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**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

DAIJA WALKER and ADAM JOY,
individually and on behalf of other individuals
similarly situated,

Plaintiff,

v.

CROSSROADS TRADING CO., INC, a
California corporation; and DOES 1 through
10, inclusive

Defendants.

CASE NO. 23CV416909

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1. Failure to Pay All Hours Worked;**
- 2. Failure to Pay Overtime;**
- 3. Failure to Provide Complaint Meal Periods in Violation of California Labor Code §§ 200, 226.7, 512;**
- 4. Failure to Provide Compliant Rest Periods in Violation of Labor Code §§ 200, 226.7, 512;**
- 5. Failure to Furnish an Accurate Itemized Wage Statement upon Payment of Wages in Violation of California Labor Code § 226;**
- 6. Failure to Pay All Wages Owed at Termination in Violation of California Labor Code § 203;**
- 7. Failure to Provide Adequate Seating;**
- 8. Failure to Reimburse for Necessary Business Expenses;**
- 9. Violations of California Business & Professions Code § 17200, et seq.; and**
- 10. Penalties Pursuant to California Labor Code §§ 2698-2699, et. seq.**

DEMAND FOR JURY TRIAL

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Attorneys for Plaintiff ADAM JOY

and other individuals similarly situated

1 Plaintiffs DAIJA WALKER and ADAM JOY (hereinafter referred to as “Plaintiffs”), hereby
2 submit the First Amended Class Action Complaint against CROSSROADS TRADING CO, INC. a
3 California corporation and Does 1-10 (hereinafter referred to as “Defendants”) on behalf of themselves
4 and the class of all other similarly situated current and former employees of Defendants as follows:

5 **INTRODUCTORY FACTUAL ALLEGATIONS**

6 1. This is a class action arising out of Defendants’ failure to provide their non-exempt
7 employees with all wages and meal and rest periods in compliance with the applicable wage order
8 and/or the California Labor Code, by failing to provide suitable seating, by failing to reimburse
9 business expenses and by failing to comply with the applicable wage order and/or the Labor Code
10 regarding the payment of wages.

11 2. Defendants own and operate retail second-hand clothing shops throughout California
12 and the United States. To Plaintiffs’ knowledge, Defendants approximately 23 retail stores in
13 California with locations in Los Angeles, Orange County, and the San Francisco Bay Area. At all
14 relevant times, Defendants issued and maintained uniform, standardized scheduling and timekeeping
15 practices and procedures for all non-exempt, hourly paid employees in California, including Plaintiffs
16 and others similarly situated, regardless of their location or position.

17 3. Defendants have maintained practices across its locations which have failed and
18 continue to fail to pay Plaintiffs and other non-exempt employees all wages. Specifically, Defendants
19 have a company-wide policy of subjecting Plaintiffs and other non-exempt employees to work off-the-
20 clock, receiving non-compliant meal periods, and subjects its employees to a rest break policy
21 requiring Plaintiff and other non-exempt employees to waive their first rest break.

22 4. In light of the foregoing, Defendants have failed to provide accurate wage statements
23 and wage statements fail to list total hours worked. Defendants have also failed to timely pay wages
24 during employment and upon separation of employ. Moreover, Defendants fail to provide any seating
25 for Plaintiffs and other non-exempt employees, and employees are required to stand for the duration
26 of their shifts. Defendants also fail to reimburse business expenses, including but not limited to
27 cellphone expenses.

28 5. Plaintiffs bring Causes of Action One through Nine (the “class claims”) as a class

action on behalf of themselves and all individuals who are or previously were employed by Defendants in California and classified as non-exempt employees at any time during the period of time from November 1, 2019 to May 27, 2024. Plaintiffs, on their own behalf and on behalf of all Class Members, bring the class claims pursuant to Labor Code sections 200-204, 210, 221, 223, 226, 226.7, 246, 500, 510, 512, 1174, 1194, 1194.2, 1197, 1198, 2802, the applicable wage order and under Business & Professions Code sections 17200-17208, for unfair competition due to Defendants' unlawful, unfair and fraudulent business acts and practices.

6. Plaintiffs bring Cause of Action Ten as proxies of the State of California on behalf of other aggrieved employees for penalties under the Private Attorneys General Act (PAGA). PAGA provides that any civil penalty assessed and collected by the Labor and Workforce Development Agency (LWDA) for violations of applicable provisions of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of themselves and other current or former employees pursuant to procedures outlined in California Labor Code § 2699.3. PAGA also provides that an aggrieved employee can bring a civil action on behalf of other aggrieved employees for violation of any other Labor Code provision that does not itself contain a civil penalty, in which case the civil penalties are assessed at \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

7. Plaintiffs are informed and believe, and based thereon allege, that Defendants have engaged in, among other things a system of willful violations of the Labor Code and the applicable IWC wage orders by creating and maintaining policies, practices and customs that knowingly deny employees the above stated rights and benefits.

PARTIES

8. Plaintiff Adam Joy is an individual over the age of eighteen (18) and is now, and/or at all relevant times mentioned in this Complaint was, a resident and domiciliary of the State of California. During the relevant time period, Plaintiff Adam Joy worked for Defendants primarily in West Hollywood and Culver City, California from approximately September, 2022 to October, 2023. Plaintiff worked as a lead cashier. Plaintiff's job duties included but were not limited to assisting

1 customers with transactions and maintaining the store.

2 9. Plaintiff Daija Walker is an individual over the age of eighteen (18) and is now, and/or
3 at all relevant times mentioned in this Complaint was, a resident and domiciliary of the State of
4 California. During the relevant time period, Plaintiff Daija Walker worked for Defendants in
5 December of 2022.

6 10. Plaintiffs are informed and believe, and based thereon allege, that Defendant
7 Crossroads Trading Company, Inc., is a California corporation. Plaintiffs are further informed and
8 believe that at all times relevant hereto, Defendant has transacted, and continues to transact, business
9 throughout the State of California.

10 11. Plaintiffs are informed and believe, and based upon such information and belief allege,
11 that Defendants are, now and/or at all times mentioned in this Complaint was in some manner legally
12 responsible for the events, happenings and circumstances alleged in this Complaint.

13 12. Plaintiffs are further informed and believe, and based upon such information and belief
14 allege, that at all times herein mentioned, Defendants proximately caused Plaintiffs, all others
15 similarly situated, and the general public to be subjected to the unlawful practices, wrongs, complaints,
16 injuries and/or damages alleged in this Complaint.

17 13. Plaintiffs are informed and believe, and based thereon allege, that at all times herein
18 mentioned Defendants and DOES 1 through 10, are and were corporations, business entities,
19 individuals, and partnerships, licensed to do business and actually doing business in the State of
20 California.

21 14. Plaintiffs do not know the true names or capacities, whether individual, partner or
22 corporate, of the Defendants sued herein as DOES 1 through 10, inclusive, and for that reason, said
23 Defendants are sued under such fictitious names, and Plaintiffs pray for leave to amend this complaint
24 when the true names and capacities are known. Plaintiffs are informed and believe, and based thereon
25 allege, that each of said fictitious Defendants were responsible in some way for the matters alleged
26 herein and proximately caused Plaintiffs and members of the general public and class to be subject to
27 the illegal employment practices, wrongs and injuries complained of herein.

28 15. At all times herein mentioned, the acts and omissions of various Defendants, and each

1 of them, concurred and contributed to the various acts and omissions of each and all of the other
2 Defendants in proximately causing the injuries and damages as herein alleged. At all times herein
3 mentioned, Defendants, and each of them, ratified each and every act or omission complained of
4 herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts
5 and omissions of each and all of the other Defendants in proximately causing the damages as herein
6 alleged.

7 16. The members of the Classes (as defined below), including the representative Plaintiffs
8 named herein, have been employed during the Class Period in California. The practices and policies
9 which are complained of by way of this Complaint are enforced throughout the State of California.

10 **JURISDICTION AND VENUE**

11 17. The Court has jurisdiction over this class action pursuant to article 6, section 10 of the
12 California Constitution and Code of Civil Procedure section 410.10.

13 18. Additionally, this Court has jurisdiction over Plaintiffs' and the Classes' claims for
14 injunctive relief, including restitution of earned wages, arising from Defendants' unfair competition
15 under Business & Professions Code section 17203 and 17204. The Court also has jurisdiction over
16 Plaintiffs' and the Class's claims pursuant to the applicable provisions.

17 19. The Court has jurisdiction over Defendants because they are authorized to do business
18 in the State of California and are registered with the California Secretary of State. Defendants do
19 sufficient business with sufficient minimum contacts in California, and/or otherwise intentionally
20 avails itself of the California market through the advertising, marketing and sale of goods and services,
21 to render the exercise of jurisdiction over Defendants by the California court consistent with traditional
22 notions of fair play and substantial justice.

23 20. Venue is proper in Santa Clara County because the acts which give rise to this litigation
24 occurred in this county and because Defendants have employed class members in this county and
25 transacts business in this county.

26 **FACTUAL ALLEGATIONS**

27 21. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

28 22. During the Class Period, upon information and belief, Defendants had, and continue to

1 have, a company-wide policy of discouraging and impeding Plaintiffs and members of the Class from
2 recording accurate hours worked that were outside of their scheduled shifts in order to limit the amount
3 of overtime employees could accrue. On information and belief, this policy of limiting overtime, led
4 Plaintiffs and members of the Class to work off-the-clock before their scheduled shift times and during
5 their meal and periods as alleged herein.

6 23. Defendants also failed to provide compliant meal and rest breaks. Specifically, meal
7 breaks are short or were taken late. Plaintiffs and members of the Classes did not sign valid meal
8 period waivers on days that they were entitled to meal periods and were not relieved of all duties.

9 24. Rest breaks are also non-compliant because Defendants did not allow Plaintiffs and the
10 Class to take a first rest period. Defendants maintain a non-compliant rest break policy and pressured
11 employees to sign a document agreeing to one 20-minute break rather than getting two breaks per day.
12 Thus, Defendants regularly failed to authorize and permit Plaintiffs and members of the Class to take
13 a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof.

14 25. During the relevant time period, Defendants have knowingly and intentionally
15 provided Plaintiffs and members of the Classes with uniform, incomplete, and inaccurate wage
16 statements. For example, Defendants issued uniform wage statements to Plaintiffs and members of
17 the Classes that failed to correctly list: gross wages earned; total hours worked; net wages earned; and
18 all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages
19 and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly
20 rate.

21 26. Because Defendants did not record the time Plaintiffs and members of the Classes spent
22 working off-the-clock and deducted time from their meal periods that were short (and therefore time
23 for which they should have been paid), Defendants did not list the correct amount of gross wages and
24 net wages earned by Plaintiffs and members of the Class in compliance with Labor Code sections
25 226(a)(1) and 226(a)(5), respectively.

26 27. For the same reason, Defendants failed to accurately list the total number of hours
27 worked by Plaintiffs and members of the Classes and failed to list the applicable hourly rates of pay
28 in effect during the pay period and the corresponding accurate number of hours worked at each hourly

1 rate. Defendants also failed to provide compliant wage statements because total hours worked is not
2 provided on wage statements.

3 28. Because Defendants failed to provide the correct net and gross wages earned,
4 applicable rates of pay, and number of total hours worked on wage statements, Plaintiffs and members
5 of the Classes have been prevented from verifying, solely from information on the wage statements
6 themselves, that they were paid correctly and in full. Instead, Plaintiffs and members of the Classes
7 have had to look to sources outside of the wage statements themselves and reconstruct time records to
8 determine whether in fact they were paid correctly and the extent of underpayment, thereby causing
9 them injury.

10 29. Defendants' stores have space in them to allow for the presence and use of a seat or
11 stool by Plaintiffs and class members.

12 30. Defendants did not provide Plaintiffs and other class members with seats or stools in
13 reasonable proximity to their work areas to allow them to use seats when it would not interfere with
14 the performance of their duties for times when they were not engaged in active duties that require
15 standing. In other words, to the extent Plaintiffs and class members engaged in duties in which the
16 nature of the work required standing, Defendants denied them the use of seats nearby during lulls in
17 their work duties and would threaten them with termination if they saw them sitting on tables during
18 work hours even when no customers were in the store. Moreover, Defendants did not inform Plaintiffs
19 and other class members of their rights to a seat or stool under California law.

20 31. Defendants willfully failed to pay Plaintiffs and members of the Classes who are no
21 longer employed by Defendants the earned and unpaid wages set forth above, including but not limited
22 to, sick pay wages, overtime wages, minimum wages, and/or meal/rest period premiums, either at the
23 time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

24 32. During the class period, Defendants had a company-wide policy of requiring Plaintiffs
25 and members of the classes to use their personal cellphones for job-related duties, including scheduling
26 and communicating with management. However, Defendants failed to reimburse them for these costs.
27 Instead, Defendants passed these operating costs off onto Plaintiffs and members of the classes.

28 ***Facts Regarding Willfulness***

1 33. Plaintiffs are informed and believe, and based thereon allege, that Defendants are and
2 were advised by skilled lawyers, other professionals, employees with human resources background
3 and advisors with knowledge of the requirements of California wage and hour laws and that at all
4 relevant times, Defendants knew or should have known, that the Plaintiff Class Members, including
5 Plaintiffs, were entitled to receive one hour of pay at the employee's regular rate of compensation for
6 each day that a meal and rest period was not provided and were and are entitled to receive pay for all
7 hours worked, accurate itemized wage statements, and pay in a timely manner.

8 ***Unfair Business Practices***

9 34. Defendants have further engaged in, and continue to engage in, unfair business
10 practices in California by practicing, employing and utilizing the unlawful employment practices and
11 policies outlined above.

12 35. As a direct result of the wage and hour violations herein alleged, Plaintiffs and
13 members of the Plaintiff Class have suffered, and continue to suffer, substantial losses related to the
14 use and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in seeking
15 to compel Defendants to perform their obligations under state law, all to Plaintiffs' and the Plaintiff
16 Class members' respective damage in amounts according to proof at the time of trial.

17 ***Plaintiffs' Exhaustion of Administrative Remedies***

18 36. Plaintiffs have complied with the procedures for bringing suit specified in Labor Code
19 section 2699.3.

20 37. By letter dated October 31, 2023, required notice by Plaintiff Adam Joy was provided
21 to the Labor and Workforce Development Agency ("LWDA") and Defendants, of the specific
22 provisions of the Labor Code alleged to have been violated, including the facts and theories to support
23 the alleged violations.

24 38. By letter dated February 3, 2023, required notice by Plaintiff Daija Walker was
25 provided to the LWDA and Defendants, of the specific provisions of the Labor Code alleged to have
26 been violated, including the facts and theories to support the alleged violations.

27 39. More than sixty-five (65) days have passed since the date the Plaintiffs' notices were
28 mailed to Defendants and the LWDA, and Plaintiffs have received no response from the LWDA

1 indicating that it plans to investigate.

2 40. Accordingly, Plaintiffs have satisfied the administrative prerequisites under California
3 Labor Code Section 2699.3(a) to recover civil penalties against Defendant for violations of California
4 Labor Code identified in this First Amended Complaint.

5 **CLASS ACTION ALLEGATIONS**

6 41. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

7 42. Plaintiffs bring this action on behalf of themselves and all others similarly situated as
8 a class action, pursuant to California *Code of Civil Procedure* §382. The classes which Plaintiffs seek
9 to represent are composed of, and defined as follows:

10 **Plaintiff Class**

11 All individuals who are or previously were employed by Defendants in
12 California and classified as non-exempt at any time during the Class
13 Period. (The Class Period is defined as the period of time from
14 November 1, 2019 to May 27, 2024).

15 **Terminated Sub Class**

16 All members of the Plaintiff Class whose employment ended during the
17 Class Period (The Class Period is defined as the period from four years
18 prior to the filing of this action through and including the date judgment
19 is rendered in this matter).

20 (collectively “Plaintiff Class” or “Class Members”)

21 43. Plaintiffs are informed and believe, and on that basis allege, that during the class period
22 thousands of class members have been employed by Defendants as non-exempt employees in the State
23 of California. Because so many persons have been employed by Defendants in this capacity, the
24 members of the Plaintiff Class are so numerous that joinder of all members is impossible and/or
25 impracticable.

26 44. Common questions of law, in fact, exist as to all members of the Plaintiff Class and
27 predominate over any questions affecting solely individual members of the Plaintiff Class. Among
28

the questions of law and fact, that are relevant to the adjudication of class members claims are as follows:

- a. Whether Plaintiffs and Class Members are subject to and entitled to the benefits of California wage and hour statutes;
- b. Whether Defendants maintained accurate records of the hours worked by employees;
- c. Whether Defendants had a standard policy of not providing proper meal breaks to Plaintiffs and members of the Plaintiff Class;
- d. Whether Defendants unlawfully and/or willfully failed to provide Plaintiffs and members of the Plaintiff Class with true and proper wage statements upon payment of wages, in violation of California *Labor Code* §226;
- e. Whether Defendants unlawfully and/or willfully failed to compensate employees for all hours worked;
- f. Whether Defendants unlawfully/or willingly failed to timely pay Plaintiffs and the Terminated Sub Class upon termination;
- g. Whether Plaintiffs and members of the Plaintiff Class sustained damages, and if so, the proper measure of such damages, as well as interest, penalties, costs, attorneys' fees, and equitable relief;
- h. Whether Defendants failed to minimize indoor heat and failed to adopt standards that minimize heat-related illness and injury among workers; and
- i. Whether Defendants' conduct as alleged herein violates the Unfair Business Practices Act of California, *Bus. & Prof. Code* § 17200, *et seq.*

45. The claims of the named Plaintiffs are typical of the claims of the members of the Plaintiff Class. Plaintiffs and the members of the Plaintiff Class sustained losses, injuries and damages arising from Defendant's common policies, practices, procedures, protocols, routines, and rules which were applied to other class members as well as Plaintiffs. Plaintiffs seek recovery for the same type of losses, injuries, and damages as were suffered by other members of the proposed class.

46. Plaintiffs are adequate representatives of the proposed classes because they re

1 members of the class, and their interests do not conflict with the interests of the members he seeks to
2 represent. Plaintiffs have retained competent counsel, experienced in the prosecution of complex class
3 actions, and together Plaintiffs and their counsel intend to prosecute this action vigorously for the
4 benefit of the classes. The interests of the Class Members will fairly and adequately be protected by
5 Plaintiffs and their attorneys.

6 47. A class action is superior to other available methods for the fair and efficient
7 adjudication of this litigation since individual litigation of the claims of all Class Members is
8 impracticable. It would be unduly burdensome to the courts if these matters were to proceed on an
9 individual basis, because this would potentially result in hundreds of individuals, repetitive lawsuits.
10 Further, individual litigation presents the potential for inconsistent or contradictory judgments, and
11 the prospect of a “race to the courthouse,” and an inequitable allocation of recovery among those with
12 equally meritorious claims. By contrast, the class action device presents far fewer management
13 difficulties, and provides the benefit of a single adjudication, economics of scale, and comprehensive
14 supervision by a single court.

15 48. The various claims asserted in this action are additionally or alternatively certifiable
16 under the provisions of the California *Code of Civil Procedure* § 382 because:

- 17 a. The prosecution of separate actions by hundreds of individual class members
18 would create a risk of varying adjudications with respect to individual class
19 members, thus establishing incompatible standards of conduct for Defendants,
20 and
21 b. The prosecution of separate actions by individual class members would also
22 create the risk of adjudications with respect to them that, as a practical matter,
23 would be dispositive of the interest of the other class members who are not a
24 party to such adjudications and would substantially impair or impede the ability
25 of such non-party class members to protect their interests.

26 49. Plaintiffs hereby incorporate each and every allegation contained above and reallege
27 said allegations as if fully set forth herein.
28

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY FOR ALL HOURS WORKED**

3 **(By Plaintiffs and the Members of the Plaintiff Class Against Defendants)**

4 50. Plaintiffs incorporate herein by reference the allegations set forth above.

5 51. At all times relevant herein, which comprise the time period not less than four (4) years
6 preceding the filing of this action, Defendants were required to compensate their hourly employees
7 for all hours worked upon reporting for work at the appointed time stated by the employer, pursuant
8 to the Industrial Welfare Commission Orders and California *Labor Code* §§ 200, 226, 1197, and 1198.

9 52. For at least the four (4) years preceding the filing of this action, Defendants failed to
10 compensate employees for all hours worked. Defendants implemented policies that actively prevented
11 employees from being compensated for all time worked by subjecting employees to off the clock
12 work, at meal breaks, and upon completion of the shift.

13 53. Under the above-mentioned wage order and state regulations, Plaintiffs and the
14 Plaintiff Class are entitled to recover compensation for all hours worked, but not paid, for the four (4)
15 years preceding the filing of this action, in addition to reasonable attorney's fees and costs of suit in
16 accordance with California *Labor Code* § 218.5, and penalties pursuant to California *Labor Code*
17 §203 and 206.

18 54. Pursuant to a uniform policy originated by Defendants, all hourly employees are
19 subject to some off the clock work for opening and closing stores and disabling and enabling the
20 security alarms. Additionally, employees would also have to communicate off the clock in regard to
21 scheduling of shifts.

22 55. Defendants did not compensate their hourly non-exempt employees for all the minutes
23 that they worked as described above, including but not limited to the time that the employees were
24 subject to the control and direction of Defendant; and/or the time that the employees were suffered or
25 permitted to work.

26 56. Defendants have knowingly and willfully refused to perform their obligations to
27 compensate Plaintiffs and the Plaintiff Class for all wages earned and all hours worked, in violation
28 of state law. As a direct result, Plaintiffs and the Plaintiff Class have suffered, and continue to suffer,

1 substantial losses related to the use and enjoyment of such wages, lost interest on such wages, and
2 expenses and attorney's fees in seeking to compel Defendants to fully perform their obligation under
3 state law, in accordance with Plaintiffs' and the Plaintiff Class's respective damage amounts according
4 to proof at time of trial.

5 57. Defendants committed such actions alleged knowingly and willfully, with the wrongful
6 and deliberate intention of injuring Plaintiffs and the Plaintiff Class, from improper motives
7 amounting to malice, and in conscious disregard of Plaintiffs' and the Plaintiff Class's rights.

8 58. Plaintiffs and the Plaintiff Class are thus entitled to recover nominal, actual,
9 compensatory, punitive, and exemplary damages in amounts according to proof at the time of trial.

10 59. As a proximate result of the above-mentioned violations. Plaintiffs and the Plaintiff
11 Class have been damaged in an amount according to proof at time of trial.

12 **SECOND CAUSE OF ACTION**

13 **UNPAID OVERTIME**

14 **(By Plaintiffs and Members of the Putative Class Against Defendants)**

15 60. Plaintiffs incorporate herein by reference the allegations set forth above.

16 61. At all times relevant herein, which comprise of the time period not less than four (4)
17 years preceding the filing of this action, Defendants were required to compensate their hourly
18 employees for all overtime hours worked.

19 62. California Labor Code sections 510 and 1198 and the applicable Industrial Welfare
20 Commission ("IWC") wage order require employers to pay employees working more than eight (8)
21 hours in a day or more than forty (40) hours in a workweek at the rate of one-and-one-half (1 ½) times
22 the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty
23 (40) hours in a workweek. The applicable IWC wage order further provides that employers are
24 required to pay employees working more than twelve (12) hours in a day overtime compensation at a
25 rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all
26 remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary
27 bonuses and incentive pay.

28 63. Defendants willfully failed to pay all overtime wages owed to Plaintiff and members

1 of the Class. During the relevant time period, Plaintiffs and members of the Class were not paid
2 overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of
3 twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they
4 worked were not recorded as alleged above.

5 64. Defendants knew, or should have known, that as a result of company-wide practices and/or
6 policies, prevents Plaintiff and members of the Class from earning overtime, Plaintiffs and members of
7 the Class were performing assigned duties off-the-clock before and after their shifts, and were suffered or
8 permitted to perform work for which they were not paid. Because Plaintiffs and members of the Class
9 worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-
10 clock work qualified for overtime premium pay. Therefore, Plaintiffs and members of the Class were not
11 paid overtime wages for all of the overtime hours they actually worked.

12 65. Defendants' failure to pay Plaintiffs and members of the Class the balance of overtime
13 compensation, as required by California law, violates the provisions of Labor Code sections 510 and 1198.
14 Plaintiffs and members of the Class are entitled to recover civil penalties, attorney's fees, costs, and interest
15 thereon.

16 **THIRD CAUSE OF ACTION**

17 **NON-COMPLIANT MEAL BREAKS IN VIOLATION OF**

18 **CAL. LABOR CODE §§200, 226.7, 512**

19 **(By Plaintiffs and the Members of the Plaintiff Class Against Defendants)**

20 66. Plaintiffs incorporate herein by reference the allegations set forth above.

21 67. For at least the four (4) years preceding the filing of this action, Defendants failed to
22 provide meal breaks as required by law.

23 68. California *Labor Code* § 226.7(a) provides that: "No employer shall require any
24 employee to work during any meal or rest period mandated by an applicable order of the Industrial
25 Welfare Commission."

26 69. California *Labor Code* § 512 provides that: "An employer may not employ an
27 employee for a work period of more than five hours per day without providing the employee with a
28 meal period of not less than 30 minutes, except that if the total work period per day of the employee

1 is no more than six hours, the meal period may be waived by mutual consent of both the employer and
2 employee.”

3 70. The applicable Wage Order Section 11(D) states “If an employer fails to provide an
4 employee a meal period in the applicable provisions of this order, the employer shall pay the employee
5 one (1) hour of pay at the employee’s regular rate of compensation each day that the meal period is
6 not provided.”

7 71. Throughout the Class Period, Plaintiffs and the members of the Plaintiff Class
8 consistently worked over five (5) hours per work period, and therefore, were entitled to a meal period
9 of not less than thirty (30) minutes prior to exceeding five (5) hours of employment.

10 72. Defendants failed to pay Plaintiffs and the Class members the full statutory penalty for
11 all non-compliant meal periods.

12 73. At all times relevant to this Complaint, each Defendants failed, and have continued to
13 fail, to timely provide Plaintiffs and the members of the Plaintiff Class with meal periods.

14 74. Thus, throughout the Class Period, Defendants regularly:

- 15 a. Failed to provide timely, 30-minute uninterrupted meal periods during which
16 Plaintiff and the members of the Plaintiff Class were relieved of all duty for each
17 five (5) hours of work;
- 18 b. Failed to pay Plaintiffs and the members of the Plaintiff Class one (1) hour of pay
19 at their regular rate of compensation for each workday that a meal period was not
20 permitted.
- 21 c. Failed to provide Plaintiffs and the members of the Plaintiff Class with a second
22 meal period of not less than thirty (30) minutes during which they are relieved of
23 all duty before working more than ten (10) hours per day.

24 75. Specifically, Plaintiffs and Plaintiff Class members’ meal breaks were routinely non-
25 compliant by being interrupted or taken late.

26 76. As a direct and proximate result of the acts and/or omissions of Defendants, Plaintiffs
27 and the members of the Plaintiff Class have been deprived of meal period wages due in amounts to
28 be determined at trial.

1 77. Defendants' conduct described herein violates the Industrial Welfare Commission
2 Order and California *Labor Code* §§ 226, 226.7, 512, and 1198.

3 **FOURTH CAUSE OF ACTION**

4 **NON-COMPLIANT REST BREAKS**

5 **(By Plaintiffs and Members of the Putative Class Against Defendants)**

6 78. Plaintiffs hereby incorporate by reference each and every one of the allegations
7 contained in the preceding paragraphs as if the same were fully set forth herein.

8 79. Labor Code sections 226.7, 516, and 1198, and the applicable IWC wage order require
9 employers to provide rest periods and to pay an employee one (1) additional hour of pay at the
10 employee's regular rate for each workday that a meal or rest period is not provided. Labor Code section
11 226.7 provides that no employer shall require an employee to work during any rest period mandated
12 by an applicable order of the IWC. The applicable IWC wage order provides that "[e]very employer
13 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in
14 the middle of each work period" and that the "rest period time shall be based on the total hours worked
15 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless
16 the total daily work time is less than three and one-half (3 ½) hours.

17 80. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and Class
18 Members were entitled to a paid rest period of not less than ten (10) minutes without duty for each
19 and every four (4) hours or major fraction thereof worked during the workday. Yet, rest breaks were
20 infrequently given as described above and Defendants required Plaintiffs and members of the classes
21 to forego the first rest break in lieu of a longer rest break later.

22 81. Thus, Defendants failed to provide Plaintiffs and Class Members with rest periods
23 required by Labor Code sections 226.7, 512, and 516, IWC wage order section 11 and categorically
24 failed to pay any and all rest period wages due.

25 82. Plaintiffs and Class Members seek damages pursuant to Labor section 226.7(b) and the
26 applicable IWC wage order section 11(D), in the amount of one additional hour of pay at the regular
27 rate for each work day that the rest period is/was not provided or provided late to Plaintiffs and any
28 member of the Class, the cumulative sum of which is to be determined at trial.

1 83. Therefore, Plaintiffs and members of the Plaintiff Class are entitled to compensation
2 for Defendants' failure to provide rest periods, plus interest, attorneys' fees, expenses, and costs of
3 suit pursuant to Labor Code section 226.7(b) and the applicable wage order.

4 **FIFTH CAUSE OF ACTION**

5 **FAILURE TO FURNISH AN ACCURATE ITEMIZED WAGE STATEMENT IN**

6 **VIOLATION OF CAL. LABOR CODE § 226**

7 **(By Plaintiffs and the Members of the Plaintiff Class Against Defendant)**

8 84. Plaintiffs hereby re-allege and incorporate by reference as though set fully forth herein,
9 the allegations contained above.

10 85. California *Labor Code* § 226(a) sets forth reporting requirements for employers when
11 they pay wages, as follows: "[e]very employer shall ... at the time of each payment of wages, furnish
12 his or her employees ... an accurate itemized statement in writing showing (1) gross wages earned; (2)
13 total hours worked by the employee.... (5) net wages earned ... (8) the name and address of the legal
14 entity that is the employer... (9) all applicable hourly rates in effect during the pay period and the
15 corresponding number of hours worked at each hourly rate by the employee." (Emphasis added.)
16 Section (e) provides: "An employee suffering injury as a result of a knowing and intentional failure
17 by an employer to comply with subdivision (a) shall be entitled to recover the greater of all actual
18 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
19 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate
20 penalty of four thousand dollars (\$4000), and shall be entitled to an award of costs and reasonable
21 attorney's fees."

22 86. Defendants failed to accurately report the gross wages earned and the net wages earned
23 by Plaintiff and the Class Members on their wage statements.

24 87. Defendants failed to accurately represent the total hours worked by Plaintiffs and Class
25 members in that all hours worked are not accurately reflected on their wage statements, as a result of
26 failing to compensate Plaintiffs and members of the Plaintiff Class for time spent "off-the-clock" and
27 as a result of unlawful meal and rest breaks.

1 88. These wage statement violations are due to Defendants' failure to accurately
2 compensate Plaintiffs and other Class Members for all time worked, and for meal break violations.

3 89. Plaintiffs and Class members were damaged by these failures because, among other
4 things, the failures hindered Plaintiffs and Class members from determining the amounts of wages
5 actually owed to them.

6 90. Plaintiffs and Class Members request recovery of California *Labor Code* § 226(e)
7 penalties according to proof, as well as interest, attorneys' fees and costs pursuant to California *Labor*
8 *Code* § 226(e), in a sum as provided by the Labor Code and/or other statutes.

9 91. WHEREFORE, Plaintiffs request relief as hereinafter provided.

10 **SIXTH CAUSE OF ACTION**

11 **FAILURE TO PAY WAGES AT TIME OF**

12 **TERMINATION IN VIOLATION OF CAL. LABOR CODE §§ 201-203**

13 **(By Plaintiffs and Members of the Terminated Sub Class Against Defendant)**

14 92. Plaintiffs re-allege and incorporate all preceding paragraphs as though fully set forth
15 herein.

16 93. At all times, relevant herein, Defendants were required to pay their employees all
17 wages owed in a timely fashion during and at the end of their employment, pursuant to California
18 *Labor Code* §§ 201-203.

19 94. As a pattern and practice, Defendants regularly failed to pay Plaintiffs and the members
20 of the Terminated Sub Class their final wages pursuant to California *Labor Code* §§ 201-203, and
21 accordingly owe waiting time penalties pursuant to California *Labor Code* § 203.

22 95. The conduct of Defendants and its agents and managerial employees as described
23 herein was willful, and in violation of the rights of Plaintiffs and the individual members of the
24 Terminated Sub Class.

25 96. Plaintiffs are informed and believe, and based thereon allege, that Defendants' willful
26 failure to pay wages due and owing them upon separation from employment results in a continued
27 payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiffs and
28 Class Members who have separated from employment are entitled to compensation pursuant to

California *Labor Code* § 203.

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE SUITABLE SEATING

(By Plaintiffs and Members of the Putative Class Against Defendants)

97. Plaintiffs re-allege and incorporate all preceding paragraphs as though fully set forth herein.

98. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. Labor Code section 1198 requires that “the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful.”

99. The IWC states that section 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby* citing IWC, 1976 Wage orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Ibid*. However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under section 14(B) during “lulls in operation.” *Ibid*.

100. Defendants did not provide Plaintiffs and members of the Class with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing, such as when customers did not need assistance or where such duties could be performed using a chair or stool.

101. As a result of Defendants’ company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Plaintiffs and members of the Class were forced to stand during shifts and denied seats. Defendants’ failure to provide suitable seating to Plaintiff and members of the Class violates Labor Code section

1 1198 and the applicable IWC Wage order section 14(B).

2 102. Plaintiffs and members of the Class are therefore entitled to recover civil penalties,
3 attorney's fees, costs, and interest thereon, and seek injunctive relief to bring Defendants into
4 compliance with California's seating requirements, pursuant to Labor Code section 1194.5.

5 **EIGHTH CAUSE OF ACTION**

6 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

7 **(By Plaintiffs and Members of the Putative Class Against Defendants)**

8 103. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth
9 herein.

10 104. Labor Code section 2802 requires employers to pay for all necessary expenditures and
11 losses incurred by the employee in the performance of his or her job. The purpose of Labor Code
12 section 2802 is to prevent employers from passing off their cost of doing business and operating
13 expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th
14 1137, 1144.

15 105. The applicable IWC wage order provides that: "[w]hen tools or equipment are required
16 by the employer or are necessary to the performance of a job, such tools and equipment shall be
17 provided and maintained by the employer, except that an employee whose wages are at least two (2)
18 times the minimum wage provided herein may be required to provide and maintain hand tools and
19 equipment customarily required by the trade or craft."

20 106. During the Class Period Defendants had a company-wide policy requiring Plaintiffs
21 and members of the Classes to use their personal cellphones for work-related duties including
22 scheduling.

23 107. Defendants failed to reimburse them for these costs. Defendants could have provided
24 Plaintiff and members of the Classes with the actual tools for use on the job. Alternatively, Defendants
25 could have reimbursed employees for the costs. Instead, Defendants passed these operating costs off
26 onto Plaintiff and members of the Classes.

27 108. Thus, Defendants have, and continue to have, a company-wide policy and/or practice
28 of not reimbursing employees for expenses necessarily incurred in violation of Labor Code section

1 2802.

2 109. Plaintiffs and members of the Classes are entitled to recover civil penalties, attorney's
3 fees, costs, and interest thereon.

4 **NINTH CAUSE OF ACTION**

5 **VIOLATIONS OF CALIFORNIA**

6 **BUSINESS AND PROFESSIONS CODE SECTION 17200, et seq.**

7 **(By Plaintiffs and the Members of the Plaintiff Class Against Defendant)**

8 110. Plaintiffs re-allege and incorporate all preceding paragraphs as though fully set forth
9 herein.

10 111. Section 17200 of the California *Business and Professions Code* prohibits any unlawful,
11 unfair or fraudulent business act or practice.

12 112. Plaintiffs bring this cause of action in a representative capacity on behalf of the general
13 public and the persons affected by the unlawful and unfair conduct described herein. Plaintiffs and
14 members of the Plaintiff Class have suffered, and continue to suffer, injury in fact and monetary
15 damages because of Defendants' actions.

16 113. The actions by Defendants as herein alleged amount to conduct which is unlawful and
17 a violation of law. As such, said conduct amounts to unfair business practices in violation of California
18 *Business and Professions Code* § 17200, et seq.

19 114. Defendants' conduct as herein alleged has damaged Plaintiffs and the members of the
20 Plaintiff Class by denying them wages due and payable, by failing to provide proper meal breaks, and
21 by failing to pay all wages due in a timely manner at the time of termination (for the Terminated Sub
22 Class). Defendants' actions are thus substantially injurious to Plaintiffs and the members of the
23 Plaintiff Class, causing them injury in fact and loss of money.

24 115. Because of such conduct, Defendants have unlawfully and unfairly obtained monies
25 due to the Plaintiffs and the members of the Plaintiff Class.

26 116. All members of the Plaintiff Class can be identified by reference to payroll and related
27 records in the possession of the Defendants. The amount of wages due to Plaintiffs and members of
28 the Plaintiff Class can be readily determined from Defendants' records. The Class Members are

entitled to restitution of monies due and obtained by Defendants during the Class Period as a result of Defendants' unlawful and unfair conduct.

117. During the Class Period, Defendants committed, and continues to commit, acts of unfair competition as defined by § 17200, *et seq.*, of the *Business and Professions Code*, by and among other things, engaging in the acts and practices described above.

118. Defendants' course of conduct, acts, and practices in violation of the California law as mentioned in each paragraph above constitutes a separate and independent violation of § 17200, *etc.*, of the *Business and Professions Code*.

119. The harm to Plaintiffs and the members of the Plaintiff Class of being wrongfully denied lawfully earned and unpaid wages outweighs the utility, if any, of Defendants' policies and practices and, therefore, Defendants' actions described herein constitute an unfair business practice or act within the meaning of *Business and Professions Code* § 17200.

120. Defendants' conduct described herein threatens an incipient violation of California's wage and hour laws, and/or violates the policy or spirit of such laws, or otherwise significantly threatens or harms competition.

121. Defendants' course of conduct described herein further violates California *Business and Professions Code* § 17200 in that it is fraudulent, improper, and unfair.

122. The unlawful, unfair, and fraudulent business practices and acts of Defendants as described herein-above have injured Plaintiff and members of the Plaintiff Class in that they were wrongfully denied the timely and full payment of wages due to them.

TENTH CAUSE OF ACTION

Civil Penalties Pursuant to PAGA (Labor Code §§ 2698, et seq.)

(On Behalf of All Aggrieved Employees Against Defendants)

123. Plaintiffs re-allege and incorporate all preceding paragraphs as though fully set forth herein.

124. At all times set forth herein, the Private Attorneys General Act of 2004 (PAGA, California Labor Code §§ 2698-99) applied to Defendant's employment of Plaintiff and the proposed Class Members.

1 125. At all times set forth herein, California Labor Code § 2699(a) has provided that any
2 provision of law under the California Labor Code that provides for a civil penalty to be assessed and
3 collected by the Labor and Workforce Development Agency (LWDA) for violations of the California
4 Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved
5 employee on behalf of himself and other current or former employees pursuant to procedures outlined
6 in California Labor Code § 2699.3.

7 126. At all times set forth herein, the PAGA has also provided that for the violation of any
8 Labor Code provision that does not itself contain a civil penalty, there are established civil penalties
9 of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each
10 aggrieved employee per pay period for each subsequent violation. Cal. Lab. C. § 2699(f).

11 127. A civil action under PAGA may be brought by an “aggrieved employee,” any person
12 that was employed by the alleged violator and against whom one or more of the alleged violations was
13 committed.

14 128. Defendants have been committing, and continue to commit, violations of the California
15 Labor Code, including, but not limited to:

- 16 a. California *Labor Code* §§ 1194, 510, 1197, 1197.1, 1198, by failing to pay all wages
17 owed;
- 18 b. California *Labor Code* § 226, by failing to provide the information required with each
19 payment of wages;
- 20 c. California *Labor Code* §§ 201-204, by failing to pay all wages when due and by
21 willfully failing to make timely payment of the full wages due to workers who quit or
22 have been discharged;
- 23 d. California *Labor Code* § 226.7 by failing to provide proper meal and rest breaks
24 mandated by law;
- 25 e. California *Labor Code* §2802 for failing to reimburse employees for necessary
26 business expenses;
- 27 f. California *Labor Code* § 1198 and California Code of Regulations, Title 8, Section
28 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section

11070(14) for failing to provide suitable seating;

g. California *Labor Code* §§ 210, 218, 221, 227.3, 246, 512, 558(a)(1)(2)

129. Plaintiffs were employed by Defendants and the alleged violations have been committed against them during their time of employment and they are, therefore, aggrieved employees. Plaintiffs and other employees are “aggrieved employees” as defined by California Labor Code §2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

130. Pursuant to California Labor Code § 2699.3, aggrieved employees, including Plaintiff, may pursue a civil action arising under the PAGA after the following requirements have been met:

- a. The aggrieved employee shall give written notice (hereinafter “Employee’s Notice”) to the LWDA and the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations;
- b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violations sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code §2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

131. On November 1, 2023, Plaintiff Adam Joy provided written notice to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

132. On February 9, 2023, Plaintiff Daija Walker provided written notice to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

133. More than 65 calendar days have passed since the date notice was provided to the

1 LWDA and Defendants. Accordingly, Plaintiffs have satisfied the administrative prerequisites under
2 California Labor Code Section 2699.3(a) to recover civil penalties against Defendants for violations
3 of California Labor Code identified in this First Amended Complaint.

4 134. Accordingly, Plaintiffs and the other aggrieved employees are entitled to and seek to
5 recover civil penalties for Defendants' violations of the Labor Code during the applicable limitations
6 period.

7 135. Pursuant to California Labor Code Section 2699(g), Plaintiffs, on behalf of themselves
8 and the other aggrieved employees, is entitled to an award of reasonable attorneys' fees and costs.

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs and Class Members pray for judgment as follows:

- 12 1. An order that the action be certified as a class action;
- 13 2. An order that counsel for Plaintiff be appointed class counsel;
- 14 3. For restitution of all monies due to Plaintiffs and the members of the Plaintiff Class
15 and disgorgement of all profits from the unlawful business practices of Defendant;
- 16 4. For compensatory damages;
- 17 5. For penalties pursuant to California *Labor Code* §§ 200, 226, 226.7, 226.3. 2699;
- 18 6. For interest accrued to date;
- 19 7. For costs of suit and expenses incurred herein pursuant to California *Labor Code*
20 §§ 226, 1194, 2699(g)(1);
- 21 8. For reasonable attorneys' fees pursuant to California *Labor Code* §§ 218.5, 226,
22 1194, and 2699(g)(1); and,
- 23 9. A declaratory judgment that Defendants have knowingly and intentionally violated the
24 following provisions of law:
 - 25 a. California *Labor Code* §§ 1194, 510, by failing to pay all wages owed;
 - 26 b. California *Labor Code* § 226, by failing to provide the information required
27 with each payment of wages;
 - 28 c. California *Labor Code* §§ 201-203, by failing to pay all wages when due and

1 by willfully failing to make timely payment of the full wages due to workers who quit
2 or have been discharged;

3 d. California *Labor Code* § 226.7 by failing to provide proper meal and rest breaks
4 mandated by law;

5 e. California *Labor Code* §2802 for failing to reimburse employees for necessary
6 business expenses;

7 f. California *Labor Code* § 1198 for failing to provide suitable seating;

8 g. California *Business & Professions Code* §§ 17200-08by violating the
9 provisions set forth herein above.

10 10. For all such other and further relief that the Court may deem just and proper.

11 DATED: April 24, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP**

14 By: /s/Norman B. Blumenthal
Norman B. Blumenthal

16 Attorneys for Plaintiffs

17 DATED: April 24, 2024

**BRADLEY/GROMBACHER LLP
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20 By: /s/Marcus Bradley
Marcus J. Bradley
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24 Attorneys for Plaintiffs

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable as a matter of right.

DATED: April 24, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP**

By: /s/Norman B. Blumenthal
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