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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO STREET ADDRESS: 247 West Third Street MAILING ADDRESS: CITY AND ZIP CODE: San Bernardino, CA 92415 BRANCH NAME: San Bernardino Justice Center WEBSITE: http://www.sb-court.org	BY SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Bernardino on Jul 3, 2023
ATTACHMENT NAME: Answer: First Amended Complaint	<i>CLERK OF THE SUPERIOR COURT</i> <i>Deputy Clerk: Sylvia Guajardo</i>
CASE NAME: Manuel Burgos vs. Destiny Hospice Care, Inc.	CASE NUMBER: CIVSB2308809
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

MANUEL BURGOS, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

DESTINY HOSPICE CARE, INC., a
California Corporation; and DOES 1 through
20, inclusive;

Defendants.

Case No.: CIVSB2308809
*[Assigned to Hon. Judge David Cohn, Dept
S26, for all purposes]*

FIRST AMENDED COMPLAINT

CLASS ACTION CLAIMS

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Meal Periods;
- (4) Failure to Provide Rest Breaks;
- (5) Failure to Reimburse Bus. Expenses;
- (6) Failure to Timely Pay Final Wages;
- (7) Failure to Provide Accurate Itemized Wage Statements;
- (8) Unfair and Unlawful Competition;

PAGA CLAIMS

- (9) Failure to Pay Minimum Wages;
- (10) Failure to Pay Overtime Wages;
- (11) Failure to Provide Meal Periods;
- (12) Failure to Provide Rest Breaks;
- (13) Failure to Reimburse Bus. Expenses;
- (14) Failure to Timely Pay Wages;
- (15) Failure to Timely Pay Final Wages;
- (16) Failure to Provide Accurate Itemized Wage Statements;

JURY TRIAL DEMANDED

1 Plaintiff Manuel Burgos (“Plaintiff”) on behalf of himself, on a representative basis, and
2 on behalf of others similarly situated, complains and alleges as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against his employer(s), Destiny Hospice Care, Inc.,
5 and DOES 1 through 20, inclusive, (collectively, “Defendants”) on behalf of all current and
6 former nonexempt employees employed by Defendants in California (the “Class” or
7 “Represented Employees”), for Labor Code violations stemming from Defendants’ failure to pay
8 all wages owed, failure to provide meal periods, failure to provide rest breaks, failure to
9 reimburse business expenses, failure to timely pay wages upon separation of employment, and
10 failure to provide accurate itemized wage statements.

11 2. Plaintiff was employed by Defendants from approximately November 2022
12 through April 2023.

13 3. Plaintiff alleges on information and belief that the Represented Employees were
14 subjected to the same policies, working conditions, and corresponding wage and hour violations
15 to which Plaintiff was subjected during employment.

16 4. Plaintiff and the Represented Employees were not provided all minimum, regular,
17 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
18 worked. For example, the Represented Employees were frequently required to perform work
19 after clocking out at the end of their shift to complete tasks for Defendant (such as “charting”),
20 yet they were not paid for this time spent under the direction and control of Defendants. These
21 practices violate California law. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829
22 (California law “do[es] not allow employers to require employees to routinely work for minutes
23 off the clock without compensation”); *Frlekin v. Apple Inc* (2020) 8 Cal.5th 1038 (tasks are
24 compensable when employee is under company’s control and where the tasks served the
25 employer’s interests).

26 5. Also, at all relevant times, Defendants utilized a rounding policy and practice that
27 routinely undercompensated Plaintiff and the Represented Employees and resulted in a net
28 benefit to Defendants and a net loss for Plaintiff and the Represented Employees. In other words,

1 Defendants' rounding policy is not neutral and results in systematic undercompensation for the
2 Represented Employees, in violation of California law. *See's Candy Shops, Inc. v. Superior*
3 *Court* (2012) 210 Cal.App.4th 889, 903 (rounding policy is illegal where it is not "neutral, both
4 facially and as applied"). Moreover, all underpayments caused by this rounding policy violate
5 California law and lead to minimum, regular, and overtime wage violations under *Camp v. Home*
6 *Depot U.S.A. Inc.*, (2022) 84 Cal. App. 5th 638, 660 (if an employer "can capture and has
7 captured the exact time an employee has worked during a shift, the employer must pay the
8 employee for 'all the time' worked").

9 6. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the
10 Represented Employees. At all relevant times, Plaintiff and the Represented Employees were
11 paid on an hourly basis plus other nondiscretionary compensation. However, on the occasions
12 when Plaintiff and the Represented Employees worked overtime hours and received additional
13 earned compensation during the same workweek, Defendants failed to properly include these
14 amounts in the calculations for the regular rate of pay – in violation of California law.

15 7. Plaintiff and the Represented Employees were also denied 30-minute off-duty
16 meal periods, as mandated by California law. As a result of Defendants' policies and practices,
17 the Represented Employees were subjected to meal period violations when they were: (1) unable
18 to take a meal period due to workload, (2) forced to take an on-duty meal period while under the
19 control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal
20 period after the 5th hour of work, and (5) not provided mandated second meal periods for shifts
21 in excess of 10 hours.

22 8. Defendants also failed to provide Plaintiff and the Represented Employees with
23 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
24 mandated by California law. Defendants did not schedule rest breaks for Plaintiff and the
25 Represented Employees, and the Represented Employees were often not authorized and/or
26 permitted to take mandated rest breaks due to being overwhelmed by their hectic workload.
27 Furthermore, on occasions when Plaintiff and the Represented Employees worked longer shifts,
28 Defendants failed to authorize and/or permit mandated third or fourth rest breaks.

1 9. Also, Defendants required Plaintiff and the Represented Employees to incur
2 substantial business-related expenses and costs to carry out their duties for Defendants without
3 reimbursement, including but not limited to substantial costs and expenses for use of personal
4 vehicles to perform their tasks for Defendants.

5 10. Plaintiff also alleges that he and the Represented Employees were not paid all
6 wages due and owing each pay period (Labor Code § 204) and upon separation of employment
7 within the time required by Labor Code §§ 201 – 203. Plaintiff further alleges that Defendants
8 engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Represented
9 Employees at the time their employment ended with Defendants, including, but not limited to
10 minimum, regular, and overtime wages, vacation and sick wages, wage premiums, among others.

11 11. Plaintiff further alleges that Defendants failed to provide accurate itemized wage
12 statements that fully complied with the requirements of Labor Code § 226(a).

13 12. Plaintiff alleges that Defendants' violations of the wage and hour components of
14 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their
15 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
16 its competitors.

17 13. At all material times, Defendants and DOES 1 through 20 were and/or are the
18 Represented Employees' employers or persons acting on behalf of the Represented Employees'
19 employer, within the meaning of California Labor Code § 558, who violated or caused to be
20 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
21 hours and days of work in an IWC Wage Order and, as such, are subject to penalties for each
22 underpaid employee as set forth in Labor Code § 558 and under California law.

23 14. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
24 monetary relief against Defendants and each of them, on behalf of himself and the Represented
25 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
26 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
27 210, 218.6, 226, 226.3, 226.7, 246, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and
28 2802, among possibly other sections inadvertently omitted. Plaintiff also reserves the right to

1 name additional representatives throughout the State of California.

2 **II. JURISDICTION**

3 15. This Court has jurisdiction over the claims for relief of Plaintiff and the
4 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

5 **III. VENUE**

6 16. Venue as to each Defendant is proper pursuant to Code of Civil Procedure §
7 395(a). Defendants transact business in San Bernardino County, the unlawful acts alleged herein
8 have a direct effect on Plaintiff and the Represented Employees in San Bernardino County, and
9 Defendants employed or employ Represented Employees in San Bernardino County.

10 **IV. PARTIES**

11 **Plaintiff**

12 17. Plaintiff and Class Representative Manuel Burgos was employed by Defendants
13 from approximately November 2022 through April 2023 and performed work for Defendants in
14 San Bernardino County.

15 **Defendants**

16 18. Plaintiff is informed and believes and thereon alleges that Defendant Destiny
17 Hospice, Inc., is a California Corporation that maintains operations and employs the Represented
18 Employees throughout California, including Riverside County.

19 19. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
20 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
21 inclusive, but on information and belief alleges that those Defendants are legally responsible for
22 the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of
23 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
24 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
25 Defendants when ascertained.

26 20. Plaintiff is informed and believes and thereon alleges that he and the Represented
27 Employees worked under the joint direction and control of Defendants and that Defendants, and
28 each of them, acted in all respects pertinent to this action as the agent of the other Defendants,

1 carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of
2 each Defendant are legally attributable to the other Defendants. On information and belief, a
3 unity of interest and ownership between each Defendant exists such that all Defendants acted as
4 a single employer of Plaintiff and other Represented Employees.

5 21. Furthermore, Plaintiff is informed and believes and thereon alleges that
6 Defendants, and each of them, are an integrated enterprise and should be treated as a single
7 employer because these entities share an interrelation of operations, with common human
8 resources and personnel policies and shared common offices and facilities. Additionally,
9 Defendants also have a shared website, common management, a centralized control of labor
10 operations, and common ownership or financial control.

11 22. Plaintiff is informed and believes and thereon alleges that, in conducting
12 themselves in the manner described herein, Defendants, and each of them, were acting in active
13 concert with one another such that the acts of each were and are fully attributable to the others in
14 all material respects. Plaintiff is further informed and believes that at all relevant times
15 Defendants and each of them are now, and at all material times herein mentioned were, the
16 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining
17 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and
18 purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of
19 their remaining co-Defendants.

20 23. Plaintiff further alleges that Defendants have been inadequately capitalized to
21 conduct business, have failed to follow appropriate corporate formalities, and have simply been a
22 shell and instrumentality through which Defendants DOES 11 through 20, inclusive, have
23 conducted their personal affairs. Accordingly, the corporate veil should be pierced, and any
24 liability attached to Defendants should be imposed jointly and severally against Defendants
25 DOES 11 through 20. Adherence to the fiction of the separate existence of these corporate
26 entities would permit abuse of the corporate privilege, sanctioning fraud and promoting injustice.

27 ///

28 ///

1 **V. CLASS ACTION ALLEGATIONS**

2 24. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
3 as if fully alleged herein.

4 25. Plaintiff brings this action on behalf of himself and all others similarly situated as
5 a class action, pursuant to Code of Civil Procedure § 382.

6 26. The relevant time period for this class action is defined as the period beginning
7 four years prior to the filing of this action until class certification (the “Relevant Time Period”).

8 27. The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to
9 represent is defined as follows:

10 All current and former nonexempt employees employed by
11 Defendants in California during the Relevant Time Period.

12 28. Plaintiff also seeks to represent the following subclasses:

13 **Meal Break Subclass**

14 All Represented Employees who worked a shift in excess of
15 5 hours during the Relevant Time Period.

16 **Rest Break Subclass**

17 All Represented Employees who worked a shift of at least
18 3.5 hours during the Relevant Time Period.

19 **Unreimbursed Expense Subclass**

20 All Represented Employees who were required to incur
21 expenses to discharge their duties for Defendants without
22 reimbursement during the Relevant Time Period.

23 **Waiting Time Penalties Subclass**

24 All Represented Employees who separated from their
25 employment with Defendants during the period three years
26 before the filing of this action and ending when final
27 judgment is entered.
28

1 **Wage Statement Penalties Subclass**

2 All Represented Employees during the period one year
3 before the filing of this action and ending when final
4 judgment is entered.

5 29. Plaintiff reserves the right to amend or modify the class description with greater
6 specificity or further division into subclasses or limitation to particular issues as appropriate.

7 30. Plaintiff, as Class Representative, is a member of the class and subclasses that he
8 seeks to represent.

9 31. This action has been brought and may properly be maintained as a class action
10 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
11 litigation and the proposed class is easily ascertainable from Defendants' records.

12 32. **Numerosity:** The potential members of the Class as defined are so numerous that
13 a joinder of all Represented Employees is impracticable. Although the exact number is currently
14 unknown to Plaintiff, this information is easily ascertainable from Defendants' records.

15 33. **Commonality:** There are questions of law and fact common to the class which
16 predominate over any questions affecting only individual members of the class, including
17 without limitation:

18 i. Whether Defendants violated the California Labor Code and applicable
19 IWC Wage Order by failing to pay wages to Plaintiff and the Represented Employees for all
20 hours worked;

21 ii. Whether Defendants violated the California Labor Code and applicable
22 IWC Wage Order by failing to pay proper overtime wages to Plaintiff and the Represented
23 Employees for hours above 8 and/or 12 per day and/or 40 per week;

24 iii. Whether Defendants violated the California Labor Code and applicable
25 IWC Wage Order by failing to provide compliant meal periods to Plaintiff and the Meal Break
26 Subclass and whether Defendants failed to compensate Plaintiff and the Meal Break Subclass
27 with one additional hour of wages at the regular rate of pay for each instance when a compliant
28 meal period was not provided;

1 iv. Whether Defendants violated the California Labor Code and applicable
2 IWC Wage Order by failing to provide compliant rest breaks to Plaintiff and the Rest Break
3 Subclass and whether Defendants failed to compensate Plaintiff and the Rest Break Subclass
4 with one additional hour of wages at the regular rate of pay for each instance when a paid rest
5 break was not provided;

6 v. Whether Defendants violated the Labor Code and applicable IWC Wage
7 Order by failing to reimburse Plaintiff and the Represented Employees for business expenses
8 incurred while discharging their duties or in obedience to the directions of their employer;

9 vi. Whether Defendants violated the California Labor Code by failing to
10 timely pay all wages due upon separation of employment between Defendants and Plaintiff and
11 the Waiting Time Penalties Subclass, whether such separation was voluntary or involuntary;

12 vii. Whether Defendants violated the California Labor Code by failing to
13 provide Plaintiff and the Wage Statement Penalties Subclass with complete, accurate, itemized
14 wage statements;

15 viii. Whether Defendants violated California Business & Professions Code §§
16 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest
17 breaks, failure to provide mandated meal periods, and failure to timely pay final wages; and

18 ix. Whether Plaintiff and Represented Employees are entitled to equitable
19 relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

20 34. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the
21 claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants'
22 ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all
23 wages owed, failure to provide mandated meal periods and rest breaks, failure to reimburse
24 business expenses, failure to timely pay wages upon separation of employment, and failure to
25 provide accurate itemized wage statements.

26 35. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly
27 and adequately represent and protect the interests of the Class. Plaintiff's interests are not in
28 conflict with those of the Class. Class Representative's counsel are competent and experienced in

1 litigating large employment class actions and other complex litigation matters, including cases
2 like this case.

3 36. **Superiority of Class Action.** Class certification is appropriate because a class
4 action is superior to other available means for the fair and efficient adjudication of this
5 controversy. Individual joinder of all Represented Employees is not practicable, and questions of
6 law and fact common to the Class predominate over any questions affecting only individual
7 members of the Class. Each Represented Employee has been damaged and is entitled to
8 recovery by reason of Defendants' illegal policies and practices set forth above. Class action
9 treatment will allow those similarly situated persons to litigate their claims in the manner that is
10 most efficient and economical for the parties and the judicial system.

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO PAY MINIMUM WAGES**

13 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

14 *Plaintiff and the Represented Employees Against All Defendants*

15 37. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
16 as if fully alleged herein.

17 38. Plaintiff and the Represented Employees were not exempt from the requirement
18 to be paid at least the applicable California minimum wage throughout the statutory period for
19 each hour worked.

20 39. Plaintiff and the Represented Employees were not provided all minimum and
21 regular wages due to Defendants' failure to accurately record and compensate for all hours
22 worked. For example, the Represented Employees were frequently required to perform work
23 after clocking out at the end of their shift to complete tasks for Defendant (such as "charting"),
24 yet they were not paid for this time spent under the direction and control of Defendants. These
25 practices violate California law. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829
26 (California law "do[es] not allow employers to require employees to routinely work for minutes
27 off the clock without compensation"); *Frlekin v. Apple Inc* (2020) 8 Cal.5th 1038 (tasks are
28

1 compensable when employee is under company's control and where the tasks served the
2 employer's interests).

3 40. Also, at all relevant times, Defendants utilized a rounding policy and practice that
4 routinely undercompensated Plaintiff and the Represented Employees and resulted in a net
5 benefit to Defendants and a net loss for Plaintiff and the Represented Employees. In other words,
6 Defendants' rounding policy is not neutral and results in systematic undercompensation for the
7 Represented Employees, in violation of California law. *See's Candy Shops, Inc. v. Superior*
8 *Court* (2012) 210 Cal.App.4th 889, 903 (rounding policy is illegal where it is not "neutral, both
9 facially and as applied"). Moreover, all underpayments caused by this rounding policy violate
10 California law and lead to minimum, regular, and overtime wage violations under *Camp v. Home*
11 *Depot U.S.A. Inc.*, (2022) 84 Cal. App. 5th 638, 660 (if an employer "can capture and has
12 captured the exact time an employee has worked during a shift, the employer must pay the
13 employee for 'all the time' worked").

14 41. As a result of these policies and practices, Defendants failed to pay Plaintiff and
15 the Represented Employees for all hours worked.

16 42. Consequently, Defendants violated California Labor Code laws and minimum
17 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
18 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

19 43. Plaintiff is informed and believes and thereon alleges that Defendants
20 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Represented
21 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

22 44. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
23 Represented Employees were entitled to be paid wages throughout the statutory period for each
24 hour worked, including proper minimum and regular wages, yet Defendants chose not to pay
25 them in accordance thereto.

26 45. At all material times, Defendants DOES 1 through 20 were and/or are the
27 employer of Plaintiff and the Represented Employees or were persons acting on behalf of said
28 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be

1 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
2 Labor Code regulating hours and days of work respectively.

3 46. During employment of Plaintiff and the Represented Employees, Defendants
4 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

5 47. As a result of the Defendants' wrongful conduct, Plaintiff and the Represented
6 Employees have been damaged in amounts to be proven at trial.

7 48. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of
8 all unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs of
9 suit, pursuant to Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be proven
10 at trial.

11 **SECOND CAUSE OF ACTION**

12 **FAILURE TO PAY OVERTIME WAGES**

13 (Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

14 *Plaintiff and the Represented Employees Against All Defendants*

15 49. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
16 as if fully alleged herein.

17 50. Plaintiff and the Represented Employees were employees of Defendants who did
18 not receive proper protections and benefits of the laws governing payment of overtime wages.

19 51. Labor Code § 204 requires that the employer timely pay all overtime wages to its
20 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
21 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in
22 any one workweek shall be compensated at the rate of no less than one and one-half times the
23 regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12)
24 in one workday shall be compensated at twice the regular rate of pay for an employee.

25 52. At all relevant times, Plaintiff and the Represented Employees were required by
26 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
27 Defendants' failure to accurately record and compensate for all hours worked Plaintiff and the
28 Represented Employees did not receive proper overtime compensation.

1 53. Plaintiff and the Represented Employees were not provided all overtime wages
2 due to Defendants' failure to accurately record and compensate for all hours worked. For
3 example, the Represented Employees were frequently required to perform work after clocking
4 out at the end of their shift to complete tasks for Defendant (such as "charting"), yet they were
5 not paid for this time spent under the direction and control of Defendants. These practices violate
6 California law. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law
7 "do[es] not allow employers to require employees to routinely work for minutes off the clock
8 without compensation"); *Frlekin v. Apple Inc* (2020) 8 Cal.5th 1038 (tasks are compensable
9 when employee is under company's control and where the tasks served the employer's interests).

10 54. Also, at all relevant times, Defendants utilized a rounding policy and practice that
11 routinely undercompensated Plaintiff and the Represented Employees and resulted in a net
12 benefit to Defendants and a net loss for Plaintiff and the Represented Employees. In other words,
13 Defendants' rounding policy is not neutral and results in systematic undercompensation for the
14 Represented Employees, in violation of California law. See's *Candy Shops, Inc. v. Superior*
15 *Court* (2012) 210 Cal.App.4th 889, 903 (rounding policy is illegal where it is not "neutral, both
16 facially and as applied"). Moreover, all underpayments caused by this rounding policy violate
17 California law and lead to overtime violations under *Camp v. Home Depot U.S.A. Inc.*, (2022) 84
18 Cal. App. 5th 638, 660 (if an employer "can capture and has captured the exact time an employee
19 has worked during a shift, the employer must pay the employee for 'all the time' worked").

20 55. Additionally, at all relevant times, Plaintiff and the Represented Employees were
21 paid on an hourly basis plus additional earned nondiscretionary compensation. However, on the
22 occasions when Plaintiff and the Represented Employees worked overtime hours and received
23 additional earned compensation during the same workweek, Defendants failed to properly
24 include these amounts in the calculations for the regular rate of pay – violating the well-
25 established rule that overtime must always be paid at time and one-half the regular rate of pay.

26 56. As a result of these policies and practices, Defendants failed to pay Plaintiff and
27 the Represented Employees for all overtime hours worked.

28 57. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage

Order § 3(A) every pay period with respect to Plaintiff and the Represented Employees because Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per week without proper overtime compensation.

58. Plaintiff is informed and believes and thereon alleges that Defendants intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the Represented Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

59. Defendants' conduct was willful, as Defendants knew that Plaintiff and the Represented Employees were entitled to be paid proper overtime wages throughout the statutory period, yet Defendants chose not to pay them in accordance thereto.

60. At all material times, Defendants DOES 1 through 20 were and/or are the employer of Plaintiff and the Represented Employees or were persons acting on behalf of said employer(s), within the meaning of California Labor Code § 558, who violated or caused to be violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California Labor Code regulating hours and days of work respectively.

61. During the employment of Plaintiff and the Represented Employees, Defendants failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

62. As a result of Defendants' wrongful conduct, Plaintiff and the Represented Employees have been damaged in amounts to be proven at trial.

63. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of all unpaid overtime wages, penalties, interest, attorneys' fees, and costs of suit against Defendants in an amount to be proven at trial.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Labor Code §§ 226.7 and 512; IWC Wage Order § 11, 12)

Plaintiff and the Meal Break Subclass Against All Defendants

64. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

1 65. Plaintiff and the Meal Break Subclass are and/or were employees of Defendants
2 who did not receive proper protections and benefits of the laws governing mandatory meal
3 periods.

4 66. Labor Code § 226.7 requires employers, including Defendants, to provide
5 employees with meal periods as mandated by the Industrial Welfare Commission.

6 67. Labor Code § 512(a), in part, provides that employers, including Defendants, may
7 not employ an employee for a work period of more than five hours per day without providing an
8 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
9 except that if the total work period per day of the employee is no more than six hours, the meal
10 period may be waived by mutual consent of both the employer and the employee. Employers
11 may not employ an employee for a work period more than 10 hours per day without providing
12 the employee with a second meal period of not less than 30 minutes.

13 68. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
14 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
15 pay for each meal period that is missed.

16 69. At all relevant times herein, Plaintiff and the Meal Break Subclass were denied
17 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
18 practices, Plaintiff and the Represented Employees were subjected to meal period violations
19 when they were: (1) unable to take a meal period due to workload, (2) forced to take an on-duty
20 meal period while under the control of the Company, (3) forced to take a shortened meal period,
21 (4) forced to take a meal period after the 5th hour of work, and (5) not provided mandated
22 second meal periods for shifts in excess of 10 hours.

23 70. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
24 Order every pay period because Plaintiff and the Meal Break Subclass were not provided with all
25 mandatory meal periods and Defendants failed to pay Plaintiff and the Meal Break Subclass one
26 additional hour of compensation at the regular rate of pay in lieu thereof.
27
28

1 71. At all relevant times herein, Defendants failed to provide Plaintiff and the Meal
2 Break Subclass all mandated meal periods and failed to pay wage premiums in lieu of mandated
3 meal or rest periods, thereby receiving an economic benefit.

4 72. On information and belief, Plaintiff and the Meal Break Subclass did not
5 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
6 obtained from Plaintiff and the Meal Break Subclass were not willfully obtained, were not
7 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
8 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Meal Break Subclass
9 to take meal periods in accordance with California law.

10 73. By their failure to provide Plaintiff and the Meal Break Subclass with meal
11 periods as required by California law, and failing to pay one hour of additional wages in lieu of
12 each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and
13 IWC Wage Order § 11. Accordingly, Defendants are liable for one hour of additional wages at
14 the employee's regular rate of compensation for each work day that a meal period was not
15 lawfully provided in an amount to be proven at time of trial.

16 74. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
17 and IWC Wage Order § 11, Defendants, and each of them, are liable to Plaintiff and the Meal
18 Break Subclass for unpaid wage premiums, penalties, costs, and interest.

19 **FOURTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE REST BREAKS**

21 (Labor Code §§ 226.7 and 512; IWC Wage Order § 12)

22 *Plaintiff and the Rest Break Subclass Against All Defendants*

23 75. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
24 as if fully alleged herein.

25 76. Plaintiff and the Rest Break Subclass are and/or were employees of Defendants
26 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

27 77. Labor Code § 226.7 requires employers, including Defendants, to provide rest
28 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

1 78. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
2 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
3 each work period. Employees shall receive a 10-minute rest period every four hours or major
4 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
5 hours worked, for which there shall be no deduction from wages.

6 79. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
7 Order, Defendants shall pay Plaintiff and the Represented Employees one additional hour of pay
8 at his regular rate of compensation for each day that the rest period is not provided.

9 80. At all relevant times, Defendants also failed to provide Plaintiff and the Rest
10 Break Subclass with 10 minutes of net rest break time for every 4 hours worked, or major
11 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks for the
12 Rest Break Subclass and the Rest Break Subclass were often not authorized and/or permitted to
13 take mandated rest breaks due to being overwhelmed by their hectic workload. Furthermore, on
14 occasions when the Rest Break Subclass worked longer shifts, Defendants failed to authorize
15 and/or permit mandated third or fourth rest breaks.

16 81. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
17 Order every pay period because Plaintiff and the Rest Break Subclass were not provided with all
18 mandatory rest periods and Defendants failed to pay Plaintiff and the Represented Employees
19 one additional hour of compensation in lieu thereof.

20 82. At all relevant times herein, Defendants failed to provide Plaintiff and the Rest
21 Break Subclass all mandated rest breaks and failed to pay wage premiums in lieu of mandated
22 rest periods, thereby receiving an economic benefit.

23 83. By their failure to provide Plaintiff and the Rest Break Subclass with rest breaks
24 as required by California law, and failing to pay one hour of additional wages in lieu of each rest
25 break not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage
26 Order § 12. Accordingly, Defendants are liable for one hour of additional wages at the
27 employee's regular rate of compensation for each workday that a paid rest break was not
28 lawfully provided in an amount to be proven at time of trial.

1 84. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
2 and IWC Wage Order § 12, Defendants, and each of them, are liable to Plaintiff and the Rest
3 Break Subclass for unpaid wage premiums, penalties, costs, and interest.

4 **FIFTH CAUSE OF ACTION**

5 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

6 (Labor Code § 2802)

7 *Plaintiff and the Unreimbursed Expense Subclass against All Defendants*

8 85. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
9 as if fully alleged herein.

10 86. Plaintiff and the Unreimbursed Expense Subclass are and/or were employees of
11 Defendants who did not receive proper protections and benefits of the laws governing
12 reimbursement of business expenses.

13 87. Labor Code § 2802(a) requires that the employer indemnify its employees for
14 expenses incurred while discharging their duties or in obedience to directions of their employer.

15 88. At all relevant times herein mentioned, as a condition of employment, Defendants
16 required Plaintiff and the Unreimbursed Expense Subclass to incur substantial business-related
17 expenses and costs without reimbursement.

18 89. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
19 failed to reimburse Plaintiff and the Unreimbursed Expense Subclass for expenses incurred as a
20 direct consequence of Plaintiff's employment with Defendant and/or under the direction of
21 Defendants.

22 90. At all relevant times herein, Defendants failed to reimburse the Unreimbursed
23 Expense Subclass, including Plaintiff, for expenses incurred while discharging duties to
24 Defendants, thereby receiving an economic benefit.

25 91. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage
26 Order § 9(B), Plaintiff and the Represented Employees have suffered, and continue to suffer,
27 substantial losses related to such incurred expenses, expenses, and attorney's fees in seeking to
28

1 compel Defendants to fully perform their obligations under the law, all in an amount to be
2 proved at time of trial.

3 92. Labor Code § 2802(b) states that “[a]ll awards made by a Court for
4 reimbursement of necessary expenditures” shall carry interest, at the same rate as judgments in
5 civil actions, and said interest will accrue from the date on which the employee incurred the
6 necessary expenditure or loss including, but not limited to, reasonable costs and attorney’s fees
7 incurred by the employee enforcing the rights granted pursuant to Labor Code § 2802. The exact
8 amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

9 93. Furthermore, Labor Code § 2802(c) states that “[f]or the purposes of this section,
10 the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not
11 limited to, attorney’s fees incurred by the employee in enforcing the rights granted by this
12 section.” Therefore, Plaintiff and the Unreimbursed Expense Subclass seek to recover the
13 unreimbursed expenses, interest on the unreimbursed expenses, and the costs and attorney’s fees
14 necessarily incurred in pursuing same. The exact amount of reimbursements, interest, costs, and
15 attorney’s fees will be in an amount to be proved at the time of trial.

16 **SIXTH CAUSE OF ACTION**

17 **FAILURE TO TIMELY PAY FINAL WAGES**

18 (Labor Code §§ 201 – 203)

19 *Plaintiff and the Waiting Time Penalties Subclass against All Defendants*

20 94. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
21 as if fully alleged herein.

22 95. Plaintiff and the Waiting Time Penalties Subclass are and/or were employees of
23 Defendants who did not receive proper protections and benefits of the laws governing the timing
24 and payment of wages.

25 96. Labor Code § 201 requires that the employer immediately pay any wages, without
26 abatement or reduction, to any employee who is discharged.

1 97. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
2 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
3 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

4 98. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
5 penalty from the due date thereof at the same rate until paid or until an action therefore is
6 commenced, but the wages shall not continue for more than thirty (30) days.

7 99. At all relevant times, Defendants employed a policy and practice whereby
8 Plaintiff and the Waiting Time Penalties Subclass were not paid all wages due and owing upon
9 separation of employment within the time required by Labor Code §§ 201 and 202.

10 100. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
11 wages due and owing to Plaintiff and the Waiting Time Penalties Subclass upon separation of
12 employment, including, but not limited to, minimum, regular, and overtime wages, vacation
13 wages, sick pay at the correct rate, as well as meal and rest period premiums.

14 101. Plaintiff alleges that, at all times material to this action, Defendants had a planned
15 pattern and practice of failing to timely pay Plaintiff and the Waiting Time Penalties Subclass all
16 wages due and owing upon separation of employment as required by Labor Code §§ 201 and
17 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Waiting
18 Time Penalties Subclass the above-described waiting time penalty, all in an amount to be shown
19 according to proof at trial and within the jurisdiction of this Court.

20 **SEVENTH CAUSE OF ACTION**

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

22 (Labor Code § 226)

23 *Plaintiff and the Wage Statement Penalties Subclass against All Defendants*

24 102. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
25 as if fully alleged herein.

26 103. Plaintiff and the Wage Statement Penalties Subclass are and/or were employees of
27 Defendants who did not receive proper protections and benefits of the laws governing the
28 provision of accurate itemized wage statements.

1 104. Labor Code § 226(a) requires an employer to provide its employees with itemized
2 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
3 inclusive dates of the pay period, the employee's name and the last four digits of his or her
4 Social Security number (or employee identification number), the name and address of the legal
5 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
6 corresponding number of hours worked at each hourly rate by the employee.

7 105. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
8 and the Wage Statement Penalties Subclass due to violations including: failure to accurately state
9 total hours worked (for example, the wage statements failed to accurately reflect the
10 compensable hours worked); failure to accurately state gross wages earned; failure to accurately
11 state all deductions; failure to accurately state net wages earned; failure to state the applicable
12 hourly rates (including the accurate overtime rate of pay); failure to accurately state the
13 corresponding number of hours worked at each hourly rate; and failure to accurately identify the
14 name and address of the legal entity of the employer.

15 106. Additionally, Defendants' wage statements directly violated Labor Code § 226(a)
16 each period due to the failure to pay and report premium wages for denied meal periods and rest
17 breaks under § 226.7.

18 107. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
19 to Plaintiff and the Wage Statement Penalties Subclass because Defendants failed to provide a
20 wage statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
21 requirements of Labor Code § 226(a).

22 108. Defendants' failure to provide the required writing deprived Plaintiff and the
23 Wage Statement Penalties Subclass of the ability to know, understand, and question the
24 calculation and rate of pay and hours used to calculate the wages paid by Defendants. Therefore,
25 Plaintiff and the Wage Statement Penalties Subclass had no way to dispute the resulting
26 miscalculation of wages, all of which resulted in an unjustified economic enrichment to said
27 Defendants. As a direct result, Plaintiff and the Wage Statement Penalties Subclass have suffered
28 and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost

1 interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully
2 perform its obligation under state law, all to their respective damages in amounts according to
3 proof at trial.

4 109. As a result of Defendants' knowing and intentional failure to comply with Labor
5 Code § 226(a), Plaintiff and the Wage Statement Penalties Subclass have suffered an injury in
6 that each was prevented from knowing, understanding and disputing the wage payments paid to
7 them. Furthermore, Plaintiff and the Wage Statement Penalties Subclass have each suffered an
8 injury in that the failure to show all wages earned on the itemized wage statements resulted in
9 Plaintiff and the Represented Employees being denied all necessary deductions, payments, and
10 withholdings owed by the employer, including, but not limited to, the failure to make all
11 necessary contributions for unemployment benefits, social security benefits, proper payment of
12 taxes and withholdings, and other mandated state and federal benefits.

13 110. Plaintiff has also been injured as a result of having to bring this action to attempt
14 to obtain correct wage information following Defendants' refusal to comply with many of the
15 mandates of California's Labor Code and related laws and regulations.

16 111. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
17 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and
18 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
19 attorney's fees and costs, to Plaintiff and the Wage Statement Penalties Subclass who were
20 injured by Defendants' failure to comply with Labor Code § 226(a). The exact amount of the
21 applicable penalty is all in an amount to be shown according to proof at trial.

22 **EIGHTH CAUSE OF ACTION**

23 **UNFAIR AND UNLAWFUL COMPETITION**

24 (Business and Professions Code § 17200 *et seq.*)

25 *Plaintiff and the Represented Employees against All Defendants*

26 112. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
27 as if fully alleged herein.
28

1 113. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
2 competition, which includes any “unlawful, unfair or fraudulent business act or practice.” The
3 Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact,
4 due to the unfair and unlawful business practices of Defendants as alleged herein.

5 114. Defendants, and each of them, are “persons” as defined under Business &
6 Professions Code § 17021.

7 115. As alleged herein, Defendants engaged in conduct that violated California’s wage
8 and hour laws, including failure to pay minimum, regular, and overtime wages, failure to provide
9 mandated meal periods and rest breaks, failure to reimburse business expenses, and failure to
10 timely pay wages upon separation of employment, all to decrease their costs and increase profits.

11 116. At all times relevant herein, Defendants did not pay Plaintiff and the Represented
12 Employees wages and monies and other financial obligations to which they were entitled.

13 117. As a result of Defendants’ failure to comply with the Labor Code and IWC
14 Orders, Represented Employees, including Plaintiff, suffered a loss of wages and monies, all in
15 an amount to be shown according to proof at trial. Defendants’ ongoing violations of the
16 foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

17 118. Defendants’ violations of the California Labor Code and IWC Wage Orders and
18 its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business
19 practices because it was done in a systematic manner over a period of time to the detriment of the
20 Plaintiff and all others similarly-situated.

21 119. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
22 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
23 Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code
24 of Civil Procedure § 1021.5.

25 120. A violation of California Business & Professions Code § 17200, *et seq.* may be
26 predicated on the violation of any state or federal law. All of the acts described herein as
27 violations of, among other things, the California Labor Code and IWC Wage Orders, are
28 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,

1 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
2 practices in violation of California Business and Professions Code §§ 17200, et seq.

3 121. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
4 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
5 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
6 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
7 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
8 harm unless Defendants, and each of them, are restrained from continuing to engage in said
9 unfair, unlawful and/or fraudulent business practices.

10 122. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
11 and does, seek such relief as may be necessary to disgorge the profits which Defendants have
12 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the
13 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
14 Represented Employees are not obligated to establish individual knowledge of the unfair
15 practices of Defendants in order to recover restitution.

16 123. Plaintiff, individually, and on behalf of the Represented Employees, is further
17 entitled to and do seek a declaration that the above described business practices are unfair,
18 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
19 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
20 the future.

21 124. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and
22 Represented Employees are entitled to restitution of the wages withheld and retained by
23 Defendants during a period that commences four years prior to the filing of this complaint; a
24 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
25 Represented Employees; an award of attorneys' fees pursuant to California Code of Civil
26 Procedure § 1021.5 and other applicable laws; and an award of costs.

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1 **VI. PAGA CAUSES OF ACTION (Cal. Lab. Code. §§ 2698 – 2699.5)**

2 125. Plaintiff is an “aggrieved employee” under the PAGA as he was employed by
3 Defendants during the applicable statutory period and suffered one or more of the Labor Code
4 violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil
5 action filed on behalf of himself and all other similarly situated current and former aggrieved
6 employees in California against whom one or more of the alleged violations was committed
7 (hereinafter the “Aggrieved Employees”).

8 126. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to
9 Labor Code § 2699, as well as attorneys’ fees, costs, and/or other damages as permitted by
10 PAGA through a representative action pursuant to the PAGA and the California Supreme Court
11 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor
12 does he, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

13 127. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing
14 to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to
15 Defendants of the specific provisions of the Labor Code alleged to have been violated, including
16 the facts and theories to support the alleged violations. More than sixty-five (65) days have
17 elapsed since the date Plaintiff provided the written notice of the claims alleged herein without
18 the LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiff has fully
19 satisfied the administrative prerequisites to suit under the PAGA.

20 **NINTH CAUSE OF ACTION**

21 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES**

22 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

23 *Plaintiff and the Aggrieved Employees against All Defendants*

24 128. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
25 as if fully alleged herein.

26 129. Plaintiff and the Aggrieved Employees were not exempt from the requirement to
27 be paid at least the applicable California minimum wage throughout the statutory period for each
28 hour worked.

1 130. Plaintiff and the Aggrieved Employees were not provided all minimum and
2 regular wages due to Defendants' failure to accurately record and compensate for all hours
3 worked. For example, the Aggrieved Employees were frequently required to perform work after
4 clocking out at the end of their shift to complete tasks for Defendant (such as "charting"), yet
5 they were not paid for this time spent under the direction and control of Defendants. These
6 practices violate California law. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829
7 (California law "do[es] not allow employers to require employees to routinely work for minutes
8 off the clock without compensation"); *Frlekin v. Apple Inc* (2020) 8 Cal.5th 1038 (tasks are
9 compensable when employee is under company's control and where the tasks served the
10 employer's interests).

11 131. Also, at all relevant times, Defendants utilized a rounding policy and practice that
12 routinely undercompensated Plaintiff and the Aggrieved Employees and resulted in a net benefit
13 to Defendants and a net loss for Plaintiff and the Aggrieved Employees. In other words,
14 Defendants' rounding policy is not neutral and results in systematic undercompensation for the
15 Aggrieved Employees, in violation of California law. See's *Candy Shops, Inc. v. Superior Court*
16 (2012) 210 Cal.App.4th 889, 903 (rounding policy is illegal where it is not "neutral, both facially
17 and as applied"). Moreover, all underpayments caused by this rounding policy violate California
18 law and lead to minimum, regular, and overtime wage violations under *Camp v. Home Depot*
19 *U.S.A. Inc.*, (2022) 84 Cal. App. 5th 638, 660 (if an employer "can capture and has captured the
20 exact time an employee has worked during a shift, the employer must pay the employee for 'all
21 the time' worked").

22 132. As a result of these policies and practices, Defendants failed to pay Plaintiff and
23 the Aggrieved Employees for all hours worked.

24 133. Consequently, Defendants violated California Labor Code laws and minimum
25 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
26 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

134. Plaintiff is informed and believes and thereon alleges that Defendants intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

TENTH CAUSE OF ACTION

136. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

138. Labor Code § 204 requires that the employer timely pay all overtime wages to its employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12) in one workday shall be compensated at twice the regular rate of pay for an employee.

1 paid for this time spent under the direction and control of Defendants. These practices violate
2 California law. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law
3 “do[es] not allow employers to require employees to routinely work for minutes off the clock
4 without compensation”); *Frlekin v. Apple Inc* (2020) 8 Cal.5th 1038 (tasks are compensable
5 when employee is under company’s control and where the tasks served the employer’s interests).

6 141. Also, at all relevant times, Defendants utilized a rounding policy and practice that
7 routinely undercompensated Plaintiff and the Aggrieved Employees and resulted in a net benefit
8 to Defendants and a net loss for Plaintiff and the Aggrieved Employees. In other words,
9 Defendants’ rounding policy is not neutral and results in systematic undercompensation for the
10 Aggrieved Employees, in violation of California law. See’s *Candy Shops, Inc. v. Superior Court*
11 (2012) 210 Cal.App.4th 889, 903 (rounding policy is illegal where it is not “neutral, both facially
12 and as applied”). Moreover, all underpayments caused by this rounding policy violate California
13 law and lead to overtime violations under *Camp v. Home Depot U.S.A. Inc.*, (2022) 84 Cal. App.
14 5th 638, 660 (if an employer “can capture and has captured the exact time an employee has
15 worked during a shift, the employer must pay the employee for ‘all the time’ worked”).

16 142. Additionally, at all relevant times, Plaintiff and the Aggrieved Employees were
17 paid on an hourly basis plus additional earned nondiscretionary compensation. However, on the
18 occasions when Plaintiff and the Aggrieved Employees worked overtime hours and received
19 additional earned compensation during the same workweek, Defendants failed to properly
20 include these amounts in the calculations for the regular rate of pay – violating the well-
21 established rule that overtime must always be paid at time and one-half the regular rate of pay.

22 143. As a result of these policies and practices, Defendants failed to pay Plaintiff and
23 the Aggrieved Employees for all overtime hours worked.

24 144. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
25 Order § 3(A) every pay period with respect to Plaintiff and the Aggrieved Employees because
26 Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per
27 week without proper overtime compensation.
28

1 145. Plaintiff is informed and believes and thereon alleges that Defendants
2 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the
3 Aggrieved Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

4 146. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
5 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
6 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

7 **ELEVENTH CAUSE OF ACTION**

8 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS**

9 (Labor Code § 226.7 and 512; IWC Wage Order § 11, 12)

10 *Plaintiff and the Aggrieved Employees against All Defendants*

11 147. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
12 as if fully alleged herein.

13 148. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
14 who did not receive proper protections and benefits of the laws governing meal periods.

15 149. Labor Code § 226.7 requires employers, including Defendants, to provide
16 employees with meal periods as mandated by the Industrial Welfare Commission.

17 150. Labor Code § 512(a), in part, provides that employers, including Defendants, may
18 not employ an employee for a work period of more than five hours per day without providing an
19 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
20 except that if the total work period per day of the employee is no more than six hours, the meal
21 period may be waived by mutual consent of both the employer and the employee. Employers
22 may not employ an employee for a work period more than 10 hours per day without providing
23 the employee with a second meal period of not less than 30 minutes.

24 151. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
25 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
26 pay for each meal period that is missed.

27 152. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied
28 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and

1 practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when
2 they were: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal
3 period while under the control of the Company, (3) forced to take a shortened meal period, (4)
4 forced to take a meal period after the 5th hour of work, and (5) not provided mandated second
5 meal periods for shifts in excess of 10 hours.

6 153. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
7 Order every pay period because Plaintiff and the Aggrieved Employees were not provided with
8 all mandatory meal periods and Defendants failed to pay Plaintiff and the Aggrieved Employees
9 one additional hour of compensation at the regular rate of pay in lieu thereof.

10 154. On information and belief, Plaintiff and the Aggrieved Employees did not
11 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
12 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not
13 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
14 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved
15 Employees to take meal periods in accordance with California law.

16 155. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
17 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
18 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

19 **TWELFTH CAUSE OF ACTION**

20 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS**

21 (Labor Code § 226.7 and 512; IWC Wage Order § 12)

22 *Plaintiff and the Aggrieved Employees against All Defendants*

23 156. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
24 as if fully alleged herein.

25 157. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
26 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

27 158. Labor Code § 226.7 requires employers, including Defendants, to provide rest
28 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

1 159. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
2 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
3 each work period. Employees shall receive a 10-minute rest period every four hours or major
4 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
5 hours worked, for which there shall be no deduction from wages.

6 160. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
7 Order, Defendants shall pay Plaintiff and the Represented Employees one additional hour of pay
8 at his regular rate of compensation for each day that the rest period is not provided.

9 161. At all relevant times, Defendants also failed to provide Plaintiff and the
10 Aggrieved Employees with 10 minutes of net rest break time for every 4 hours worked, or major
11 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks for the
12 Aggrieved Employees, the Aggrieved Employees were unable to leave the premises for breaks,
13 and the Aggrieved Employees were often not authorized and/or permitted to take mandated rest
14 breaks due to being overwhelmed by their hectic workload. Furthermore, on occasions when the
15 Aggrieved Employees worked longer shifts, Defendants failed to authorize and/or permit
16 mandated third rest breaks.

17 162. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
18 Order every pay period because Plaintiff and the Aggrieved Employees were not provided with
19 all mandatory rest periods and Defendants failed to pay Plaintiff and the Aggrieved Employees
20 one additional hour of compensation in lieu thereof.

21 163. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
22 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
23 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

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1 **THIRTEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 (Labor Code § 2802)

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 164. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 165. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
8 who did not receive proper protections and benefits of the laws governing reimbursement of
9 business expenses.

10 166. Labor Code § 2802(a) requires that the employer indemnify its employees for
11 expenses incurred while discharging their duties or in obedience to directions of their employer.

12 167. At all relevant times herein mentioned, as a condition of employment, Defendants
13 required Plaintiff and the Aggrieved Employees to incur substantial business-related expenses
14 and costs without reimbursement.

15 168. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
16 failed to reimburse Plaintiff and the Aggrieved Employees for expenses incurred as a direct
17 consequence of Plaintiff's employment with Defendant and/or under the direction of Defendants.

18 169. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
19 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
20 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

21 **FOURTEENTH CAUSE OF ACTION**

22 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD**

23 (Labor Code § 204)

24 *Plaintiff and the Aggrieved Employees against All Defendants*

25 170. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
26 as if fully alleged herein.
27
28

1 171. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
2 who did not receive proper protections and benefits of the laws regarding the timing of payment
3 of wages each period.

4 172. Labor Code § 204(a) states that all wages earned by a person are due and payable
5 twice during each calendar month, and further states that wages earned during the first through
6 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
7 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
8 the following month.

9 173. Furthermore, Labor Code § 204(d) states “[t]he requirements of this section shall
10 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
11 the wages are paid not more than seven calendar days following the close of the payroll period.”

12 174. At all relevant times herein, Defendants did not provide Plaintiff and the
13 Aggrieved Employees with all wages due and owing each period within the time required by
14 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Aggrieved
15 Employees with all wages due and owing each pay period, including, but not limited to,
16 minimum, regular, and overtime wages, as well as meal and rest period premiums and sick time
17 at the proper rate, within the time specified by Labor Code § 204.

18 175. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
19 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
20 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

21 **FIFTEENTH CAUSE OF ACTION**

22 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES**

23 (Labor Code §§ 201 – 203)

24 *Plaintiff and the Aggrieved Employees against All Defendants*

25 176. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
26 as if fully alleged herein.

1 177. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
2 who did not receive proper protections and benefits of the laws governing the timing and
3 payment of final wages.

4 178. Labor Code § 201 requires that the employer immediately pay any wages, without
5 abatement or reduction, to any employee who is discharged.

6 179. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
7 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
8 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

9 180. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
10 penalty from the due date thereof at the same rate until paid or until an action therefore is
11 commenced, but the wages shall not continue for more than thirty (30) days.

12 181. At all relevant times here, Defendants did not provide Plaintiff and the Aggrieved
13 Employees with all wages due and owing upon separation of employment, including, but not
14 limited to, minimum, regular, and overtime wages, vacation and sick pay at the proper rates, and
15 meal and rest period premiums, within the time specified by Labor Code §§ 201 – 203.

16 182. Plaintiff alleges that, at all times material to this action, Defendants had a planned
17 pattern and practice of failing to timely pay to Plaintiff and the Aggrieved Employees all wages
18 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.

19 183. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
20 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
21 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

22 **SIXTEENTH CAUSE OF ACTION**

23 **PAGA ASSESSMENT FOR**

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

25 (Labor Code § 226)

26 *Plaintiff and the Aggrieved Employees against All Defendants*

27 184. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
28 as if fully alleged herein.

1 185. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
2 who did not receive proper protections and benefits of the laws governing the provision of
3 accurate itemized wage statements.

4 186. Labor Code § 226(a) requires an employer to provide its employees with itemized
5 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
6 inclusive dates of the pay period, the employee's name and the last four digits of his or her
7 Social Security number (or employee identification number), the name and address of the legal
8 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
9 corresponding number of hours worked at each hourly rate by the employee.

10 187. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
11 and the Aggrieved Employees due to violations including: failure to accurately state total hours
12 worked (for example, the wage statements failed to accurately reflect the compensable hours
13 worked); failure to accurately state gross wages earned; failure to accurately state all deductions;
14 failure to accurately state net wages earned; failure to state the applicable hourly rates (including
15 the accurate overtime rate of pay); failure to accurately state the corresponding number of hours
16 worked at each hourly rate; and failure to accurately identify the name and address of the legal
17 entity of the employer.

18 188. Additionally, Defendants' wage statements directly violated Labor Code § 226(a)
19 each period due to the failure to pay and report premium wages for denied meal periods and rest
20 breaks under § 226.7.

21 189. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
22 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
23 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

24 **VII. PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, on behalf of himself, on a representative basis, and all others
26 similarly situated, prays for judgment and relief against Defendants, jointly and severally, as
27 follows:
28

1. As to the Ninth through Sixteenth Causes of Action, the assessment of all applicable and available remedies under PAGA;
2. For reasonable attorneys' fees and costs as permitted under PAGA;
3. That the First through Eighth Causes of Action be certified as a class action;
4. That Plaintiff be appointed as Class Representative;
5. That counsel for Plaintiff be appointed Class Counsel;
6. For all applicable statutory penalties recoverable under the First through Eighth Causes of Action to the extent permitted by law, including those pursuant to Labor Code and Orders of the Industrial Welfare Commission;
7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including those pursuant to the Labor Code;
8. For injunctive relief and/or restitution as provided by the Labor Code and Business and Professions Code § 17200, *et seq.*;
9. For a declaratory judgment that Defendants have violated Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 246, 510, 512, 558, 1194, 1197, 1198, 1199, and 2802, among other sections inadvertently omitted;
10. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties according to proof, including interest thereon;
11. For pre- and post-judgment interest; and
12. For such other relief as the Court deems just and proper.

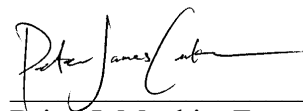
DEMAND FOR JURY TRIAL

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial as to the First through Eighth Causes of Action pled herein.

Dated: July 3, 2023

LAUBY, MANKIN & LAUBY LLP

BY:



Brian J. Mankin, Esq.
Peter J. Carlson, Esq.
Attorneys for Plaintiff

PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 5198 Arlington Avenue, PMB 513, Riverside, CA 92504.

On July 3, 2023, I caused to be served the foregoing document(s) described as follows:

FIRST AMENDED COMPLAINT

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **By Mail** I deposited such envelope in the mail at Riverside, California. The envelope was mailed with postage thereon fully prepaid.

☐ **By Facsimile** I sent this document via fax to all parties as listed on attached service list, on

☐ **By Overnight Service** I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

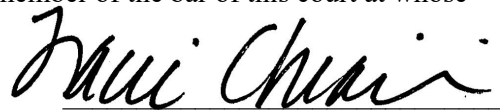
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

☐ **By Certified Mail-Return Receipt Requested** I caused such envelope with postage fully prepaid thereon, to be placed in the United States mail at Riverside, California

☐ **By Personal Service** I caused said document(s) to be personally served by hand on the parties listed on the attached service list.

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 3, 2023, Riverside, California.

☐ **Federal** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


Tracie Chiarito, Declarant

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