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Per local Rule, This case is assigned to
Judge Treat, Charles S, for all purposes.

10 Attorneys for Plaintiff, STANLEY GLENN

11 As an individual and on behalf of all others similarly situated

SUMMONS ISSUED

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

11 STANLEY GLENN, as an individual and
12 on behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 THE MCCOY GROUP LLC, a California
16 Limited Liability Company; MCCOY
17 GROUP, INC., a Wisconsin Corporation;
18 FOODLINER, INC, a Wisconsin
19 Corporation; and DOES 1-100, inclusive,

20 Defendants.

Case No.: C23-00863

CLASS ACTION COMPLAINT FOR:

1. **Recovery of Unpaid Wages and Liquidated Damages**
2. **Failure to Furnish Accurate Itemized Wage Statements**
3. **Failure to Timely Pay All Wages Due Upon Separation of Employment**
4. **Failure to Reimburse Business Expenses and**
5. **Unfair Competition**

DEMAND FOR JURY TRIAL

1 Plaintiff, STANLEY GLENN (“PLAINTIFF”), as an individual and on behalf of all other
2 similarly situated Class Members (as defined below), hereby files this Complaint against Defendants
3 THE MCCOY GROUP LLC, a California Limited Liability Company; MCCOY GROUP, INC., a
4 Wisconsin Corporation; FOODLINER, INC, a Wisconsin Corporation; and DOES 1-100, inclusive,
5 (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and
6 thereon alleges as follows:

7 **JURISDICTION AND VENUE**

8 1. This court possesses original subject matter jurisdiction over this matter. Venue is
9 proper in the County of Contra Costa pursuant to California Code of Civil Procedure section 395.5
10 because DEFENDANTS transact business within this judicial district, and Defendant THE MCCOY
11 GROUP LLC’s principal place of business is in this judicial district, and some of the acts, omissions,
12 and conduct alleged by PLAINTIFF herein occurred in this this judicial district.

13 **THE PARTIES**

14 2. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
15 California and a citizen of the State of California. PLAINTIFF was employed by DEFENDANTS
16 in the State of California as a non-exempt employee during the Class Period (defined below).

17 3. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
18 PLAINTIFF worked for DEFENDANTS as a driver, truck driver and/or similar title(s) and/or
19 position(s) from in or around July 2020 through on or around May 1, 2022. DEFENDANTS
20 regularly assigned PLAINTIFF to work out of its locations, yards and/or facilities located in Rialto,
21 California, and PLAINTIFF completed routes for DEFENDANTS in various cities located
22 throughout California.

23 4. DEFENDANTS are a California limited liability company and/or Wisconsin
24 corporation that, at all relevant times, were authorized to do business within the State of California
25 and are doing business in the State of California.

26 5. DEFENDANTS own, operate, or otherwise manage a transportation business. Based
27 on information and belief, DEFENDANTS own, operate and/or otherwise manage companies
28 and/or business entities that operate under and/or operated under the following names: McCoy

1 Group / McCoy Group, Inc., Truck Country, Foodliner / Foodliner, Inc., Quest Liner, Foodliner
2 Mexico/Quest Liner Mexico, Quest Logistics, and/or McCoy Construction & Forestry.
3 DEFENDANTS owns, operates, and/or otherwise manages, locations, sites, yards, and/or facilities
4 in California, including but not limited to locations, sites, yards and/or facilities in Rialto, California,
5 and Richmond, California, among other cities in California.

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

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

22 **JOINT LIABILITY**

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

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

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

19 10. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
20 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
21 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
22 across all of their locations/facilities and subjected all of the Class Members to these same policies
23 and practices regardless of the location(s) where they worked. Among other things, PLAINTIFF is
24 informed and believes that: (1) there is common ownership in, and financial control, in
25 DEFENDANTS’ companies, (2) DEFENDANTS utilize common management, who have control
26 over the day-to-day operations and employment matters, including the power to hire and fire, set
27 schedules, issue employee policies, and determine rates of compensation across its locations in
28 California; (3) DEFENDANTS utilize the same policies and procedures for all California

1 employees, including issuing the same employee handbooks and other form agreements; (4)
2 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee
3 employment matters; and, (6) DEFENDANTS share employees.

4 11. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
5 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Class Members
6 upon whose behalf PLAINTIFF brings these allegations and causes of action, in that
7 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Class Members' wages,
8 hours and working conditions, and/or suffered or permitted PLAINTIFF and the Class Members to
9 work so as to be considered the joint employers of PLAINTIFF and the Class Members. For
10 example, based on information and belief, DEFENDANTS issued wage statements to PLAINTIFF
11 identifying "McCoy" and/or "The McCoy Group" as the name of the legal entity that is the
12 employer. However, based on information and belief, various documents in PLAINTIFF's
13 personnel file reflect the following as the name of PLAINTIFF's employer: "Foodliner" and/or
14 "Foodliner, Inc." Moreover, most if not all the loads PLAINTIFF hauled for DEFENDANTS were
15 hauled and/or otherwise transported for a business operating under the name "Foodliner" and/or
16 "Foodliner, Inc." Based on information and belief, Class Members were required to identify
17 themselves as "Foodliner" and/or "Foodliner, Inc." when making deliveries. Based on further
18 information and belief, DEFENDANTS, and each of them, share the same principal business
19 address, agent for service of process as provided to the California Secretary of State and/or
20 Wisconsin Secretary of State and/or utilize some of the same attorneys and/or human resources
21 personnel to oversee employment-related matters.

22 12. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
23 uniform set of policies, practices and/or procedures concerning, inter alia, hourly pay, time-keeping
24 practices, reimbursement of business expenses and other working conditions that were distributed
25 to, and/or applied to PLAINTIFF and the Class Members, and further that DEFENDANTS
26 uniformly compensated and controlled the wages of PLAINTIFF and the Class Members in a
27 uniform manner. DEFENDANTS collectively represented to PLAINTIFF and the Class Members
28 that each was an "at-will" employee of DEFENDANTS, and that DEFENDANTS collectively

1 retained the right to terminate PLAINTIFF's and Class Members' employment with or without
2 cause. Upon information and belief, DEFENDANTS further collectively represented to PLAINTIFF
3 and Class Members in writing the details of their compensation, and the manner in which they were
4 to take meal and rest periods, the procedures required by DEFENDANTS collectively for
5 recordation of hours worked and the policies applicable to PLAINTIFF and Class Members by
6 which DEFENDANTS collectively would evaluate the wage rates of PLAINTIFF and Class
7 Members.

8 13. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
9 and working conditions of PLAINTIFF and Class Members. As such, DEFENDANTS collectively
10 held the right to control virtually every aspect of PLAINTIFF's and the Class Members'
11 employment, including the instrumentality that resulted in the illegal conduct for which PLAINTIFF
12 seeks relief in this Complaint.

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

16 **CLASS ALLEGATIONS**

17 15. PLAINTIFF brings this action on behalf of himself, and all others similarly situated
18 as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF seeks to
19 represent are defined as follows and referred to as the "Class" or "Class Members":

20 All current and former non-exempt employees that worked either
21 directly or via a staffing agency for any one or more of the
22 DEFENDANTS at any location in California at any time within the
23 four years prior to the filing of the initial Complaint ("Class Period").

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

28 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment

1 because common questions of law and fact predominate over individual issues.
2 Common questions include, but are not limited to, the following: (1) whether
3 DEFENDANTS understated hours worked and failed to pay all amounts due to
4 PLAINTIFF and the Class Members for wages earned, including minimum and
5 straight time wages, under California law; (2) whether DEFENDANTS
6 provided PLAINTIFF and Class Members with accurate, itemized wage
7 statements in compliance with California law, displaying, including but not
8 limited to, the total hours worked during the pay period; (3) whether
9 DEFENDANTS timely paid PLAINTIFF and the Class Members all wages due
10 upon separation of employment; (4) whether DEFENDANTS failed to
11 reimburse PLAINTIFF and the Class Members for all business expenses; and
12 (5) whether DEFENDANTS violated California Business and Professions Code
13 sections 17200, *et seq.*

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

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

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

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

18 **FACTUAL AND LEGAL ALLEGATIONS**

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

22 17. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
23 PLAINTIFF worked for DEFENDANTS as a driver, truck driver and/or similar title(s) and/or
24 position(s) from in or around July 2020 through on or around May 1, 2022. DEFENDANTS
25 regularly assigned PLAINTIFF to work out of its locations, yards and/or facilities located in Rialto,
26 California, and PLAINTIFF completed routes for DEFENDANTS in various cities located
27 throughout California.

28 18. PLAINTIFF regularly worked at least fourteen (14) hours per day.. At all

1 relevant times, PLAINTIFF was a non-exempt employee that was paid on an hourly basis for time
2 counted by DEFENDANTS as hours.

3 19. **Unpaid Minimum and Straight Time Wages.** DEFENDANTS failed to
4 compensate PLAINTIFF and Class Members for all hours worked, resulting in the underpayment
5 of minimum and straight time wages. DEFENDANTS failed to compensate PLAINTIFF and Class
6 Members for all hours worked by virtue of, DEFENDANTS' automatic deduction policies, payment
7 according to scheduled hours rather than actual hours worked, and/or time rounding policies, and
8 failure to relieve employees of all duties/employer control and/or suffering, permitting and/or
9 requiring Class Members to perform work during unpaid meal periods, as explained below.

10 20. Based on information and belief, DEFENDANTS implemented a policy and/or
11 practice of rounding meal period start and end times and/or automatically deducting at least thirty
12 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
13 PLAINTIFF and other Class Members were subject to DEFENDANTS' control during purported
14 meal periods and/or were otherwise required to work through unpaid meal periods, depriving
15 PLAINTIFF and Class Members of all wages owed.

16 21. Based on information and belief, Class Members were not paid for all hours worked
17 due to DEFENDANTS' policy and/or practice of rounding time entries or paying according to
18 scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies
19 and/or practices.

20 22. For example, DEFENDANTS prohibited PLAINTIFF and other Class Members
21 from recording their actual hours worked and/or any hours worked in excess of fourteen (14) hours
22 in a shift. However, due to their assigned workloads and/or explicit instructions from
23 DEFENDANTS, PLAINTIFF and other Class Members were consistently required to clock out but
24 to continue working. For example, on at least a dozen occasions when arriving at an unload
25 destination shortly before exceeding fourteen hours of worktime, PLAINTIFF was required to log
26 out of the vehicle/timekeeping system and continue working, including but not limited to, going
27 through the unload process and/or performing other work tasks off the clock so that PLAINTIFF
28 would not exceed his fourteen-hour shift. As such, PLAINTIFF was consistently suffered, permitted

1 and/or required to perform off-the-clock work resulting in the substantial underpayment of
2 minimum wages and straight time wages owed to PLAINTIFF.

3 23. Based on information and belief, DEFENDANTS did not compensate Class
4 Members for all pre-trip and/or post-trip inspections, waiting time, time spent at weight stations,
5 time spent fueling, cleaning, retrieving, returning, maintaining, repairing trucks and/or work
6 equipment/tools, setting up, time spent completing paperwork, loading, unloading, waiting between
7 jobs and tasks, and/or performing other work tasks, resulting in a failure to pay Class Members for
8 all hours worked.

9 24. Based on information and belief, Class Members were required to spend time
10 starting, booting and/or logging into the vehicle onboarding system before they could clock in for
11 the start of their shifts. As such, Class Members spent at least several minutes before each scheduled
12 shift starting, booting and/or logging into the vehicle onboarding system in order to clock in and
13 begin their shifts. At the end of their shifts, Class Members were required to first clock out for the
14 end of their shifts before spending at least several minutes to shut down and/or log out of the vehicle
15 system. This pre-shift and post-shift work was off-the-clock and uncompensated resulting in unpaid
16 minimum wages and straight time wages.

17 25. Moreover, based on information and belief, at times, DEFENDANTS' electronic
18 time-keeping system/app malfunctioned such that Class Members were required to either reinitiate
19 and/or otherwise troubleshoot the system and/or wait for the system to boot prior to being able to
20 clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in from
21 meal periods, resulting in off-the-clock work and the underpayment of wages owed to Class
22 Members. Based on information and belief, Class Members experienced the same issues when
23 clocking out for shifts and/or back in for meal periods. This time spent under DEFENDANTS'
24 control was not recorded and not compensated and resulted in unpaid minimum wages owed to
25 Class Members.

26 26. Based on information and belief, Class Members were also required to complete off-
27 the-clock work outside of scheduled shifts due to work-related phone calls and/or messages they
28 received to their phones and were required to respond to, including but not limited to,

1 communications from supervisors regarding scheduling and/or other work tasks, resulting in the
2 underpayment of wages owed to Class Members.

3 27. Based on information and belief, DEFENDANTS failed to pay Class Members for
4 time they were required to spend completing orientation, training, policy questionnaires, and/or time
5 spent completing the onboarding process including but not limited to reviewing various documents
6 and policies provided by DEFENDANTS. For example, based on information and belief,
7 DEFENDANTS required PLAINTIFF and other Class Members to watch training videos and/or
8 review other training materials and/or undergo testing regarding the training videos and/or other
9 training materials, resulting in approximately at least four (4) to five (5) hours of uncompensated
10 work time at least every several months. Based on information and belief, this work time was
11 completed off-the-clock and was not compensated.

12 28. Based on further information and belief, DEFENDANTS implemented a time-
13 rounding system that as applied systematically deprived PLAINTIFF and other Class Members of
14 compensable time because the time-rounding system implemented by DEFENDANTS would
15 almost always, if not always, result in understating actual compensable work time.

16 29. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
17 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
18 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
19 minimum wages and/or straight time wages owed to PLAINTIFF and Class Members.

20 30. Based on information and belief, DEFENDANTS had actual and/or constructive
21 knowledge that its time rounding policies/practices, auto-deduction policies and practices and/or
22 other off-the-clock work resulted in the underpayment of minimum and straight time wages owed
23 to PLAINTIFF and other Class Members, in violation of, including but not limited to, California's
24 minimum wage laws.

25 31. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
26 provide PLAINTIFF and other Class Members with accurate wage statements that complied with
27 Labor Code section 226.

28 32. DEFENDANTS issued wage statements to PLAINTIFF and Class Members that

1 failed to indicate the earned gross and net wages earned during the pay period, the correct applicable
2 rates of pay for all hours worked, and the total hours worked by PLAINTIFF and Class Members
3 (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve Class
4 Members of all duties and employer control during unpaid meal periods, payment according to
5 scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies
6 and practices) which results in a violation of Labor Code section 226(a).

7 33. Based on information and belief, wage statements issued by DEFENDANTS failed
8 to list all applicable hourly rates in effect during the pay period and the corresponding number of
9 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

10 34. Moreover, based on information and belief, DEFENDANTS issued wage statements
11 to PLAINTIFF and Class Members that further violate Labor Code section 226(a), by among other
12 things, failing to list the correct name and/or address of the legal entity that is the employer.

13 35. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Class
14 Members that were not accurate and did not include all of the statutorily required information. As
15 such, DEFENDANTS violated Labor Code section 226.

16 36. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
17 information and belief, DEFENDANTS failed to timely pay Class Members all wages that were due
18 and owing upon termination or resignation. Based on information and belief, DEFENDANTS
19 untimely provide final wages to Class Members without regard to the timing requirements of Labor
20 Code sections 201-202.

21 37. Upon separation of employment, Class Members' final paychecks were not timely
22 provided and/or were not timely provided with all owed vacation pay and/or paid time off.
23 Moreover, PLAINTIFF's and Class Members' final paychecks, once provided, did not include all
24 wages owed as they were devoid of, including but not limited to, all owed minimum wages, straight
25 time wages, reporting time pay wages, vacation pay, and all owed sick leave and/or paid time off
26 wages at the properly accrued rates.

27 38. Moreover, DEFENDANTS failed to timely provide all owed wages immediately
28 upon discharge of employment. For example, based on information and belief, at times, Class

1 Members experienced breaks in their employment caused by DEFENDANTS whereby Class
2 Members would not be called in for work for longer than a single pay period due to including but
3 not limited to DEFENDANTS' lack of work or lack of assignments. Such instances qualify as a
4 discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at the end of
5 such periods of employment, in violation of including but not limited to Labor Code section 201-
6 202.

7 39. These violations subject DEFENDANTS to civil penalties under Labor Code section
8 203, 210, and/or 256.

9 40. **Unreimbursed Business Expenses.** Based on information and belief,
10 DEFENDANTS required PLAINTIFF and Class Members to incur business expenses as a direct
11 consequence of the performance of their job duties without providing reimbursement, in violation
12 of Labor Code section 2802. Based on information and belief, PLAINTIFF and Class Members
13 were improperly required to provide and maintain work tools that are supposed to be the
14 responsibility of the employer.

15 41. Based on information and belief, DEFENDANTS shifted the costs of doing business
16 onto Class Members by requiring them to pay for business expenses, including but not limited to,
17 uniforms and/or protective/safety equipment, and/or the use of NON-EXEMPT AGGRIEVED
18 EMPLOYEES' and/or EXEMPT AGGRIEVED EMPLOYEES' personal mobile phone and data
19 usage for work-related purposes, including but not limited to, to receive and respond to work related
20 messages and/or phone calls. For example, PLAINTIFF received work-related calls and/or
21 messages on a near daily basis if not daily to his personal cell phone from managers and/or
22 supervisors, including but not limited to, regarding scheduling/other work tasks but was not
23 reimbursed and/or not reimbursed in full by DEFENDANTS for these business expenses as required
24 under California Law.

25 42. Based on information and belief, Class Members were not reimbursed for the cost of
26 using their personal phone for work-related purposes and/or the cost of purchasing and/or
27 maintaining work uniforms and/or protective/safety equipment.

28 43. Based on information and belief, Class Members were improperly required to pay

1 for additional business expenses that are supposed to be the responsibility of DEFENDANTS,
2 including but not limited to, hand tools/equipment and/or cost of fuel, costs of vehicle/equipment
3 maintenance and/or repairs, and/or work-related fees/fines, incurred as a direct consequence of the
4 discharge of their assigned job duties without receiving any and/or full reimbursement from
5 DEFENDANTS for these expenses.

6 44. Based on information and belief, Class Members were also required to use their
7 personal vehicles for work but were not provided any and/or full reimbursement by DEFENDANTS
8 for these expenses including but not limited to, reimbursement for mileage, cost of fuel, and/or other
9 costs related to the use of their personal vehicles for work purposes. For example, on information
10 and belief, Class Members were required to use their personal vehicles for DEFENDANTS'
11 business purposes, including but not limited to, for driving between and/or around DEFENDANTS'
12 job sites/facilities/locations and/or for other work purposes without receiving any and/or full
13 reimbursement from DEFENDANTS for the business use of their personal vehicles. PLAINTIFF is
14 informed and believes and alleges thereon that DEFENDANTS engaged in these same herein
15 described unlawful practices and that DEFENDANTS applied these same herein described unlawful
16 practices to all of its employees that it applied to PLAINTIFF.

17 **FIRST CAUSE OF ACTION**

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

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

21 46. It is fundamental that an employer must pay its employees for all time worked.
22 California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages.
23 Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 223
24 prohibits the pay of less than a statutory or contractual wage scale. Pursuant to California Labor
25 Code sections 1194 and 1197, and the Industrial Wage Commission ("IWC") Wage Orders, an
26 employer must pay its employees for all hours worked, up to 40 hours per week or 8 hours per day,
27 at a regular rate no less than the mandated minimum wage. Payment to an employee of less than
28 the applicable minimum wage for all hours worked in a payroll period is unlawful. Labor Code
section 224 only permits deductions from wages when the employer is required or empowered to

1 do so by state or federal law or when the deduction is expressly authorized in writing by the
2 employee for specified purposes that do not have the effect of reducing the agreed upon wage.

3 47. DEFENDANTS violated the above-described laws by failing to compensate
4 PLAINTIFF and the Class Members for all hours worked by virtue of, among other things,
5 DEFENDANTS' time rounding, automatic deduction for meal periods, off-the-clock/unpaid work
6 completed during meal periods, other pre-shift, post-shift and/or otherwise off-the-clock work,
7 and/or payment according to scheduled hours worked rather than actual hours worked (described
8 above), which resulted in the failure to account for all hours worked and thus the denial of all owed
9 straight time wages.

10 48. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
11 Class Members for all hours worked.

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

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

21 **SECOND CAUSE OF ACTION**

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

23 51. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

27 (1) gross wages earned, (2) total hours worked by the employee,
28 except for any employee whose compensation is solely based on a
salary and who is exempt from payment of overtime under

1 subdivision (a) of Section 515 or any applicable order of the Industrial
2 Welfare Commission, (3) the number of piece-rate units earned and
3 any applicable piece rate if the employee is paid on a piece-rate basis,
4 (4) all deductions, provided that all deductions made on written orders
5 of the employee may be aggregated and shown as one item, (5) net
6 wages earned, (6) the inclusive dates of the period for which the
7 employee is paid, (7) the name of the employee and his or her social
8 security number, except that by January 1, 2008, only the last four
9 digits of his or her social security number or an employee
10 identification number other than a social security number may be
11 shown on the itemized statement, (8) the name and address of the
12 legal entity that is the employer, and (9) all applicable hourly rates in
13 effect during the pay period and the corresponding number of hours
14 worked at each hourly rate by the employee.

15 53. Due to violations detailed above, including but not limited to, DEFENDANTS'
16 failure to pay straight time wages and minimum wages for all hours worked, and failure to pay all
17 sick leave wages at the proper rates, DEFENDANTS have violated California Labor Code § 226 by
18 willfully failing to furnish PLAINTIFF and other Class Members with accurate, itemized wage
19 statements that listed the gross and net wages earned and the correct applicable rates of pay for all
20 hours worked.

21 54. As explained above, wage statements issued by DEFENDANTS failed to list the
22 "total hours worked" by PLAINTIFF and Class Members (by virtue of rounded time entries,
23 automatic deduction for meal periods/failure to relieve Class Members of all duties and employer
24 control during unpaid meal periods, payment according to scheduled hours worked rather than actual
25 hours worked, and/or other off-the-clock work policies and practices all described in greater detail
26 *supra*), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on
27 a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v.*
28 *Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

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

56. DEFENDANTS' failure to accurately list all hours worked on all wage statements
caused confusion to PLAINTIFF and caused and continues to cause confusion to other Class

1 Members over whether they received all wages owed to them.

2 57. As a result, PLAINTIFF and other Class Members have suffered injury as they could
3 not easily determine whether they received all wages owed to them and whether they were paid for
4 all hours worked.

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

8 59. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
9 Class Members with accurate, itemized wage statements.

10 60. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Class Members
11 have suffered injury. The absence of accurate information on their wage statements has prevented
12 earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
13 mathematical computations to determine the amount of wages owed, and will cause difficulty and
14 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
15 submission of inaccurate information about wages and amounts deducted from wages to state and
16 federal government agencies. As a result, PLAINTIFF and Class Members are required to
17 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
18 and pay records than if DEFENDANT had complied with its legal obligations.

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

23 62. Pursuant to California Labor Code § 226(h), PLAINTIFF and Class Members are
24 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
25 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
26 provide currently employed Class Members with inaccurate wage statements in violation of
27 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
28 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful

1 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
2 with California Labor Code § 226(a).

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

6 **THIRD CAUSE OF ACTION**

7 **Failure to Timely Pay All Wages Due Upon Separation of Employment**

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

9 64. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

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

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

18 67. Based on information and belief, DEFENDANTS failed and continue to fail to timely
19 pay final wages to Class Members upon separation of employment in violation of Labor Code
20 section 201-202. Moreover, final paychecks once provided to Class Members do not include all
21 wages owed as they are devoid of, including but not limited to, all owed minimum wages, straight
22 time wages, reporting time pay wages, vacation pay, and all owed sick leave and/or paid time off
23 wages at the properly accrued rates.

24 68. Moreover, DEFENDANTS failed to timely provide all owed wages immediately
25 upon discharge of employment. For example, based on information and belief, at times, Class
26 Members experienced breaks in their employment caused by DEFENDANTS whereby Class
27 Members would not be called in for work for longer than a single pay period due to including but
28 not limited to DEFENDANTS' lack of work or lack of assignments. Such instances qualify as a
discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at the end of

1 such periods of employment, in violation of including but not limited to Labor Code section 201-
2 202.

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

6 **FOURTH CAUSE OF ACTION**
7 **Failure to Reimburse Business Expenses**
8 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

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

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

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

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

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

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

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

FIFTH CAUSE OF ACTION

Unfair Competition

(By PLAINTIFF and the Class Members Against all DEFENDANTS)

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

78. DEFENDANTS' unlawful conduct alleged herein constitutes unfair competition within the meaning of California Business and Professions Code section 17200 *et seq.* This unfair conduct includes all unlawful conduct alleged herein, including but not limited to: DEFENDANTS' failure to pay minimum and straight time wages by virtue of its illegal policies and practices; DEFENDANTS' failure to furnish complete and accurate itemized wage statements; DEFENDANTS' failure to reimburse business expenses; DEFENDANTS' failure to timely pay all wages owed upon separation of employment; and DEFENDANTS' failure to provide paid sick leave (or paid time off in lieu thereof) at the properly accrued rates (due to, including but not limited to, DEFENDANTS' failure to incorporate all non-discretionary compensation into the sick pay calculation and failure to base the accrued sick leave on the correct number of hours worked as a result of DEFENDANTS' time-rounding/auto deduction policies and practices, payment according to scheduled hours worked and/or other off-the-clock work policies and practices).

79. Due to DEFENDANTS' unfair and unlawful business practices in violation of the California Labor Code, DEFENDANTS have gained a competitive advantage over other comparable companies doing business in the State of California that properly accrue and pay sick time benefits, to provide complete and accurate itemized wage statements, to reimburse employees for all business expenses, to pay all owed wages and during employment and due upon separation of employment of their employees.

80. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFF

1 and Class Members have suffered injury in fact and lost money or property, as described in more
2 detail above. Pursuant to California Business and Professions Code section 17200, *et seq.*,
3 PLAINTIFF and Class Members are entitled to restitution of all wages and other monies rightfully
4 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of their
5 unlawful and unfair business practices.

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

9 82. PLAINTIFF also seeks an award of attorney's fees pursuant to Code Civ. Proc
10 Section 1021.5 and as permitted by law, and an award for costs reasonably incurred, as permitted
11 by law.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for relief and judgment, on behalf of PLAINTIFF and
3 Class Members as follows:

- 4 1. For an order that the action be certified as a class action;
5 2. For an order that PLAINTIFF be appointed as class representative;
6 3. For an order that counsel for PLAINTIFF be appointed as class counsel;
7 4. For compensatory damages according to proof;
8 5. For liquidated damages according to proof;
9 6. For penalties according to proof;
10 7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully
11 withheld from PLAINTIFF and the Class Members;
12 8. For an order finding DEFENDANTS have engaged in unfair competition in violation of
13 section 17200, *et seq.*, of the California Business and Professions Code;
14 9. For an order enjoining DEFENDANTS from further acts of unfair competition;
15 10. For pre-judgment interest as permitted by law;
16 11. For attorney's fees and costs reasonably incurred; and
17 12. For such other and further relief that the Court deems just and proper.

18
19 Dated: April 14, 2023

CROSNER LEGAL, PC

20
21 By: 

22 Zachary M. Crosner, Esq.
23 Jamie Serb, Esq.
24 Attorneys for Plaintiff
25 STANLEY GLENN
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28

1 **DEMAND FOR JURY TRIAL**

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

3
4 Dated: April 14, 2023

CROSNER LEGAL, PC

5
6 By: 

7 Zachary M. Crosner, Esq.

8 Jamie Serb, Esq.

9 Attorneys for Plaintiff

10 STANLEY GLENN