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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN**

BRANDYN COOPER, an individual, on
behalf of himself and all others similarly
situated,

Plaintiff,

v.

SAFEWAY INC, a Delaware corporation;
and DOES 1 through 10, Inclusive,

Defendants.

FILED

2024 SEP 23 PM 12: 25

STEPHAN L. ... CLERK

BY MIA STIPE

Case No.: STK-CV-UOE-2023-1882

CLASS ACTION

**SECOND AMENDED CLASS ACTION AND
REPRESENTATIVE ACTION COMPLAINT
FOR DAMAGES AND CIVIL PENALTIES**

DEMAND FOR JURY TRIAL

Assigned to: Hon. Robert Waters
Department: 11B

FILE BY FAX

1 Plaintiff BRANDYN COOPER (“Plaintiff”), by and through his attorneys, brings this action
2 on behalf of himself, and all other similarly situated non-exempt employees who are or were
3 employed in California by SAFEWAY INC. (“Safeway” or “Defendant”) and DOES 1 through 10,
4 inclusive between four years prior to the date of the filing of this action through the date of final
5 disposition of this action. Plaintiff hereby alleges, on information and belief, except for information
6 based on personal knowledge, which allegations are likely to have evidentiary support after further
7 investigation and discovery, as follows:

8 **INTRODUCTION**

9 1. This California-based class and representative action is brought on behalf of Plaintiff,
10 the Class¹ and all aggrieved employees because of Defendant’s systematic mistreatment of its
11 employees, in violation of California’s wage and hour laws.

12 2. Defendant operates distribution facilities throughout the state of California and
13 employs numerous employees at those distribution facilities.

14 3. Employees were required to work off-the-clock and were also not reimbursed for
15 required business expenses.

16 4. Defendant also failed to provide paid sick leave and paid COVID-19 supplemental paid
17 sick leave.

18 5. Additionally, Defendant failed to accurately calculate regular rates of pay. Defendant
19 regularly paid several types of bonuses, but failed to factor those bonuses into the regular rate of pay
20 for the purpose of calculating: overtime premium wages; missed meal and rest premium wages; sick
21 leave wages; and vacation pay wages.

22 6. Further, Defendant regularly failed to provide employees with proper meal breaks,
23 failed to authorize and permit legally compliant rest breaks, and failed to provide meal and rest break
24 premiums in lieu of such breaks.

25 7. Finally, Defendant failed to provide accurate wage statements and maintain adequate
26 records and failed to pay all wages owed upon termination of employment.

27 8. Defendant also violated the California quota laws by failing to provide employees with
28

¹ The “Class” is defined in paragraphs 60-63.

1 written descriptions of each quota and any potential adverse employment action that could result from
2 failure to meet the quota. Defendant also violated the quota laws by requiring employees to meet
3 quotas that prevented compliance with meal and rest periods and use of bathroom facilities, including
4 reasonable travel time to and from bathroom facilities, and by taking adverse employment actions
5 against employees, including termination, for failure to meet a quota that did not allow them to take
6 meal and rest periods and use the bathroom facilities, including reasonable travel time to and from
7 bathroom facilities, and for failure to meet a quota that had never been disclosed to them.

8 9. Upon information and belief, the above practices are uniform at all distribution facilities
9 in the State of California and are still ongoing.

10 10. In order to redress the harms suffered, Plaintiff, on behalf of himself and the Class,
11 brings claims associated with Defendant's violations of the California Labor Code and the applicable
12 IWC Wage Order, including: (1) failure to pay all minimum, regular rate and overtime wages for off-
13 the-clock work; (2) failure to pay all wages at legally sufficient rates; (3) failure to provide meal
14 periods in violation of Labor Code §§226.7 and 512; (4) failure to provide rest periods in violation of
15 Labor Code §226.7; (5) failure to reimburse for required business expenses; (6) failure to provide
16 accurate wage statements in violation of Labor Code §226; (7) failure to timely pay wages when due
17 at termination in violation of Labor Code §§201 and 202; (8) failure to comply with California quota
18 laws in violation of Labor Code § 2100 *et seq.*; and (9) violation of the Unfair Competition Law
19 ("UCL") pursuant to Business & Professions Code §17200, *et seq.*

20 11. Plaintiff also brings on behalf of himself and all other aggrieved employees, a claim
21 under the Private Attorneys General Act of 2004 as codified in Labor Code §§ 2698, *et seq.* ("PAGA")

22 **JURISDICTION AND VENUE**

23 12. This Court has jurisdiction over all causes of action asserted herein pursuant to the
24 California Constitution, Article VI, §10, because this case is a cause not given by statute to other trial
25 courts. The damages sought by Plaintiff totals more than this Court's jurisdictional minimum.

26 13. Plaintiff is a citizen of California because his domicile is in California.

27 14. This Court has personal jurisdiction over Defendant because Defendant has its principal
28 place of business in California, has conducted and continue to conduct substantial business in

1 California, employs numerous individuals in California, and has intentionally availed itself of the
2 laws and markets of California through the operation of its business in California.

3 15. Venue is proper in this Court because Defendant employs numerous individuals in
4 this county, including Plaintiff. Further, Plaintiff resides in this county, and a substantial portion of
5 the acts giving rise to this action occurred in this county.

6 **PARTIES**

7 **A. PLAINTIFF**

8 16. Plaintiff is an individual over the age of eighteen years, and at all times relevant herein
9 was and is, a resident of the County of San Joaquin in the State of California.

10 17. During the Class Period, Plaintiff worked at one of Defendant's distribution facilities
11 in Tracy, California. Plaintiff was employed by Defendant from in or around January 2022 through
12 in or around June 2022.

13 **B. DEFENDANT**

14 18. Defendant Safeway is a Delaware corporation with its principal place of business in the
15 State of California.

16 19. On information and belief, Defendant operates distribution facilities throughout the
17 State of California and employs numerous employees in those distribution facilities.

18 20. Based on information and belief, Defendant had the authority to, directly or indirectly,
19 or through an agent or other person, employ or exercise control over Plaintiff's and the Class's wages,
20 hours, and working conditions.

21 21. Based on information and belief, Defendant had knowledge of the wage-and-hour
22 violations alleged herein and had the power to prevent the violations from occurring. Having
23 knowledge of the wage-and-hour violations set forth in this Complaint, Defendant could have but
24 failed to prevent the violations from occurring.

25 22. Plaintiff does not know the true names and capacities of defendants sued herein as
26 DOES 1 through 10, and therefore sues these defendants by such fictitious names. Plaintiff will amend
27 this Complaint to allege the true names and capacities when they are ascertained.

28 23. Plaintiff believes and thereon alleges that each "Doe" defendant is responsible in some

1 manner for the occurrences herein alleged, and Plaintiff's injuries and damages as herein alleged are
2 directly, proximately and/or legally caused by such defendant and its acts.

3 24. Plaintiff is informed and believes and thereon alleges that the aforementioned DOES
4 are somehow responsible for the acts alleged herein as the agents, employers, representatives or
5 employees of the named Defendant, and in doing the acts herein alleged were acting within the scope
6 of their agency, employment or representative capacity of said named Defendant.

7 25. The tortious acts and omissions alleged herein were performed by Defendant's
8 management level employees. Defendant allowed and/or condoned a continuing pattern of unlawful
9 practices in violation of the California Labor Code, and has caused, and will continue to cause,
10 Plaintiff's economic damage in an amount to be proven at trial.

11 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

12 26. Safeway operates distribution warehouses throughout the State of California. Workers
13 at those warehouses are provided with lifts and are given assignments to complete. The assignments
14 consist of driving their lift up and down aisles in enormous warehouses, taking items off the shelves
15 and loading them onto pallets to be ultimately shipped to customers and/or retail stores.

16 **Off-the-clock Work**

17 27. Employees are also required to work time off-the-clock both before and after their
18 shifts.

19 28. Plaintiff and other Class members are required to be ready to start their assignments at
20 the starting time of their shift. If they are not ready, they are disciplined by Defendant.

21 29. Therefore, employees are required to arrive approximately one hour prior to their shifts
22 in order to claim a lift for the day and prepare it so they can start their assignments on time. However,
23 employees are not allowed to clock in until the start time of their shifts. This results in unpaid off-
24 the-clock work.

25 30. After the end of their shifts and before they can go home, employees are required to
26 stop their vehicles at a security checkpoint, so that security can randomly check vehicles to make sure
27 employees are not stealing.

28 31. Due to many employees leaving at the same time, employees spend at least 5 minutes

1 in line waiting for their turn to go through the security checkpoint, irrespective of whether they are
2 ultimately chosen for a random search.

3 **Failure to Accurately Calculate the Regular Rate of Pay and Therefore Failure to Pay all Wages**
4 **at Legally Required Rates**

5 32. Defendant regularly paid various types of bonuses.

6 33. However, Defendant failed to incorporate those bonuses into the appropriate
7 calculations of the regular rate of pay for: overtime premium wages; missed meal and rest period
8 wages; sick leave wages; and vacation wages.

9 **Meal Breaks**

10 34. Defendant utilizes a system in which the employee's workday is controlled by a headset
11 that they are required to wear. The headset provides the assignments and tracks the employee's
12 performance rate on the assignments.

13 35. Employees are given a limited amount of time to complete each assignment. If they do
14 not complete their assignments within the time allotted, they receive lower scores, are reprimanded
15 and can be terminated.

16 36. This headset system prevents employees from being able to take their meal and rest
17 breaks.

18 37. The headset system requires employees to state that they are taking a meal break in
19 order to pause the current assignment or avoid being assigned another assignment if the previous one
20 was complete. Once the employee notifies the headset that he or she would like to take a meal break,
21 the headset begins a 30- minute meal period countdown.

22 38. However, in order to clock out for the break, the employee must still clock out on a
23 time clock at the breakroom. It takes approximately 5 or more minutes to go to the break room and
24 the same amount of time to return after the break. Because an employee is required to take a 30-
25 minute meal break on the time clock, this results in the headset recording 40 minutes for a meal break
26 and the employee is penalized 10 minutes on his or her performance, due to this 10 minute
27 discrepancy between the headset and time-clock.

28 39. Because employees are counseled, written up and terminated for even small

1 performance rate issues, this results in employees not taking their breaks.

2 40. Upon information and belief, Defendant modifies the time records to reflect that a break
3 was taken when it was not.

4 41. Plaintiff and Class members are owed premiums for all of these missed meal periods.

5 **Rest Breaks**

6 42. For rest breaks, employees are allocated 15 minutes for each rest break.

7 43. When an employee wants to take a rest break, he or she informs the headset that he or
8 she would like to take a break. The headset begins counting the 15 minutes.

9 44. However, it takes the employee approximately 5 or more minutes each way to go to
10 and from either the restroom or the break room.

11 45. As a result, Plaintiff and Class members are only provided with approximately 5-minute
12 rest breaks.

13 46. Plaintiff and Class members are owed premiums for those missed rest periods.

14 **Failure to Comply with Quota Laws**

15 47. As described above, Defendant has and continues to maintain a system requiring
16 specific productivity metrics called a quota. Defendant uses an electronic means of monitoring the
17 productivity of Plaintiff and Class members. This quota made it impossible for Plaintiff and made
18 and continues to make it impossible for Class members to take proper meal and rest breaks and access
19 restrooms, including reasonable travel time to and from the restrooms, without being subject to
20 discipline.

21 48. Additionally, Defendant failed to provide employees with a written description of
22 applicable quotas and any potential adverse employment action that could result from failure to meet
23 the quota.

24 49. Furthermore, Defendant took adverse employment actions against Class members,
25 including termination, for failure to meet such a quota that did not allow them to take meal and rest
26 periods and use the bathroom facilities, including reasonable travel time to and from bathroom
27 facilities, and for failure to meet a quota that had never been disclosed to them as required by Section
28 2101.

1 **Paid Sick Leave and COVID-19 Supplemental Paid Sick Leave**

2 50. California Healthy Workplaces Healthy Families Act, ARTICLE 1.5. 'Paid Sick Days'
3 [sections §§ 245-249] requires employers to provide paid sick leave and COVID-19 supplemental
4 paid sick leave to employees.

5 51. Defendant failed to provide paid sick leave to Plaintiff and other aggrieved employees
6 in accordance with California law.

7 52. In failing to provide paid sick leave and COVID-19 supplemental paid sick leave,
8 Defendant also violated the requirement under Labor Code § 246(i) to provide with the employee
9 wage statements the number of hours earned and used at the appropriate and accurate rates.

10 **Unreimbursed Expenses**

11 53. Defendant also requires employees to purchase steel-toed boots which they must use
12 when working in the warehouses. Defendant does not reimburse them for the cost of these boots.

13 **Wage Statements**

14 54. Because of Defendant's failure to record all hours worked and failure to pay all wages
15 and premiums owed, the wage statements it issues to employees are incorrect.

16 55. The wage statements also do not accurately state the name and address of the employer.

17 **Termination of Employment**

18 56. When Plaintiff's employment with Defendant ended, Defendant failed to pay him all
19 money that he was owed, as a result of not paying him for off-the-clock work, not paying wages at
20 legally required rates and not paying meal and rest break premiums as alleged above.

21 57. Plaintiff is informed and believes that the above practices he experienced were not
22 unique to him but rather were companywide policies and practices at all distribution facilities in the
23 State of California and were suffered by all non-exempt employees.

24 58. Plaintiff is informed and believes that the unlawful wage and hour policies described
25 in this action are set centrally and are applicable through-out California.

26 59. Plaintiff is informed and believes that the unlawful wage and hour policies described
27 in this action are still ongoing.

28 **CLASS ACTION ALLEGATIONS**

1 60. Plaintiff brings this class action pursuant to CCP § 382, on behalf of the following
2 Class:

3 All Non-Exempt current and former employees of Defendant who were
4 employed at a distribution facility in California during the Class Period.

5 61. “Non-Exempt” means employees that are not exempt from California wage and hour
6 laws pursuant to Labor Code §515(a); 8 Cal. C. Regs. §11010, et seq.

7 62. “Class Period” means the period from four years prior to the filing of this action through
8 the date of final disposition of this action.

9 63. Excluded from the Class are Defendant, its officers and directors, families and legal
10 representatives, heirs, successors, or assigns and any entity in which Defendant has a controlling
11 interest, and any Judge assigned to this case and their immediate families.

12 64. Plaintiff reserves the right to amend or modify the definition of the Class to provide
13 greater specificity and/or further division into subclasses or limitation to particular issues.

14 65. **Numerosity:** The members of the Class are so numerous that joinder of all members is
15 impracticable. The exact number or identification of class members is presently unknown, but it is
16 believed that there are several thousand class members in the Class. The identity of the Class Members
17 is ascertainable and can be determined based on records maintained by Defendant.

18 66. **Predominance of Common Questions:** There are multiple questions of law and fact
19 common to the Class that will predominate over questions affecting only individual class members.
20 The questions of fact that are common to the Class members and predominate over questions that
21 may affect individual Class members, include, whether Defendant:

- 22 a) Failed to pay Plaintiff and members of the Class all of their earned wages and
23 compensation;
- 24 b) Failed to authorize and permit Plaintiff and members of the Class to take all rest
25 periods to which they were entitled by the applicable laws;
- 26 c) Failed to provide Plaintiff and members of the Class the opportunity to take all meal
27 periods to which they were entitled by the applicable laws;
- 28 d) Failed to track Class members’ meal periods;

- e) Failed to pay Plaintiff and members of the Class one hour of pay at their regular rate of compensation for each earned rest period not permitted and/or each earned meal period not provided;
- f) Failed to timely pay Plaintiff and members of the Class all their earned wages and compensation;
- g) Failed to furnish to Plaintiff and members of the Class accurate, itemized wage statements compliant with Labor Code §226;
- h) Failed to timely pay Plaintiff and members of the Class all of their earned wages, compensation and benefits immediately upon termination of their employment or within seventy-two hours of them quitting;
- i) Failed to reimburse employees for the purchase of steel-toed boots; and/or
- j) Failed to comply with California quota laws.

67. The questions of law that are common to the Class members and predominate over questions that may affect individual Class members, include:

- a) Whether the provisions of the Labor Code include the employer's obligation to pay all earned wages and to pay all such earned wages at the time of the termination of a member of the Class's employment;
- b) Defendant's legal obligation to permit members of the Class to take paid rest periods of ten (10) consecutive, uninterrupted minutes for shifts of at least four hours or major fraction thereof and a second rest period for shifts in excess of six hours;
- c) Defendant's legal obligation to provide members of the Class the opportunity to take meal periods of thirty (30) consecutive, uninterrupted minutes for shifts in excess of five hours and a second meal period for shifts in excess of ten hours;
- d) The Class members' entitlement to one hour of pay at the members' regular rate of compensation for each paid ten (10) consecutive minute, uninterrupted, rest period that Defendant did not permit the Class members to take;
- e) The Class members' entitlement to one hour of pay at his/her regular rate of compensation for each thirty (30) consecutive minute, uninterrupted, meal period that

Defendant did not provide;

- f) The requirements for a wage statement to be compliant with Labor Code §226; and/or
- g) What remedies, including restitution, compensatory damages, statutory and civil penalties, additional wages and disgorgement of revenue, are available under California law to members of the Class who were not paid all earned wages, compensation and benefits; were not timely paid all earned minimum, regular and overtime wages, compensation and benefits; were not paid all wages and premium compensation earned at the time of the termination of their employment relationship with Defendant; were not provided lawful wage statements; were not permitted to take earned ten (10) minute rest periods; were not provided earned thirty (30) minute meal periods;

68. **Typicality:** Plaintiff's claims are typical of the claims of the Class because Plaintiff and all putative Class members were subject to, and affected by, Defendant's systemic policies and practices alleged herein.

69. **Adequacy:** Plaintiff is an adequate representative of the Class because he is a member of the Class and his interests do not conflict with the interests of the members of the Class he seeks to represent. Plaintiff is represented by experienced and competent Class Counsel. Class Counsel have litigated numerous class actions. Class Counsel intend to prosecute this action vigorously for the benefit of everyone in the Class. Plaintiff and Class Counsel can fairly and adequately protect the interests of all of the Members of the Class.

70. **Superiority:** The class action is superior to other available methods for fairly and efficiently adjudicating this controversy because individual litigation of Class members' claims would be impracticable and individual litigation would be unduly burdensome to the courts. Without the class action vehicle, the Class would have no reasonable remedy and would continue to suffer losses. Further, individual litigation has the potential to result in inconsistent or contradictory judgments. There is no foreseeable difficulty in managing this action as a class action and it provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

1 **FIRST CAUSE OF ACTION**

2 **Failure to Pay all Regular and Overtime Wages (Off-the-Clock Work)**

3 **[Cal. Labor Code §§ 200, 204, 510, 1194 & 1198]**

4 71. Plaintiff re-alleges and incorporates by reference each and every allegation contained
5 in the preceding and subsequent paragraphs as though fully set forth herein.

6 72. Labor Code section 1194(a) states “Notwithstanding any agreement to work for a lesser
7 wage, any employee receiving less than the legal minimum wage or the legal overtime compensation
8 applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount
9 of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's
10 fees and costs of suit.” Liquidated damages in an amount equal to the wages unlawfully unpaid and
11 interest thereon are provided for under Labor Code section 1194.2.

12 73. Labor Code section 1197 states “The minimum wage for employees fixed by the
13 commission or by any applicable state or local law, is the minimum wage to be paid to employees,
14 and the payment of a lower wage than the minimum so fixed is unlawful.”

15 74. Labor Code section 1197.1 (a) states “Any employer or other person acting either
16 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to
17 any employee a wage less than the minimum fixed by an applicable state or local law, or by an order
18 of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable
19 to the employee, and any applicable penalties imposed pursuant to Labor Code §203...”

20 75. As provided for in Section 1197.1(a)(1), for any initial violation that is intentionally
21 committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which
22 the employee is underpaid. For each subsequent violation for the same specific offense, two hundred
23 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
24 underpaid regardless of whether the initial violation is intentionally committed.

25 76. Labor Code section 1198 states "The maximum hours of work and the standard
26 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
27 conditions of labor for employees. The employment of any employee for longer hours than those
28 fixed by the order or under conditions of labor prohibited by the order is unlawful."

77. Section (B) of the “Minimum Wages” provision of the applicable IWC Wage Order states “Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission or otherwise.”

78. As set forth above, Defendant required Plaintiff and other Class members to work off-the-clock. Plaintiff and Class members regularly worked more than eight hours a day and more than 40 hours a week, however, Defendant did not compensate Plaintiff and the Class members for the time spent working for Defendant before and after they clocked out.

79. As such, Plaintiff and other Class members are owed wages for those unpaid hours.

80. Plaintiff and other Class members are entitled to recover from Defendant all of such unpaid regular pay, with pre-judgment interest, and reasonable attorneys' fees, and costs of suit pursuant to Labor Code § 1194.

SECOND CAUSE OF ACTION

Failure to Pay All Wages at Legally Sufficient Rates (Base Rate Calculations)

[Cal. Labor Code §§ 245-249, 226.7, 227.3, 510, 512]

81. Plaintiff re-alleges and incorporate by reference each and every allegation contained in the preceding and subsequent paragraphs as though fully set forth herein.

Failure to Pay Overtime Wages at Legally Sufficient Rates (Labor Code § 510):

82. Labor Code section 510 requires overtime be paid after 8 hours in a day at the rate of no less than one and one-half times the regular rate of pay for an employee. The applicable IWC Wage Order at item 20 provides for the same requirement.

83. Defendant failed to fully compensate Plaintiff and other members of the Class for all overtime wages they earned.

84. Specifically, Defendant failed to include the earned bonuses when calculating the regular rate of pay in order to calculate overtime compensation.

85. Plaintiff is informed and believes, and thereon alleges that the failure of Defendant to fully compensate Plaintiff and other members of the Class for overtime work was willful, purposeful, and unlawful and done in accordance with the policies and practices of Defendant's

1 operations.

2 86. As a proximate cause of the aforementioned violations, Plaintiff and other members
3 of the Class have been damaged in an amount according to proof at time of trial. Plaintiff and the
4 other members of the Class are entitled to recover the unpaid balance of wages owed, penalties,
5 including penalties available pursuant to California Labor Code §558, plus interest, reasonable
6 attorney fees and costs of suit according to the mandate of California Labor Code §§1194, et seq.

7 **Failure to Pay Rest and Meal Period Premium Wages at Legally Sufficient Rates (Labor Code**
8 **§§ 226.7, 512):**

9 87. Labor Code § 512(a) states, “An employer may not employ an employee for a work
10 period of more than five hours per day without providing the employee with a meal period of not
11 less than 30 minutes, except that if the total work period per day of the employee is no more than
12 six hours, the meal period may be waived by mutual consent of both the employer and employee.
13 An employer may not employ an employee for a work period of more than 10 hours per day without
14 providing the employee with a second meal period of not less than 30 minutes except that if the
15 total hours worked is no more than 12 hours, the second meal period may be waived by mutual
16 consent of the employer and the employee only if the first meal period was not waived.”

17 88. Section (A) of the “Meal Period” provision of the applicable IWC Wage Order states,
18 “No employer shall employ any person for a work period of more than five (5) hours without a meal
19 period of not less than 30 minutes, except that when a work period of not more than six (6) hours
20 will complete the day’s work the meal period may be waived by mutual consent of the employer
21 and the employee. An employer may not employ an employee for a work period of more than ten
22 (10) hours per day without providing the employee with a second meal period of not less than 30
23 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may
24 be waived by mutual consent of the employer and the employee only if the first meal period was not
25 waived. Unless the employee is relieved of all duty during a 30 minute meal period, the meal
26 period shall be considered and ‘on duty’ meal period and counted as time worked.” Section (D)
27 states “If an employer fails to provide an employee a meal period in accordance with the applicable
28 provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s

1 regular rate of compensation for each work day that the meal period is not provided.”

2 89. Labor Code § 226.7 states: “(b) An employer shall not require an employee to work
3 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
4 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
5 Health Standards Board, or the Division of Occupational Safety and Health.”

6 90. On July 15, 2021, the California Supreme Court held in *Ferra v. Loews Hollywood*
7 *Hotel, LLC*, (2021) 11 Cal. 5th 858, that the term “regular rate of compensation” under § 226.7(c) is
8 equivalent to the term “regular rate of pay” under Labor code § 510(a). Accordingly, the meal and
9 rest break premiums owed must be paid at the same rate as would be required under Labor Code §
10 510(a). On the rare occasions that Defendant actually paid meal break premiums, those premiums
11 were only paid at the basic hourly rate and did not account for any bonuses paid. Accordingly,
12 Defendant violated Labor Code § 226.7(c).

13 91. Because of the unlawful acts of Defendant, Plaintiff and other members of the Class
14 have been deprived of wages and other compensation, which is an amount resulting directly from
15 the acts complained of. Plaintiff and the other Class members are entitled to recover one additional
16 hour of pay at his or her regular rate of compensation for each workday that the meal period was not
17 provided, plus interest thereon and costs of suit in an amount to proven at or following trial of this
18 matter. Lab. Code §226.7(c); the applicable IWC Wage Order, ¶11(B).

19 **Failure to Pay Sick Leave at Legally Sufficient Rates (Cal. Labor Code §§ 245-249):**

20 92. Pursuant to the California Healthy Workplaces Healthy Families Act, ARTICLE 1.5.
21 ‘Paid Sick Days’ [sections §§ 245-249] requires employers to provide paid sick leave to employees.
22 Labor Code § 246(l)(1)-(2) mandates that sick leave be calculated in the same fashion that overtime
23 base rates are calculated for the pay period sick leave is used, or in a 90-day period in which the
24 sick leave is used. In either case, the rate should be calculated by dividing the sum of all wages by
25 total hours. However, Defendant refuses to include all wages earned (including bonuses) in the
26 calculations, and instead pays sick leave at the employee’s simple hourly rates, when it actually
27 does pay sick leave. Plaintiff and other class members are therefore owed compensation for these
28 improperly paid sick time hours.

1 93. In failing to pay the proper sick leave rate, Defendant also violated the requirement
2 under Labor Code § 246(i) to provide with the employee wage statements the number of hours
3 earned and used at the appropriate and accurate rates.

4 **Failure to Pay Vacation Pay at Legally Sufficient Rates (Cal. Labor Code §§ 227.3):**

5 94. Labor Code § 227.3 provides that “Unless otherwise provided by a collective-
6 bargaining agreement, whenever a contract of employment or employer policy provides for paid
7 vacations, and an employee is terminated without having taken off his vested vacation time, all
8 vested vacation shall be paid to him as wages at his final rate in accordance with such contract of
9 employment or employer policy respecting eligibility or time served; provided, however, that an
10 employment contract or employer policy shall not provide for forfeiture of vested vacation time
11 upon termination. The Labor Commissioner or a designated representative, in the resolution of any
12 dispute with regard to vested vacation time, shall apply the principles of equity and fairness.”

13 95. Plaintiff and certain Class members have either resigned from Defendant’s employ or
14 had their employment terminated by Defendant. At all relevant times, Defendant has had an
15 established written policy, practice, or agreement to provide paid vacation to its warehouse
16 employees employed in the State of California wherein employees receive additional compensation
17 in the form of vacation time, which they can use to take time off from work with compensation.
18 Upon resignation or termination, Defendant paid Plaintiff and the other Class members vested
19 vacation time at an hourly rate of pay that was lower than their final regular hourly rates of pay,
20 because Defendant failed to include earned commissions when calculating the regular rate of pay, in
21 violation of Labor Code § 227.3.

22 96. Plaintiff and other Class members are entitled to payment of their vested, but unused
23 vacation time compensation at the correct rate upon resignation or termination.

24 **THIRD CAUSE OF ACTION**

25 **Failure to Provide Meal Breaks or Compensation in Lieu Thereof**

26 **[Cal. Labor Code §§ 226.7 & 512]**

27 97. Plaintiff re-alleges and incorporates by reference each and every allegation contained
28 in the preceding and subsequent paragraphs as though fully set forth herein.

98. Pursuant to Labor Code § 512, no employer shall employ any person for a work period in excess of five (5) hours without providing a meal period of at least thirty (30) minutes. *See also* the applicable IWC Wage Order, item 11. During this meal period of no less than thirty (30) minutes, the employer must completely relinquish any and all control over the employee and the employee must not engage in any work-related activity for the employer. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040. If the employee performs any work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. *Id.* Additionally, California law does not permit an employer to employ an individual for a work period in excess of ten (10) hours without providing a second meal period of at least thirty (30) minutes. Labor Code § 512; the applicable IWC Wage Order, item 11. If the employer fails to provide an employee with a legally compliant meal period, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal period was not provided. Labor Code § 226.7; the applicable IWC Wage Order, item 11.

99. Plaintiff contends that as a policy, practice, guideline and/or procedure, Defendant failed to provide meal breaks to its employees. Specifically, Defendant set up its system such that an employee was penalized for trying to take a full 30-minute meal period. Therefore, employees were prevented from taking meal breaks. As such, Plaintiff and other Class members were not relieved of duty and were not provided legally adequate meal breaks.

100. Because of the unlawful acts of Defendant, Plaintiff and the other members of the Class have been deprived of wages and other compensation, which is an amount resulting directly from the acts complained of. Plaintiff and the other Class members are entitled to recover one additional hour of pay at his or her regular rate of compensation for each workday that the meal period was not provided, plus interest thereon and costs of suit in an amount to proven at or following trial of this matter. Lab. Code §226.7(c) and the applicable IWC Wage Order, ¶11(B).

101. Plaintiff and the other members of the Class are also entitled to attorneys' fees and costs pursuant to Labor Code § 218.5.

FOURTH CAUSE OF ACTION

1 **Failure to Authorize and Permit Rest Breaks or Compensation in Lieu Thereof**

2 **[Cal. Labor Code § 226.7]**

3 102. Plaintiff re-alleges and incorporates by reference each and every allegation contained
4 in the preceding and subsequent paragraphs as though fully set forth herein.

5 103. The applicable IWC Wage Order, item 12 requires employers to authorize and permit
6 off-duty rest periods during which an employee must be relieved of any and all work-related duties.
7 *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269. Additionally, a lawful off-duty
8 rest period is not provided where an employer fails to relinquish control over how employees spend
9 their time. *Id.* Under Labor Code § 226.7, an employer is required to pay an employee one (1)
10 additional hour of pay at the employee's regular rate of pay for each workday in which a lawful rest
11 period was not provided. *See also* the applicable IWC Wage Order.

12 104. As set forth above, Defendant consistently did not authorize and permit full 10-minute
13 off-duty rest breaks.

14 105. Because of the unlawful acts of Defendant, Plaintiff and the Class have been deprived
15 of wages, which is an amount resulting directly from the acts complained of. Plaintiff and other
16 members of the Class are entitled to recover one additional hour of pay at his or her regular rate of
17 compensation for each workday that the rest period was not permitted, plus interest thereon and
18 costs of suit in an amount to be proven at or following trial of this matter. *See*, the applicable IWC
19 Wage Order, ¶12(B).

20 106. Plaintiff and the other members of the Class are also entitled to attorneys' fees and costs
21 pursuant to Labor Code § 218.5.

22 **FIFTH CAUSE OF ACTION**

23 **Failure to Reimburse Expenses**

24 **[Cal. Labor Code § 2802]**

25 107. Plaintiff re-alleges and incorporates by reference each and every allegation contained
26 in the preceding and subsequent paragraphs as though fully set forth herein.

27 108. Labor Code section 2802(a) provides in pertinent part, "[a]n employer shall indemnify
28 his or her employee for all necessary expenditures or losses incurred by the employee in direct

1 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
2 employer.”

3 109. Labor Code section 2802(b) states, “[a]ll awards made by a court or by the Division of
4 Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall
5 carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on
6 which the employee incurred the necessary expenditure or loss.”

7 110. Furthermore, Labor Code section 2802(c) states “[f]or purposes of this section, the term
8 ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to,
9 attorney’s fees incurred by the employee enforcing the rights granted by this section.”

10 111. Defendant required Plaintiff and other Class members to purchase steel-toed boots as a
11 condition of employment. Plaintiff and other Class members were not reimbursed for this necessary
12 expense which was required for the benefit of their employer.

13 112. Defendant did not compensate Plaintiff and Class members for these costs incurred in
14 the discharge of their duties and they are entitled to recover these expenses. Plaintiff and other Class
15 members also seek recovery of interest, attorney's fees and costs to the extent allowed by law.

16 **SIXTH CAUSE OF ACTION**

17 **Failure to Provide Accurate Wage Statements**

18 **[Cal. Labor Code § 226]**

19 113. Plaintiff re-alleges and incorporates by reference each and every allegation contained
20 in the preceding and subsequent paragraphs as though fully set forth herein.

21 114. Labor Code § 226(a) states in pertinent part that every employer shall provide an
22 accurate itemized statement in writing with respect to each one of its employees showing: 1) gross
23 wages earned; 2) total hours worked by an employee, except for any employee whose compensation
24 is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of
25 Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece
26 rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
27 deductions, provided that all deductions made on written orders of the employee may be aggregated
28 and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the

1 employee is paid; (7) the name of the employee and the last four digits of his or her social security
2 number or an employee identification number other than a social security number; (8) the name and
3 address of the legal entity that is the employer...; and (9) all applicable hourly rates in effect during
4 the pay period and the corresponding number of hours worked at each hourly rate by the employee.

5 115. Labor Code § 226.3 provides that “Any employer who violates subdivision (a) of
6 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
7 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
8 each violation in a subsequent citation for which the employer fails to provide the employee a wage
9 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

10 116. In addition, Labor Code § 226(e) imposes a penalty of the greater of all actual
11 damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for
12 each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and
13 Plaintiff is entitled to an award of costs and reasonable attorney's fees.

14 117. Section (B) of the “Records” provision of the applicable IWC Wage Order states that
15 “Every employer shall semimonthly or at the time of each payment of wages furnish each
16 employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages,
17 or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of
18 the period for which the employee is paid; (3) the name of the employee or the employee’s social
19 security number; and (4) the name of the employer, provided all deductions made on written orders
20 of the employee may be aggregated and shown as one item.”

21 118. Labor Code § 1174(d) provides that an employer must keep, at a central location in
22 the state or at the plants or establishments at which employees are employed, payroll records
23 showing the hours worked daily by and the wages paid to, employees employed at the respective
24 establishments. These records shall be kept on file for not less than three years. Labor Code §
25 1174.5 provides for a civil penalty of five hundred dollars (\$500) for an employer who willfully
26 fails to maintain the records pursuant to Labor Code section 1174(d).

27 119. Sections (7)(A)(4) and (5) of the “Records” provision of the applicable IWC Wage
28 Order provides that employers shall keep accurate information with respect to each employee,

1 including total wages paid each payroll period, total hours worked during the payroll period, and
2 applicable rates of pay, as well as time records showing when each employee begins and ends each
3 work period. The time records must also show meal periods, split shift intervals, and total daily
4 hours worked.

5 120. Defendant failed to maintain records as set forth in § 1174 of the Labor Code and the
6 “Records” section of the applicable IWC Wage Order including but not limited to, accurately
7 recording applicable rates of pay.

8 121. Defendant also failed to provide accurate itemized wage statements as required by
9 Labor Code §226.

10 122. Due to Defendant not paying for all hours worked, not paying at legally required rates
11 and not paying meal and rest period premiums, Defendant does not record proper hours and wages,
12 and does not provide legally compliant wage statements accurately accounting for hours, wages,
13 deductions, etc.. Nor do the wage statements properly state the name and address of the legal entity
14 that is the employer.

15 123. Labor Code §§226(e) and (h) provide for the remedy for wage statement violations:

16 (e) An employee suffering injury as a result of a knowing and intentional failure by
17 an employer to comply with subdivision (a) is entitled to recover the greater of all
18 actual damages or fifty dollars (\$50) for the initial pay period in which a violation
19 occurs and one hundred dollars (\$100) per employee for each violation in a
20 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars
21 (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.

22 (h) An employee may also bring an action for injunctive relief to ensure compliance
23 with this section, and is entitled to an award of costs and reasonable attorney’s fees.

24 124. By knowingly and intentionally failing to keep accurate time records and failing to
25 provide proper wage statements as required by Labor Code §§226, 1174(d), and the applicable IWC
26 Wage Order, ¶7, Defendant has injured Plaintiff and the other members of the Class and made it
27 difficult to calculate the unpaid wages owed, and losses and expenditures not indemnified by
28 Defendant (including wages, interest and penalties thereon) due Plaintiff and the Class.

1 125. Because of Defendant's unlawful acts, Plaintiff and the Class are entitled to bring this
2 action to recover damages, ensure compliance and recover costs and reasonable attorneys' fees.
3 Lab. Code §226(e)-(h).

4 **SEVENTH CAUSE OF ACTION**

5 **Failure to Pay All Wages Due Upon Termination**

6 **[Cal. Labor Code §§ 201-203]**

7 126. Plaintiff re-alleges and incorporates by reference each and every allegation contained
8 in the preceding and subsequent paragraphs as though fully set forth herein.

9 127. Labor Code § 201 states "If an employer discharges an employee, the wages earned
10 and unpaid at the time of discharge are due and payable immediately."

11 128. Labor Code § 202 states "If an employee not having a written contract for a definite
12 period quits his or her employment, his or her wages shall become due and payable not later than 72
13 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to
14 quit, in which case the employee is entitled to his or her wages at the time of quitting."

15 129. Labor Code § 203(a) states, in relevant part; "If an employer willfully fails to pay,
16 without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any
17 wages of an employee who is discharged or who quits, the wages of the employee shall continue as
18 a penalty from the due date thereof at the same rate until paid or until an action therefore is
19 commenced; but the wages shall not continue for more than 30 days."

20 130. Labor Code § 204(a) states in pertinent part "All wages... earned by any person in any
21 employment are due and payable twice during each calendar month, on days designated in advance
22 by the employer as the regular paydays."

23 131. Defendant failed to pay Plaintiff and the other Class members all minimum, regular,
24 overtime, and meal and rest period wages due and owing during and upon termination of
25 employment. Defendant willfully failed to pay all wages when required by §§ 201 and 202 of the
26 Labor Code. Therefore, Defendant owes waiting time penalties to all affected employees including
27 Plaintiff.

28 132. Defendant failed to pay earned wages to Plaintiff and members of the Class upon their

1 termination and/or within 72 hours of the last day of their employment with Defendant. More than
2 30 days have passed since Plaintiff and members of the Class have been terminated and/or quit
3 Defendant's employ.

4 133. Because of Defendant's willful conduct in not paying all wages due upon discharge
5 and/or resignation of employment, Plaintiff and the other members of the Class are entitled to 30-
6 days' wages as a penalty under Labor Code §203, plus interest thereon. Pursuant to Labor Code
7 §218.5, Plaintiff and the other members of the Class are also entitled to attorneys' fees and costs.

8 **EIGHTH CAUSE OF ACTION**

9 **Failure to Comply with California Quota Laws**

10 **(Against All Defendants)**

11 **[Cal. Labor Code § 2100, et seq.]**

12 134. Plaintiff re-alleges and incorporates by reference each and every allegation contained
13 in the preceding and subsequent paragraphs as though fully set forth herein.

14 135. Labor Code § 2101 provides that each employer that employs 100 or more employees
15 at a single warehouse distribution center in California, or 1,000 employees at one or more
16 warehouse distribution centers in California, shall provide upon hire or within 30 days of the
17 effective date of this part, a written description of each quota to which the employee is subject,
18 including the quantified number of tasks to be performed or materials to be produced or handled,
19 within the defined time period, and any potential adverse employment action that could result from
20 failure to meet the quota.

21 136. Labor Code § 2102 provides that an employee shall not be required to meet a quota
22 that prevents compliance with meal or rest periods, use of bathroom facilities, including reasonable
23 travel time to and from bathroom facilities, or occupational health and safety laws in the Labor
24 Code or division standards. An employer shall not take adverse employment action against an
25 employee for failure to meet a quota that does not allow a worker to comply with meal and rest
26 periods, or occupational health and safety laws in the Labor Code or division standards, or for
27 failure to meet a quota that has not been disclosed to the employee pursuant to Section 2101.

28 137. Labor Code § 2103 provides:

1 (a) Any actions taken by an employee to comply with occupational health and safety
2 laws in the Labor Code or division standards shall be considered time on task and
3 productive time for purposes of any quota or monitoring system.

4 (b) Notwithstanding subdivision (a), consistent with existing law, meal and rest
5 breaks are not considered productive time unless the employee is required to remain
6 on call.

7 138. Defendant is subject to the above-mentioned Labor Code provisions because its
8 warehouses qualify as “warehouse distribution centers” under Labor Code § 2100(i) and it qualifies
9 as an “employer” under Labor code § 2100(f) because it employs or exercised control over the
10 wages, hours, or working conditions of 100 or more employees at the Tracy, California facility.
11 Defendant also employs more than 1,000 employees at one or more warehouse distribution centers
12 in the state of California.

13 139. Defendant employs a quota as defined by Labor Code § 2100(h), because it has and
14 does use a system of timing employees for assignments and judging those employees’ performance
15 against the set standards of how long each task is expected to take under the system.

16 140. Defendant failed to provide employees with a written description of applicable quotas
17 and any potential adverse employment action that could result from failure to meet the quota.
18 Defendant also required Plaintiff and other Class members to meet quotas that prevented
19 compliance with meal and rest periods and use of bathroom facilities, including reasonable travel
20 time to and from bathroom facilities. Similarly, the quota system prevented Plaintiff and other Class
21 members from taking breaks because it failed to account for or treat time traveling to and from
22 break areas as productive in the quota such that Plaintiff and other Class members were penalized
23 under the quota for taking breaks.

24 141. Defendant took adverse employment actions against Class members, including
25 termination, for failure to meet a quota that did not allow them to take meal and rest periods and use
26 the bathroom facilities, including reasonable travel time to and from bathroom facilities, and for
27 failure to meet a quota that had never been disclosed to them as required by § 2101.

28 142. Labor Code § 2108 provides that “[a] current or former employee may bring an action

1 for injunctive relief to obtain compliance with Sections 2101 to 2104, inclusive, and may, upon
2 prevailing in the action, recover costs and reasonable attorney's fees in that action. In any action
3 involving a quota that prevented the compliance with regulations promulgated by the Occupational
4 Safety and Health Standards Board, the injunctive relief shall be limited to suspension of the quota
5 and any adverse action that resulted from its enforcement."

6 143. Plaintiff, on behalf of himself and other Class members, seeks injunctive relief for
7 Defendant's violation of the quota laws. Specifically, Plaintiff seeks to enjoin the use of
8 Defendant's quota system as violative of the law and requiring Defendant to reverse any and all
9 adverse actions taken against Class members for failure to perform under the quota.

10 144. Plaintiff and the Class are also entitled to and hereby claim attorneys' fees and costs,
11 pursuant to Labor Code § 2108.

12 **NINTH CAUSE OF ACTION**

13 **Violation of the Unfair Competition Law**

14 **[Business & Professions Code § 17200 *et seq.*]**

15 145. Plaintiff re-alleges and incorporates by reference each and every allegation contained
16 in the preceding and subsequent paragraphs as though fully set forth herein.

17 146. Defendant engaged in unlawful activity prohibited by Bus. & Prof. Code §17200, *et*
18 *seq.* The actions of Defendant as alleged within this Complaint constitute unlawful and unfair
19 business practices with the meaning of Bus. & Prof. Code §§17200, *et seq.*

20 147. Defendant has conducted the following unlawful activities:

21 a) violations of Labor Code §§ 200, 204, 510, 1194 & 1198 by requiring Plaintiff and
22 the Class to work off-the-clock and not paying them minimum and overtime wages for those hours
23 worked;

24 b) violations of Labor Code §§ 245-249, 226.7, 227.3, 510, 512, by failing to pay
25 Plaintiff and the Class vacation pay, sick pay, overtime pay, meal period premiums and rest break
26 premiums at the correct legal rate;

27 c) violations of Labor Code §§512 and 226.7, and the applicable IWC Wage Order,
28 ¶11, by failing to provide and/or precluding Plaintiff and the Class from taking a 30-minute

1 restrictive-free meal period after working more than five hours per day and by failing to provide one
2 hour of pay at Plaintiff's and the Class's regular rates of compensation for each work day that the
3 meal periods were not provided;

4 d) violations of Labor Code §226.7 and the applicable Wage Order ¶12, , by failing to
5 provide and/or precluding Plaintiff and the Class from taking rest periods and by failing to provide
6 one hour of pay at Plaintiff's and the Class's regular rates of compensation for each work day that
7 the rest periods were not provided;

8 e) violations of Labor Code §§226, 1174, 1174.5, and the applicable IWC Wage Order,
9 ¶7, by failing to maintain and provide Plaintiff and the Class with accurate payroll and time records;

10 f) violations of Labor Code §204 by failing to timely pay all earned wages to Plaintiff
11 and the Class;

12 g) violations of Labor Code §§201, 202, 203, 204 and 210 by failing to pay earned
13 wages to Plaintiff and the Class upon their termination and/or within 72 hours of the last day of
14 their employment with Defendant or upon regularly scheduled pay days required by California law;

15 h) violations of Labor Code § 2101-2104 by not complying with the California quota
16 laws;

17 i) And/or any other violations of applicable law and/or unfair and/or fraudulent
18 practices arising from the allegations stated herein.

19 148. Defendant's activities also constitute unfair practices in violation of Bus. & Prof.
20 Code §§17200, *et seq.*, because Defendant's practices violate the above noted laws, and/or violate
21 an established public policy, and/or the practice is immoral, unethical, oppressive, unscrupulous,
22 and substantially injurious to Plaintiff and the Class.

23 149. The identified violations of the Labor Code, Wage Order, Regulations, laws, and
24 public policy constitute business practices because they were done repeatedly over time and in a
25 systematic manner to the detriment of Plaintiff and the Class

26 150. Because of Defendant's violations of the Labor Code, Wage Order, Regulations, laws,
27 and public policy, Plaintiff and the Class have suffered injury-in-fact and have lost money or
28 property because of Defendant's practices. This injury-in-fact and loss of money or property

1 consists of the lost wages and other restitutionary remedies provided by the Labor Code,
2 Regulations, Wage Order, laws and public policy as detailed in this Complaint and other resulting
3 harms. Plaintiff and the Class are entitled to restitution, an injunction, declaratory, and other
4 equitable relief against such unlawful practices to prevent future damage for which there is no
5 adequate remedy at law. Specifically, there is no adequate remedy at law for unpaid wages which
6 occurred more than three years prior to the filing of this action, while the Unfair Competition Law
7 allows for restitution for four years.

8 151. As a direct and proximate result of the unfair business practices of Defendant,
9 Plaintiff and the Class are entitled to equitable and injunctive relief, including full restitution of all
10 wages which have been unlawfully lost as a result of the business acts and practices described
11 herein and enjoining Defendant to cease and desist from engaging in the practices described herein
12 for the maximum time permitted pursuant to Bus. & Prof. Code §17208, including any tolling.

13 152. The unlawful and unfair conduct alleged herein is continuing. Plaintiff believes and
14 alleges that if Defendant is not enjoined from the conduct set forth in this Complaint, it will
15 continue to violate the noted laws.

16 153. Plaintiff and the Class are also entitled to and hereby claim attorneys' fees and costs,
17 pursuant to the private attorney general theory doctrine (Code of Civil Procedure §1021.5), and any
18 other applicable provision for attorney fees and costs, based upon the violation of the underlying
19 public policies.

20 **TENTH CAUSE OF ACTION**

21 **Private Attorneys General Act**

22 **(Against All Defendants)**

23 **[Cal. Labor Code §§ 2698-2699.5]**

24 154. Plaintiff re-alleges and incorporates by reference each and every allegation contained
25 in the preceding and subsequent paragraphs as though fully set forth herein.

26 155. Plaintiff is an "aggrieved employee" within the meaning of California Labor Code §
27 2699(c), and a proper representative to bring a civil action on behalf of himself and other current and
28 former employees of Defendant pursuant to the procedures specified in California Labor Code

1 §2699.3, because Plaintiff was employed by Defendant and the alleged violations of the California
2 Labor Code were committed against Plaintiff.

3 156. Pursuant to the PAGA, Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil
4 penalties, including but not limited to penalties under California Labor Code §§ 2699, 203, 210,
5 248.5, 558, 1197.1 and the applicable IWC Wage Order, from Defendant for the violations set forth
6 above, including but not limited to violations of California Labor Code §§ 200, 201, 202, 203, 204,
7 210, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1,
8 1198, 2101-2104 and 2802.

9 157. Plaintiff seeks civil penalties pursuant to the PAGA for violations of the Labor Code,
10 including:

- 11 a. Failure to pay regular and overtime wages for all hours worked (Labor Code §§ 200,
12 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1 and 1198, and the applicable IWC
13 Wage Order);
- 14 b. Failure to calculate a legally sufficient regular rate, and therefore:
 - 15 i. Failure to pay overtime premium wages at legally sufficient rates (Labor Code
16 § 510; *Alvarado v Dart Container*, (2018), 4 Cal.5th 542);
 - 17 ii. Failure to pay vacation pay at legally sufficient rates (Labor Code § 227.3);
 - 18 iii. Failure to pay sick leave and COVID-19 supplemental sick leave at legally
19 sufficient rates (Labor Code §§ 246(l)(1)-(2) and 248.5); and
 - 20 iv. Failure to pay rest and meal break premium wages at legally sufficient rates
21 (Labor Code §§ 226.7, 512(a), 558, 1198; *Ferra v. Loews Hollywood Hotel*,
22 *LLC*, (2021) 11 Cal. 5th 858).
- 23 c. Failure to pay sick leave and COVID-19 supplemental sick leave and to provide
24 notice of accrued sick leave available (Labor Code §§ 246(l)(1)-(2) and 248.5);
- 25 d. Failure to provide meal breaks (Labor Code §§ 226.7, 512, 558 and the applicable
26 IWC Wage Order);
- 27 e. Failure to authorize and permit rest breaks (Labor Code §§ 226.7, 558 and the
28 applicable IWC Wage Order);

- f. Failure to reimburse business expenses (Labor Code § 2802);
- g. Failure to pay wages in a timely fashion (Labor Code §§ 204, and 210);
- h. Failure to provide accurate wage statements (Labor Code §§ 226(a), 226(e)(1), 226.3, 1174, 1174.5, and the applicable IWC Wage Order);
- i. Failure to comply with California quota laws (Labor Code §§ 2100-2112); and
- j. Failure to pay all wages due upon termination of the employment relationship (Labor Code §§ 201, 202, 203, 204, 1198, 2699 et seq., and the “Minimum Wages” Section, and the applicable IWC Wage Order).

158. Plaintiff is also entitled to an award of reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1).

159. Plaintiff has satisfied the requirements of Labor Code § 2699.3. On March 2nd, 2023, Plaintiff sent notice to the California Labor and Workforce Development Agency (LWDA) notifying them of the specific violations and the facts and theories supporting those violations. Plaintiff also provided Defendant notice of this “PAGA Letter” by certified mail. Sixty-five days have elapsed since Plaintiff notified the LWDA, and the LWDA has not provided notice that it intends to investigate the claims. On August 16, 2023, Plaintiff sent an amended notice to the LWDA notifying them of the specific violations and the facts and theories supporting those violations. The amended notice added violations of the California quota laws. Plaintiff also provided Defendant notice of this amended PAGA letter by certified mail. Sixty-five days elapsed since Plaintiff notified the LWDA, and the LWDA did not provide notice that it intends to investigate the claims.

160. Further, for certain violations, Labor Code § 2699.3 provides that “the employer may cure the alleged violation within 33 calendar days of the postmark date of the notice sent by the aggrieved employee or representative. The employer shall give written notice within that period of time by certified mail to the aggrieved employee or representative and by online filing with the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.” Lab. Code, § 2699.3(c)(2)(A). Labor Code § 2699(d) states that “[f]or purposes of this part, ‘cure’ means that the

1 employer abates each violation alleged by any aggrieved employee, the employer is in compliance
2 with the underlying statutes as specified in the notice required by this part, and any aggrieved
3 employee is made whole. A violation of paragraph (6) or (8) of subdivision (a) of Section 226 shall
4 only be considered cured upon a showing that the employer has provided a fully compliant,
5 itemized wage statement to each aggrieved employee for each pay period for the three-year period
6 prior to the date of the written notice sent pursuant to paragraph (1) of subdivision (c) of Section
7 2699.3.” Lab. Code, § 2699(d). Plaintiff has not received notice from Defendant that any of the
8 alleged violations were cured within the statutory period. Plaintiff has, therefore, exhausted his
9 administrative remedies as required by Labor Code §2699.3.

10 161. In a letter dated July 10, 2024, the LWDA notified Plaintiff and Defendant that it
11 retains jurisdiction from August 17, 2023, and all times after that date, for all civil-penalty-issues
12 regarding Sections 2100 to 2012 for violations occurring on or after August 17, 2023.

13 162. Attached as Exhibit 1 to this Complaint is Plaintiff’s PAGA Letter.

14 163. Attached as Exhibit 2 to this Complaint is Plaintiff’s Amended PAGA Letter.

15 **PRAYER FOR RELIEF**

16 **WHEREFORE**, Plaintiff prays for judgment as follows:

- 17 1. That the Court certify this action as a Class Action under CCP § 382 and appoint
18 Plaintiff as representative of the Class and his attorneys as Class Counsel;
- 19 2. For nominal, actual, exemplary and compensatory damages, including lost wages,
20 according to proof at trial;
- 21 3. For restitution of all monies, wages, expenses, and costs due to Plaintiff and the
22 Class;
- 23 4. For liquidated damages under Labor Code § 1194.2;
- 24 5. For reasonable attorneys’ fees, costs and expenses pursuant to Labor Code §§ 218.5,
25 226, 1194, 2802, and Code of Civil Procedure § 1021.5;
- 26 6. For pre-judgment and post-judgment interest, to the extent allowable by law,
27 including but not limited to pre-judgement interest authorized under Labor Code §
28 218.6;

- 1 7. For all applicable statutory penalties recoverable under Labor Code §§203, 210, 226,
2 558, and as otherwise authorized by statute or law;
- 3 8. For appropriate injunctive relief, including but not limited to an injunction
4 restraining Defendant from continuing to engage in unlawful and unfair business
5 practices in violation of Bus. & Prof. Code §17200, et seq., and all appropriate
6 injunctions under Labor Code § 2100 et. seq. including preventing Defendant from
7 enforcing illegal quotas and policies and practices related to illegal quotas;
- 8 9. For civil penalties, fees and costs under Labor Code §§ 2698 et seq; and 2699(g);
- 9 10. For an injunction restraining Defendant from continuing to engage in unlawful and
10 unfair business practices in violation of Bus. & Prof. Code §17200, et seq.;
- 11 11. For any other appropriate declaratory relief;
- 12 12. For all such other and further relief as the Court deems proper and just under all the
13 circumstances.

14 **DEMAND FOR JURY TRIAL**

15 Plaintiff demands a trial by jury for all claims so triable.

16
17
18 DATED: August 29, 2024

BEN TRAVIS LAW, APC

HEWGILL, COBB & LOCKARD, APC

21
22 

23 _____
Ben Travis, Esq.
Justin Hewgill, Esq.
Attorneys for Plaintiffs