

AEGIS LAW FIRM, PC

SAMUEL A. WONG, State Bar No. 217104

KASHIF HAQUE, State Bar No. 218672

JESSICA L. CAMPBELL, State Bar No. 280626

FAWN F. BEKAM, State Bar No. 307312

fbekam@aegislawfirm.com

9811 Irvine Center Drive, Suite 100

Irvine, California 92618

Telephone: (949) 379-6250

Facsimile: (949) 379-6251

Attorneys for Plaintiff Bob B. Benyamin, individually,
and on behalf of all others similarly situated.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

BOB B. BENYAMIN, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

TOPGOLF PAYROLL SERVICES, LLC;
TOPGOLF INTERNATIONAL, INC.;
TOPGOLF USA ROSEVILLE, LLC; and
DOES 1 through 20, inclusive,

Defendants.

Case No. 2:23-cv-00303-JAM-DB

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Failure to Reimburse Business Expenses;
6. Failure to Provide Accurate Itemized Wage Statements;
7. Failure to Pay All Wages Due Upon Separation of Employment; and
8. Violation of Business and Professions Code §§ 17200, *et seq.*

1 Plaintiff Bob B. Benyamin, individually and on behalf of others similarly situated, alleges
2 as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Bob B. Benyamin (“Plaintiff”) brings this putative class action against
5 defendants Topgolf Payroll Services, LLC; Topgolf International, Inc.; Topgolf USA Roseville,
6 LLC; and DOES 1 through 20, inclusive (collectively, “Defendants”), on Plaintiff’s own behalf
7 and on behalf of a putative class of California citizens who are and were employed by
8 Defendants as non-exempt employees throughout California.

9 2. Defendants provide services or goods throughout California.

10 3. Through this action, Plaintiff alleges that Defendants engaged in a systematic
11 pattern of wage and hour violations under the California Labor Code and Industrial Welfare
12 Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate unfair
13 competition.

14 4. Plaintiff is informed and believe, and thereon alleges, that Defendants have
15 increased their profits by violating state wage and hour laws by, among other things:

- 16 (a) failing to pay all wages (including minimum wages and overtime wages);
- 17 (b) failing to provide lawful meal periods or compensation in lieu thereof;
- 18 (c) failing to authorize or permit lawful rest breaks or provide compensation
19 in lieu thereof;
- 20 (d) failing to reimburse necessary business-related costs;
- 21 (e) failing to provide accurate itemized wage statements; and
- 22 (f) failing to pay all wages due upon separation of employment.

23 5. Plaintiff seeks monetary relief against Defendants on behalf of Plaintiff and all
24 others similarly situated in California to recover, among other things, unpaid wages, un-
25 reimbursed business expenses, benefits, interest, attorneys’ fees, costs and expenses, and
26 penalties pursuant to Labor Code §§ 201, 202, 203, 226, 226.7, 227.3, 246, 510, 512, 1182.12,
27 1194, 1194.2, 1197, 1198, 2800, and 2802, and Code of California Civil Procedure § 1021.5.

28 ///

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this case because it is a class action with an amount in controversy over \$5,000,000.00.

7. This Court has personal jurisdiction over Defendants because they conduct or have conducted business in this District and the unlawful conduct alleged in the Complaint occurred in, was directed to, and/or emanated from this District.

8. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred here.

THE PARTIES

9. Plaintiff is a resident of California and worked for Defendants from approximately August 2016 to May 2022. On average, he worked 40 hours per week, 5 days per week, and 8 hours per day. Plaintiff worked some shifts that exceeded 8 hours in a day or 40 hours in a week.

10. Plaintiff is informed and believes, and thereon alleges that at all times hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as employers, whose employees were and are engaged throughout this county and the State of California.

11. Plaintiff is unaware of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this Complaint and serve such fictitiously named defendants once their names and capacities become known.

12. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants at all relevant times.

13. Plaintiff is informed and believes, and thereon alleges, that each defendant acted in all respects pertinent to this action as the agent of the other defendant, carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant

1 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the
2 employer and/or joint employer of Plaintiff and the class members.

3 14. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
4 and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES
5 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the
6 other's behalf. The acts of any and all Defendants were in accordance with, and represent, the
7 official policy of Defendants.

8 15. At all relevant times, Defendants, and each of them, acted within the scope of
9 such agency or employment, or ratified each and every act or omission complained of herein. At
10 all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
11 each and all the other Defendants in proximately causing the damages herein alleged.

12 16. Plaintiff is informed and believes, and thereon alleges, that each of said
13 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
14 omissions, occurrences, and transactions alleged herein.

15 **CLASS ACTION ALLEGATIONS**

16 17. Plaintiff brings this action under Code of Civil Procedure § 382 on Plaintiff's own
17 behalf and on behalf of all others similarly situated who were affected by Defendants' Labor
18 Code, Business and Professions Code §§ 17200, and IWC Wage Order violations.

19 18. All claims alleged herein arise under California law for which Plaintiff seeks
20 relief authorized by California law.

21 19. Plaintiff's proposed class consists of and is defined as follows:

22 Class

23 All California citizens currently or formerly employed by Defendants as non-
24 exempt employees in the State of California at any time between July 19, 2018¹
25 and the date of class certification ("Class").

26
27 ¹ The statute of limitations for this matter was tolled between April 6, 2020 and October 1, 2020
28 pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

20. Plaintiff also seeks to certify the following subclasses of employees:

Waiting Time Subclass

All members of the Class who separated their employment with Defendant at any time between July 19, 2019 and the date of class certification (“Waiting Time Subclass”).

21. Plaintiff reserves the right to modify or re-define the Class, establish additional subclasses, or modify or re-define any class or subclass definition as appropriate based on investigation, discovery, and specific theories of liability.

22. Members of the Class and the Waiting Time Subclass described above will be collectively referred to as “Class Members.”

23. There are common questions of law and fact as to the Class Members that predominate over any questions affecting only individual members including, but not limited to, the following:

- (a) Whether Defendants failed to pay Plaintiff and Class Members all wages (including minimum wages and overtime wages) for all hours worked by Plaintiff and Class Members.
- (b) Whether Defendants required Plaintiff and Class Members to work over eight (8) hours per day, over twelve (12) hours per day, and/or over forty (40) hours per week and failed to pay them proper overtime compensation for all overtime hours worked.
- (c) Whether Defendants deprived Plaintiff and Class Members of timely meal periods or required Plaintiff and Class Members to work through meal periods without legal compensation.
- (d) Whether Defendants deprived Plaintiff and Class Members of rest breaks or required Plaintiff and Class Members to work through rest breaks.
- (e) Whether Defendants failed to reimburse Plaintiff and Class Members for necessary business-related costs expended for the benefit of Defendants.

- (f) Whether Defendants failed to provide Plaintiff and Class Members accurate itemized wage statements.
- (g) Whether Defendants failed to pay wages timely to Plaintiff and Class Members;
- (h) Whether Defendants failed to timely pay the Waiting Time Subclass all wages due upon termination or within seventy-two (72) hours of resignation.
- (i) Whether Defendants' conduct was willful or reckless.
- (j) Whether Defendants engaged in unfair business practices in violation of Business and Professions Code §§ 17200, *et seq.*

24. There is a well-defined community of interest in this litigation and the proposed Class and subclasses are readily ascertainable:

(a) Numerosity: The Class Members are so numerous that joinder of all members is impractical. Although the members of the Class are unknown to Plaintiff at this time, on information and belief, the Class is estimated to be greater than fifty (50) individuals. The identities of the Class Members are readily ascertainable by inspection of Defendants' employment and payroll records.

(b) Typicality: Plaintiff's claims (or defenses, if any) are typical of the claims (or defenses, if any) of the Class Members because Defendants' failure to comply with the provisions of California's wage and hour laws entitled each Class Member to similar pay, benefits, and other relief. The injuries sustained by Plaintiff are also typical of the injuries sustained by the Class Members, because they arise out of and are caused by Defendants' common course of conduct as alleged herein.

(c) Adequacy: Plaintiff will fairly and adequately represent and protect the interests of all Class Members because it is in Plaintiff's best interest to prosecute the claims alleged herein to obtain full compensation and penalties due. Plaintiff's attorneys, as proposed class counsel, are competent and experienced in litigating large employment class actions and versed in the rules governing class action discovery, certification, and settlement. Plaintiff has

1 incurred and, throughout the duration of this action, will continue to incur attorneys' fees and
2 costs that have been and will be necessarily expended for the prosecution of this action for the
3 substantial benefit of the Class Members.

4 (d) Superiority: The nature of this action makes use of class action
5 adjudication superior to other methods. A class action will achieve economies of time, effort, and
6 expense as compared with separate lawsuits and will avoid inconsistent outcomes because the
7 same issues can be adjudicated in the same manner for the entire Class and Waiting Time
8 Subclass at the same time. If appropriate, this Court can, and is empowered to, fashion methods
9 to efficiently manage this case as a class action.

10 (e) Public Policy Considerations: Employers in the State of California violate
11 employment and labor laws every day. Current employees are often afraid to assert their rights
12 out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
13 because they believe their former employers might damage their future endeavors through
14 negative references and/or other means. Class actions provide class members who are not named
15 in the complaint with a type of anonymity that allows for the vindication of their rights while
16 affording them privacy protections.

17 **GENERAL ALLEGATIONS**

18 25. At all relevant times mentioned herein, Defendants employed Plaintiff and other
19 California residents as non-exempt employees throughout California at Defendants' California
20 business location(s).

21 26. Defendants continue to employ non-exempt employees within California.

22 27. Plaintiff is informed and believes, and thereon alleges, that at all times herein
23 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who
24 were knowledgeable about California's wage and hour laws, employment and personnel
25 practices, and the requirements of California law.

26 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and Class Members were entitled to receive wages for all time
28 worked (including minimum wages and overtime wages) and that they were not receiving all

1 wages earned for work that was required to be performed. In violation of the Labor Code and
2 IWC Wage Orders, Plaintiff and Class Members were not paid all wages (including minimum
3 wages and overtime wages) for all hours worked at the correct rate and within the correct time.
4 Specifically, Defendants required Plaintiff and Class Members to undergo off-the-clock COVID
5 screenings every day from March 2020 to February 2021, where Plaintiff's and Class Members'
6 temperatures were checked and they were required to fill out symptom questionnaires and were
7 not paid for this time. Additionally, Defendants paid Plaintiff and Class Members "Suppl
8 Wages" from 3/16/2020 through 3/29/2020 and failed to incorporate these wages into the regular
9 rate of pay when calculating overtime and sick pay. Further, Defendants often paid Plaintiff and
10 Class Members overtime at a rate less than 1.5x their hourly rate of pay. For example, Plaintiff's
11 March 25, 2022 wage statement shows he earned an hourly wage of \$17.98 but was paid
12 overtime at a rate of \$26.9682, which was only 1.49x his hourly wage.

13 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and Class Members were entitled to receive all required meal
15 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
16 rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the
17 Labor Code and IWC Wage Orders, Plaintiff and Class Members did not receive all meal periods
18 or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of
19 pay when they did not receive a timely, uninterrupted meal period. Specifically, Defendants
20 maintained a policy and practice of applying extreme pressure to Plaintiff and Class Members to
21 meet service standards, which made it difficult to take timely, uninterrupted meal breaks,
22 particularly because Defendants failed to maintain adequate staffing levels to ensure coverage for
23 meal breaks. Plaintiff estimates that Defendants failed to provide him a timely, 30-minute
24 uninterrupted meal period once per month throughout his employment. Defendants also
25 maintained a written policy that unlawfully placed the onus on employees to report if a meal
26 break was missed: "If the Company does not hear from the Supervisor, Manager or Associate,
27 the Company will assume that any non-exempt Associate who fails to record a meal period,
28 records a less-than-30-minute meal period, or takes and records a late meal period, did so

1 voluntarily, and the Associate was provided with the opportunity to take a timely meal period.”
2 However, under California law, “[i]f an employer’s records show no meal period for a given
3 shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty
4 and no meal period was provided.” *Donohue v. AMN Services, LLC*, 11 Cal.5th 58, 74 (2021).
5 Further, “[a]n employer’s assertion that it did relieve the employee of duty, but the employee
6 waived the opportunity to have a work-free break, is not an element that a plaintiff must disprove
7 as part of the plaintiff’s case-in-chief. Rather . . . the assertion is an affirmative defense, and thus
8 the burden is on the employer, as the party asserting waiver, to plead and prove it.”

9 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and Class Members were entitled to receive all rest breaks or
11 payment of one (1) additional hour of pay at Plaintiff’s and Class Members’ regular rate of pay
12 when a rest break was late, missed, or interrupted. In violation of the Labor Code and IWC Wage
13 Orders, Plaintiff and Class Members did not receive all rest breaks or payment of one (1)
14 additional hour of pay at Plaintiff’s and Class Members’ regular rate of pay when a rest break
15 was missed, short, or interrupted. Specifically, Defendants maintained a policy and practice of
16 applying extreme pressure to Plaintiff and Class Members to meet service standards, which made
17 it difficult to take uninterrupted rest breaks, particularly because Defendants failed to maintain
18 adequate staffing levels to ensure coverage for rest breaks. Plaintiff estimates that Defendants
19 failed to provide him a 10-minute, uninterrupted rest period during 80-90% of his shifts
20 throughout his employment. Defendants also maintained a policy and practice of not paying rest
21 period premiums despite knowledge that Plaintiff’s and Class Members’ rest periods were
22 interrupted, short, or missed.

23 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and Class Members were entitled to reimbursement and/or
25 indemnification for all necessary business expenditures or losses as a direct consequence of the
26 discharge of their duties, or of their obedience to the directions of Defendants. In violation of the
27 Labor Code and IWC Wage Orders, Plaintiff and Class Members incurred necessary business
28 expenses or losses, but were not reimbursed nor indemnified of such expenses or losses that were

1 incurred as a direct consequence of the discharge of their duties, or of their obedience to the
2 directions of Defendants. Specifically, Plaintiff and Class Members were required to use their
3 personal cell phones for work purposes but were not reimbursed by Defendants for these costs
4 until March 2021. Defendants knew or had reason to know that these expenses were incurred,
5 because they began paying \$2.50 per pay period for cell phone expenses as a matter of policy
6 and practice in March 2021. However, the reimbursement was paid as a wage for which Plaintiff
7 and Class Members were taxed, and was not sufficient to reimburse for the expenses incurred.

8 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and Class Members were entitled to receive itemized wage
10 statements that accurately showed the following information pursuant to the Labor Code: (1)
11 gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units
12 earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
13 deductions, provided that all deductions made on written orders of the employee may be
14 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for
15 which the employee is paid; (7) the name of the employee and only the last four digits of his or
16 her social security number or an employee identification number other than a social security
17 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
18 hourly rates in effect during the pay period and the corresponding number of hours worked at
19 each hourly rate by the employee. In violation of the Labor Code, Plaintiff and Class Members
20 were not provided with accurate itemized wage statements because of the unpaid wages and
21 unpaid meal and rest period premiums alleged above. As the California Supreme Court has made
22 clear, derivative wage statement penalties can stem from unpaid meal and rest period premiums.
23 *Naranjo v. Spectrum Security Services, Inc.*, 13 Cal.5th 93 (2022). Additionally, Plaintiff's and
24 Class Members' wage statements incorrectly identified the legal entity that was their employer as
25 "Topgolf Payroll Services LLC."

26 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that the Waiting Time Subclass was entitled to timely payment of wages due
28 upon separation of employment. In violation of the Labor Code, the Waiting Time Subclass did

1 not receive payment of all wages within the permissible time periods because of the unpaid
2 wages and unpaid meal and rest period premiums alleged above. As the California Supreme
3 Court has made clear, derivative waiting time penalties can stem from unpaid meal and rest
4 period premiums. *Naranjo v. Spectrum Security Services, Inc.*, 13 Cal.5th 93 (2022).

5 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known they had a duty to compensate Plaintiff and Class Members, and Defendants
7 had the financial ability to pay such compensation but willfully, knowingly, and intentionally
8 failed to do so in order to increase Defendants' profits.

9 35. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief
10 against Defendants on Plaintiff's own behalf and on behalf of all Class Members to recover,
11 among other things, unpaid wages (including minimum wages and overtime wages), unpaid meal
12 period premium payments, unpaid rest period premium payments, unreimbursed business
13 expenditures, interest, attorneys' fees, penalties, costs, and expenses.

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO PAY MINIMUM WAGES**

16 (Violation of Labor Code §§ 246, 1194, 1194.2, and 1197; Violation of IWC Wage Order §3-4)

17 36. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
18 though fully set forth herein.

19 37. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
20 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
21 wage than the minimum so fixed is unlawful.

22 38. Plaintiff and Class Members were employees entitled to the protections of Labor
23 Code §§ 1194 and 1197.

24 39. During the relevant time period, Defendants failed to pay Plaintiff and Class
25 Members all wages owed when Defendants did not pay minimum wage for all hours worked.

26 40. During the relevant time period, Defendants failed to pay at least minimum wage
27 to Plaintiff and Class Members for all hours worked pursuant to Labor Code §§ 1194 and 1197.
28

1 41. Defendants' failure to pay Plaintiff and Class Members the required minimum
2 wage violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and Class
3 Members are entitled to recover the unpaid balance of their minimum wage compensation as
4 well as interest, costs, and attorneys' fees.

5 42. Pursuant to Labor Code § 1194.2, Plaintiff and Class Members are entitled to
6 recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued
7 interest thereon.

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PAY OVERTIME**

10 (Violation of Labor Code §§ 510, 1194, and 1198; Violation of IWC Wage Order § 3)

11 43. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
12 though fully set forth herein.

13 44. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
14 unlawful to employ persons without compensating them at a rate of pay either one and one-half
15 (1½) or two (2) times the person's regular rate of pay, depending on the number of hours
16 worked by the person on a daily or weekly basis.

17 45. Specifically, the applicable IWC Wage Orders provide that Defendants are and
18 were required to pay overtime compensation to Plaintiff and Class Members at the rate of one
19 and one-half times (1½) their regular rate of pay when working and for all hours worked in
20 excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first
21 eight (8) hours of work on the seventh day of work in a workweek.

22 46. The applicable IWC Wage Orders further provide that Defendants are and were
23 required to pay overtime compensation to Plaintiff and Class Members at a rate of two times
24 their regular rate of pay when working and for all hours worked in excess of twelve (12) hours in
25 a day or in excess of eight (8) hours on the seventh day of work in a workweek.

26 47. California Labor Code § 510 codifies the right to overtime compensation at one
27 and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a
28 day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh

1 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
2 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
3 seventh day of work in a workweek.

4 48. Labor Code § 510 and the applicable IWC Wage Orders provide that employment
5 of more than six days in a workweek is only permissible if the employer pays proper overtime
6 compensation as set forth herein.

7 49. Plaintiff and Class Members were employees entitled to the protections of
8 California Labor Code §§ 510 and 1194.

9 50. During the relevant time period, Defendants required Plaintiff and Class Members
10 to work in excess of eight (8) hours in a day, forty (40) hours in a week, and/or on a seventh
11 consecutive day of work, entitling them to overtime wages.

12 51. During the relevant time period, Defendants failed to pay Plaintiff and Class
13 Members overtime wages for all overtime hours worked. To the extent these hours qualify for
14 the payment of overtime wages, Plaintiff and Class Members were not paid proper overtime
15 wages.

16 52. In violation of California law, Defendants knowingly and willfully refused to
17 perform their obligations and compensate Plaintiff and Class Members for all wages earned and
18 all hours worked.

19 53. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of
20 overtime compensation, as required by California law, violates the provisions of Labor Code §§
21 510 and 1198, and is therefore unlawful.

22 54. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to
23 recover their unpaid overtime and double time compensation as well as interest, costs, and
24 attorneys' fees.

25 ///

26 ///

27 ///

28 ///

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

55. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

56. Labor Code § 226.7 provides that no employer shall require an employee to work during any meal period mandated by the IWC Wage Orders.

57. Section 11 of the applicable IWC Wage Order states, “[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.”

58. Labor Code § 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

59. Labor Code § 512(a) also provides that an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

60. During the relevant time period, Plaintiff and Class Members did not receive compliant meal periods for working more than five (5) and ten (10) hours per day because their meal periods were missed, late, short, interrupted, and/or they were not permitted to take a second meal period.

1 61. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
2 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of
3 compensation for each work day that a compliant meal period is not provided.

4 62. At all relevant times, Defendants failed to pay Plaintiff and Class Members meal
5 period premiums for missed, late, and/or short meal periods pursuant to Labor Code § 226.7(b)
6 and section 11 of the applicable IWC Wage Order.

7 63. As a result of Defendants' failure to pay Plaintiff and Class Members an
8 additional hour of pay for each day a compliant meal period was not provided, Plaintiff and
9 Class Members suffered and continue to suffer a loss of wages and compensation.

10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO PERMIT REST BREAKS**

12 (Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12)

13 64. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
14 though fully set forth herein.

15 65. Labor Code § 226.7(a) provides that no employer shall require an employee to
16 work during any rest period mandated by the IWC Wage Orders.

17 66. Section 12 of the applicable IWC Wage Order states "[e]very employer shall
18 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
19 the middle of each work period[.]" and the "[a]uthorized rest period time shall be based on the
20 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
21 fraction thereof[.]" unless the total daily work time is less than three and one-half (3½) hours.

22 67. During the relevant time period, Plaintiff and Class Members did not receive a ten
23 (10) minute rest period for every four (4) hours or major fraction thereof worked, including
24 working in excess of ten (10) hours in a day, because they were required to work through their
25 rest periods and/or were not authorized to take their rest periods.

26 68. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires
27 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of
28 compensation for each work day that a compliant rest period is not provided.

69. At all relevant times, Defendants failed to pay Plaintiff and Class Members rest period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order.

70. As a result of Defendants' failure to pay Plaintiff and Class Members an additional hour of pay for each day a compliant rest period was not provided, Plaintiff and Class Members suffered and continue to suffer a loss of wages and compensation.

FIFTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(Violation of Labor Code §§ 2800, 2802)

71. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

72. Labor Code § 2800 states that "[a]n employer shall in all cases indemnify his employee for losses caused by the employer's want of ordinary care."

73. Labor Code § 2802(a) states that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer"

74. Labor Code § 2802(b) states that "[a]ll awards made by a court . . . for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss."

75. Labor Code § 2802(c) states that "[f]or purposes of this section, the term "necessary expenditures or losses" shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section."

76. During the relevant time period, Plaintiff and Class Members incurred necessary business-related costs that were not fully reimbursed by Defendants.

77. In violation of Labor Code §§ 2800 and 2802, Defendants failed to reimburse or indemnify Plaintiff and Class Members for their expenses due to Defendants' knowing and

1 intentional failure to reimburse necessary business expenditures in connection with Plaintiff's
2 and Class Members' work and job duties.

3 78. As a direct result, Plaintiff and Class Members have suffered and continue to
4 suffer losses, and therefore seek complete reimbursement and indemnification of necessary
5 business expenditures or losses, interest thereon at the required rate, and all reasonable costs in
6 enforcing the rights under Labor Code § 2802, including, but not limited to attorneys' fees.

7 **SIXTH CAUSE OF ACTION**

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

9 (Violation of Labor Code § 226; Violation of IWC Wage Order)

10 79. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
11 though fully set forth herein.

12 80. Labor Code § 226(a) requires Defendants to provide each employee with an
13 accurate wage statement in writing showing nine pieces of information, including, the following:
14 (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate
15 units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
16 deductions, provided that all deductions made on written orders of the employee may be
17 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
18 which the employee is paid, (7) the name of the employee and the last four digits of his or her
19 social security number or an employee identification number other than a social security number,
20 (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly
21 rates in effect during the pay period and the corresponding number of hours worked at each
22 hourly rate by the employee.

23 81. During the relevant time period, Defendants have knowingly and intentionally
24 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff
25 and Class Members. The deficiencies include, among other things, the failure to correctly state
26 the gross and net wages earned, total hours worked, all applicable hourly rates in effect, and the
27 number of hours worked at each hourly rate by Plaintiff and Class Members.

1 82. As a result of Defendants' knowing and intentional failure to comply with Labor
2 Code § 226(a), Plaintiff and Class Members have suffered injury and damage to their statutorily-
3 protected rights. Specifically, Plaintiff and Class Members are deemed to suffer an injury
4 pursuant to Labor Code § 226(e) where, as here, Defendants intentionally violated Labor Code §
5 226(a). Plaintiff and Class Members were denied both their legal right to receive, and their
6 protected interest in receiving, accurate itemized wage statements under Labor Code § 226(a). In
7 addition, because Defendants failed to provide the accurate rates of pay on wage statements,
8 Defendants prevented Plaintiff and Class Members from determining if all hours worked were
9 paid at the appropriate rate and the extent of the underpayment. Plaintiff had to file this lawsuit
10 in order to analyze the extent of the underpayment, thereby causing Plaintiff to incur expenses
11 and lost time. Plaintiff would not have had to engage in these efforts and incur these costs had
12 Defendants provided the accurate hours worked, wages earned, and rates of pay. This has also
13 delayed Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

14 83. Plaintiff and Class Members are entitled to recover from Defendants the greater of
15 all actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty
16 dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars
17 (\$100.00) per employee for each violation in subsequent pay periods in an amount not exceeding
18 four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

19 84. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff and
20 Class Members from knowing, understanding, and disputing the wages paid to them and resulted
21 in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
22 intentional failure to comply with California Labor Code § 226(a), Plaintiff and Class Members
23 have suffered an injury, in the exact amount of damages and/or penalties to be shown according
24 to proof at trial.

25 ///

26 ///

27 ///

28 ///

SEVENTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT

(Violation of Labor Code §§ 201, 202, 203, and 227.3)

85. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

86. Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of an intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

87. During the relevant time period, Defendants willfully failed to pay the Waiting Time Subclass all their earned wages upon termination, either at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

88. Defendants' failure to pay the Waiting Time Subclass all their earned wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is in violation of Labor Code §§ 201 and 202.

89. Labor Code § 203 provides that if an employer willfully fails to pay wages owed immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

90. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover from Defendants the statutory penalty, which is defined as the Waiting Time Subclass members' regular daily wages at their regular hourly rate of pay for each day they were not paid, up to a maximum of thirty (30) days.

///

///

EIGHTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.

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

91. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

92. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice . . .”

93. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be predicated on a violation of any state or federal law. In the instant case, Defendants’ policies and practices violated state law, causing Plaintiff and Class Members to suffer and continue to suffer injuries-in-fact.

94. Defendants’ policies and practices violated state law in at least the following respects:

- (a) Failing to pay all wages earned (including minimum wage, overtime wages, and sick wages) to Plaintiff and Class Members at the proper rate and in a timely manner in violation of Labor Code §§ 246, 510, 1194, 1194.2, 1197, 1198.
- (b) Failing to provide compliant meal periods without paying Plaintiff and Class Members premium wages for every day said meal periods were not provided in violation of Labor Code §§ 226.7 and 512.
- (c) Failing to authorize or permit compliant rest breaks without paying Plaintiff and Class Members premium wages for every day said rest breaks were not authorized or permitted in violation of Labor Code § 226.7.
- (d) Failing to reimburse Plaintiff and Class Members for necessary business-related expenses in violation of Labor Code §§ 2800 and 2802.

1 (e) Failing to provide Plaintiff and Class Members with accurate itemized
2 wage statements in violation of Labor Code § 226.

3 (f) Failing to timely pay all earned wages to the members of the Waiting
4 Time Subclass upon separation of employment in violation of Labor Code
5 §§ 201, 202, 203, and 227.3.

6 95. As alleged herein, Defendants systematically engaged in unlawful conduct in
7 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages
8 (minimum and overtime wages), failing to provide meal periods and rest breaks or
9 compensation in lieu thereof, failing to reimburse necessary business-related costs and
10 expenses, failing to furnish accurate wage statements, and failing to pay all wages due and
11 owing upon separation of employment in a timely manner to the Waiting Time Subclass, all in
12 order to decrease their costs of doing business and increase their profits.

13 96. At all relevant times herein, Defendants held themselves out to Plaintiff and Class
14 Members as being knowledgeable concerning the labor and employment laws of California.

15 97. At all times relevant herein, Defendants intentionally avoided paying Plaintiff and
16 Class Members wages and monies, thereby creating for Defendants an artificially lower cost of
17 doing business in order to undercut their competitors and establish and/or gain a greater
18 foothold in the marketplace.

19 98. By violating the foregoing statutes and regulations as herein alleged, Defendants'
20 acts constitute unfair and unlawful business practices under California Business and Professions
21 Code §§ 17200, *et seq.*

22 99. As a result of the unfair and unlawful business practices of Defendants as alleged
23 herein, Plaintiff and Class Members are entitled to injunctive relief. Plaintiff and class members
24 are being subjected to ongoing injury/harm for which there is no adequate remedy at law.
25 Damages will not fully redress such harms, and thus, injunctive relief is necessary.

26 100. Plaintiff seeks to enforce important rights affecting the public interest within the
27 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged
28

herein, has been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members, and the general public.

101. Further, Plaintiff seeks restitution under the Healthy Workplaces, Healthy Family Act of 2014 (“HWHF”), which is codified as California Labor Code sections 245 to 249. It provides, at Labor Code section 246(l)(1)(2), that sick pay must be paid at the regular rate of pay, not the base hourly rate. Section 248.5 provides that, “any person or entity enforcing [the HWHF] on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive, or restitutionary relief . . .”

102. Based on Defendants’ conduct as alleged herein, Plaintiff and Class Members are entitled to an award of attorneys’ fees pursuant to California Code of Civil Procedure § 1021.5.

PRAYER FOR RELIEF

On Plaintiff’s own behalf and on behalf of all others similarly situated, Plaintiff prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For certification under California Code of Civil Procedure § 382 of the proposed Class and any other appropriate subclass;
2. For appointment of Bob B. Benyamin as class representative;
3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;
4. For compensatory damages in an amount according to proof at trial;
5. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, unreimbursed expenses, benefits, and penalties;
6. For economic and/or special damages in an amount according to proof at trial;
7. For liquidated damages pursuant to Labor Code § 1194.2;
8. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;
9. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;
10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

11. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et seq.*;

12. For pre-judgment interest;

13. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§ 226(e) and 1194; and

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

Dated: March 9, 2023

AEGIS LAW FIRM, PC

By: 

Fawn F. Bekam

Attorneys for Plaintiff Bob B. Benyamin