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on behalf of himself and all others similarly situated

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
03/09/2023
Clerk of the Court
BY: ANNIE PASCUAL
Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

MARK A. FLETCHER, an individual, on
behalf of himself and others similarly
situated,

Plaintiff,

vs.

HEBREW HOME FOR AGED DISABLED,
a California nonprofit corporation; SAN
FRANCISCO CAMPUS FOR JEWISH
LIVING, a California entity form unknown;
JEWISH HOME AND SENIOR LIVING
FOUNDATION, a California nonprofit
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: CGC-23-603795

CLASS ACTION

Assigned for Case Management Purposes To:
Hon. Anne-Christine Massullo
Dept.: 610

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages and for All Hours Worked;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code § 226(a);
6. Violation of Labor Code § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203;
9. Failure to Reimburse Necessary Business Expenses under Labor Code § 2802;
10. Business & Professions Code § 17200 *et seq*
11. Penalties under PAGA, Labor Code § 2698

DEMAND FOR JURY TRIAL

Complaint Filed: January 4, 2023
Trial Date: None set.

1 Plaintiff MARK A. FLETCHER (hereinafter “Plaintiff”), on behalf of himself and all other
2 similarly situated non-exempt, hourly employees employed as maintenance workers, care givers,
3 nurses, housekeepers, and in similar and related positions by Defendants in California during the
4 relevant period (collectively, “Employees”; individually, “Employee”) complains of Defendants,
5 and each of them, as follows:

6 **INTRODUCTION**

7 1. Plaintiff brings this action on behalf of himself and all current and former
8 Employees within the State of California who, at any time four (4) years prior to the filing of this
9 lawsuit, are or were employed as non-exempt, hourly employees by Defendants HEBREW HOME
10 FOR AGED DISABLED, a California nonprofit corporation; SAN FRANCISCO CAMPUS FOR
11 JEWISH LIVING (“SFCJL”), a California entity form unknown; JEWISH HOME AND SENIOR
12 LIVING FOUNDATION, a California nonprofit corporation; and DOES 1 through 50 (all
13 defendants being collectively referred to herein as “Defendants”). Plaintiff alleges that
14 Defendants, and each of them, violated various provisions of the California Labor Code, relevant
15 orders of the Industrial Welfare Commission (IWC), and California Business & Professions Code,
16 and seeks redress for these violations.

17 2. Plaintiff and the Class members worked as hourly, non-exempt maintenance
18 workers and care givers and in similar positions related to providing care and life enriching
19 services to Defendants’ patients and customers. Plaintiff, and upon information and belief other
20 similarly situated Employees, were required to perform various operational and maintenance and
21 housekeeping and care-giving related work tasks for Defendants’ and their patients and residents
22 and customers at Defendants’ facilities in California. Plaintiff has resided in San Francisco
23 County, California and was generally employed by Defendants throughout his employment based
24 out of Defendants’ facilities there. He and the other similarly situated Class members employed as
25 maintenance workers were responsible for repairs, modifications and preventive maintenance
26 tasks on building and facility equipment, fixtures and systems, including responding to
27 maintenance requests on an emergency basis. He consistently worked at Defendants’ behest
28 without being paid all wages due and without being provided all required breaks. More

specifically, Plaintiff and the other similarly situated Class members were employed by Defendants and (1) shared similar job duties and responsibilities (2) were subjected to the same policies and practices (3) and endured similar violations at the hands of Defendants as the other Employee Class members who served in similar and related positions.

3. Defendants required Plaintiff and the Employees in the Class to work off the clock and failed to record accurate time worked by these Employees, failed to pay them at the appropriate rates for all hours worked, failed to pay all wages due and owing at termination or resignation, and provided Plaintiff and the Class members with inaccurate wage statements that prevented them from learning of these unlawful pay practices. Defendants also failed to provide Plaintiff and the Class with lawful meal and rest periods, as Employees were required to remain under Defendants' control and were not provided with the opportunity to take full uninterrupted and duty-free rest periods and meal breaks, as required by the Labor Code and the applicable paragraphs of the IWC Wage Orders.

4. Defendant HEBREW HOME FOR AGED DISABLED is a California nonprofit corporation with an address on Silver Avenue in San Francisco which operates Defendants' facilities in California and is responsible for providing long term care and life enriching services to senior adults from its facilities in the San Francisco Bay area. Upon information and belief, it operates under multiple Fictitious Business Names which are listed with San Francisco County, including "The Jewish Home" and "The Jewish Home of San Francisco," both of which have the same Silver Ave. address in San Francisco. Plaintiff, and upon information and belief the other Class members, received wage statements from Defendants which listed "Jewish Home" as the employer, with the same Silver Ave. address in San Francisco. Named Defendant JEWISH HOME AND SENIOR LIVING FOUNDATION is a California non-profit corporation which also lists its address on Silver Ave in San Francisco, and is believed to be a related entity to HEBREW HOME FOR AGED DISABLED and other of its fictitious business names which jointly employ Plaintiff and the Class members.

5. Defendant SAN FRANCISCO CAMPUS FOR JEWISH LIVING ("SFCJL") is a California entity form unknown which is also headquartered at and based out of the same Silver

1 Ave. address in San Francisco. It is believed to be a related entity to or another fictitious business
2 name for the other named Defendants addressed above and jointly employes and employed the
3 Class members with them in California. The web-site for SAN FRANCISCO CAMPUS FOR
4 JEWISH LIVING describes its Vision as: "To become a regional resource as an integral part of a
5 continuum of care throughout the Bay Area that provides senior adults with a variety of life
6 enriching programs and services that are accessible, promote individual dignity, encourage
7 independence, connect them to their community, and reflect the social, cultural, and spiritual
8 values of Jewish tradition." It also calls itself a beneficiary of Jewish Home & Senior Living
9 Foundation and the San Francisco-based Jewish Community Federation. Plaintiff was under the
10 impression he worked for SFCJL even though it is not a registered entity on the California
11 Secretary of State's web-site and the wage statements issued to him listed Jewish Home as his
12 employer. Despite these entities sharing the Silver Ave. address in San Francisco, Plaintiff was
13 still confused as to which entity actually employed him and where to turn for Human Resources
14 questions and the like.

15 6. This Court has jurisdiction over this Action pursuant to California Code of Civil
16 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
17 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
18 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
19 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
20 obligations and liabilities giving rise to this lawsuit occurred, at least in large part in San Francisco
21 County where Defendant operates and maintains properties and facilities, and Defendants have
22 operated and managed properties in the San Francisco Bay area where Plaintiff and the other Class
23 members were employed.

24 7. The true names and capacities, whether individual, corporate, associate, or
25 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
26 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
27 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
28 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in

1 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
2 this Complaint to reflect the true names and capacities of the Defendants designated herein as
3 Does 1 through 50 when their identities become known.

4 8. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
5 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
6 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
7 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
8 all respects as the employers or joint employers of Employees. Defendants, and each of them,
9 exercised control over the wages, hours or working conditions of Employees, created and
10 implemented the policies and practices that governed the employment of Plaintiff and the Class
11 members and dictated their job duties and responsibilities, or otherwise suffered or permitted
12 Plaintiff and the other Employee Class members to work, or engaged, thereby creating a common
13 law employment relationship, with the Employee Class members. Therefore, Defendants, and each
14 of them, employed or jointly employed the Employee Class members.

15 **FACTUAL BACKGROUND**

16 9. The Employees who comprise the Class, including Plaintiff, are non-exempt
17 employees of Defendants pursuant to the applicable Wage Order of the Industrial Welfare
18 Commission ("IWC"). During the period of four years prior to the filing of this action through its
19 resolution, Plaintiff and the Class members were either not paid by Defendants for all hours
20 worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also
21 contends that Defendants failed to pay Plaintiff and the Class members all wages due and owing,
22 including by rounding and requiring off the clock work, failed to provide meal and rest breaks,
23 and failed to furnish accurate wage statements and timely pay all wages owed, all in violation of
24 various provisions of the California Labor Code and applicable paragraphs of the IWC Wage
25 Orders.

26 10. During the course of Plaintiff and the Class members' employment with
27 Defendants, they were not paid all wages they were owed, including for all work performed
28 (resulting in "off the clock" work) and for all their overtime hours worked. This has resulted in

1 systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders.
2 Upon information and belief, Defendants employ other non-exempt, hourly employees as
3 maintenance and construction workers at their properties in California.

4 11. Plaintiff was generally scheduled to work eight and one half hour shifts with an
5 automatically deducted 30 minute meal period, for at least five days a week and more as required.
6 Despite Defendants' efforts to prevent overtime, Employees worked longer than their scheduled
7 shifts and for which they were actually paid, including due to off the clock work and rounding.
8 Plaintiff was required to arrive at work before his scheduled shift time so that he could clock in
9 and be prepared to work at the start of his shift. He and other Class members were required to
10 undergo COVID screenings before being allowed to clock in as well, which encompassed two to
11 five minutes, and then Plaintiff completed required job duties before clocking in. Time clocks
12 recorded timekeeping entries by fingerprint scans and were capable of recording to the exact
13 minute. However, given the shortage of time clocks, additional off the clock hours were incurred
14 waiting to clock in for work shifts or from meal breaks due to the line of Employees waiting. This
15 time under Defendants' control was all uncompensated and Defendants followed a uniform
16 policy of rounding away to the nearest quarter hour his time entries so that they would conform
17 generally to his shift schedule.

18 12. Defendants' policy of discouraging and preventing overtime also led to further off
19 the clock work at the end of work shifts. Plaintiff and the Class members were required to work
20 before shifts as addressed above and accordingly should have begun incurring overtime premium
21 wages sooner in their shifts than their timekeeping records reflected when time extended past
22 eight hours. Additionally, given the prohibition on overtime and the job requirements and
23 production demands, Plaintiff was compelled on occasion to clock out at the end of his scheduled
24 work period and continue working off the clock. Defendants' also contacted Plaintiff during meal
25 periods to respond to work demands and he was otherwise required to remain under Defendants'
26 control without receiving compensation. This included Defendants' requirement that he remain
27 on-call during off duty hours to respond to emergency calls on his cell phone, again without
28 compensation. Upon information and belief, other Class members endured similar off the clock

1 work and rounding and failure to pay overtime and for all hours worked at the applicable rates as
2 Plaintiff.

3 13. During relevant work periods, and often during off-duty hours, Plaintiff was
4 expected to remain on call and promptly respond to work-related calls and inquiries even if he
5 was attempting to take a meal break or rest break. Defendants thus failed to pay for all hours
6 worked by Plaintiff and the Class members and failed to pay any overtime hours worked at
7 applicable premium rates. Plaintiff recalls thinking that every wage statement and check he
8 received seemed to reflect many fewer hours than he actually worked, and that the times appeared
9 to be rounded and adjusted to conform generally to scheduled work shifts and reduce or eliminate
10 overtime.

11 14. In addition to the above described rounding and time shaving and off the clock
12 work, Plaintiff was also required by Defendants to arrive at time clocks early to clock out for
13 lunch during his shifts and then to clock back in given the limited number of clocks and the
14 number of Employees attempting to take a break. Defendants required this so it would appear he
15 received a timely meal break when in fact he either did not receive a meal period or took it well
16 after five hours into his work shift. Upon information and belief, Defendants committed similar
17 violations and followed similar unlawful procedures in connection with the other Class members.
18 When Plaintiff and the Class members were under Defendants' control without being
19 compensated, including to respond to work demands during off-duty times or during attempted
20 breaks or during screenings and the like, this resulted in additional compensable time that was not
21 compensated as hours worked by Defendants. As Defendants did not permit the Employees to
22 review any of their timekeeping entries after they were submitted, Plaintiff had no way of
23 knowing if his hours were being accurately recorded and paid for payroll purposes.

24 15. Plaintiff was therefore not paid for all his hours worked at the required minimum,
25 overtime and double time wage rates due to Defendants' policy and practice of requiring him to
26 work off the clock and without pay and by unlawful rounding of hours, and Defendants thus also
27 failed to keep required records of hours worked. Defendants also failed to pay Plaintiff at the
28 required overtime rates for all hours over eight in a shift, or over forty in a work week. With work

1 shifts generally scheduled for eight hours or more, this unpaid off the clock work resulted in
2 Plaintiff and the Class members working past eight hours on a shift, which required that they be
3 paid at the correct overtime rate of 1.5 times their regular rate. The hours reflected on Plaintiff's
4 wage statements rarely comported with his own records or recollection of them. Plaintiff
5 remained confused as to how his overtime was calculated and paid, and was compelled to simply
6 look to ensure he was paid at least 40 hours for each week as scheduled.

7 16. Defendants thus systematically underpaid Plaintiff and the Class members by
8 failing to pay them at the required overtime rates for all hours over eight in a work shift or over
9 forty in a work week, and all hours over twelve in a day at the required double time rate. Upon
10 information and belief, the Class members were bound by similar scheduling and work policies
11 and endured similar violations at Defendants' hands as Plaintiff.

12 17. Defendants have either failed to maintain timekeeping records for Plaintiff that
13 would permit Plaintiff to discover the nature and extent of the off the clock work Defendants
14 required and the actual hours Plaintiff worked or the breaks he received or have otherwise
15 declined to produce them to Plaintiff in response to a timely and lawful records request. By
16 failing to pay for all hours worked, and by rounding regular hours to the substantial detriment of
17 the Class members to conform generally to scheduled shift times, and by failing to record
18 accurate meal period beginning and ending times, Defendants have committed knowing and
19 intentional ongoing violations of the record keeping requirements under the Labor Code,
20 including section 1174. Additionally, to the extent Defendants paid overtime, it was underpaid as
21 addressed above or Defendants failed to include all forms of remuneration in the regular rate used
22 to calculate and pay overtime wages, thus resulting in further underpayment of wages earned by
23 Plaintiff and the Class members.

24 18. The failure to pay for all hours worked and underpayment of wages to Plaintiff
25 and the Class members is and has been a direct consequence of Defendants' unlawful
26 compensation policies and practices, which upon information and belief applied uniformly to the
27 Class members working at Defendants' properties throughout California. As a result of the
28 above-described unlawful requirements to work off the clock and unlawful rounding, the failure

1 to accurately record all hours worked and pay wages at the correct rates, and the other wage
2 violations they endured at Defendants' hands, Plaintiff and the Class members were not properly
3 paid all wages earned and all wages owed to them by Defendants, including when working more
4 than eight hours in any given day and/or more than forty hours in any given week.

5 19. Therefore, from at least four years prior to the filing of this lawsuit and continuing
6 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
7 hours worked and failing to pay minimum wages for all time worked, as required by California
8 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
9 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation
10 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a
11 week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of
12 Labor Code § 510 and the corresponding sections of IWC Wage Orders.

13 20. Defendants also failed to provide Plaintiff and the Class members with their
14 required meal periods and the at least two ten-minute rest breaks required for scheduled shifts of
15 eight hours. The above described off the clock work contributed to Defendants' common policy
16 of failing to provide lawful meal periods to Plaintiff and the Class members, as required under the
17 Labor Code and Paragraph 11 of the IWC Wage Order(s). Defendants similarly systematically
18 failed to authorize and permit Plaintiff and the employee Class Members to take all required 10-
19 minute rest breaks, as required under the Labor Code and Paragraph 12 of the IWC Wage
20 Order(s).

21 21. Plaintiff and the Class members generally worked shifts that entitled them to
22 receive at least one meal period and two rest breaks. However, Defendants failed to provide all
23 required meal periods and rest breaks to them. Defendants' uniformly applied policies and
24 practices systematically failed to provide required duty-free meal periods to Plaintiff and the
25 Class members. Instead, Plaintiff and the Class members were expected to continue working
26 throughout their shifts and were often unable to take full, timely, duty-free 30 minute meal
27 periods. Given work demands and management pressure, meal periods were often provided for
28 shorter duration given the time it took to clock out and back in and were after five hours into a

1 work shift or were otherwise shortened unlawfully. Further systematic violations occurred by
2 Defendants' policy of requiring Plaintiff and other similarly situated Class members to remain
3 under Defendants' control and respond to work demands or telephone or radio calls regarding
4 work duties or emergency actions required from them. If and when Plaintiff was able to attempt
5 to take a meal break, it was therefore also not duty-free. Defendants therefore failed to provide
6 meal periods, provided them untimely, or else provided impermissibly shortened meal periods
7 where employees remained on-call to perform duties when needed and had to hurry back to work.
8 Upon information and belief, the Class members endured similar meal period violations at
9 Defendants' hands. On the occasions when Plaintiff and the Class members worked over ten
10 hours on a shift, they did, Defendants failed to provide them with a second uninterrupted and
11 duty-free and timely meal period.

12 22. Defendants thus followed a uniformly applied policies of not providing all
13 required meal periods to their Employees. Meal periods were often not provided at all during a
14 work shift, as work and production demands and management pressure required Employees to
15 work through breaks or to take them after five hours of work on a shift. However, even when
16 Plaintiff and the Class members were able to take a meal period, it was provided for less than the
17 required time or was otherwise interrupted by work duties, and Employees were not free to leave
18 the property premises during breaks and were required to respond to calls and manager inquiries
19 and instructions during breaks and remain ready to do so, which was not possible if they left the
20 premises.

21 23. Defendants thus failed to provide all the legally required unpaid, off-duty meal
22 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
23 members, as required by the applicable Wage Order and Labor Code. Defendants did not have a
24 policy or practice which provided or recorded all the legally required unpaid, off-duty meal
25 periods and all the legally required paid, off-duty rest periods to Employees. Plaintiff and other
26 Class members were required to perform work as ordered by Defendants or otherwise remain
27 under Defendants' control for more than five hours during a shift, or ten hours in a shift, but were
28 often required to do so without receiving a lawful, timely, and duty-free 30-minute meal breaks.

1 Additionally, as addressed above, Defendants followed a practice of requiring off the clock work,
2 in a manner that would impact when Employees were to receive meal periods and rest breaks,
3 thus leading to further violations.

4 24. As a result, Defendants' failure to provide Plaintiff and the Class members with all
5 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
6 periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants have
7 either failed to maintain required records of when meal periods were actually provided or failed to
8 produce them in response to Plaintiff's timely and lawful requests, or else maintained inaccurate
9 and incomplete records. Defendants also failed to pay Employees "premium pay," i.e. one hour of
10 wages at each Employee's effective hourly rate of pay, for each meal period or rest break that
11 Defendants failed to provide or deficiently provided. Upon information and belief, if and when
12 Defendants did pay any meal period premiums, they failed to include all forms of remuneration in
13 the regular rate used to calculate and pay it.

14 25. Therefore, for at least four years prior to the filing of this action and through to the
15 present, Plaintiff and the Class members were unable to take off-duty breaks or were otherwise not
16 provided with the opportunity to take required meal breaks due to Defendants' policies and
17 practices. On the occasions when Plaintiff and the Class members were provided with a meal
18 period, it was often untimely or interrupted, or was impermissibly shortened, and Employees were
19 not provided with one hour's wages in lieu thereof. Meal period violations thus occurred in one or
20 more of the following manners:

- 21 (a) Class members were not provided full thirty-minute duty free meal periods
22 for work days in excess of five hours and were not compensated one hour's
23 wages in lieu thereof, all in violation of, among others, Labor Code §§
24 226.7, 512, and the applicable Industrial Welfare Commission Wage
25 Order(s);
- 26 (b) Class members were not provided second full thirty-minute duty free meal
27 periods for work days in excess of ten hours;

- 1 (c) Class members were required to work through at least part of their daily
2 meal period(s);
- 3 (d) Meal periods were provided after five hours of continuous work during a
4 shift; and
- 5 (e) Class members were restricted in their ability to take a full thirty-minute
6 meal period or were otherwise required to remain under Defendants'
7 control during meal periods.

8 26. Defendants also failed to authorize and permit Plaintiff and the Class members to
9 take duty-free, net ten minute rest breaks for every four hours of shift work, or major fraction
10 thereof. There were similar issues with the required net ten-minute rest breaks that Plaintiff and
11 the Class members were unable to take as with meal periods. This was exacerbated by the fact
12 that Defendants made no efforts to schedule and otherwise authorize and permit Plaintiff and the
13 Class members to take their required ten minute rest breaks. Defendants therefore manifestly and
14 systematically also failed to authorize and permit Plaintiff and the Class members to take their
15 required duty-free, net ten-minute rest periods. As rest breaks were not scheduled, Defendants'
16 policy was not to provide them, and management did not emphasize the requirement to provide at
17 least one ten-minute duty-free rest period for each four-hour duty period, or major fraction
18 thereof. If and when Plaintiff was permitted to take a ten-minute rest break on a shift, he was not
19 permitted to take a second one or a third one or any breaks were untimely or impermissibly
20 shortened. Further violations occurred as Plaintiff and the Class members were required to remain
21 under Defendants' control by not being able to leave the premises and by Defendants'
22 requirement that they remain ready to respond to calls regarding work requirements and job
23 demands.

24 27. Therefore, Defendants failed to authorize and permit Class members to take all
25 their required rest breaks. Plaintiff and the other similarly situated Class members were either not
26 authorized permitted the opportunity to take a rest break, or were required to remain under
27 Defendants' control and respond to instructions and job demands. Defendants also failed to
28 authorize and permit Employees to leave the property premises during rest breaks, or else

1 prevented them from doing so, thus further evidencing Defendants' policy and practice of
2 requiring Plaintiff and the Class members to remain under their control during required off-duty
3 rest breaks.

4 28. Defendants' policies and practices thus systematically deny and denied Plaintiff
5 and the Class members full, duty-free ten-minute rest periods and thirty-minute, duty-free meal
6 periods. The California Supreme Court has instructed that the rest period requirement obligates
7 employers to permit-and authorizes employees to take-off-duty rest periods. That is, during rest
8 periods employers must relieve employees of all duties and relinquish control over how
9 employees spend their time. Plaintiff and the Class members were and are under Defendants'
10 control when they are working through rest breaks, and Defendants failed to schedule or account
11 for required first, second, and third rest breaks during the shifts Plaintiff and the Class members
12 generally worked.

13 29. Plaintiff and the Employees in the Class were not authorized and permitted to take
14 lawful rest periods, were systematically required by Defendants to work through or during breaks,
15 and were not provided with one hour's wages in lieu thereof. They were required to remain on
16 duty during breaks or portions of their breaks, thus making them either untimely or shortened and
17 on-duty, and they were also prevented from leaving the premises during rest breaks under
18 Defendants' policies and practices. Rest period violations therefore arose in one or more of the
19 following manners:

- 20 (a) Class members were required to work without being provided a minimum
21 ten minute rest period for every four hours or major fraction thereof
22 worked and were not compensated one hour of pay at their regular rate of
23 compensation for each workday that a rest period was not provided, and to
24 the extent Defendants paid any premiums, they failed to include all forms
25 of remuneration in the regular rate used to calculate and pay them.
- 26 (b) Class members were not authorized and permitted to take timely rest
27 periods for every four hours worked, or major fraction thereof; and
- 28 (c) Class members were required to remain on duty and under Defendants'

1 control during rest periods or otherwise had their rest periods interrupted
2 by work demands.

3 30. From at least four years prior to the filing of this lawsuit and continuing to the
4 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
5 deducting the Employees' earned wages, including by the above described off the clock work
6 before and after work shifts and automatically deducting hours for unpaid meal periods
7 Defendants failed to provide. By not compensating Employees for all hours worked, and not
8 recording any break times or permitting off-duty breaks, Defendants unlawfully deducted wages
9 earned by and owed to Plaintiff and the Class members, in violation of Labor Code § 221.

10 31. As a result of the above described illegal policies and practices, Defendants
11 engaged in and enforced the following additional unlawful practices and policies against Plaintiff
12 and the Class members he seeks to represent:

- 13 (a) failing to pay all wages owed to Class members who either were
14 discharged, laid off, or resigned in accordance with the requirements of
15 Labor Code §§ 201, 202, 203;
- 16 (b) failing to pay all wages owed to the Class members twice monthly in
17 accordance with the requirements of Labor Code § 204;
- 18 (c) failing to pay Class members all wages owed, including all meal and rest
19 period premium wages;
- 20 (d) failing to maintain accurate records of Class members' earned wages and
21 meal periods in violation of Labor Code §§ 226 and 1174(d) and section 7
22 of the applicable IWC Wage Orders; and
- 23 (e) failing to produce timekeeping records in response to Plaintiff's timely and
24 lawful request to receive them under these authorities.

25 32. From at least four years prior to the filing of this lawsuit, and continuing to the
26 present, Defendants have also consistently failed to provide Employees with timely, accurate, and
27 itemized wage statements, in writing, as required by California wage-and-hour laws, including by
28 the above-described requirement of off the clock work, failure to pay all overtime, and failure to

1 pay premium wages for unprovided or otherwise unlawful meal and rest breaks. Defendants have
2 also made it difficult to account with precision for the unlawfully withheld wages and meal and
3 rest period compensation owed to Plaintiff and the Class, during the liability period, because they
4 did not implement and preserve a record-keeping method as required for non-exempt employees
5 by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable California Wage
6 Orders. Upon information and belief, time clock punches were not maintained or were not
7 accurately maintained for work shifts and meal periods. Defendants also failed to accurately
8 record and pay for all regular and overtime hours worked by Plaintiff and the Class members.

9 33. Defendants also provided Plaintiff and the Class members with wage statements
10 that failed to accurately report all hours worked and applicable hourly rates for all hours worked,
11 including by reflecting rounded hours to the Employees' detriment and otherwise requiring off the
12 clock work. For the same reasons as explained above, Plaintiff and the Class members were
13 provided with unlawful wage statements that failed to reflect all hours worked by rounding and by
14 only paying for his scheduled hours rather than his actual hours and failed to pay for all overtime
15 hours, including at the correct overtime rate. Defendants followed this unlawful policy and
16 practice even though both Plaintiff and Defendants were aware that Plaintiff and the Class
17 members worked more total hours than were reflected on the wage statements including overtime
18 hours. Plaintiff and the Employees in the Class were unable to discern from their wage statements
19 alone the actual hours they worked in total during a pay period and the rates they were paid for
20 those hours worked.

21 34. Defendants have thus also failed to comply with Labor Code § 226(a) by issuing
22 wage statements that inaccurately reported total hours worked and total wages earned by Plaintiff
23 and the Class members, along with the appropriate applicable rates, and failed to list the correct
24 employer's name and address, among other requirements. In violation of Labor Code § 226(a)(8),
25 Defendants listed "Jewish Home" as the employer on wage statements issued to Plaintiff, and
26 upon information and belief other Class members. "Jewish Home" is not a listed entity authorized
27 to do business in California and Plaintiff believed he was employed by SFCJL. Plaintiff and Class
28 members are therefore entitled to penalties not to exceed \$4,000.00 for each employee pursuant to

1 Labor Code § 226(b). Defendants have also failed to comply with paragraph 7 of the applicable
2 California IWC Wage Orders by failing to maintain accurate time records showing when the
3 employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code
4 § 226.7, and total daily hours worked by itemizing in wage statements all deductions from
5 payment of wages and accurately reporting total hours worked by the Class members.

6 35. Defendants required Plaintiff and the Class members to work hours off the clock
7 for which they were not compensated and engaged in systematic rounding to the detriment of
8 Employees, and Defendants also failed to pay all overtime premium wages owed for work
9 conducted on a work shift and a workday, as addressed above. Therefore, from at least three or
10 four years prior to filing this lawsuit and continuing to the present, Defendants have also followed
11 a uniform and consistent policy of failing to pay all wages owed to Plaintiff and other similarly
12 situated Employees at the time of their termination or within seventy-two hours of their
13 resignation, as required by California wage-and-hour laws. Defendants also failed to pay all wages
14 owed to those Class members at the time they were terminated or otherwise separated from
15 employment.

16 36. Defendants required Plaintiff to undergo an unnecessary background check at the
17 outset of his employment. California Labor Code § 1024.5, private and public sector employers
18 (excluding certain financial institutions) are allowed to use consumer credit reports for hiring or
19 personnel decisions only if the individual is applying for or works (or will work) in certain types
20 of positions listed in section 1024(a)(1)-(a)(8), such as those with direct access to bank accounts,
21 social security numbers, cash, credit cards, or money transfers, and law enforcement. Other
22 positions for which consumer credit reports may be used include managerial positions and those
23 that afford access to trade secret, confidential, or proprietary information. None of these
24 requirements should apply to Plaintiff, and Defendants therefore obtained a credit report for
25 Plaintiff in violation of Labor Code § 1024.5. Plaintiff will seek all available remedies for this
26 violation, including civil penalties.

27 37. Additionally, from at least four years prior to the filing of this lawsuit and
28 continuing to the present, Defendants have regularly required Plaintiff and the Class members to

1 incur necessary business expenses in the course of performing their required job duties without
2 reimbursement. Defendants required Plaintiff and the Class members to use their cellular phones
3 to conduct work related business and to receive scheduling and assignments. Plaintiff and the
4 Class members must be reimbursed for these necessary business expenses under Labor Code §
5 2802 and Defendants systematically failed to do so.

6 38. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
7 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.7, 510,
8 511, 512, 558, 1174, 1185, 1194, 1194.2, 1197, 2802, and 2698 *et seq.*, and California Code of
9 Regulations, Title 8, section 11000 *et seq.*

10 39. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff
11 and the Class members seek injunctive relief, restitution, and disgorgement of all benefits
12 Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or
13 fraudulent practices alleged in this Complaint.

14 **CLASS ALLEGATIONS**

15 40. Plaintiff brings this class action on behalf of himself and all others similarly
16 situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the
17 Class” or “Class members”) defined as follows: “All individuals employed by Defendants at any
18 time during the period of four (4) years prior to the filing of this lawsuit and ending on a date as
19 determined by the Court (“the Class Period”), and who have been employed as non-exempt,
20 hourly employees by Defendants within the State of California.” Further, Plaintiff seeks to
21 represent the Subclasses composed of and defined as follows:

22 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
23 compensated for all hours worked for Defendants at the applicable minimum wage.

24 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
25 compensated for all hours worked for Defendants at the required rates of pay, including for all
26 hours worked in excess of eight in a day and/or forty in a week.

27 c. Subclass 3. Meal Period Subclass. All Class members who were subject to
28 Defendants’ policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-

1 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

2 d. Subclass 4. Rest Break Subclass. All Class members who were subject to
3 Defendants' policy and/or practice of failing to authorize and permit Employees to take
4 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
5 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

6 e. Subclass 5. Wage Statement Subclass. All Class members who, within the
7 applicable limitations period, were not provided with accurate itemized wage statements.

8 f. Subclass 6. Unauthorized Deductions from Wages Subclass. All Class members
9 who were subject to Defendants' policy and/or practice of deducting wages earned from their pay,
10 including by requiring off the clock work.

11 g. Subclass 7. Failure to Timely Pay Wages Twice Monthly Subclass. All Class
12 members who were subject to Defendants' policy and practice of not timely paying all wages
13 earned when they were due and payable at least twice monthly.

14 h. Subclass 8. Termination Pay Subclass. All Class members who, within the
15 applicable limitations period, either voluntarily or involuntarily separated from their employment
16 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
17 termination.

18 i. Subclass 9. Expense Reimbursement Subclass. All Class members who incurred
19 necessary and reasonable expenses in connection with performing their job duties for Defendants
20 and who were subject to a policy and/or practice under which such expenses were not reimbursed.

21 j. Subclass 10. UCL Subclass. All Class members who are owed restitution as a
22 result of Defendants' business acts and practices, to the extent such acts and practices are found to
23 be unlawful, deceptive, and/or unfair.

24 41. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
25 modify the class description with greater particularity or to provide further division into subclasses
26 or limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class
27 against Defendants, the Class Period should be adjusted accordingly.

28 ///

1 42. Defendants, as a matter of company policy, practice and procedure, and in violation
2 of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements,
3 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged
4 in a practice whereby Defendants failed to correctly calculate and pay compensation for the time
5 worked by Plaintiff and the other members of the Class, even though Defendants enjoyed the
6 benefit of this work, required Employees to perform this work and permitted or suffered to permit
7 this work. Defendants have uniformly denied these Class members wages to which these
8 employees are entitled, and failed to provide meal periods or authorize and permit rest periods, in
9 order to unfairly cheat the competition and unlawfully profit.

10 43. This action has been brought and may properly be maintained as a class action
11 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
12 of interest in this litigation and the proposed Class is easily ascertainable from the employment
13 records for Plaintiff and the Class members that Defendants are required to maintain under
14 California law.

15 **A. Numerosity**

16 44. The potential members of the Class as defined are so numerous that joinder of all
17 the Class members is impracticable. While the precise number of Class member has not been
18 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
19 time period relevant to this lawsuit employed, at least 100 Employees who satisfy the Class
20 definition within the State of California. Plaintiff alleges that Defendants’ employment records
21 will provide information as to the number and location of all Class members.

22 **B. Commonality**

23 45. There are questions of law and fact common to the Class that predominate over any
24 questions affecting only individual Class members. The common questions are numerous and
25 substantial and flow from Defendants’ uniform policies and/or practices of violating the California
26 Labor Code addressed above. As such, these common questions predominate over individual
27 questions concerning each individual Class Member’s showing as to his or her eligibility for
28 recovery or as to the amount of damages. These common questions of law and fact include:

- a. Whether Defendants failed to pay Employees minimum wages;
- b. Whether Defendants failed to pay Employees wages for all hours worked;
- c. Whether Defendants failed to pay Employees overtime as required under Labor Code § 510;
- d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Employees with requisite meal periods or premium pay in lieu thereof;
- e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders, by failing to authorize and permit Employees to take requisite rest breaks or provide premium pay in lieu thereof;
- f. Whether Defendants violated Labor Code § 226(a) by providing Employees with inaccurate wage statements and wage statements that omitted many of the Section 226(a) requirements.
- g. Whether Defendants violated Labor Code § 221;
- h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- i. Whether Defendants' conduct was willful;
- j. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage Orders by failing to maintain accurate records of Class members' earned wages and work periods;
- k. Whether Defendants violated Labor Code § 1194 by failing to compensate all Employees during the relevant time period for all hours worked, whether regular or overtime;
- l. Whether Defendants violated Labor Code § 204 by failing to pay Employees all wages earned at least twice monthly;
- m. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary business expenses incurred by Employees;

- 1 n. Whether Defendants obtained unlawful and unauthorized background reports on
2 Employees in violation of Labor Code § 1024.5;
3 o. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
4 p. Whether Employees are entitled to equitable relief pursuant to Business and
5 Professions Code § 17200 *et seq.*

6 **C. Typicality**

7 46. The claims of the named Plaintiff are typical of those of the other Employees. The
8 Employee Class members all sustained injuries and damages arising out of and caused by
9 Defendants' common course of conduct and uniformly applied policies in violation of statutes, as
10 well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for
11 the off the clock work and meal and rest violations they were required to endure are typical of
12 those of the other Class members.

13 **D. Adequacy of Representation**

14 47. Plaintiff will fairly and adequately represent and protect the interest of the
15 Employee Class members. Counsel who represents Plaintiff and the Employees in the Class are
16 experienced and competent in litigating employment class actions.

17 **E. Superiority of Class Action**

18 48. A class action is superior to other available means for the fair and efficient
19 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
20 questions of law and fact common to all Employees predominate over any questions affecting only
21 individual Employees. Each Employee in the Class has been damaged and is entitled to recovery
22 by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

23 49. As to the issues raised in this case, a class action is superior to all other methods for
24 the fair and efficient adjudication of this controversy, as joinder of all Class members is
25 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class
26 members. Further, as the economic or other loss suffered by vast numbers of Class members may
27 be relatively small, the expense and burden of individual actions makes it difficult for the Class
28 members to individually redress the wrongs they have suffered. Moreover, in the event

1 disgorgement is ordered, a class action is the only mechanism that will permit the employment of
2 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
3 managing this case as a class action, and proceeding on a class-wide basis will permit Employees
4 to vindicate their rights for violations they endured which they would otherwise be foreclosed
5 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

6 50. Class action treatment will allow those persons similarly situated to litigate their
7 claims in the manner that is most efficient and economical for the parties and the judicial system.
8 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
9 Plaintiff contemplates the eventual issuance of notice to the proposed Class members that would
10 set forth the subject and nature of the instant action. The Defendants' own business records can be
11 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent
12 that any further notice is required additional media and/or mailings can be used.

13 51. Defendants, as prospective and actual employers of the Employees in the Class,
14 had a special fiduciary duty to disclose to prospective Class members the true facts surrounding
15 Defendants' pay practices, policies and working conditions imposed upon the similarly situated
16 Employees as well as the effect of any alleged arbitration agreements that may have been forced
17 upon them. In addition, Defendants knew they possessed special knowledge about pay practices
18 and policies, most notably intentionally refusing to pay for all hours actually worked which should
19 have been recorded in Defendants' pay records and the consequence of the alleged arbitration
20 agreements and policies and practices on the Employees and Class as a whole.

21 52. Plaintiff and the Employees in the Class did not discover the fact that they were
22 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there
23 any discussion about Plaintiff's and the Class members' waiver of their Constitutional rights of
24 trial by jury, to collectively organize and oppose unlawful pay practices under California law as
25 well as obtain injunctive relief preventing such practices from continuing. As a result, the
26 applicable statutes of limitation tolled until such time as Plaintiff and the Class members
27 discovered their claims.

28 ///

FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(Against All Defendants)

53. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in full herein.

54. Defendants failed to pay Employees minimum wages they were owed, including by their consistent policy of failing to pay Employees for all hours worked. Employees would work hours and not receive wages, including as alleged above in connection with off the clock work and unlawful rounding, including all the time required to remain on duty and under Defendants' control and during breaks and due to the work demands placed upon them by Defendants' management. Defendants also imposed difficult to attain job and shift scheduling requirements on Plaintiff and the Class members and required them to list or otherwise record hours worked as scheduled rather than as actually worked, which resulted in off the clock work and underpayment of all wages owed to Employees over a period of time, while benefiting Defendants. During the relevant Class Period, Defendants thus regularly failed to pay minimum wages to Plaintiff and the Class members, including by requiring systematic off the clock work. Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Class as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the other members of the Class as to minimum wage pay.

55. In California, employees must be paid at least the then applicable state minimum wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H) of the applicable IWC Wage Orders defines "Hours Worked" as "the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Additionally, pursuant to Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

1 56. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage”
2 states: “The minimum wage for employees fixed by the commission is the minimum wage to be
3 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

4 57. The applicable minimum wage rate fixed by the commission for work during the
5 relevant period is found in the Wage Orders.

6 58. The minimum wage provisions of California Labor Code are enforceable by private
7 civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to
8 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
9 overtime compensation applicable to the employee is entitled to recover in a civil action the
10 unpaid balance of the full amount of this minimum wage or overtime compensation, including
11 interest thereon, reasonable attorney’s fees and costs of suit.”

12 59. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
13 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
14 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
15 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
16 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
17 the absence of a contractually agreed upon one. The underpayment of wages to Plaintiff and the
18 Class members is and has been a direct consequence of Defendants’ unlawful compensation
19 policies and practices, which applied uniformly to the Class members working at locations and
20 work sites throughout California.

21 60. In committing the above-described violations of the California Labor Code,
22 Defendants inaccurately recorded, or required Plaintiff and the Class members to input times that
23 did not reflect their actual hours worked, or calculated the correct time worked and consequently
24 underpaid the actual time worked by Plaintiff and other members of the Class, including by
25 requiring off the clock work and rounding and refusing to pay all incurred overtime, as addressed
26 in detail above. Defendants acted in an illegal attempt to avoid the payment of all earned wages,
27 and other benefits in violation of the California Labor Code, the Industrial Welfare Commission
28 requirements and other applicable laws and regulations. As a result of these violations, Defendants

1 also failed to timely pay all wages earned in accordance with California Labor Code § 1194.

2 61. California Labor Code § 1194.2 also provides for the following remedies: “In any
3 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
4 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
5 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

6 62. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
7 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial
8 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
9 pay each employee minimum wages.

10 63. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are
11 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
12 interest thereon.

13 64. Defendants have the ability to pay minimum wages for all time worked and have
14 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
15 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

16 65. Wherefore, Plaintiff and the Employee Class members are entitled to recover the
17 unpaid minimum wages (including double minimum wages), liquidated damages in an amount
18 equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees
19 and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other members of
20 the Class further request recovery of all unpaid wages, according to proof, interest, statutory costs,
21 as well as the assessment of any statutory and/or civil penalties against Defendants, in a sum as
22 provided by the California Labor Code, including § 558, and/or other applicable statutes. To the
23 extent minimum wage compensation is determined to be owed to the Class members who have
24 terminated their employment, Defendants’ conduct also violates Labor Code §§ 201 and/or 202,
25 and therefore these individuals are also be entitled to waiting time penalties under California
26 Labor Code § 203, which penalties are sought herein on behalf of these Class members.
27 Defendants’ failure to timely pay all wages owed also violated Labor Code § 204 for failure to pay
28 all wages owed twice monthly and resulted in violations of Labor Code § 226 because they

1 resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was
2 willful, intentional and not in good faith. Further, Plaintiff and other Class members are entitled to
3 seek and recover statutory costs.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

6 **(Against All Defendants)**

7 66. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
8 full herein.

9 67. California Labor Code § 1194 provides that "any employee receiving less than the
10 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
11 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
12 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action
13 may be maintained directly against the employer in an employee's name without first filing a
14 claim with the Division of Labor Standards and Enforcement.

15 68. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
16 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the
17 Industrial Welfare Commission) by failing to pay Employees for all hours worked, including: (a)
18 time and one-half their regular hourly rates for hours worked in excess of eight hours in a workday
19 or in excess of forty hours in any workweek or for the first eight hours worked on the seventh day
20 of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of
21 twelve hours in any one day or for hours worked in excess of eight hours on any seventh day of
22 work in a workweek. Defendants had a consistent policy of not paying Employees wages for all
23 hours worked, including by requiring off the clock work and rounding as addressed above and by
24 under-reporting actual hours worked. With work shifts generally being scheduled for eight hours,
25 this unpaid off the clock work resulted in Plaintiff and the Class members working past eight
26 hours on a shift, which required that they be paid at the correct overtime rate of 1.5 times their
27 regular rate.

69. Defendants thus had a consistent policy of not paying Employees wages for all hours worked, including hours at their required regular, overtime, and double-time rates. Defendants required Plaintiff and the Class members to work off the clock to avoid paying all their earned and owed straight time and overtime wages and other benefits, in violation of the California Labor Code, the California Code of Regulations and the IWC Wage Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties or to attend and participate in company required activities or remain under Defendants' control. Therefore, Employees were not properly compensated, nor were they paid overtime rates for hours worked in excess of eight hours in a given day, and/or forty hours in a given week. Based on information and belief, Defendants did not make available to Employees a reasonable protocol for correcting time records when Employees worked overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the Employee's detriment, as Defendants required time records to generally reflect scheduled shift times. Defendants also under-paid Plaintiff and the putative Class members all wages by systematically miscalculating and underpaying overtime wages they earned, as detailed above.

70. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of regular wages owed and overtime compensation for all hours worked, as required by California law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable IWC Wage Order, and is therefore unlawful.

71. Additionally, Labor Code § 558(a) provides "any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provisions regulating hours and days of work in any order of the IWC shall be subject to a civil penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each

1 underpaid employee for each pay period for which the employee was underpaid in addition to an
2 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
3 be paid to the affected employee.” Labor Code § 558(c) states, “the civil penalties provided for in
4 this section are in addition to any other civil or criminal penalty provided by law.” Defendants
5 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
6 Wage Orders. Accordingly, Plaintiff and the Class members seek the remedies set forth in Labor
7 Code § 558.

8 72. Defendants’ failure to pay compensation in a timely fashion also constituted a
9 violation of California Labor Code § 204, which requires that all wages shall be paid
10 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
11 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
12 and overtime compensation earned by Employees. Each such failure to make a timely payment of
13 compensation to Employees constitutes a separate violation of California Labor Code § 204.

14 73. Employees have been damaged by these violations of California Labor Code §§
15 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
16 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less
17 than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions
18 of labor prohibited by an order of the commission” or if the employer pays “a wage less than the
19 minimum fixed by an order of the commission” or “violates...any provision of this chapter or
20 any order or ruling of the commission.”

21 74. Consequently, pursuant to the California Labor Code, including Labor Code §§
22 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders,
23 including paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full
24 amount of all their unpaid wages and overtime compensation for all their hours worked, with
25 interest, plus their reasonable attorneys’ fees and costs, as well as the assessment of any statutory
26 penalties against Defendants, and each of them, and any additional sums as provided by the
27 Labor Code and/or other statutes.

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1 **THIRD CAUSE OF ACTION**

2 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

3 **(Against All Defendants)**

4 75. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
5 full herein.

6 76. Employees regularly worked shifts greater than five hours and in some instances,
7 greater than ten hours. Pursuant to Labor Code § 512, and paragraph 11 of the applicable IWC
8 Wage Order, an employer may not employ someone for a shift of more than five hours without
9 providing him or her with a meal period of not less than thirty minutes or for a shift of more than
10 ten hours without providing him or her with a second meal period of not less than thirty minutes.

11 77. Defendants failed to provide Employees with meal periods as required under the
12 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required
13 to work or to otherwise remain under Defendants' control during meal periods, or Defendants
14 provided them after Employees worked beyond the fifth hour of their shifts or Employees
15 otherwise had them shortened and interrupted by work demands and requirements to remain under
16 Defendants' control during off the clock time. Furthermore, upon information and belief, on the
17 occasions when Employees worked more than ten hours in a given shift, they did so without
18 receiving a second uninterrupted thirty-minute meal period as required by law.

19 78. Defendants thus failed to provide Plaintiff and the Class members with meal
20 periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,
21 including by not providing them with the opportunity to take meal breaks, by providing them late
22 or for less than thirty minutes, or by requiring them to perform work during breaks.

23 79. Moreover, Defendants failed to compensate Employees for each meal period not
24 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
25 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
26 employee a meal period in accordance with this section, the employer shall pay the employee one
27 hour of pay at the employee's regular rate of compensation for each workday that the meal period
28 is not provided. Defendants failed to compensate the Employees in the Class for each meal period

1 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11
2 and 20 of the applicable IWC Wage Order.

3 80. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the
4 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal
5 to one hour of wages at their effective hourly rates of pay for each meal period not provided or
6 deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory
7 penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and
8 other statutes and applicable IWC Wage Order paragraphs.

9 **FOURTH CAUSE OF ACTION**

10 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

11 **(Against All Defendants)**

12 81. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
13 full herein.

14 82. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders
15 provide that employers must authorize and permit all employees to take rest periods at the rate of
16 ten minutes net rest time per four work hours.

17 83. Employees consistently worked consecutive four hour shifts and were generally
18 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and
19 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable
20 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for
21 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest
22 breaks of not less than ten minutes for each consecutive four hour shift. Defendants made no
23 efforts to authorize and permit rest breaks or otherwise schedule them, and Employees were often
24 required to work or to otherwise remain under Defendants' control during rest periods, and had
25 breaks provided untimely as a result of the above described off the clock work. Plaintiff and the
26 Class members were also not permitted to leave their work premises during any rest breaks they
27 were able to take.

28 ///

1 84. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage
2 Orders provide that if an employer fails to provide an employee rest period in accordance with this
3 section, the employer shall pay the employee one hour of pay at the employee's regular rate of
4 compensation for each workday that the rest period is not provided.

5 85. Defendants, and each of them, have therefore intentionally and improperly denied
6 rest periods to Plaintiff and the Class members in violation of Labor Code §§ 226.7 and 512 and
7 paragraph 12 of the applicable IWC Wage Orders.

8 86. Defendants failed to authorize and permit Plaintiff and the Class members to take
9 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
10 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
11 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
12 12 and 20 of the applicable IWC Wage Orders.

13 87. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the
14 applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one hour
15 of wages at their effective hourly rates of pay for each day worked without the required rest
16 breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against
17 Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

18 **FIFTH CAUSE OF ACTION**
19 **VIOLATION OF LABOR CODE § 226(a)**
20 **(Against All Defendants)**

21 88. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
22 full herein.

23 89. California Labor Code § 226(a) requires an employer to furnish each of his or her
24 employees with an accurate, itemized statement in writing showing the gross and net earnings,
25 total hours worked, and the corresponding number of hours worked at each hourly rate; these
26 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
27 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
28 statements may be given to the employee separately from the payment of wages; in either case the

1 employer must give the employee these statements twice a month or each time wages are paid.

2 90. Defendants failed to provide Plaintiff and the similarly situated Employee Class
3 members with accurate itemized wage statements in writing, as required by the Labor Code and
4 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements given to
5 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,
6 including by failing to pay for all hours worked, failure to pay for all overtime hours worked and
7 for providing deficient meal periods and rest breaks, all of which Defendants knew or reasonably
8 should have known were owed to the Employees, as alleged above.

9 91. Defendants also provided Plaintiff and the Class members with wage statements
10 that failed to accurately report all hours worked and applicable hourly rates for all hours worked.
11 Plaintiff and the Employees in the Class were unable to discern from their wage statements alone
12 the actual hours they worked in total during a pay period.

13 92. Throughout the liability period, Defendants intentionally failed to furnish to
14 Plaintiff and the Class members, upon each payment of wages, itemized statements accurately
15 showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-
16 rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net
17 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
18 the employee and only the last four digits of his or her social security number or an employee
19 identification number other than a social security number, (8) the name and address of the legal
20 entity that is the employer and (9) all applicable hourly rates in effect during the pay period and
21 the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor
22 Code § 226 and paragraph 7 of the applicable IWC Wage Orders, amongst other statutory
23 requirements. Defendants knowingly and intentionally failed to provide Plaintiff and the Class
24 members with such timely and accurate wage and hour statements. As addressed above,
25 Defendants also violated Labor Code § 226(a)(8) by listing the wrong employer on wage
26 statements issued to Plaintiff and other Class members.

27 93. Plaintiff and the Class members suffered injury as a result of Defendants' knowing
28 and intentional failure to provide them with the wage and hour statements as required by law and

1 are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the
2 Defendants have failed to provide an accurate wage statement, failed to provide accurate and
3 complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9),
4 inclusive, and the Plaintiff and Class members cannot promptly and easily determine from the
5 wage statement alone one or more of the following: (i) The amount of the gross wages or net
6 wages paid to the employee during the pay period or any of the other information required to be
7 provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of
8 subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net
9 wages paid to the employee during the pay period, (iii) The name and address of the employer
10 and, (iv) The name of the employee and only the last four digits of his or her social security
11 number or an employee identification number other than a social security number. For purposes
12 of Labor Code § 226(e) “promptly and easily determine” means a reasonable person [i.e. an
13 objective standard] would be able to readily ascertain the information without reference to other
14 documents or information.

15 94. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
16 are required “to pay each employee, on the established payday for the period involved, not less
17 than the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor
18 Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order
19 or under conditions of labor prohibited by the order is unlawful.” Plaintiff and the Class members
20 may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph
21 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
22 IWC Wage Orders.

23 95. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
24 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
25 Class suffered injuries, including among other things confusion over whether they received all
26 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
27 them to make mathematical computations to analyze whether the wages paid in fact compensated
28 them correctly for all hours worked.

1 96. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable
2 IWC Wage Order, Plaintiff and the Employee Class members are entitled to recover the greater of
3 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
4 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
5 aggregate penalty of four thousand dollars (\$4,000) under Section 226(e). They are also entitled to
6 an award of costs and reasonable attorneys' fees.

7 **SIXTH CAUSE OF ACTION**
8 **VIOLATION OF LABOR CODE § 221**
9 **(Against All Defendants)**

10 97. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
11 full herein.

12 98. Labor Code § 221 provides, "It shall be unlawful for any employer to collect or
13 receive from an employee any part of wages theretofore paid by said employer to said employee."
14 Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and
15 public policy, an employer must timely pay its employees for all hours worked. Defendants failed
16 to do so.

17 99. Defendants unlawfully received and/or collected wages from the Employees in the
18 Class by implementing a policy understating the hours worked by Employees and by rounding and
19 requiring off the clock work, as alleged above.

20 100. As a direct and proximate cause of the unauthorized deductions, Employees have
21 been damaged, in an amount to be determined at trial.

22 **SEVENTH CAUSE OF ACTION**
23 **VIOLATION OF LABOR CODE § 204**
24 **(Against All Defendants)**

25 101. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
26 full herein.

27 102. Labor Code § 204 instructs that: "All wages, ...earned by any person in any
28 employment are due and payable twice during each calendar month, on days designated in

1 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
2 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
3 during which the labor was performed, and labor performed between the 16th and the last day,
4 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
5 month.” Additionally, the requirements of this section shall be deemed satisfied by the payment
6 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
7 calendar days following the close of the payroll period.” As detailed above, Defendants
8 maintained a consistently applied policy and practice of not paying all wages earned between the
9 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
10 between the 16th and the last day of the month between the 1st and 10th day of the following month.
11 This included failing to pay all wages due and owing to Plaintiff and the Class members for all
12 hours they worked.

13 103. All wages due and owing to Plaintiff and the Class members, including as required
14 under Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages
15 required by Labor Code § 1194 and other sections became due and payable to each employee in
16 each pay period that he or she was not provided with a meal period or rest period or paid straight
17 or overtime wages to which he or she was entitled.

18 104. Defendants violated Labor Code § 204 by systematically refusing to timely pay
19 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the
20 applicable IWC Wage Orders, employers are required “to pay each employee, on the established
21 payday for the period involved, not less than the applicable minimum wage for all hours worked in
22 the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer
23 hours than those fixed by the order or under conditions of labor prohibited by the order is
24 unlawful.” Plaintiff and the Class members may therefore pursue damages and penalties for
25 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
26 penalties under paragraph 20 of the applicable IWC Wage Orders.

27 105. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
28 represent have been deprived of wages in amounts to be determined at trial, and they are entitled

1 to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
2 pursuant to Labor Code § 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
3 applicable IWC Wage Orders.

4 **EIGHTH CAUSE OF ACTION**
5 **VIOLATION OF LABOR CODE § 203**
6 **(Against All Defendants)**

7 106. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
8 full herein.

9 107. Plaintiff and numerous Class members are no longer employed by Defendants; they
10 either quit Defendants' employ or were fired therefrom.

11 108. Defendants failed to pay these Employees all wages due and certain at the time of
12 termination or within seventy-two (72) hours of resignation, as addressed in detail above.

13 109. The wages withheld from these Employees by Defendants remained due and owing
14 for more than thirty (30) days from the date of separation from employment.

15 110. Defendants failed to pay these Class members without abatement, all wages as
16 defined by applicable California law. Among other things, these Employees were not paid all
17 regular and overtime wages, including by Defendants failing to pay for all hours worked or
18 requiring off the clock work or by unlawfully under-recording time entries and rounding to the
19 detriment of Employees, and Defendants failed to pay premium wages owed for unprovided meal
20 periods and rest periods, as further detailed in this Complaint. Defendants' failure to pay said
21 wages within the required time was willful within the meaning of Labor Code § 203.

22 111. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
23 are required "to pay each employee, on the established payday for the period involved, not less
24 than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor
25 Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order
26 or under conditions of labor prohibited by the order is unlawful." Plaintiff on behalf of these Class
27 members may therefore pursue damages and penalties for violations of Labor Code § 203 and
28 paragraph 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the

1 applicable IWC Wage Orders. Also, under Labor Code § 1199(a)-(c), it is a misdemeanor and
2 Defendants are subject to a fine of not less than \$100 for causing Employees “to work for longer
3 hours than those fixed, or under conditions of labor prohibited by an order of the commission” or
4 if the employer pays “a wage less than the minimum fixed by an order of the commission” or
5 “violates...any provision of this chapter or any order or ruling of the commission.”

6 112. Defendants’ failure to pay wages, as alleged, entitles these former Employee Class
7 members to penalties under Labor Code § 203 and the applicable paragraphs of the IWC Wage
8 Orders as addressed above, including the requirement that an employee’s wages shall continue
9 until paid for up to thirty (30) days from the date they were due.

10 **NINTH CAUSE OF ACTION**
11 **FOR FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**
12 **UNDER LABOR CODE § 2802**
13 **(Against All Defendants)**

14 113. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
15 full herein.

16 114. Plaintiff and the Class are informed and believe and based thereon allege that
17 throughout the period applicable, Defendants required Plaintiff and the Class members to pay for
18 necessary work related expenses they incurred. Defendants required Plaintiff and the Class
19 members to use their cellular phones to conduct work related business and to receive scheduling
20 and assignments when they did not have company phones or radios. Plaintiff and the Class
21 members must be reimbursed for these necessary business expenses under Labor Code § 2802 and
22 Defendants systematically failed to do so.

23 115. Defendants thus followed a uniform policy and practice of failing to reimburse
24 Employees for these necessary work related expenses or losses incurred in direct discharge of their
25 job duties during employment with Defendants and at the direction of the Defendants pursuant to
26 Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

27 116. Defendants’ knowing and willful failure to reimburse lawful necessary work related
28 expenses and losses to Plaintiff and the Class members resulted in damages because, among other

1 things, Defendants did not inform employees of their right to be reimbursed for those work related
2 expenses. As Defendants failed to inform and misled Plaintiff and the Class members with regard
3 to their rights, Plaintiff and the Class members were led to believe that incurring those lawful and
4 necessary expenses was an expected and essential function of their employment with Defendants
5 and that failure to incur those expenses would have adverse consequences on their employment.

6 117. Therefore, Plaintiff and the Class members are entitled to reimbursement for any
7 and all necessary work related expenses, as provided for in Labor Code § 2802(b) and paragraph 9
8 of the applicable IWC Wage Orders, incurred during the direct discharge of their duties while
9 employed by Defendants, as well as accrued interest on those expenses that were not reimbursed
10 from the date Plaintiff and the Class members incurred those expenses. Further, Plaintiff and the
11 Class members are entitled to costs and attorney's fees pursuant to Labor Code § 2802(c).

12 **TENTH CAUSE OF ACTION**

13 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

14 **(Against All Defendants)**

15 118. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
16 full herein.

17 119. Plaintiff, on behalf of himself, the Employees in the Class, and the general public,
18 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of
19 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
20 harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting
21 the public interest within the meaning of Code of Civil Procedure § 1021.5.

22 120. Plaintiff is a "person" within the meaning of Business & Professions Code
23 § 17204, have suffered injury, and therefore has standing to bring this cause of action for
24 injunctive relief, restitution, and other appropriate equitable relief.

25 121. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
26 business practices. By the conduct alleged herein, Defendants' practices were deceptive and
27 fraudulent in that Defendants' policy and practice failed to provide the required amount of
28 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and

1 Class members for all hours worked, due to systematic business practices as alleged herein that
2 cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare
3 Commission requirements in violation of California Business and Professions Code §§ 17200, *et*
4 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California
5 Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

6 122. Wage-and-hour laws express fundamental public policies. Paying employees their
7 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental
8 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State
9 vigorously to enforce minimum labor standards, to ensure that employees are not required or
10 permitted to work under substandard and unlawful conditions, and to protect law-abiding
11 employers and their employees from competitors who lower costs to themselves by failing to
12 comply with minimum labor standards.

13 123. Defendants have violated statutes and public policies. Through the conduct alleged
14 in this Complaint, Defendants have acted contrary to these public policies, have violated specific
15 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
16 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,
17 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
18 guaranteed to all employees under the law. Defendants' conduct, as alleged above, constitutes
19 unfair competition in violation of the Business & Professions Code § 17200 *et seq.*

20 124. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
21 overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of
22 reasonable care should have known that their conduct was unlawful; therefore their conduct
23 violates the Business & Professions Code § 17200 *et seq.*

24 125. By the conduct alleged herein, Defendants have engaged and continue to engage in
25 a business practice which violates California and federal law, including but not limited to, the
26 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
27 Code including Sections 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 for which this Court
28 should issue declaratory and other equitable relief pursuant to California Business & Professions

1 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
2 competition, including restitution of wages wrongfully withheld.

3 126. As a proximate result of the above-mentioned acts of Defendants, Employees have
4 been damaged, in a sum to be proven at trial.

5 127. Unless restrained by this Court, Defendants will continue to engage in the unlawful
6 conduct as alleged above. Pursuant to the Business & Professions Code, this Court should make
7 such orders or judgments, including the appointment of a receiver, as may be necessary to prevent
8 the use by Defendants or their agents or employees of any unlawful or deceptive practice
9 prohibited by the Business & Professions Code, including but not limited to the disgorgement of
10 such profits as may be necessary to restore Employees to the money Defendants have unlawfully
11 failed to pay.

12 **ELEVENTH CAUSE OF ACTION**

13 **PENALTIES PURSUANT TO LABOR CODE § 2698, *ET SEQ.***

14 **(Against All Defendants)**

15 128. Plaintiff realleges and incorporate all preceding paragraphs, as though set forth in
16 full herein.

17 129. Plaintiff and the Employees in the Class are also aggrieved employees as defined
18 under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and
19 either were or are employed by Defendants (“Aggrieved Employees”) during the relevant time
20 period.

21 130. In failing to pay Aggrieved Employees minimum wages and overtime, not
22 providing proper meal and rest periods, failing to provide accurate itemized wage statements, and
23 failing to pay Employees wages upon termination or timely upon resignation, all discussed above,
24 Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required
25 under Labor Code § 204. Defendants also failed to maintain records showing accurate hours
26 worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and
27 paragraph 7 of the applicable IWC Wage Orders.

28

1 131. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699
2 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5,
3 including the penalty provisions, without limitation, based, inter alia, on the following California
4 Labor Code sections: 201, 202, 203, 204, 206.5, 226, 226.2, 226.7, 432.5, 510, 512, 558, 1174,
5 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and 2698 *et seq.*

6 132. More specifically, after complying with the notice procedures of Labor Code §
7 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
8 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed
9 underlying claims and seeking penalties as specified by the applicable corresponding provisions,
10 including as follows:

11 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
12 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
13 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
14 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
15 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
16 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant
17 to Labor Code § 2699(g)(1);

18 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
19 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
20 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
21 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC
22 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under
23 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,
24 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs
25 pursuant to Labor Code § 2699(g)(1);

26 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
27 Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to
28 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,

1 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking
2 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),
3 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,
4 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by
5 providing inaccurate wage statements and failing to maintain records as required under Labor
6 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor
7 Code §226.3, which in addition to other penalties provided by law, subjects Defendants to "a
8 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
9 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
10 citation, ...";

11 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
12 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
13 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
14 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
15 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code
16 § 2699(g)(1);

17 (e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For
18 Defendants' unlawful deductions from wages and for Defendants' failure to reimburse the
19 necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and
20 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties
21 available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and
22 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs
23 pursuant to Labor Code § 2699(g)(1);

24 (f) All Alleged Violations of the IWC Wage Orders and Other Labor Code Sections:
25 For any above addressed violation of the applicable provisions of the IWC Wage Orders, each of
26 which constitute separate violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking
27 penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the
28 applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code §

1 2699(g)(1).

2 133. As also addressed above, Plaintiff, on behalf of the Aggrieved Employees, also seek
3 the penalties and remedies set forth in Labor Code § 558, which states:

4 (a) Any employer or other person acting on behalf of an employer who violates, or
5 causes to be violated, a section of this chapter or any provision regulating hours and days of work
6 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1)
7 For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for
8 which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
9 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
10 each pay period for which the employee was underpaid in addition to an amount sufficient to
11 recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected
12 employee.

13 (b) If upon inspection or investigation the Labor Commissioner determines that a
14 person had paid or caused to be paid a wage for overtime work in violation of any provision of this
15 chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare
16 Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting,
17 and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a
18 violation of this chapter shall be the same as those set out in Section 1197.1.

19 (c) The civil penalties provided for in this section are in addition to any other civil or
20 criminal penalty provided by law.

21 134. Plaintiff has exhausted his administrative remedies by submitting a certified letter to
22 the LWDA and Defendants on September 9, 2022 (LWDA-CM-927304-23) addressing in detail
23 the specific provisions of the Labor Code Defendants have violated and addressing the facts and
24 legal theories to support the alleged violations and requested penalties. The LWDA has not
25 provided notice of its intent to investigate the alleged violations within 65 calendar days of the
26 postmark date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the
27 violations addressed herein and in the PAGA Notice letter and the original Complaint.

28 **RELIEF REQUESTED**

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work
performed by Employees and unpaid overtime compensation from at least four (4) years prior to
the filing of this action, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and
interest thereon, from at least four (4) years prior to the filing of this action, according to proof;

1 4. For compensatory damages in the amount of all unpaid wages, including overtime
2 and double-time pay, as may be proven;

3 5. For compensatory damages in the amount of the hourly wage made by Employees
4 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
5 years prior to the filing of this action, as may be proven;

6 6. For compensatory damages in the amount of the hourly wage made by Employees
7 for each day requisite rest breaks were not provided or were deficiently provided where no
8 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
9 be proven;

10 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

11 8. For restitution and/or damages and penalties for Defendants' failure to pay all
12 wages due twice monthly under Labor Code § 204, as may be proven;

13 9. For restitution and/or damages for all amounts unlawfully withheld from the wages
14 for all class members in violation of Labor Code § 221, as may be proven;

15 10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
16 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

17 11. For damages and restitution for failure to reimburse all reasonable and necessary
18 business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;

19 12. For liquidated damages pursuant to California Labor Code 1194.2(a) for failure to
20 pay minimum wage;

21 13. For restitution for unfair competition pursuant to Business & Professions Code
22 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

23 14. For an order enjoining Defendants and their agents, servants, and employees, and
24 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
25 duties adumbrated in this Complaint;

26 15. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;

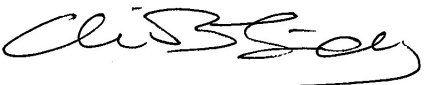
27 16. For penalties under Labor Code § 558, as may be proven;

28 17. For other wages and penalties under the Labor Code as may be proven;

- 1 18. For all general, special, and incidental damages as may be proven;
2 19. For an award of pre-judgment and post-judgment interest;
3 20. For an award providing for the payment of the costs of this suit;
4 21. For an award of attorneys' fees; and
5 22. For such other and further relief as this Court may deem proper and just.

6
7 DATED: March 9, 2023

DAVID YEREMIAN & ASSOCIATES, INC.

8
9 By 
10 David Yeremian
11 Alvin B. Lindsay
12 Attorneys for Plaintiff Mark A Fletcher,
13 on behalf of himself and others similarly
14 situated
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DATED: March 9, 2023

By

David Yermian
Alvin B. Lindsay
Attorneys for Plaintiff Mark A Fletcher,
on behalf of himself and others similarly
situated

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 2540 Foothill Blvd., Suite 201 La Crescenta, CA 91214.

On March 9, 2023, I served the foregoing: **FIRST AMENDED CLASS ACTION COMPLAINT** in Interested Parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

Michael Guasco
MGuasco@littler.com
LITTLER
333 Bush Street, 34th Floor
San Francisco, CA 94104

☐ **(BY MAIL)** I placed such envelope with postage thereon fully paid in the United States mail at La Crescenta, California. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with 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 1 day after date of deposit for mailing in affidavit.

☒ **(ONLY BY ELECTRONIC TRANSMISSION)** I electronically served the foregoing document in PDF format. I caused a true copy of the foregoing document(s) listed above to be served by electronic email transmission at the time shown on each transmission, to each interested party at the email address(es) shown above. Each transmission was reported as complete and without error.

☒ **(STATE)** I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 9, 2023, at La Crescenta, California.


Natalia Bermudes