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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	
ATTACHMENT NAME: Answer: First Amended Complaint	
CASE NAME: Brian Gonzalez Fajardo vs. CW Convenient Couriers LLC, et al.	CASE NUMBER: CIVSB2309355
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Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

BRIAN GONZALEZ FAJARDO,
individually, on a representative basis, and on
behalf of all others similarly situated;

Plaintiff,

vs.

CW CONVENIENT COURIERS LLC, a
California Limited Liability Company;
CHRISTOPHER WILLIAMS, an Individual;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVSB2309355

*[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 Each
Period;
- (15) Failure to Timely Pay Final Wages;
- (16) Failure to Provide Accurate Itemized
Wage Statements

JURY TRIAL DEMANDED

1 Plaintiff Brian Gonzalez Fajardo (“Plaintiff”) on behalf of himself, on a representative
2 basis, and 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), Defendants CW Convenient
5 Couriers LLC and DOES 1 through 20, inclusive, (collectively, “Defendants”) on behalf of all
6 current and 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, including minimum, regular, and overtime wages, failure to provide meal
9 periods, failure to provide rest breaks, failure to timely pay wages upon separation of
10 employment, and failure to provide accurate itemized wage statements.

11 2. Plaintiff was employed by Defendants from approximately October 2022 through
12 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 while clocked out for meal periods, leading to uncompensated work. And the Represented
20 Employees were often required to remain under the Company’s control while on standby,
21 without compensation. These practices violate California law. See *Troester v. Starbucks*
22 *Corporation* (2018) 5 Cal.5th 829 (California law “do[es] not allow employers to require
23 employees to routinely work for minutes off the clock without compensation”); *Frlekin v. Apple*
24 *Inc* (2020) 8 Cal.5th 1038 (tasks are compensable when employee is under company’s control
25 and where the tasks served the employer’s interests)

26 5. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the
27 Represented Employees. At all relevant times, Plaintiff and the Represented Employees were
28 paid on an hourly basis plus additional earned nondiscretionary. However, on the occasions

1 when Plaintiff and the Represented Employees worked overtime hours and received additional
2 earned compensation during the same workweek, Defendants failed to properly include these
3 amounts in the calculations for the regular rate of pay – in violation of California law.

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

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

18 8. Also, Defendants required Plaintiff and the Represented Employees to incur
19 substantial business-related expenses and costs (such as personal cellular phones) to carry out
20 their duties for Defendants without reimbursement without reimbursement.

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

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

1 11. Plaintiff alleges that Defendants' violations of the wage and hour components of
2 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their
3 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
4 its competitors.

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

11 13. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
12 monetary relief against Defendants and each of them, on behalf of himself and the Represented
13 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
14 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
15 210, 218.6, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198,
16 1199, and 2802, among possibly other sections inadvertently omitted. Plaintiff also reserves the
17 right to name additional representatives throughout the State of California.

18 **II. JURISDICTION**

19 14. This Court has jurisdiction over the claims for relief of Plaintiff and the
20 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

21 **III. VENUE**

22 15. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
23 Procedure § 395(a). Defendants transact business in San Bernardino County and the unlawful
24 acts alleged herein have a direct effect on Plaintiff and the Represented Employees in San
25 Bernardino County. Furthermore, Defendants employed or employ Represented Employees in
26 San Bernardino County.

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1 **IV. PARTIES**

2 **Plaintiff**

3 16. Plaintiff and Class Representative Brian Gonzalez Fajardo was employed by
4 Defendants from approximately October 2021 through April 2023 and performed work for
5 Defendants in San Bernardino County.

6 **Defendants**

7 17. Plaintiff is informed and believes and thereon alleges that Defendant CW
8 Convenient Couriers LLC is a California limited liability company that maintains operations and
9 employs the Represented Employees throughout California, including San Bernardino County.

10 18. Plaintiff alleges that Defendant Christopher Williams is the owners/officers of
11 Defendant CW Convenient Couriers LLC and, moreover, was the actual employers of Plaintiff
12 and the Represented Employees. Plaintiff also alleges that, in the alternative, Defendant
13 Christopher Williams was an individuals employed by Defendant CW Convenient Couriers LLC
14 as a managerial and/or supervisory employee of Plaintiff and the Represented Employees. In
15 addition, Plaintiff alleges that at all relevant times herein Defendant Christopher Williams had
16 the authority, to exercise independent judgment to hire, transfer, promote, discharge, assign,
17 discipline, or take other similar actions against Plaintiff and the Represented Employees, and
18 Defendant Christopher Williams was direct responsible for the wrongful conduct outlined herein.

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

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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 **Waiting Time Penalties Subclass**

20 All Represented Employees who separated from their
21 employment with Defendants during the period three years
22 before the filing of this action and ending when final
23 judgment is entered.

24 **Wage Statement Penalties Subclass**

25 All Represented Employees during the period one year
26 before the filing of this action and ending when final
27 judgment is entered.

28 ///

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

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

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

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

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

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

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

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

25 iv. Whether Defendants violated the California Labor Code and applicable
26 IWC Wage Order by failing to provide compliant rest breaks to Plaintiff and the Rest Break
27 Subclass and whether Defendants failed to compensate Plaintiff and the Rest Break Subclass
28 with one additional hour of wages at the regular rate of pay for each instance when a paid rest

break was not provided;

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

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

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

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

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

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

35. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly and adequately represent and protect the interests of the Class. Plaintiff's interests are not in conflict with those of the Class. Class Representative's counsel are competent and experienced in litigating large employment class actions and other complex litigation matters, including cases like this case.

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

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PAY MINIMUM WAGES**

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

12 *Plaintiff and the Represented Employees Against All Defendants*

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

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

18 39. Plaintiff and the Represented Employees were not provided proper minimum and
19 regular wages due to Defendants' failure to accurately record and compensate for all hours
20 worked. As a result of this policy and practice, Plaintiff and the Represented Employees were
21 required to perform off-the-clock work that Defendants either knew or should have known they
22 were performing.

23 40. As a result of these policies and practices, Defendants failed to pay Plaintiff and
24 the Represented Employees for all hours worked.

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

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

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

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

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

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

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

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PAY OVERTIME WAGES**

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

24 *Plaintiff and the Represented Employees Against All Defendants*

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

27 49. Plaintiff and the Represented Employees were employees of Defendants who did
28 not receive proper protections and benefits of the laws governing payment of overtime wages.

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

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

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

17 53. As a result of these policies and practices, Defendants failed to pay Plaintiff and
18 the Represented Employees for all overtime hours worked.

19 54. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
20 Order § 3(A) every pay period with respect to Plaintiff and the Represented Employees because
21 Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per
22 week without proper overtime compensation.

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

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

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

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

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

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

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO PROVIDE MEAL PERIODS**

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

16 *Plaintiff and the Meal Break Subclass Against All Defendants*

17 61. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
18 as if fully alleged herein.

19 62. Plaintiff and the Meal Break Subclass are and/or were employees of Defendants
20 who did not receive proper protections and benefits of the laws governing mandatory meal
21 periods.

22 63. Labor Code § 226.7 requires employers, including Defendants, to provide
23 employees with meal periods as mandated by the Industrial Welfare Commission.

24 64. Labor Code § 512(a), in part, provides that employers, including Defendants, may
25 not employ an employee for a work period of more than five hours per day without providing an
26 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
27 except that if the total work period per day of the employee is no more than six hours, the meal
28 period may be waived by mutual consent of both the employer and the employee. Employers

1 may not employ an employee for a work period more than 10 hours per day without providing
2 the employee with a second meal period of not less than 30 minutes.

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

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

13 67. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
14 Order every pay period because Plaintiff and the Meal Break Subclass were not provided with all
15 mandatory meal periods and Defendants failed to pay Plaintiff and the Meal Break Subclass one
16 additional hour of compensation at the regular rate of pay in lieu thereof.

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

20 69. On information and belief, Plaintiff and the Meal Break Subclass did not
21 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
22 obtained from Plaintiff and the Meal Break Subclass were not willfully obtained, were not
23 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
24 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Meal Break Subclass
25 to take meal periods in accordance with California law.

26 70. By their failure to provide Plaintiff and the Meal Break Subclass with meal
27 periods as required by California law, and failing to pay one hour of additional wages in lieu of
28 each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and

1 IWC Wage Order § 11. Accordingly, Defendants are liable for one hour of additional wages at
2 the employee's regular rate of compensation for each work day that a meal period was not
3 lawfully provided in an amount to be proven at time of trial.

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

7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE REST BREAKS**

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

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

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

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

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

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

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

25 77. At all relevant times, Defendants also failed to provide Plaintiff and the Rest
26 Break Subclass with 10 minutes of net rest break time for every 4 hours worked, or major
27 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks for the
28 Rest Break Subclass and the Rest Break Subclass were often not authorized and/or permitted to

1 take mandated rest breaks due to being overwhelmed by their hectic workload. Furthermore, on
2 occasions when the Rest Break Subclass worked longer shifts, Defendants failed to authorize
3 and/or permit mandated third or fourth rest breaks.

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

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

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

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

20 **FIFTH CAUSE OF ACTION**

21 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

22 (Labor Code § 2802)

23 *Plaintiff and the Represented Employees against All Defendants*

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

26 83. Plaintiff and the Represented Employees are and/or were employees of
27 Defendants who did not receive proper protections and benefits of the laws governing
28 reimbursement of business expenses.

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

3 85. At all relevant times herein mentioned, as a condition of employment, Defendants
4 required Plaintiff and the Represented Employees to incur substantial business-related expenses
5 and costs without reimbursement. For example, Defendants required Plaintiff and the
6 Represented Employees to use personal cell phone use to carry out duties for Defendants without
7 reimbursement.

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

11 87. At all relevant times herein, Defendants failed to reimburse the Represented
12 Employees, including Plaintiff, for expenses incurred while discharging duties to Defendants,
13 thereby receiving an economic benefit.

14 88. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage
15 Order § 9(B), Plaintiff and the Represented Employees have suffered, and continue to suffer,
16 substantial losses related to such incurred expenses, expenses, and attorney's fees in seeking to
17 compel Defendants to fully perform their obligations under the law, all in an amount to be
18 proved at time of trial.

19 89. Labor Code § 2802(b) states that "[a]ll awards made by a Court for
20 reimbursement of necessary expenditures" shall carry interest, at the same rate as judgments in
21 civil actions, and said interest will accrue from the date on which the employee incurred the
22 necessary expenditure or loss including, but not limited to, reasonable costs and attorney's fees
23 incurred by the employee enforcing the rights granted pursuant to Labor Code § 2802. The exact
24 amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

25 90. Furthermore, Labor Code § 2802(c) states that "[f]or the purposes of this section,
26 the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not
27 limited to, attorney's fees incurred by the employee in enforcing the rights granted by this
28 section." Therefore, Plaintiff and the Represented Employees seek to recover the unreimbursed

1 expenses, interest on the unreimbursed expenses, and the costs and attorney's fees necessarily
2 incurred in pursuing same. The exact amount of reimbursements, interest, costs, and attorney's
3 fees will be in an amount to be proved at the time of trial.

4 **SIXTH CAUSE OF ACTION**

5 **FAILURE TO TIMELY PAY FINAL WAGES**

6 (Labor Code §§ 201 – 203)

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

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

10 92. Plaintiff and the Waiting Time Penalties Subclass are and/or were employees of
11 Defendants who did not receive proper protections and benefits of the laws governing the timing
12 and payment of wages.

13 93. Labor Code § 201 requires that the employer immediately pay any wages, without
14 abatement or reduction, to any employee who is discharged.

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

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

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

24 97. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
25 wages due and owing to Plaintiff and the Waiting Time Penalties Subclass upon separation of
26 employment, including, but not limited to, minimum, regular, and overtime wages, vacation
27 wages, as well as meal and rest period premiums.

28 ///

1 98. Furthermore, Defendants failed to pay all wages due and owing to the Waiting
2 Time Subclass because of the failure to pay all required sick pay wages. Labor Code § 246(l)(1)
3 provides that paid sick time for non-exempt employees must be “calculated in the same manner
4 as the regular rate of pay for the workweek in which the employee uses paid sick time, whether
5 or not the employee actually works overtime in that workweek.” Additionally, Labor Code §
6 246(l)(2) states that the paid sick time must be “calculated by dividing the employee’s total
7 wages, not including overtime premium pay, by the employee’s total hours worked in the full
8 pay periods of the prior 90 days of employment.” Here, Defendants only calculated and paid sick
9 pay at the base rate of pay, rather than at the rate required by Labor Code § 246, leading to
10 unpaid sick pay and violations of Labor Code §§ 201 – 203.

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

17 **SEVENTH CAUSE OF ACTION**

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

19 (Labor Code § 226)

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

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

23 101. Plaintiff and the Wage Statement Penalties Subclass are and/or were employees of
24 Defendants who did not receive proper protections and benefits of the laws governing the
25 provision of accurate itemized wage statements.

26 102. Labor Code § 226(a) requires an employer to provide its employees with itemized
27 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
28 inclusive dates of the pay period, the employee’s name and the last four digits of his or her

1 Social Security number (or employee identification number), the name and address of the legal
2 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
3 corresponding number of hours worked at each hourly rate by the employee.

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

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

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

19 106. Defendants' failure to provide the required writing deprived Plaintiff and the
20 Wage Statement Penalties Subclass of the ability to know, understand, and question the
21 calculation and rate of pay and hours used to calculate the wages paid by Defendants. Therefore,
22 Plaintiff and the Wage Statement Penalties Subclass had no way to dispute the resulting
23 miscalculation of wages, all of which resulted in an unjustified economic enrichment to said
24 Defendants. As a direct result, Plaintiff and the Wage Statement Penalties Subclass have suffered
25 and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost
26 interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully
27 perform its obligation under state law, all to their respective damages in amounts according to
28 proof at trial.

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

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

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

19 **EIGHTH CAUSE OF ACTION**

20 **UNFAIR AND UNLAWFUL COMPETITION**

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

22 *Plaintiff and the Represented Employees against All Defendants*

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

25 111. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
26 competition, which includes any "unlawful, unfair or fraudulent business act or practice." The
27 Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact,
28 due to the unfair and unlawful business practices of Defendants as alleged herein.

1 112. Defendants, and each of them, are “persons” as defined under Business &
2 Professions Code § 17021.

3 113. As alleged herein, Defendants engaged in conduct that violated California’s wage
4 and hour laws, including failure to pay minimum, regular, and overtime wages, failure to provide
5 mandated meal periods and rest breaks, and failure to timely pay wages upon separation of
6 employment, all to decrease their costs and increase profits.

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

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

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

17 117. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
18 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
19 Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code
20 of Civil Procedure § 1021.5.

21 118. A violation of California Business & Professions Code § 17200, *et seq.* may be
22 predicated on the violation of any state or federal law. All of the acts described herein as
23 violations of, among other things, the California Labor Code and IWC Wage Orders, are
24 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,
25 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
26 practices in violation of California Business and Professions Code §§ 17200, *et seq.*

27 119. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
28 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a

1 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
2 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
3 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
4 harm unless Defendants, and each of them, are restrained from continuing to engage in said
5 unfair, unlawful and/or fraudulent business practices.

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

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

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

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

24 123. Plaintiff is an "aggrieved employee" under the PAGA as he was employed by
25 Defendants during the applicable statutory period and suffered one or more of the Labor Code
26 violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil
27 action filed on behalf of himself and all other similarly situated current and former aggrieved
28 employees in California against whom one or more of the alleged violations was committed

1 (hereinafter the “Aggrieved Employees”).

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

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

14 **NINTH CAUSE OF ACTION**

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

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

17 *Plaintiff and the Aggrieved Employees against All Defendants*

18 126. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
19 as if fully alleged herein.

20 127. Plaintiff and the Aggrieved Employees were not exempt from the requirement to
21 be paid at least the applicable California minimum wage throughout the statutory period for each
22 hour worked.

23 128. Plaintiff and the Aggrieved Employees were not provided proper minimum and
24 regular wages due to Defendants’ failure to accurately record and Aggrieved for all hours
25 worked. As a result of this policy and practice, Plaintiff and the Represented Employees were
26 required to perform off-the-clock work that Defendants either knew or should have known they
27 were performing.

28 ///

129. As a result of this policy and practice, Defendants failed to pay Plaintiff and the Aggrieved Employees for all hours worked.

131. 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

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

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

135. 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.

Aggrieved Employees did not receive proper overtime compensation.

137. Additionally, Defendants paid Plaintiff and the Aggrieved Employees on an hourly basis but also paid additional nondiscretionary compensation (such as bonuses). However, during workweeks where the Aggrieved Employees worked overtime hours and earned additional nondiscretionary compensation, Defendants failed to include that compensation in the calculations for the regular rate of pay – violating the well-established rule that overtime must always be paid at time and one-half the regular rate of pay.

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

139. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage Order § 3(A) every pay period with respect to Plaintiff and the Aggrieved 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.

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

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

ELEVENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS

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

Plaintiff and the Aggrieved Employees against All Defendants

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

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

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1 144. Labor Code § 226.7 requires employers, including Defendants, to provide
2 employees with meal periods as mandated by the Industrial Welfare Commission.

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

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

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

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

24 149. On information and belief, Plaintiff and the Aggrieved Employees did not
25 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
26 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not
27 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
28 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved

1 Employees to take meal periods in accordance with California law.

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

5 **TWELFTH CAUSE OF ACTION**

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

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

8 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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

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

23 156. At all relevant times, Defendants also failed to provide Plaintiff and the
24 Aggrieved Employees with 10 minutes of net rest break time for every 4 hours worked, or major
25 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks for the
26 Aggrieved Employees, the Aggrieved Employees were unable to leave the premises for breaks,
27 and the Aggrieved Employees were often not authorized and/or permitted to take mandated rest
28 breaks due to being overwhelmed by their hectic workload. Furthermore, on occasions when the

1 Aggrieved Employees worked longer shifts, Defendants failed to authorize and/or permit
2 mandated third rest breaks.

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

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

10 **THIRTEENTH CAUSE OF ACTION**

11 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

12 (Labor Code § 2802)

13 *Plaintiff and the Aggrieved Employees against All Defendants*

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

16 160. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
17 who did not receive proper protections and benefits of the laws governing reimbursement of
18 business expenses.

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

21 162. At all relevant times herein mentioned, as a condition of employment, Defendants
22 required Plaintiff and the Aggrieved Employees to incur substantial business-related expenses
23 and costs without reimbursement. For example, Defendants required Plaintiff and the Aggrieved
24 Employees to use personal cell phone use to carry out duties for Defendants without
25 reimbursement.

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

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

4 **FOURTEENTH CAUSE OF ACTION**

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

6 (Labor Code § 204)

7 *Plaintiff and the Aggrieved Employees against All Defendants*

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

10 166. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
11 who did not receive proper protections and benefits of the laws regarding the timing of payment
12 of wages each period.

13 167. Labor Code § 204(a) states that all wages earned by a person are due and payable
14 twice during each calendar month, and further states that wages earned during the first through
15 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
16 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
17 the following month.

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

21 169. At all relevant times herein, Defendants did not provide Plaintiff and the
22 Aggrieved Employees with all wages due and owing each period within the time required by
23 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Aggrieved
24 Employees with all wages due and owing each pay period, including, but not limited to,
25 minimum, regular, and overtime wages, as well as meal and rest period premiums and sick time
26 at the proper rate, within the time specified by Labor Code § 204.

27 ///

28 ///

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

4 **FIFTEENTH CAUSE OF ACTION**

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

6 (Labor Code §§ 201 – 203)

7 *Plaintiff and the Aggrieved Employees against All Defendants*

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

10 172. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
11 who did not receive proper protections and benefits of the laws governing the timing and
12 payment of final wages.

13 173. Labor Code § 201 requires that the employer immediately pay any wages, without
14 abatement or reduction, to any employee who is discharged.

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

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

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

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

28 ///

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

4 **SIXTEENTH CAUSE OF ACTION**

5 **PAGA ASSESSMENT FOR**
6 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

7 (Labor Code § 226)

8 *Plaintiff and the Aggrieved Employees against All Defendants*

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

11 180. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
12 who did not receive proper protections and benefits of the laws governing the provision of
13 accurate itemized wage statements.

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

20 182. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
21 and the Aggrieved Employees due to violations including: failure to accurately state total hours
22 worked (for example, the wage statements failed to accurately reflect the compensable hours
23 worked); failure to accurately state gross wages earned; failure to accurately state all deductions;
24 failure to accurately state net wages earned; failure to state the applicable hourly rates (including
25 the accurate overtime rate of pay); failure to accurately state the corresponding number of hours
26 worked at each hourly rate; and failure to accurately identify the name and address of the legal
27 entity of the employer.

28 ///

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

4 184. 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 **VII. PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, on behalf of himself, on a representative basis, and all others
9 similarly situated, prays for judgment and relief against Defendants, jointly and severally, as
10 follows:

11 1. As to the Ninth through Sixteenth Causes of Action, the assessment of all
12 applicable and available remedies under PAGA;

13 2. For reasonable attorneys' fees and costs as permitted under PAGA;

14 3. That the First through Eighth Causes of Action be certified as a class action;

15 4. That Plaintiff be appointed as Class Representative;

16 5. That counsel for Plaintiff be appointed Class Counsel;

17 6. For all applicable statutory penalties recoverable under the First through Eighth
18 Causes of Action to the extent permitted by law, including those pursuant to Labor Code and
19 Orders of the Industrial Welfare Commission;

20 7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by
21 law, including those pursuant to the Labor Code;

22 8. For injunctive relief and/or restitution as provided by the Labor Code and
23 Business and Professions Code § 17200, *et seq.*;

24 9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
25 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194,
26 1197, 1198, 1199, and 2802, among other sections inadvertently omitted;

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1 10. For an award of damages in the amount of unpaid compensation including, but
2 not limited to, unpaid wages, benefits, and penalties according to proof, including interest
3 thereon;

4 11. For pre- and post-judgment interest; and

5 12. For such other relief as the Court deems just and proper.

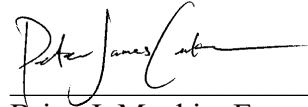
6 **DEMAND FOR JURY TRIAL**

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

9
10 Dated: June 26, 2023

LAUBY, MANKIN & LAUBY LLP

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12 BY:



13 Brian J. Mankin, Esq.
14 Peter J. Carlson, Esq.
15 Attorneys for Plaintiff
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