questions of law and fact common to the class which
8 predominate over any questions affecting only individual members of the class, including
9 without limitation:

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

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

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

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

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

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

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

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

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

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

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

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

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

4 *Plaintiff and the Represented Employees Against All Defendants*

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

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

10 37. Plaintiff and the Represented Employees were not provided proper minimum and
11 regular wages due to Defendants' failure to accurately record and compensate for all hours
12 worked. As a result of this policy and practice, Plaintiff and the Represented Employees were
13 required to perform off-the-clock work that Defendants either knew or should have known they
14 were performing.

15 38. As a result of these policies and practices, Defendants failed to pay Plaintiff and
16 the Represented Employees for all hours worked.

17 39. Consequently, Defendants violated California Labor Code laws and minimum
18 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197.

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

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

26 42. At all material times, Defendants DOES 1 through 20 were and/or are the
27 employer of Plaintiff and the Represented Employees or were persons acting on behalf of said
28 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be

1 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
2 Labor Code regulating hours and days of work respectively.

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

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

7 45. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of
8 all unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs of
9 suit, pursuant to Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be proven
10 at trial.

11 **SECOND CAUSE OF ACTION**

12 **FAILURE TO PAY OVERTIME WAGES**

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

14 *Plaintiff and the Represented Employees Against All Defendants*

15 46. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
16 alleged herein.

17 47. Plaintiff and the Represented Employees were employees of Defendants who did
18 not receive proper protections and benefits of the laws governing payment of overtime wages.

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

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

1 had a policy and practice of refusing to pay overtime premiums for overtime hours worked and
2 instead employed a practice that they called “flex” time, wherein Plaintiff and Represented
3 Employees were required to doctor their time records to avoid overtime premiums. This practice
4 denied the class members their proper overtime premiums.

5 50. Additionally, at all relevant times, Plaintiff and the Represented Employees were
6 paid on an hourly basis plus additional earned compensation in the form of commissions and
7 other similar payments. However, on the occasions when Plaintiff and the Represented
8 Employees worked overtime hours and received additional earned compensation during the same
9 workweek, Defendants failed to properly include these amounts in the calculations for the
10 regular rate of pay – violating the well-established rule that overtime must always be paid at time
11 and one-half the regular rate of pay.

12 51. As a result of these policies and practices, Defendants failed to pay Plaintiff and
13 the Represented Employees for all overtime hours worked.

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

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

21 54. Defendants’ conduct was willful, as Defendants knew that Plaintiff and the
22 Represented Employees were entitled to be paid proper overtime wages throughout the statutory
23 period, yet Defendants chose not to pay them in accordance thereto.

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

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

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

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

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PROVIDE MEAL PERIODS**

10 (Labor Code §§ 226.7 and 512; IWC Wage Order § 11, 12)

11 *Plaintiff and the Meal Break Subclass Against All Defendants*

12 59. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
13 alleged herein.

14 60. Plaintiff and the Meal Break Subclass are and/or were employees of Defendants
15 who did not receive proper protections and benefits of the laws governing mandatory meal
16 periods.

17 61. Labor Code § 226.7 requires employers, including Defendants, to provide
18 employees with meal periods as mandated by the Industrial Welfare Commission.

19 62. Labor Code § 512(a), in part, provides that employers, including Defendants, may
20 not employ an employee for a work period of more than five hours per day without providing an
21 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
22 except that if the total work period per day of the employee is no more than six hours, the meal
23 period may be waived by mutual consent of both the employer and the employee. Employers
24 may not employ an employee for a work period more than 10 hours per day without providing
25 the employee with a second meal period of not less than 30 minutes.

26 63. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
27 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
28 pay for each meal period that is missed.

1 64. At all relevant times herein, Plaintiff and the Meal Break Subclass were denied
2 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
3 practices, Plaintiff and the Represented Employees were subjected to meal period violations
4 when they were: (1) unable to take a meal period due to workload, (2) forced to take an on-duty
5 meal period while under the control of the Company, (3) forced to take a shortened meal period,
6 (4) forced to take a meal period after the 5th hour of work, and (5) not provided mandated
7 second meal periods for shifts in excess of 10 hours.

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

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

15 67. On information and belief, Plaintiff and the Meal Break Subclass did not
16 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
17 obtained from Plaintiff and the Meal Break Subclass were not willfully obtained, were not
18 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
19 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Meal Break Subclass
20 to take meal periods in accordance with California law.

21 68. By their failure to provide Plaintiff and the Meal Break Subclass with meal
22 periods as required by California law, and failing to pay one hour of additional wages in lieu of
23 each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and
24 IWC Wage Order § 11. Accordingly, Defendants are liable for one hour of additional wages at
25 the employee's regular rate of compensation for each work day that a meal period was not
26 lawfully provided in an amount to be proven at time of trial.

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69. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512, and IWC Wage Order § 11, Defendants, and each of them, are liable to Plaintiff and the Meal Break Subclass for unpaid wage premiums, penalties, costs, and interest.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS

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

Plaintiff and the Rest Break Subclass Against All Defendants

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

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

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

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

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

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

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

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

8 78. By their failure to provide Plaintiff and the Rest Break Subclass with rest breaks
9 as required by California law, and failing to pay one hour of additional wages in lieu of each rest
10 break not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage
11 Order § 12. Accordingly, Defendants are liable for one hour of additional wages at the
12 employee's regular rate of compensation for each workday that a paid rest break was not
13 lawfully provided in an amount to be proven at time of trial.

14 79. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
15 and IWC Wage Order § 12, Defendants, and each of them, are liable to Plaintiff and the Rest
16 Break Subclass for unpaid wage premiums, penalties, costs, and interest.

17 **FIFTH CAUSE OF ACTION**

18 **FAILURE TO TIMELY PAY FINAL WAGES**

19 (Labor Code §§ 201 – 203)

20 *Plaintiff and the Waiting Time Penalties Subclass against All Defendants*

21 80. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
22 alleged herein.

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

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

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

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

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

10 86. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
11 wages due and owing to Plaintiff and the Waiting Time Penalties Subclass upon separation of
12 employment, including, but not limited to, minimum, regular, and overtime wages, as well as
13 meal and rest period premiums.

14 87. Furthermore, Defendants failed to pay all wages due and owing to the Waiting
15 Time Subclass because of the failure to pay all required sick pay wages. Labor Code § 246(l)(1)
16 provides that paid sick time for non-exempt employees must be “calculated in the same manner
17 as the regular rate of pay for the workweek in which the employee uses paid sick time, whether
18 or not the employee actually works overtime in that workweek.” Additionally, Labor Code §
19 246(l)(2) states that the paid sick time must be “calculated by dividing the employee’s total
20 wages, not including overtime premium pay, by the employee’s total hours worked in the full
21 pay periods of the prior 90 days of employment.” Here, Defendants only calculated and paid sick
22 pay at the base rate of pay, rather than at the rate required by Labor Code § 246, leading to
23 unpaid sick pay and violations of Labor Code §§ 201 – 203.

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

1 according to proof at trial and within the jurisdiction of this Court.

2 **SIXTH CAUSE OF ACTION**

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

4 (Labor Code § 226)

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

6 89. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
7 alleged herein.

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

11 91. Labor Code § 226(a) requires an employer to provide its employees with itemized
12 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
13 inclusive dates of the pay period, the employee's name and the last four digits of his or her
14 Social Security number (or employee identification number), the name and address of the legal
15 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate by the employee.

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

25 93. Additionally, Defendants' wage statements directly violated Labor Code § 226(a)
26 each period due to the failure to pay and report premium wages for denied meal periods and rest
27 breaks under § 226.7.

28 ///

1 94. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
2 to Plaintiff and the Wage Statement Penalties Subclass because Defendants failed to provide a
3 wage statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
4 requirements of Labor Code § 226(a).

5 95. Defendants' failure to provide the required writing deprived Plaintiff and the
6 Wage Statement Penalties Subclass of the ability to know, understand, and question the
7 calculation and rate of pay and hours used to calculate the wages paid by Defendants. Therefore,
8 Plaintiff and the Wage Statement Penalties Subclass had no way to dispute the resulting
9 miscalculation of wages, all of which resulted in an unjustified economic enrichment to said
10 Defendants. As a direct result, Plaintiff and the Wage Statement Penalties Subclass have suffered
11 and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost
12 interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully
13 perform its obligation under state law, all to their respective damages in amounts according to
14 proof at trial.

15 96. As a result of Defendants' knowing and intentional failure to comply with Labor
16 Code § 226(a), Plaintiff and the Wage Statement Penalties Subclass have suffered an injury in
17 that each was prevented from knowing, understanding and disputing the wage payments paid to
18 them. Furthermore, Plaintiff and the Wage Statement Penalties Subclass have each suffered an
19 injury in that the failure to show all wages earned on the itemized wage statements resulted in
20 Plaintiff and the Represented Employees being denied all necessary deductions, payments, and
21 withholdings owed by the employer, including, but not limited to, the failure to make all
22 necessary contributions for unemployment benefits, social security benefits, proper payment of
23 taxes and withholdings, and other mandated state and federal benefits.

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

27 98. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
28 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and

one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus attorney's fees and costs, to Plaintiff and the Wage Statement Penalties Subclass who were injured by Defendants' failure to comply with Labor Code § 226(a). The exact amount of the applicable penalty is all in an amount to be shown according to proof at trial.

SEVENTH CAUSE OF ACTION

UNFAIR AND UNLAWFUL COMPETITION

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

Plaintiff and the Represented Employees against All Defendants

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

100. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair competition, which includes any "unlawful, unfair or fraudulent business act or practice." The Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact, due to the unfair and unlawful business practices of Defendants as alleged herein.

101. Defendants, and each of them, are "persons" as defined under Business & Professions Code § 17021.

102. As alleged herein, Defendants engaged in conduct that violated California's wage and hour laws, including failure to pay minimum, regular, and overtime wages, failure to provide mandated meal periods and rest breaks, and failure to timely pay wages upon separation of employment, all to decrease their costs and increase profits.

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

104. As a result of Defendants' failure to comply with the Labor Code and IWC Orders, Represented Employees, including Plaintiff, suffered a loss of wages and monies, all in an amount to be shown according to proof at trial. Defendants' ongoing violations of the foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

105. Defendants' violations of the California Labor Code and IWC Wage Orders and its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business

1 practices because it was done in a systematic manner over a period of time to the detriment of the
2 Plaintiff and all others similarly-situated.

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

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

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

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

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

engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in the future.

111. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and Represented Employees are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and Represented Employees; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

VI. PAGA CAUSES OF ACTION (Cal. Lab. Code §§ 2698 – 2699.5)

112. Plaintiff is an "aggrieved employee" under the PAGA as he was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil action filed on behalf of himself and all other similarly situated current and former aggrieved employees in California against whom one or more of the alleged violations was committed (hereinafter the "Aggrieved Employees").

113. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by PAGA through a representative action pursuant to the PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor does he, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

114. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing to the Labor and Workforce Development Agency ("LWDA") and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. More than sixty-five (65) days have elapsed since the date Plaintiff provided the written notice of the claims alleged herein without the LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiff has fully satisfied the administrative prerequisites to suit under the PAGA.

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1 **EIGHTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES**

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

4 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

10 117. Plaintiff and the Aggrieved Employees were not provided proper minimum wages
11 due to Defendants' failure to accurately record and compensate for all hours worked. For
12 instance, Plaintiff and Aggrieved Employees were frequently pressured to work off-the-clock to
13 make company dictated quotas and to increase commissions both for themselves and their
14 superiors. Moreover, Plaintiff and the Aggrieved Employees were required to perform off-the-
15 clock work at the beginning and end of shifts without compensation. Because this time was
16 spent under Defendants' control without compensation, this violates California law and led to
17 minimum and overtime wage violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th
18 829 (California law "do[es] not allow employers to require employees to routinely work for
19 minutes off the clock without compensation").

20 118. As a result of this policy and practice, Plaintiff and the Aggrieved Employees
21 were required to perform off-the-clock work that Defendants either knew or should have known
22 they were performing.

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

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

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

4 **NINTH CAUSE OF ACTION**

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

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

7 *Plaintiff and the Aggrieved Employees against All Defendants*

8 122. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
9 as if fully alleged herein.

10 123. Plaintiff and the Aggrieved Employees were employees of Defendants who did
11 not receive proper protections and benefits of the laws governing payment of overtime wages.

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

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

22 126. For instance, Plaintiff and Aggrieved Employees were frequently pressured to
23 work off-the-clock to make company dictated quotas and to increase commissions both for
24 themselves and their superiors. Moreover, Plaintiff and Aggrieved Employees were instructed to
25 change their time entries for the Defendants to avoid paying overtime premiums. Instead, the
26 Defendants instructed the Plaintiff and Aggrieved Employees that they could take time off in a
27 subsequent week and record the time as regular, base rate hours. This had an added effect of
28 decreasing overtime premiums that should have been paid on commissions earned during weeks

1 were the overtime was actually worked. Moreover, Plaintiff and the Aggrieved Employees were
2 required to perform off-the-clock work at the beginning and end of shifts without compensation.
3 Because this time was spent under Defendants' control without compensation, this violates
4 California law and led to overtime wage violations. See *Troester v. Starbucks Corporation*
5 (2018) 5 Cal.5th 829 (California law "do[es] not allow employers to require employees to
6 routinely work for minutes off the clock without compensation").

7 127. Furthermore, Defendants paid Plaintiff and the Aggrieved Employees on an
8 hourly basis but also paid additional nondiscretionary compensation. However, during
9 workweeks where the Aggrieved Employees worked overtime hours and earned additional
10 nondiscretionary compensation, Defendants failed to properly include that compensation in the
11 calculations for the regular rate of pay – violating the well-established rule that overtime must
12 always be paid at time and one-half the regular rate of pay.

13 128. Additionally, Defendants frequently required Plaintiff and the Aggrieved
14 Employees to work in excess of 8 and/or 12 hours per day and/or 40 hours per workweek
15 without paying proper overtime and doubletime compensation. For example, during Plaintiff's
16 employment, he was routinely required to work twelve-hour shifts (or longer), four days a week,
17 yet he was not paid any overtime or doubletime on such occasions.

18 129. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
19 Aggrieved Employees for all overtime hours worked.

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

24 131. Plaintiff is informed and believes and thereon alleges that Defendants
25 intentionally, willfully, and improperly failed to pay proper overtime to Plaintiff and the
26 Aggrieved Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

27 132. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
28 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,

1 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

2 **TENTH CAUSE OF ACTION**

3 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE MEAL PERIODS**

4 (Labor Code §§ 226.7 and 512; IWC Wage Order § 11, 12)

5 *Plaintiff and the Aggrieved Employees Against All Defendants*

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

8 134. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
9 who did not receive proper protections and benefits of laws governing mandatory meal periods.

10 135. Labor Code § 226.7 requires employers, including Defendants, to provide
11 employees with meal periods as mandated by the Industrial Welfare Commission.

12 136. Labor Code § 512(a), in part, provides that employers, including Defendants, may
13 not employ an employee for a work period of more than five hours per day without providing an
14 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
15 except that if the total work period per day of the employee is no more than six hours, the meal
16 period may be waived by mutual consent of both the employer and the employee. Employers
17 may not employ an employee for a work period more than 10 hours per day without providing
18 the employee with a second meal period of not less than 30 minutes.

19 137. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
20 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
21 pay for each meal period that is missed.

22 138. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied
23 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
24 practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when
25 they were: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal
26 period while under the control of the Company, (3) forced to take a shortened meal period, (4)
27 forced to take a meal period after the 5th hour of work, and (5) not provided mandated second
28 meal periods for shifts in excess of 10 hours.

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

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

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

14 **ELEVENTH CAUSE OF ACTION**

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

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

17 *Plaintiff and the Aggrieved Employees Against All Defendants*

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

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

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

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

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

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

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

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

19 **TWELFTH CAUSE OF ACTION**

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

21 (Labor Code § 204)

22 *Plaintiff and the Aggrieved Employees Against All Defendants*

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

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

28 ///

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

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

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

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

16 **THIRTEENTH CAUSE OF ACTION**

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

18 (Labor Code §§ 201 – 203)

19 *Plaintiff and the Aggrieved Employees Against All Defendants*

20 156. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
21 as if fully alleged herein.

22 157. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
23 who did not receive proper protections and benefits of the laws governing the timing and
24 payment of wages.

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

27 ///

28 ///

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

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

7 161. At all relevant times, Defendants employed a policy and practice whereby
8 Plaintiff and the Aggrieved Employees were not paid all wages due and owing upon separation
9 of employment within the time required by Labor Code §§ 201 and 202.

10 162. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
11 wages due and owing to Plaintiff and the Aggrieved Employees upon separation of employment,
12 including, but not limited to, minimum, regular, and overtime wages, meal and rest period
13 premiums, among other compensation.

14 163. Additionally, at all relevant times, Defendants failed to pay all mandated sick
15 wages owed to the Aggrieved Employees at the proper rate of pay under Labor Code § 246(1).

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

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

22 **FOURTEENTH CAUSE OF ACTION**

23 **PAGA ASSESSMENT FOR**

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

25 (Labor Code § 226)

26 *Plaintiff and the Aggrieved Employees Against All Defendants*

27 166. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
28 as if fully alleged herein.

1 167. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
2 who did not receive proper protections and benefits of the laws governing the provision of
3 accurate itemized wage statements.

4 168. Labor Code § 226(a) requires an employer to provide its employees with itemized
5 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
6 inclusive dates of the pay period, the employee's name and the last four digits of his or her
7 Social Security number (or employee identification number), the name and address of the legal
8 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
9 corresponding number of hours worked at each hourly rate by the employee.

10 169. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
11 and the Aggrieved Employees due to violations including: failure to accurately state total hours
12 worked (for example, the wage statements failed to accurately reflect total compensable hours);
13 failure to accurately state gross wages earned, all deductions, and net wages earned (due to, for
14 example, the failure to pay all required minimum and overtime wages); failure to state the start
15 and end dates of the pay period; failure to state the applicable hourly rates (including the accurate
16 overtime rate of pay); failure to state the inclusive dates of the pay period; failure to accurately
17 state the name and address of the legal entity of the employer; and failure to accurately state the
18 corresponding number of hours worked at each hourly rate.

19 170. Additionally, Defendants' wage statements directly violated Labor Code § 226(a)
20 each period due to the failure to pay and report premium wages for denied meal periods and rest
21 breaks under § 226.7.

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

25 **VII. PRAYER FOR RELIEF**

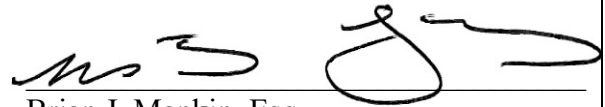
26 WHEREFORE, Plaintiff, on behalf of himself, on a representative basis, and all others
27 similarly situated, prays for judgment and relief against Defendants, jointly and severally, as
28 follows:

1. As to the Eighth through Fourteenth Causes of Action, the assessment of all remedies and/or penalties available under the PAGA;
2. For reasonable attorneys' fees and costs as permitted under PAGA;
3. That the First through Seventh Causes of Action be certified as a class action;
4. That Plaintiff be appointed as Class Representative;
5. That counsel for Plaintiff be appointed Class Counsel;
6. For all applicable statutory penalties recoverable under the First through Seventh Causes of Action to the extent permitted by law, including those pursuant to Labor Code and Orders of the Industrial Welfare Commission;
7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including those pursuant to the Labor Code;
8. For injunctive relief and/or restitution as provided by the Labor Code and Business and Professions Code § 17200, *et seq.*;
9. For a declaratory judgment that Defendants have violated Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 510, 512, 558, 1194, 1197, 1198, and 1199, among other sections inadvertently omitted;
10. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties according to proof, including interest;
11. For pre- and post-judgment interest; and
12. For such other relief as the Court deems just and proper.

Dated: February 13, 2023

LAUBY, MANKIN & LAUBY LLP

BY:



Brian J. Mankin, Esq.
Misty M. Lauby, Esq.
Attorneys for Plaintiff

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

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

On February 15, 2023, I caused to be served the foregoing document(s) described as follows:

FIRST AMENDED COMPLAINT

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

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

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

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

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

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

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

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 15, 2023, Riverside, California.

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



Tracie Chiarito, Declarant

SERVICE LIST

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