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As an individual and on behalf of all others similarly situated

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF ALAMEDA**

12 ANTONIO DE LEON, as an individual on
behalf of himself and on behalf of all others
13 similarly situated,

14 Plaintiff,

15 v.

16 SERVICE WEST, INC., a California
17 corporation; and DOES 1-100, inclusive,

18 Defendants.
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ELECTRONICALLY FILED
Superior Court of California
County of Alameda
09/12/2023

Chad Finke, Executive Officer / Clerk of the Court

By: D. Drew Deputy

Case No.: 23CV028511

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. **Recovery of Unpaid Minimum Wages
and Liquidated Damages**
2. **Recovery of Unpaid Overtime Wages**
3. **Failure to Provide Meal Periods or
Compensation in Lieu Thereof**
4. **Failure to Provide Rest Periods or
Compensation in Lieu Thereof**
5. **Failure to Furnish Accurate Itemized
Wage Statements**
6. **Failure to Timely Pay All Wages Due
Upon Separation of Employment**
7. **Failure to Reimburse Business Expenses**
8. **Unfair Competition and**
9. **Violation of the Private Attorneys
General Act of 2004**

DEMAND FOR JURY TRIAL

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

6 **JURISDICTION AND VENUE**

7 1. This court possesses original subject matter jurisdiction over this matter. Venue is
8 proper in the County of Alameda pursuant to California Code of Civil Procedure section 395.5
9 because DEFENDANTS transact business within this judicial district, DEFENDANTS employed
10 PLAINTIFF to work in this judicial district and some of the acts, omissions, and conduct alleged by
11 PLAINTIFF herein occurred in this this judicial district. *See also Crestwood Behavioral Health,*
12 *Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a PAGA action is proper in any county
13 where the defendants committed Labor Code violations against some of its employees).

14 **THE PARTIES**

15 2. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
16 California and a citizen of the State of California. PLAINTIFF is currently employed by
17 DEFENDANTS in the State of California as a non-exempt employee.

18 3. PLAINTIFF was employed by DEFENDANTS in the State of California as a non-
19 exempt employee, from in or around March 2018 through the separation of his employment, in or
20 around April 2019, and subsequently employed by DEFENDANTS in the State of California as a
21 non-exempt employee, from in or around the beginning of November 2021 through the present. At
22 times during the relevant period, PLAINTIFF experienced breaks in employment longer than a
23 single pay period and was not timely paid all owed wages upon each discharge.

24 4. PLAINTIFF worked for DEFENDANTS as an installer, modular installer, modular
25 carpenter and/or similar title(s) at several California locations as assigned by DEFENDANTS,
26 including but not limited to, locations, warehouses, offices and/or facilities located in Mountain
27 View, California and Oakland, California. At times, PLAINTIFF worked in different positions
28 including but not limited to administrative positions while employed by DEFENDANTS.

5. DEFENDANTS are a California corporation that, at all relevant times, were authorized to do business within the State of California and are doing business in the State of California.

6. DEFENDANTS own, operate, or otherwise manage a commercial furniture installation, warehousing and logistics business.¹

7. The true names and capacities of the DOE Defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Doe Defendants when such identities become known.

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

JOINT LIABILITY

9. Under California law, the definition of the terms “to employ” are broadly construed under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3) to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control

¹ See <https://www.servicewest.com/> (Last visited on February 27, 2023).

1 was to reach situations in which multiple entities control different aspects of the employment
2 relationship. Supervision of the work, in the specific sense of exercising control over how services
3 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
4 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
5 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
6 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
7 California, applying a less stringent standard to what constitutes sufficient control by a business
8 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
9 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative
10 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
11 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
12 employment,” *Id.* at 875 [emphasis added].

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

20 11. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
21 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
22 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
23 across all of their locations/facilities and subjected all of the Class Members and Aggrieved
24 Employees to these same policies and practices regardless of the location(s) where they worked.
25 Among other things, PLAINTIFF is informed and believes that: (1) there is common ownership in,
26 and financial control, in DEFENDANTS’ companies, (2) DEFENDANTS utilize common
27 management, who have control over the day-to-day operations and employment matters, including
28 the power to hire and fire, set schedules, issue employee policies, and determine rates of

1 compensation across its locations in California; (3) DEFENDANTS utilize the same policies and
2 procedures for all California employees, including issuing the same employee handbooks and other
3 form agreements; (4) DEFENDANTS use at least some of the same Human Resources personnel
4 and attorneys to oversee employment matters; and, (6) DEFENDANTS share employees.

5 12. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
6 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Class Members
7 and Aggrieved Employees upon whose behalf PLAINTIFF brings these allegations and causes of
8 action, in that DEFENDANTS, exercised sufficient control over PLAINTIFF and the Class
9 Members and Aggrieved Employees' wages, hours and working conditions, and/or suffered or
10 permitted PLAINTIFF and the Class Members and Aggrieved Employees to work so as to be
11 considered the joint employers of PLAINTIFF and the Class Members and Aggrieved Employees.

12 13. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
13 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
14 time-keeping practices, meal and rest periods, reimbursement of business expenses and other
15 working conditions that were distributed to, and/or applied to PLAINTIFF and the Class Members
16 and Aggrieved Employees, and further that DEFENDANTS uniformly compensated and controlled
17 the wages of PLAINTIFF and the Class Members and Aggrieved Employees in a uniform manner.
18 DEFENDANTS collectively represented to PLAINTIFF and the Class Members and Aggrieved
19 Employees that each was an "at-will" employee of DEFENDANTS, and that DEFENDANTS
20 collectively retained the right to terminate PLAINTIFF's and Class Members and Aggrieved
21 Employees' employment with or without cause. Upon information and belief, DEFENDANTS
22 further collectively represented to PLAINTIFF and Class Members and Aggrieved Employees in
23 writing the details of their compensation, and the manner in which they were to take meal and rest
24 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
25 and the policies applicable to PLAINTIFF and Class Members and Aggrieved Employees by which
26 DEFENDANTS collectively would evaluate the wage rates of PLAINTIFF and Class Members and
27 Aggrieved Employees.

28 14. Thus, DEFENDANTS collectively exercised the right to control the wages, hours

1 and working conditions of PLAINTIFF and Class Members and Aggrieved Employees. As such,
2 DEFENDANTS collectively held the right to control virtually every aspect of PLAINTIFF's and
3 the Class Members and Aggrieved Employees' employment, including the instrumentality that
4 resulted in the illegal conduct for which PLAINTIFF seeks relief in this Complaint.

5 15. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
6 control over, applied the same policies and practices, and engaged in the same acts and omissions
7 with regard to the other Class Members and Aggrieved Employees.

8 **CLASS ALLEGATIONS**

9 16. PLAINTIFF brings this action on behalf of PLAINTIFF, and all others similarly
10 situated as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF
11 seeks to represent are defined as follows and referred to as the "Class" or "Class Members":
12

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

17 a. Numerosity. While the exact number of Class Members is unknown to
18 PLAINTIFF at this time, the Class is so numerous that the individual joinder of
19 all members is impractical under the circumstances of this case. PLAINTIFF is
20 informed and believes the Class consists of at least 100 individuals.

21 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
22 because common questions of law and fact predominate over individual issues.
23 Common questions include, but are not limited to, the following: (1) whether
24 DEFENDANTS understated hours worked and failed to pay all amounts due to
25 PLAINTIFF and the Class Members for wages earned, including minimum and
26 overtime wages, under California law; (2) whether DEFENDANTS provided

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

1 PLAINTIFF and the Class Members with all meal periods or premium payments
2 in lieu thereof in compliance with California law; (3) whether DEFENDANTS
3 provided PLAINTIFF and the Class Members with all rest periods or premium
4 payments in lieu thereof, in compliance with California law; (4) whether
5 DEFENDANTS provided PLAINTIFF and Class Members with accurate,
6 itemized wage statements in compliance with California law, displaying,
7 including but not limited to, the total hours worked during the pay period; (5)
8 whether DEFENDANTS timely paid PLAINTIFF and the Class Members all
9 wages due upon separation of employment; (6) whether DEFENDANTS failed
10 to reimburse PLAINTIFF and the Class Members for all business expenses; and
11 (7) whether DEFENDANTS violated California Business and Professions Code
12 sections 17200, *et seq.*

13 c. Ascertainable Class. The proposed Class is ascertainable as members can be
14 identified and located using information in DEFENDANTS' business, payroll
15 and personnel records.

16 d. Typicality. PLAINTIFF's claims are typical of the claims of the Class Members.
17 PLAINTIFF suffered a similar injury as members of the Class as a result of
18 DEFENDANTS' common practices regarding, *inter-alia*, failure to calculate
19 and pay all owed minimum and overtime wages, failure to provide proper meal
20 periods and rest periods or premium compensation in lieu thereof, failure to
21 provide accurate wage statements, failure to reimburse business expenses, and
22 failure to timely pay all wages due upon separation of employment.

23 e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the
24 Class Members. PLAINTIFF has no interests adverse to the interests of the other
25 Class Members. Counsel who represent PLAINTIFF are competent and
26 experienced in litigating similar class action cases and are California lawyers in
27 good standing. Counsel for PLAINTIFF have the experience and resources to
28 vigorously prosecute this case,

1 f. Superiority. A class action is superior to other available means for the fair and
2 efficient adjudication of this controversy since individual joinder of all members
3 of the class is impractical. Class action treatment will permit a large number of
4 similarly situated persons to prosecute their common claims in a single forum
5 simultaneously, efficiently, and without the unnecessary duplication of effort
6 and expense that numerous individual actions would engender. Furthermore, as
7 the damages suffered by each individual member of the Class may be relatively
8 small, the expenses and burden of individual litigation would make it difficult
9 or impossible for individual members of the Class to redress the wrongs done to
10 them, while an important public interest will be served by addressing the matter
11 as a class action. The cost to the court system of adjudication of such
12 individualized litigation would be substantial. Individualized litigation would
13 also present the potential for inconsistent or contradictory judgments. Finally,
14 the alternative of filing a claim with the California Labor Commissioner is not
15 superior, given the lack of discovery in such proceedings, the fact that there are
16 fewer available remedies, and the losing party has the right to a trial de novo in
17 the Superior Court.

18 **FACTUAL AND LEGAL ALLEGATIONS**

19 17. During the relevant period, PLAINTIFF, and each of the Class Members and
20 Aggrieved Employees worked for DEFENDANTS in the State of California. At all times referenced
21 herein, DEFENDANTS exercised control over PLAINTIFF and Class Members and Aggrieved
22 Employees, and suffered and/or permitted them to work.

23 18. PLAINTIFF was employed by DEFENDANTS in the State of California as a non-
24 exempt employee, from in or around March 2018 through the separation of his employment, in or
25 around April 2019, and subsequently employed by DEFENDANTS in the State of California as a
26 non-exempt employee, from in or around the beginning of November 2021 through the present.

27 19. PLAINTIFF worked for DEFENDANTS as an installer, modular installer, modular
28 carpenter and/or similar title(s). PLAINTIFF's job duties included but were not limited to,

1 performing installation and assembly of office furniture within DEFENDANTS' clients' facilities,
2 loading and unloading product from delivery trucks and/or trailers, performing site cleanups,
3 cleaning vehicles, tools and/or equipment, among other job duties. At times, PLAINTIFF worked
4 in an administrative position. PLAINTIFF worked for DEFENDANTS at several California
5 locations as assigned by DEFENDANTS, including but not limited to, locations, warehouses,
6 offices and/or facilities located in Mountain View, California and Oakland, California, including
7 but not limited to, from in or around the beginning of November 2021 through on or around
8 December 21, 2021, when PLAINTIFF went out on leave before returning to work in or around the
9 month of October 2022 to work for approximately at least one workweek during the month of
10 October 2022. At times during the relevant period, PLAINTIFF experienced breaks in employment
11 longer than a single pay period and was not timely paid all owed wages upon each discharge. At
12 times during the relevant period, PLAINTIFF regularly worked at least twelve (12) hours per day at
13 least five (5) days per week, including but not limited to, from on or around November 9, 2021
14 through on or around December 21, 2021.

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

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

24 22. Based on information and belief, DEFENDANTS implemented a policy and/or
25 practice of rounding meal period start and end times and/or automatically deducting at least thirty
26 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
27 PLAINTIFF and other Class Members and Aggrieved Employees were subject to DEFENDANTS'
28 control during purported meal periods and/or were otherwise not afforded lawful meal periods,

1 depriving PLAINTIFF and Class Members and Aggrieved Employees of all wages owed.

2 23. Based on information and belief, Class Members and Aggrieved Employees were
3 not paid for all hours worked due to DEFENDANTS' policy and/or practice of rounding time entries
4 or paying according to scheduled hours worked instead of actual time worked, and/or mandated off-
5 the clock work policies and/or practices. For example, PLAINTIFF and other Class Members and
6 Aggrieved Employees were required to complete pre-shift and post-shift off-the-clock work due in
7 part, to DEFENDANTS' failure to record the true shift start times and shift end times and failure to
8 provide any mechanism for PLAINTIFF and other Class Members and Aggrieved Employees to
9 record their true hours worked. For example, at times, rather than requiring PLAINTIFF to clock
10 in and out for his shifts and/or record hours worked in any manner, DEFENDANTS simply required
11 PLAINTIFF to sign off each day on a written sheet filled out by DEFENDANTS merely reflecting
12 that PLAINTIFF had worked his scheduled shift that day. Based on information and belief,
13 DEEFENDANTS applied this same policy and practice of payment according to scheduled hours
14 rather than actual hours worked to other Class Members and Aggrieved Employees, resulting in the
15 substantial underpayment of minimum wages owed to Class Members and Aggrieved Employees.

16 24. Moreover, DEFENDANTS' pay records, payroll registers and/or wage statements
17 issued to PLAINTIFF evidence rounding to the at least the nearest quarter, half and/or whole hour.
18 For example, DEFENDANTS' payroll register for PLAINTIFF for paycheck dated December 3,
19 2021, shows an exact 23.50 regular hours worked and precisely 8.00 overtime hours worked;
20 similarly, DEFENDANTS' payroll register for PLAINTIFF for paycheck dated December 10, 2021,
21 shows an exact 40.00 regular hours worked and precisely 28.00 overtime hours worked; similarly,
22 DEFENDANTS' payroll register for PLAINTIFF for paycheck dated December 17, 2021, shows
23 precisely 40.00 regular hours worked and precisely 20.00 overtime hours worked; likewise,
24 DEFENDANTS' payroll register for PLAINTIFF for paycheck dated December 23, 2021 shows
25 precisely 32.00 regular hours worked and precisely 24.50 overtime hours worked. Based on
26 information and belief, DEFENDANTS rounded PLAINTIFF's hours worked to at least the nearest
27 quarter, half and/or whole hour during most if not all pay periods during the Class Period. Based
28 on further information, DEFENDANTS also rounded other Class Members and Aggrieved

1 Employees total hours worked to at least the nearest quarter, half and/or whole hour, during most if
2 not all pay periods during the Class Period, resulting in the substantial underpayment of minimum
3 wages and overtime wages owed to Class Members and Aggrieved Employees.

4 25. Based on information and belief, DEFENDANTS did not compensate Class
5 Members and Aggrieved Employees for time spent donning and doffing personal protective
6 equipment, safety gear and/or uniforms/work clothing (e.g., hard hats, safety glasses/goggles, safety
7 vests and/or gloves) during meal periods, rest periods, before the start of a scheduled shift, and after
8 completing a scheduled shift, resulting in the underpayment of minimum wages owed to Class
9 Members and Aggrieved Employees.

10 26. Based on further information and belief, Class Members and Aggrieved Employees
11 were not paid for additional pre-shift and/or post-shift off-the-clock work and/or other work outside
12 their scheduled shift times, including but not limited to all time spent gathering, preparing,
13 maintaining, repairing and/or returning equipment/tools for work-related purposes and/or all time
14 spent performing site cleanups, cleaning and readying all vehicles, tools and/or equipment for the
15 next day's use and/or completing other work tasks.

16 27. Based on information and belief, on times during the Class Period, Class Members
17 and Aggrieved Employees were required to record their work hours electronically/using
18 DEFENDANTS' electronic timekeeping and/or computer time-keeping systems. Based on
19 information and belief, at times, DEFENDANTS' electronic time-keeping system (e.g.,
20 DEFENDANTS' *REALtime* timekeeping system) malfunctioned such that Class Members and
21 Aggrieved Employees were required to either reinitiate and/or otherwise troubleshoot the system
22 and/or wait for the system to boot prior to being able to clock in and/or were unable to clock in at
23 all for the start of their shifts and/or clock back in from meal periods, resulting in off-the-clock work
24 and the underpayment of wages owed to Class Members and Aggrieved Employees. Based on
25 information and belief, Class Members and Aggrieved Employees experienced the same issues
26 when clocking out for shifts and/or back in for meal periods. This time spent under DEFENDANTS'
27 control was not recorded and not compensated and resulted in unpaid minimum wages owed to
28 Class Members and Aggrieved Employees.

1 28. Based on information and belief, Class Members and Aggrieved Employees were
2 also required to complete off-the-clock work outside of scheduled shifts due to work-related phone
3 calls and/or messages they received to their phones and were required to respond to, including but
4 not limited to, communications from supervisors and/or other Class Members and Aggrieved
5 Employees regarding scheduling and/or other work tasks, resulting in the underpayment of wages
6 owed to Class Members and Aggrieved Employees. For example, PLAINTIFF consistently
7 received calls and/or messages from supervisors and/or other Class Members and Aggrieved
8 Employees regarding scheduling and/or other work tasks, including but not limited to, outside of
9 his scheduled shift times and/or during unpaid meal periods, resulting in the underpayment of
10 minimum wages owed to PLAINTIFF.

11 29. Based on information and belief, DEFENDANTS failed to pay Class Members and
12 Aggrieved Employees for time they were required to spend completing orientation, policy
13 questionnaires, training, and/or time spent completing the onboarding process including but not
14 limited to reviewing various documents and policies provided by DEFEDANTS. Based on
15 information and belief, this work time was completed off-the-clock and was not compensated.

16 30. Based on further information and belief, DEFENDANTS implemented a time-
17 rounding system that as applied systematically deprived PLAINTIFF and other Class Members and
18 Aggrieved Employees of compensable time because the time-rounding system implemented by
19 DEFENDANTS would almost always, if not always, result in understating actual compensable work
20 time. For example, as explained above, DEFENDANTS' pay records and/or wage statements for
21 PLAINTIFF evidence rounding of PLAINTIFF's hours worked to at least the nearest quarter, half
22 and/or whole hour, resulting in the consistent underpayment of minimum wages owed to
23 PLAINTIFF. Based on information and belief, DEFENDANTS systemically rounded/shaved time
24 off other Class Members and Aggrieved Employees workdays to at least the nearest quarter, half
25 and/or whole hour during most if not all pay periods, resulting in the consistent underpayment of
26 minimum wages owed to those Class Members and Aggrieved Employees.

27 31. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
28 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal

1 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
2 minimum wages owed to PLAINTIFF and Class Members and Aggrieved Employees as well as
3 unpaid overtime wages for those Class Members and Aggrieved Employees who worked more than
4 eight (8) hours in a day and/or more than forty (40) hours in a week.

5 32. Based on information and belief, DEFENDANTS had actual and/or constructive
6 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to
7 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
8 underpayment of minimum wages owed to PLAINTIFF and other Class Members and Aggrieved
9 Employees, in violation of California's minimum and overtime wage laws.

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

14 34. Based on information and belief, DEFENDANTS failed to incorporate all non-
15 discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or
16 other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s),
17 resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other
18 Class Members and Aggrieved Employees.

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

28 36. Based on information and belief, other Class Members and Aggrieved Employees

1 were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had
2 their meal periods interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise
3 on duty due to commentary from supervisors, understaffing, the nature and constraints of their job
4 duties, and/or the need to meet DEFENDANTS' goals and expectations. For example, at times
5 during the Class Period, based on information and belief, PLAINTIFF and other Class Members
6 and Aggrieved Employees were not required to clock in and out for meal periods nor notate the
7 timing of them in any way, and were not provided with any mechanism with which to do so. Instead,
8 if and when meal periods were afforded, per DEFENDANTS' policy and practice, PLAINTIFF's
9 lead / supervisor would simply tell PLAINTIFF when to start and end his meal period. At times,
10 based on information and belief, Class Members and Aggrieved Employees' meal periods were cut
11 short and/or interrupted due to the need to respond to work communications, load/unload product
12 from delivery trucks/trailers, and/or complete other work tasks. Moreover, PLAINTIFF and other
13 Class Members and Aggrieved Employees were consistently suffered, permitted and/or required to
14 take their meal periods after the fifth hour of work. Based on information and belief,
15 DEFENDANTS did not pay Class Members and Aggrieved Employees any meal period premiums
16 for these late, shortened, interrupted and/or otherwise non-compliant meal periods.

17 37. Based on information and belief, DEFENDANTS implemented policies and/or
18 practices that failed to relieve Class Members and Aggrieved Employees of all duties and
19 DEFENDANTS' control during unpaid meal periods. For example, based on information and
20 belief, PLAINTIFF and other Class Members and Aggrieved Employees were required to monitor
21 work communication devices during unpaid purportedly off duty meal periods and at times were
22 required to respond to work-related calls/messages from supervisors and/or other Class Members
23 and Aggrieved Employees during unpaid purportedly off-duty meal periods.

24 38. Based on information and belief, DEFENDANTS required Class Members and
25 Aggrieved Employees to complete off-the-clock work prior to their scheduled shift time which
26 DEFENDANTS failed to take into account when scheduling meal periods for Class Members and
27 Aggrieved Employees. Based on information and belief, meal periods were late, in part due to
28 unaccounted pre-shift off-the-clock work.

1 39. Based on information and belief, despite DEFENDANTS' failure to provide lawful
2 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
3 times of PLAINTIFF's and other Class Members and Aggrieved Employees' meal periods and/or
4 automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal
5 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Class
6 Members and Aggrieved Employees did not receive lawful meal periods.

7 40. Moreover, per DEFENDANTS' uniform policy and practice, Class Members and
8 Aggrieved Employees who worked shifts of more than ten hours did not receive a second legally
9 compliant thirty (30) minute second meal period. For example, PLAINTIFF often worked shifts
10 lasting longer than ten (10) and/or twelve (12) hours but was not provided with any version of a
11 second meal period during those shifts.

12 41. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
13 other Class Members and Aggrieved Employees as to the timing and duty-free nature of meal
14 periods. Based on further information and belief, DEFENDANTS did not have a compliant written
15 meal period policy, nor did DEFENDANTS have any sort of compliant policy in practice.

16 42. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
17 records of the true start and end times of PLAINTIFF's and Class Members and Aggrieved
18 Employees' meal periods. Based on information and belief, to the extent meal period were recorded,
19 DEFENDANTS illegally rounded the start and end times of purported meal periods resulting in
20 PLAINTIFF and other Class Members and Aggrieved Employees not being paid for all time worked
21 as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th
22 58.

23 43. Based on information and belief, DEFENDANTS had actual and/or constructive
24 knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which
25 were free of DEFENDANTS' control owed to PLAINTIFF and other Class Members and Aggrieved
26 Employees, in violation of California's meal period laws.

27 44. DEFENDANTS failed to pay PLAINTIFF and other Class Members and Aggrieved
28 Employees, an additional hour of wages at their₁₅ respective regular rates of compensation for each

1 workday a lawful meal period was not provided. DEFENDANTS either failed to pay a meal period
2 premium at all for each workday a lawful meal period was not provided and/or failed to pay the
3 proper meal period premium for failure to incorporate all non-discretionary remuneration, including
4 but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into
5 the regular rate or compensation for purposes of calculating the owed meal period premium.

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

10 46. PLAINTIFF and other Class Members and Aggrieved Employees were not
11 adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest
12 periods per California law. Based on information and belief, DEFENDANTS had no policy in place
13 nor instruction as to the taking of duty-free rest periods.

14 47. Based on information and belief, DEFENDANTS did not have a have a compliant
15 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
16 practice.

17 48. Based on information and belief, Class Members and Aggrieved Employees' rest
18 periods were interrupted, cut short, on duty, restricted to work premises and/or late due to
19 understaffing, the nature and constraints of their job duties, and/or due to commentary from
20 supervisors/managers pressuring them to skip rest periods completely or otherwise take non-
21 compliant rest periods.

22 49. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
23 lasting longer than ten hours. For example, PLAINTIFF often worked shifts lasting longer than ten
24 (10) hours but was not provided with any version of a third rest period on those shifts during which
25 he worked more than ten (10) hours.

26 50. Based on information and belief, DEFENDANTS implemented policies and/or
27 practices that failed to relieve PLAINTIFF and other Class Members and Aggrieved Employees of
28 all duties and DEFENDANTS' control during rest periods. For example, based on information and

1 belief, PLAINTIFF and other Class Members and Aggrieved Employees were required to monitor
2 work communication devices during any rest periods and often had to respond to work
3 communications during any rest periods rendering those rest periods on duty and/or worked through
4 and thus noncompliant with California rest period law.

5 51. Based on information and belief, Class Members and Aggrieved Employees were
6 pressured to complete their work duties according to a designated schedule such that rest periods
7 were only taken once tasks were completed, and/or as time permitted. For example, due to the need
8 to complete assigned projects according to DEFENDANTS' designated schedule, meet
9 DEFENDANTS' deadlines and/or complete assigned work tasks, PLAINTIFF was rarely, if ever,
10 afforded the opportunity to take a ten-minute off-duty rest period during the Class Period.

11 52. Moreover, on information and belief, DEFENDANTS failed to authorize and permit
12 rest periods that were a "net" ten minutes in a suitable rest area and instead, to the extent rest periods
13 were provided at all, limited Class Members and Aggrieved Employees to only ten-minute rest
14 periods, requiring them to be back at their workstations within ten minutes of leaving, in violation
15 of California rest period law. DEFENDANTS' failure to communicate that the rest period is a net
16 ten minutes deprived Class Members and Aggrieved Employees of their rights to a full rest period,
17 as such as policy only relieves Class Members and Aggrieved Employees from their workstation
18 for ten minutes to travel to and from a rest area and be back at the workstation by the end of that ten
19 minutes.

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

27 54. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
28 provide PLAINTIFF and other Class Members and Aggrieved Employees with accurate wage

1 statements that complied with Labor Code section 226. As DEFENDANTS failed to provide
2 PLAINTIFF and Class Members and Aggrieved Employees with meal and rest periods that
3 complied with Labor section 226.7, the wage statements DEFENDANTS issued to PLAINTIFF and
4 Class Members and Aggrieved Employees failed and continue to fail to correctly set forth the gross
5 wages earned, the total hours worked, the net wages earned, and all applicable hourly rates in effect
6 during the pay period and the corresponding number of hours worked at each hourly rate by the
7 employee.

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

16 56. As described herein, based on information and belief, DEFENDANTS also failed to
17 incorporate all forms of non-discretionary compensation earned during the pay period into the
18 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
19 of overtime worked by PLAINTIFF and other Class Members and Aggrieved Employees.

20 57. Moreover, based on information and belief, DEFENDANTS issued wage statements
21 to PLAINTIFF and Class Members and Aggrieved Employees that further violate Labor Code
22 section 226(a), by among other things, failing to list the correct name and/or address of the legal
23 entity that is the employer.

24 58. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Class
25 Members and Aggrieved Employees that were not accurate and did not include all of the statutorily
26 required information. As such, DEFENDANTS violated Labor Code section 226.

27 59. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
28 information and belief, DEFENDANTS failed to timely pay Class Members and Aggrieved

1 Employees all wages that were due and owing upon termination or resignation. Based on
2 information and belief, DEFENDANTS untimely provide final wages to Class Members and
3 Aggrieved Employees without regard to the timing requirements of Labor Code sections 201-202.

4 60. Upon separation of employment, Class Members and Aggrieved Employees' final
5 paychecks were not timely provided and/or were not timely provided with all owed vacation pay
6 and/or paid time off. Moreover, PLAINTIFF's and Class Members and Aggrieved Employees' final
7 paychecks, once provided, did not include all wages owed as they were devoid of, including but not
8 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed
9 sick leave and/or paid time off wages at the properly accrued rates. For example, upon PLAINTIFF's
10 separation of employment during the Class Period, DEFENDANTS failed to timely pay
11 PLAINTIFF his final wages, including but not limited to all owed minimum wages, overtime wages,
12 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
13 accrued rates.

14 61. Moreover, DEFENDANTS failed to timely provide all owed wages immediately
15 upon discharge of employment. For example, based on information and belief, at times, PLAINTIFF
16 and other Class Members and Aggrieved Employees experienced breaks in their employment caused
17 by DEFENDANTS whereby PLAINTIFF and other Class Members and Aggrieved Employees
18 would not be called in for work for longer than a single pay period due to including but not limited
19 to DEFENDANTS' lack of work or lack of assignments. Such instances qualify as a discharge of
20 employment. Yet, DEFENDANTS failed to timely pay all owed wages at the end of such periods
21 of employment, in violation of including but not limited to Labor Code section 201-202.

22 62. These violations subject DEFENDANTS to civil penalties under Labor Code section
23 203, 210, and/or 256.

24 63. **Unreimbursed Business Expenses.** Based on information and belief,
25 DEFENDANTS required PLAINTIFF and Class Members and Aggrieved Employees to incur
26 business expenses as a direct consequence of the performance of their job duties without providing
27 reimbursement, in violation of Labor Code section 2802. Based on information and belief,
28 PLAINTIFF and Class Members and Aggrieved Employees were improperly required to provide

1 and maintain work tools that are supposed to be the responsibility of the employer.

2 64. Based on information and belief, DEFENDANTS shifted the costs of doing business
3 onto Class Members and Aggrieved Employees by requiring them to pay for business expenses,
4 including but not limited to, the use of Class Members and Aggrieved Employees' personal mobile
5 phone and data usage for work related purposes to receive and respond to work related messages
6 and/or phone calls, the purchase and/or maintenance of work tools/equipment and/or uniforms/work
7 clothing/protective equipment/safety gear (e.g., steel-toed/safety boots and/or gloves). For example,
8 PLAINTIFF was frequently required to respond to work-related calls and/or messages to his
9 personal cell phone/mobile device from his supervisors and/or other Class Members and Aggrieved
10 Employees regarding scheduling and/or other work tasks without receiving any/full reimbursement
11 from DEFENDANTS for this business use of his personal cell phone/mobile device. Based on
12 information and belief, other Class Members and Aggrieved Employees were also required to use
13 their personal cell phones/computers/devices for work without receiving any/full reimbursement
14 from DEFENDANTS for the business expenses they incurred in connection therewith.

15 65. Based on information and belief, at times, Class Members and Aggrieved Employees
16 were also required to purchase, repair and/or maintain hand tools, power tools and/or other tools
17 and/or equipment, such as but not limited to, wrenches, screw drivers, tape measurers, mallets,
18 utility knives, sockets and/or other tools/equipment they required to perform their assigned job
19 duties without receiving any and/or full reimbursement from DEFENDANTS for the expenses Class
20 Members and Aggrieved Employees incurred in connection therewith.

21 66. Based on information and belief, DEFENDANTS required Class Members and
22 Aggrieved Employees to use their personal vehicles to travel between DEFENDANTS' facilities
23 and/or locations and/or between job sites and/or otherwise use their personal vehicles for
24 DEFENDANTS' business purposes without providing any and/or full reimbursement to Class
25 Members and Aggrieved Employees for the use of their personal vehicles, including but not limited
26 to, cost of gas, mileage and wear and tear on the vehicle. Based on further information and belief,
27 DEFENDANTS further failed to reimburse Class Members and Aggrieved Employees at all and/or
28 in full for parking expenses incurred when parking at their assigned job sites.

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

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

69. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS engaged in these same herein described unlawful practices and that DEFENDANTS applied these same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

FIRST CAUSE OF ACTION

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

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

71. It is fundamental that an employer must pay its employees for all time worked. California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages. Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 223 prohibits the pay of less than a statutory or contractual wage scale. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage Commission (“IWC”) Wage Orders, an employer must pay its employees for all hours worked, up to 40 hours per week or 8 hours per day, at a regular rate no less than the mandated minimum wage. Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful. Labor Code section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not have the effect of reducing the agreed upon wage.

72. DEFENDANTS violated California's minimum wage laws by failing to compensate PLAINTIFF and the Class Members for all hours worked by virtue of, among other things,

1 DEFENDANTS' time rounding, automatic deduction for meal periods, off-the-clock/unpaid work
2 completed during meal periods, other pre-shift, post-shift and/or otherwise off-the-clock work,
3 and/or payment according to scheduled hours worked rather than actual hours worked (described
4 above), which resulted in the failure to account for all hours worked and thus the denial of minimum
5 wages.

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

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

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

17 **SECOND CAUSE OF ACTION**

18 **Recovery of Unpaid Overtime Wages**

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

20 76. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

21 77. Employees in California must be paid overtime, equal to one and one-half times the
22 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
23 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
24 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
25 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
26 consecutive day of work in a workweek, unless they are exempt.

27 78. PLAINTIFF and the Class Members worked overtime hours for which they were not
28 compensated by DEFENDANTS by virtue of, among other things, DEFENDANTS' time rounding,
automatic deduction for meal periods, off-the-clock/unpaid work completed during meal periods,

1 other pre-shift, post-shift and/or otherwise off-the-clock work, and/or payment according to
2 scheduled hours worked rather than actual hours worked (described above), which resulted in the
3 failure to account for all hours worked and thus the denial of all owed overtime wages.

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

8 80. Based on information and belief, DEFENDANTS further violated California's
9 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
10 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
11 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
12 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
13 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
14 other Class Members.

15 81. DEFENDANTS' conduct described above is in violation of California Labor Code
16 sections 510 and 1194 and all applicable Wage Orders.

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

19 **THIRD CAUSE OF ACTION**

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

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

22 84. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
23 DEFENDANTS were required to provide PLAINTIFF and the Class Members with one 30-minute
24 meal break free from all duties and employer control for all shifts longer than 5 hours, and a second
25 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be
26 waived, but only under the following circumstances: (1) if an employee's total work period in a day
27 is over five (5) hours but no more than six (6) hours, the required meal period may be waived by
28 mutual consent of the employer and employee, and (2) if an employee's total work period in a day

1 is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be
2 waived by mutual consent of the employer and employee, but only if the first meal period was not
3 waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their
4 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
5 done so.

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

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

16 87. Based on information and belief, DEFENDANTS had and continue to have a policy
17 of rounding the start and end times of employees' meal periods and/or automatically deducting thirty
18 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and Class
19 Members did not receive compliant meal periods.

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

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

26 90. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
27 periods in violation of California law and/or failed to pay the proper meal period premium for failure
28 to incorporate all non-discretionary remuneration including but not limited to, bonuses, shift

1 differential pay and/or other non-discretionary compensation into the regular rate or compensation
2 for purposes of calculating the owed meal period premium.

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

7 **FOURTH CAUSE OF ACTION**

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

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

10 93. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
11 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
12 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
13 "insofar as practicable." In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the
14 California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts
15 from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10
16 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029).
17 The rest period requirement obligates employers to permit and authorize employees to take off-duty
18 rest periods, meaning employers must relieve employees of all duties and relinquish control over
19 how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257.

20 94. If the employer fails to provide any required rest period, the employer must pay the
21 employee one hour of pay at the employee's regular rate of compensation for each workday the
22 employer did not provide at least one legally required rest period, pursuant to Labor Code section
23 226.7.

24 95. PLAINTIFF and the Class Members did not receive legally compliant, timely 10-
25 minute rest periods for every four (4) hours worked or major fraction thereof. As explained above,
26 any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject to
27 DEFENDANTS' control due to the nature and constraints of Class Members' job duties,
28 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Class Members to

1 skip rest periods completely or otherwise take non-compliant rest periods.

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

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

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

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

20 **FIFTH CAUSE OF ACTION**

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

22 100. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

26 (1) gross wages earned, (2) total hours worked by the employee,
27 except for any employee whose compensation is solely based on a
28 salary and who is exempt from payment of overtime under
subdivision (a) of Section 515 or any applicable order of the Industrial
Welfare Commission, (3) the number of piece-rate units earned and

1 any applicable piece rate if the employee is paid on a piece-rate basis,
2 (4) all deductions, provided that all deductions made on written orders
3 of the employee may be aggregated and shown as one item, (5) net
4 wages earned, (6) the inclusive dates of the period for which the
5 employee is paid, (7) the name of the employee and his or her social
6 security number, except that by January 1, 2008, only the last four
7 digits of his or her social security number or an employee
8 identification number other than a social security number may be
9 shown on the itemized statement, (8) the name and address of the
10 legal entity that is the employer, and (9) all applicable hourly rates in
11 effect during the pay period and the corresponding number of hours
12 worked at each hourly rate by the employee.

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

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

104. As explained above, wage statements issued by DEFENDANTS failed to list the
"total hours worked" by PLAINTIFF and Class Members (by virtue of rounded time entries,
automatic deduction for meal periods/failure to relieve Class Members of all duties and employer

1 control during unpaid meal periods, payment according to scheduled hours worked rather than actual
2 hours worked, and/or other off-the-clock work policies and practices all described in greater detail
3 *supra*), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on
4 a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v.*
5 *Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

6 105. Separately, and independent from the above allegations, DEFENDANTS issued
7 wage statements to PLAINTIFF and Class Members that violate Labor Code section 226(a)(8), by
8 failing to list the correct name and/or address of the legal entity that is the employer.

9 106. Based on information and belief, wage statements issued by DEFENDANTS failed
10 to list the inclusive dates of the pay period for which the Class Member is being paid.

11 107. DEFENDANTS' failure to accurately list all hours worked on all wage statements
12 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Class
13 Members over whether they received all wages owed to them.

14 108. As a result, PLAINTIFF and other Class Members have suffered injury as they could
15 not easily determine whether they received all wages owed to them and whether they were paid for
16 all hours worked.

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

20 110. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
21 Class Members with accurate, itemized wage statements.

22 111. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Class Members
23 have suffered injury. The absence of accurate information on their wage statements has prevented
24 earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
25 mathematical computations to determine the amount of wages owed, and will cause difficulty and
26 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
27 submission of inaccurate information about wages and amounts deducted from wages to state and
28 federal government agencies. As a result, PLAINTIFF and Class Members are required to

1 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
2 and pay records than if DEFENDANT had complied with its legal obligations.

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

7 113. Pursuant to California Labor Code § 226(h), PLAINTIFF and Class Members are
8 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
9 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
10 provide currently employed Class Members with inaccurate wage statements in violation of
11 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
12 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
13 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
14 with California Labor Code § 226(a).

15 114. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFF and Class
16 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable
17 attorneys' fees, and costs of suit.

18 **SIXTH CAUSE OF ACTION**

19 **Failure to Timely Pay All Wages Due Upon Separation of Employment** 20 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

21 115. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

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

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

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

7 119. Moreover, DEFENDANTS failed to timely provide all owed wages immediately
8 upon discharge of employment. For example, based on information and belief, at times, PLAINTIFF
9 and other Class Members experienced breaks in their employment caused by DEFENDANTS
10 whereby PLAINTIFF and other Class Members would not be called in for work for longer than a
11 single pay period due to including but not limited to DEFENDANTS' lack of work or lack of
12 assignments. Such instances qualify as a discharge of employment. Yet, DEFENDANTS failed to
13 timely pay all owed wages at the end of such periods of employment, in violation of including but
14 not limited to Labor Code section 201-202.

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

18 **SEVENTH CAUSE OF ACTION**
19 **Failure to Reimburse Business Expenses**
20 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

21 121. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

22 122. California law requires employers to indemnify their employees for all necessary
23 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
24 their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable
25 Wage Orders section 9(b). Furthermore, "for purposes of [section 2802], the term 'necessary
26 expenditure or losses' shall include all reasonable costs, including, but not limited to, attorneys' fees
27 incurred by the employee enforcing the rights granted by this section."

28 123. Among other things, under California law, when employees must use their personal
cellphones for work-related purposes, the employer must reimburse them for a reasonable

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

124. As described above, PLAINTIFF and the Class Members were improperly required to pay for business expenses that are legally the responsibility of the employer.

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

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

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

EIGHTH CAUSE OF ACTION

Unfair Competition

(By PLAINTIFF and the Class Members Against all DEFENDANTS)

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

129. DEFENDANTS' unlawful conduct alleged herein constitutes unfair competition within the meaning of California Business and Professions Code section 17200 *et seq.* This unfair conduct includes all unlawful conduct alleged herein, including but not limited to: DEFENDANTS' failure to pay minimum and overtime wages by virtue of its illegal policies and practices; DEFENDANTS' failure to authorize or permit, or provide, all required meal and rest periods or pay proper premiums in lieu thereof; DEFENDANTS' failure to furnish complete and accurate itemized wage statements; DEFENDANTS' failure to reimburse business expenses; DEFENDANTS' failure

1 to timely pay all wages owed upon separation of employment; and DEFENDANTS' failure to
2 provide paid sick leave (or paid time off in lieu thereof) at the properly accrued rates (due to,
3 including but not limited to, DEFENDANTS' failure to incorporate all non-discretionary
4 compensation into the sick pay calculation and failure to base the accrued sick leave on the correct
5 number of hours worked as a result of DEFENDANTS' time-rounding/auto deduction policies and
6 practices, payment according to scheduled hours worked and/or other off-the-clock work policies
7 and practices).

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

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

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

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

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NINTH CAUSE OF ACTION

**Violation of the Private Attorneys General Act of 2004
(By PLAINTIFF and the Aggrieved Employees Against All DEFENDANTS)**

134. PLAINTIFF incorporates all preceding paragraphs as if full alleged herein.

135. PLAINTIFF brings this action under the Private Attorneys General Act of 2004, Labor Code sections 2698, et seq., ("PAGA"), as a representative action on behalf of PLAINTIFF, the State of California and Aggrieved Employees, regarding violations of the California Labor Code as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

All current and former non-exempt employees that worked either directly or via a staffing agency for any of the DEFENDANTS at any location in California at any time from one year plus 65 days from the filing of the initial Complaint through the present ("PAGA Period").

136. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory limitations period and suffered one or more of the Labor Code violations set forth herein. Accordingly, PLAINTIFF seeks to recover on behalf of the State of California and all Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs. PLAINTIFF has standing to bring a PAGA cause of action on behalf of PLAINTIFF, the State of California, and all Aggrieved Employees, as PLAINTIFF was jointly employed by DEFENDANTS and is thereby affected by one or more of the alleged violations. See *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations committed by the employer - regardless of whether Plaintiff experienced all violations personally. *Id.* at 760-761.

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COMPLIANCE WITH PAGA'S NOTIFICATION REQUIREMENTS

137. On March 3, 2023, PLAINTIFF, through counsel, gave written notice by online filing with the California Labor and Workforce Development Agency ("LWDA") informing it that DEFENDANTS failed to comply with California's labor laws with regard to the allegations alleged in this Complaint ("PAGA Notice").

138. The LWDA did not provide notice of its intention to investigate DEFENDANTS'

1 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
2 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
3 Accordingly, PLAINTIFF has exhausted the administrative remedies as required by Labor Code
4 section 2699.3. Consequently, PLAINTIFF's right to file the instant lawsuit against DEFENDANTS
5 has duly accrued.

6 139. PLAINTIFF seeks to recover the PAGA civil penalties through a representative
7 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
8 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

9 140. From one year prior to PLAINTIFF's filing of the required PAGA notice with the
10 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated California
11 Labor Code sections, 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 432, 432.5, 432.7, 510,
12 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all
13 applicable Wage Orders.

14 141. As set forth above, DEFENDANTS have committed numerous violations of the
15 California Labor Code due to including but not limited to their failure to pay all owed minimum
16 wages and all owed overtime wages, failure to provide lawful meal and rest periods or compensation
17 in lieu thereof, failure to provide accurate wage statements, failure to reimburse business expenses,
18 and failure to pay all wages owed upon separation of employment as alleged above. PAGA penalties
19 are in addition to any other relief available under the Labor Code.

20 142. Additionally, DEFENDANTS have violated the following Labor Code sections and
21 provisions of the applicable Wage Order as to the PLAINTIFF and other Aggrieved Employees.

22 **Failure to Keep Accurate Records**

23 143. California Labor Code § 1174 requires employers to keep "accurate and complete"
24 payroll records showing, among other things, the hours worked daily by all non-exempt employees.
25 All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the
26 times during which all owed meal periods were provided each day.

27 144. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate
28 and complete records as required by law, including but not limited to the following records: total

1 daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other
2 Aggrieved Employees began and ended each work period, time records of meal periods, and
3 accurate itemized wage statements.

4 145. DEFENDANTS' failure to keep "accurate and complete" payroll records for
5 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
6 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
7 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
8 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
9 period during which the referenced statutes and Wage Order provisions were violated.³

10 **Failure to Produce Records in Violation of Labor Code §§ 226(b)-(c), 1198.5, and 432**

11 146. Time and Pay Records: Labor Code section 226 and all applicable IWC Wage
12 Orders, section 7 require that employers keep the following information on file for each employee
13 for a minimum of three years: The employee's dates of employment; the employee's hourly rates
14 and the corresponding number of hours worked by the employee at each hourly rate, when the
15 employee begins and ends each work period (including meal periods) and split intervals; total hours
16 worked by the employee; all deductions; gross wages earned; and net wages earned.

17 147. Section (b) of Labor Code section 226 further requires employers to "afford current
18 and former employees the right to inspect or receive a copy of records pertaining to their
19 employment upon reasonable request to the employer." Section (c) of Labor Code section 226
20 provides that, "an employer who receives a written or oral request to inspect or receive a copy of
21 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
22 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
23 violation of this subdivision is an infraction." An employer's failure to comply within this timeframe
24 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from

25 ³ Labor Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Labor
26 Code § 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the
27 employee was underpaid"); All applicable wage orders, § 20 (establishing that "[i]n addition to any other civil
28 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid") (emphasis added).

1 the employer. Lab. Code section 226(f).

2 148. Personnel Records. In addition to their right to time and pay records, employees, and
3 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
4 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code
5 section 432 further specifies that employers must furnish copies of all employment records bearing
6 the employee's signature. Labor Code section 1198.5 also requires that the file be made available
7 for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days
8 from the date the employer receives a written request." An employer's failure to comply within this
9 timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar
10 (\$750) penalty from the employer. Lab. Code section 1198.5(k).

11 149. Based on information and belief, DEFENDANTS fail to timely produce or make
12 available Aggrieved Employees' personnel records and/or payroll records when requested pursuant
13 to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations subject
14 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

15 **Statutory Wage Violations**

16 150. California Labor Code section 223 makes it unlawful for an employer to secretly pay
17 wages lower than required by statute while purporting to pay legal wages. As described above,
18 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
19 earned minimum and overtime compensation for all hours worked which resulted in the payment of
20 less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
21 statutory wages, including, but not limited to, minimum and overtime wages, to which they were
22 entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other Aggrieved
23 Employees lower wages than those they were entitled to while purporting that PLAINTIFF and
24 other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Aggrieved
25 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
26 Labor Code § 2699(f)-(g).

27 **Refusal to Make Payment**

28 151. Labor Code section 216 declares unlawful an employer's refusal to pay wages due

1 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
2 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
3 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
4 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
5 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
6 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
7 each Aggrieved Employee, for each pay period during which the statute provisions were violated.⁴

8 **Standard Conditions of Labor Violations**

9 152. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
10 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
11 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
12 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
13 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
14 minimum/overtime wages and other violations described herein result in separate violations of
15 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
16 1197.1 and 2699.

17 **Unlawful Deductions**

18 153. Labor Code section 221 prohibits an employer from “collect[ing] or receiv[ing] from
19 an employee any part of wages theretofore paid by said employer to said employee.” Based on
20 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees
21 paychecks during the relevant period, including but not limited to deducting costs of uniforms and/or
22 other business costs and/or deducting wages for purported overpayments from previous pay periods
23 and/or unlawfully deducting wages for negligently damaged property and/or deducting costs
24 advanced by DEFENDANTS from Aggrieved Employees’ final paychecks. Such a practice is in
25 violation of including but not limited to, Labor Code Sections 221-222 which subjects
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27 ⁴ Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

1 DEFENDANTS to civil penalties under Labor Code Section 2699.

2 154. Each violation results in a separate civil penalty, for each Aggrieved Employee, for
3 each pay period during which the statute provisions were violated. See Lab. Code §225.5
4 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
5 provided in this article, every person who unlawfully withholds wages due any employee in
6 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure
7 to pay each employee”).

8 **Sick Leave Violations**

9 155. DEFENDANTS violated California’s paid sick leave laws including, Labor Code
10 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
11 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
12 DEFENDANTS’ failure to account for actual hours worked (as explained above), and/or failure to
13 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but
14 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
15 compensation into the sick leave pay rate calculation.

16 156. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
17 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
18 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
19 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
20 Aggrieved Employees’ intelligent exercise of their paid sick leave.

21 157. But for this failure, PLAINTIFF and other Aggrieved Employees would have used
22 their paid sick leave at least prior to their respective separations, for as on several occasions
23 thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate
24 compensation.

25 158. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
26 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
27 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
28 were entitled to the maximum number of hours accruable.

1 159. Upon information and belief, DEFENDANTS failed and continue to fail to comply
2 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with
3 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
4 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
5 wages.

6 160. These practices violated California's sick leave laws, Labor Code section 245, *et seq.*

7 161. On information and belief, PLAINTIFF alleges that all of these practices were
8 experienced and continue to be experienced by other Aggrieved Employees.

9 162. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the
10 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
11 seeks injunctive relief, attorney's fees, declaratory relief, and penalties as permitted by law.

12 **Failure To Provide Supplemental Paid Sick Leave**

13 163. Labor Code § 248.2 provides that all employers with 26 or more employees are
14 required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental
15 Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related.
16 DEFENDANTS violated Labor Code § 248.2 by not providing PLAINTIFF and other Aggrieved
17 Employees with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information
18 and belief, DEFENDANTS failed to provide Supplemental Paid Sick Leave in 2022 in violation of
19 Labor Code section 248.6.

20 **Failure to Pay Vested Vacation/Paid Time Off**

21 164. California Labor Code section 227.3 provides that when an employer policy provides
22 for paid vacations and/or paid time off, and an employee is terminated without having taken off his,
23 her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the
24 employee's final rate in accordance with such contract of employment or employer policy respecting
25 eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time
26 off upon termination.

27 165. Based on information and belief, DEFENDANTS had and continue to have a
28 uniform policy and practice of failing to allow Aggrieved Employees to use their earned

1 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
2 to Aggrieved Employees upon separation of employment, in violation of California law, including
3 but not limited to, Labor Code section 227.3.

4 166. Under the provisions of PAGA and the above mentioned Labor Code sections,
5 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
6 245-248.6, 256, 432, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199,
7 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all interpretations of these
8 laws by California Courts and administrative bodies, as well as any other law that is enforceable
9 through PAGA, DEFENDANTS are liable for the following penalties:

- 10 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
11 relevant California Labor Code provisions listed herein only if permitted by the
12 PAGA statute, pursuant to Labor Code section 2699(a); and
13 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
14 violations without a civil penalty recoverable under the PAGA, all in the default
15 amounts provided by Labor Code section 2699(f).
16 c. The proper measure of penalties under PAGA is the number of violations,
17 whether those violations were committed as against PLAINTIFF or any
18 Aggrieved Employee, whether a party to this action or not.

19 167. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
20 PLAINTIFF is entitled to recover civil penalties, costs, and attorney's fees.

21 **PRAYER FOR RELIEF**

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

- 24 1. For an order that the action be certified as a class action;
25 2. For an order that PLAINTIFF be appointed as class representative;
26 3. For an order that counsel for PLAINTIFF be appointed as class counsel;
27 4. For compensatory damages according to proof;
28 5. For liquidated damages according to proof;

6. For penalties according to proof;
7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully withheld from PLAINTIFF and the Class Members;
8. For an order finding DEFENDANTS have engaged in unfair competition in violation of section 17200, *et seq.*, of the California Business and Professions Code;
9. For an order enjoining DEFENDANTS from further acts of unfair competition;
10. For pre-judgment interest as permitted by law;
11. For attorney's fees and costs reasonably incurred;
12. For civil penalties according to proof, including PAGA penalties (75% payable to the LWDA and 25% payable to Aggrieved Employees); and
13. For such other and further relief that the Court deems just and proper.

Dated: September 11, 2023

CROSNER LEGAL, PC

By: Samantha Smith
Samantha A. Smith
Attorneys for Plaintiff
ANTONIO DE LEON

DEMAND FOR JURY TRIAL

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

Dated: September 11, 2023

CROSNER LEGAL, PC

By: Samantha Smith
Samantha A. Smith
Attorneys for Plaintiff
ANTONIO DE LEON

PROOF OF SERVICE

ANTONIO DE LEON VS. SERVICE WEST, INC., et al.
Alameda County Superior Court Case No. 23CV028511

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 9440 Santa Monica Blvd., Ste. 301, Beverly Hills, CA 90210.

On June 14, 2023, I served true copies of the following document(s) described as

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT
on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

☒ BY ELECTRONIC TRANSMISSION. I transmitted copies of the above-referenced document(s) on the interested parties in this action by electronic transmission. Said electronic transmission was reported as complete and without error.

☐ BY FACSIMILE TRANSMISSION. I transmitted copies of the above-referenced document(s) on the interested parties in this action by facsimile transmission from (310) 510-6429. A transmission report was properly issued by the transmitting facsimile machine and the transmission was reported as complete and without error.

☐ BY UNITED STATES POSTAL SERVICE. I enclosed the documents in electronic pdf format and submitted them electronically into the mail provider, Letterstream, Inc.'s, online mail portal (letterstream.com) to be mailed addressed to the entities and/or persons listed in the Service List as set forth herein. I caused an envelope containing the documents to be placed for collection and mailing and to be mailed by First Class Mail, following our law firm and Letterstream, Inc.'s ordinary business practices. I am readily familiar with our business practices and the business practices of Letterstream, Inc. for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. Pursuant to that practice, the above-referenced document(s) were sealed in an envelope, with postage paid, and deposited with a post office, mailbox, sub-post office, substation, mail chute, or other facility or postal pick up/drop off regularly maintained by the United States Postal Service or an affiliate thereof, at or near Phoenix, Arizona.

☐ BY OVERNIGHT MAIL SERVICE. I enclosed the documents in electronic pdf format and submitted them electronically into the mail provider, Letterstream, Inc.'s, online mail portal (letterstream.com) addressed to the entities and/or persons listed in the Service List as set forth herein. I caused an envelope containing the documents to be placed for collection and mailing and to be mailed by Overnight Mail via Federal Express, following our law firm and Letterstream, Inc.'s ordinary business practices. I am readily familiar with our business practices and the business practices of Letterstream, Inc. for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with Federal Express, an express carrier, in Phoenix, Arizona, or delivered with any and all delivery fees to an authorized courier or driver authorized by the express service carrier to receive documents.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this

PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

1 Court at whose direction the service was made.

2 Executed on June 14, 2023, at Los Angeles, California.

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SERVICE LIST

ANTONIO DE LEON VS. SERVICE WEST, INC., et al.
Alameda County Superior Court Case No. 23CV028511

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