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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

MATTHEW NORTON, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

CUMMINS, INC., an Indiana Corporation;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: 30-2023-01319123-CU-OE-CXC
*[Assigned to Hon. Judge William D. Cluster,
Dept CX104, for all purposes]*

FIRST AMENDED COMPLAINT

CLASS ACTION CLAIMS

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

PAGA CLAIMS

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

JURY TRIAL DEMANDED

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

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

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

12 2. Plaintiff was employed by Defendants from approximately February 2022
13 through July 2023.

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

17 4. Plaintiff and the Represented Employees were not provided all minimum, regular,
18 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
19 worked.

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

27 6. Defendants also failed to provide Plaintiff and the Represented Employees with
28 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as

1 mandated by California law. Defendants did not schedule rest breaks and the Represented
2 Employees were often not authorized and/or permitted to take mandated rest breaks due to being
3 overwhelmed by their hectic workload. Furthermore, on occasions when Plaintiff and the
4 Represented Employees worked longer shifts, Defendants failed to authorize and/or permit
5 mandated third or fourth rest breaks.

6 7. Moreover, at all relevant times, Defendants required Plaintiff and the Represented
7 Employees to incur necessary business-related expenses and costs without reimbursement. For
8 example, Plaintiff was required to acquire and maintain the necessary tools and gear to perform
9 his duties.

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

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

18 10. Plaintiff alleges that Defendants' violations of the wage and hour components of
19 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their
20 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
21 its competitors.

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

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1 12. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
2 monetary relief against Defendants and each of them, on behalf of himself and the Represented
3 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
4 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
5 210, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199,
6 among possibly other sections inadvertently omitted. Plaintiff also reserves the right to name
7 additional representatives throughout the State of California.

8 13. Pursuant to Labor Code § 2699.3(a), Plaintiff has given written notice by online
9 filing to the Labor and Workforce Development Agency ("LWDA") and by certified mail to
10 Defendants of the specific provisions of the Labor Code alleged to have been violated, including
11 the facts and theories to support the alleged violations. As such, Plaintiff reserves the right to
12 amend this complaint or bring a separate complaint for the PAGA claims pursuant to Labor Code
13 § 2699.3(a)(2)(C).

14 **II. JURISDICTION**

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

17 **III. VENUE**

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

23 **IV. PARTIES**

24 **Plaintiff**

25 16. Plaintiff and Class Representative Mathew Norton was employed by Defendants
26 from approximately February 2022 through July 2023 and performed work for Defendants in
27 Orange County.

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1 **Defendants**

2 17. Plaintiff is informed and believes and thereon alleges that Defendant Cummins,
3 Inc. is a Wisconsin corporation authorized to, and doing business in Orange County, California.
4 Plaintiff is also informed and believes that Defendant Cummins, Inc. is and/or was the legal
5 employer of Plaintiff and the Represented Employees during the applicable statutory periods.

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

13 19. Plaintiff is informed and believes and thereon alleges that he and the Represented
14 Employees worked under the joint direction and control of Defendants and that Defendants, and
15 each of them, acted in all respects pertinent to this action as the agent of the other Defendants,
16 carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of
17 each Defendant are legally attributable to the other Defendants. On information and belief, a
18 unity of interest and ownership between each Defendant exists such that all Defendants acted as
19 a single employer of Plaintiff and other Represented Employees.

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

26 21. Plaintiff is informed and believes and thereon alleges that, in conducting
27 themselves in the manner described herein, Defendants, and each of them, were acting in active
28 concert with one another such that the acts of each were and are fully attributable to the others in

1 all material respects. Plaintiff is further informed and believes that at all relevant times
2 Defendants and each of them are now, and at all material times herein mentioned were, the
3 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining
4 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and
5 purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of
6 their remaining co-Defendants.

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

15 **V. CLASS ACTION ALLEGATIONS**

16 23. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
17 (the "Complaint") as if fully alleged herein.

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

20 25. The relevant time period for this class action is defined as the period beginning
21 four years prior to the filing of this action until class certification (the "Relevant Time Period").

22 26. The Class, also referred to as the "Represented Employees," that Plaintiff seeks to
23 represent is defined as follows:

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

26 27. Plaintiff also seeks to represent the following subclasses:

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1 **Meal Break Subclass**

2 All Represented Employees who worked a shift in excess of
3 5 hours during the Relevant Time Period.

4 **Rest Break Subclass**

5 All Represented Employees who worked a shift of at least
6 3.5 hours during the Relevant Time Period.

7 **Unreimbursed Expense Subclass**

8 All Represented Employees who were required to incur
9 expenses to discharge their duties for Defendants without
10 reimbursement during the Relevant Time Period.

11 **Waiting Time Penalties Subclass**

12 All Represented Employees who separated from their
13 employment with Defendants during the period three years
14 before the filing of this action and ending when final
15 judgment is entered.

16 **Wage Statement Penalties Subclass**

17 All Represented Employees during the period one year
18 before the filing of this action and ending when final
19 judgment is entered.

20 28. Plaintiff reserves the right to amend or modify the class description with greater
21 specificity or further division into subclasses or limitation to particular issues as appropriate.

22 29. Plaintiff, as Class Representative, is a member of the class and subclasses that he
23 seeks to represent.

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

27 31. **Numerosity:** The potential members of the Class as defined are so numerous that
28 a joinder of all Represented Employees is impracticable. Although the exact number is currently

unknown to Plaintiff, this information is easily ascertainable from Defendants' records.

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

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

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

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

iv. Whether Defendants violated the California Labor Code and applicable IWC Wage Order by failing to provide compliant rest breaks to Plaintiff and the Rest Break Subclass and whether Defendants failed to compensate Plaintiff and the Rest Break Subclass 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 Labor Code and applicable IWC Wage Order by failing to reimburse Plaintiff and the Unreimbursed Expense Subclass for business expenses incurred 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

1 wage statements;

2 viii. Whether Defendants violated California Business & Professions Code §§
3 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest
4 breaks, failure to provide mandated meal periods, failure to reimburse business expenses, and
5 failure to timely pay final wages; and

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

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

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

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

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

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

4 *Plaintiff and the Represented Employees Against All Defendants*

5 36. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
6 alleged herein.

7 37. Plaintiff and the Represented Employees were not exempt from the requirement
8 to be paid at least the applicable California minimum wage throughout the statutory period for
9 each hour worked.

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

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

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

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

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

1 Labor Code regulating hours and days of work respectively.

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

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

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

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PAY OVERTIME WAGES**

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

13 *Plaintiff and the Represented Employees Against All Defendants*

14 46. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
15 alleged herein.

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

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

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

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1 50. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the
2 Represented Employees due to the failure to include all earned and nondiscretionary
3 compensation in the calculation for the regular rate of pay and overtime rate.

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

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

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

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

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

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

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

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

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

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

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

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

23 **FOURTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE REST BREAKS**

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

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

27 69. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
28 alleged herein.

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

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

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

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

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

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

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

27 77. By their failure to provide Plaintiff and the Rest Break Subclass with rest breaks
28 as required by California law, and failing to pay one hour of additional wages in lieu of each rest

break not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage Order § 12. Accordingly, Defendants are liable for one hour of additional wages at the employee's regular rate of compensation for each workday that a paid rest break was not lawfully provided in an amount to be proven at time of trial.

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

FIFTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802)

Plaintiff and the Unreimbursed Expense Subclass Against All Defendants

79. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

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

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

82. At all relevant times herein mentioned, as a condition of employment, Defendants required Plaintiff and the Unreimbursed Expense Subclass to incur necessary business-related expenses and costs without reimbursement. For example, Plaintiff was required to acquire and maintain the necessary tools and gear to perform his duties.

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

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1 84. At all relevant times herein, Defendants failed to reimburse the Unreimbursed
2 Expense Subclass, including Plaintiff, for expenses incurred while discharging duties to
3 Defendants, thereby receiving an economic benefit.

4 85. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage
5 Order § 9(B), Plaintiff and the Unreimbursed Expense Subclass have suffered, and continue to
6 suffer, substantial losses related to such incurred expenses, expenses, and attorney's fees in
7 seeking to compel Defendants to fully perform their obligations under the law, all in an amount
8 to be proved at time of trial.

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

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

22 **SIXTH CAUSE OF ACTION**

23 **FAILURE TO TIMELY PAY FINAL WAGES**

24 (Labor Code §§ 201 – 203)

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

26 88. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
27 alleged herein.

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1 89. Plaintiff and the Waiting Time Penalties Subclass are and/or were employees of
2 Defendants who did not receive proper protections and benefits of the laws governing the timing
3 and payment of wages.

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

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

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

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

15 94. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
16 wages due and owing to Plaintiff and the Waiting Time Penalties Subclass upon separation of
17 employment, including, but not limited to, minimum, regular, overtime, as well as meal and rest
18 period premiums.

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

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1 **SEVENTH CAUSE OF ACTION**

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

3 (Labor Code § 226)

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

5 96. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
6 alleged herein.

7 97. Plaintiff and the Wage Statement Penalties Subclass are and/or were employees of
8 Defendants who did not receive proper protections and benefits of the laws governing the
9 provision of accurate itemized wage statements.

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

16 99. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
17 and the Wage Statement Penalties Subclass due to violations including: failure to accurately state
18 total hours worked (the wage statements failed to accurately reflect total compensable hours);
19 failure to accurately state gross wages earned; failure to accurately state all deductions; failure to
20 accurately state net wages earned; failure to state the applicable hourly rates (including the
21 accurate overtime rate of pay); and failure to accurately state the corresponding number of hours
22 worked at each hourly rate.

23 100. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
24 to Plaintiff and the Wage Statement Penalties Subclass because Defendants failed to provide a
25 wage statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
26 requirements of Labor Code § 226(a).

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1 101. 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.

4 102. Defendants' failure to provide the required writing deprived Plaintiff and the
5 Wage Statement Penalties Subclass of the ability to know, understand, and question the
6 calculation and rate of pay and hours used to calculate the wages paid by Defendants. Therefore,
7 Plaintiff and the Wage Statement Penalties Subclass had no way to dispute the resulting
8 miscalculation of wages, all of which resulted in an unjustified economic enrichment to said
9 Defendants. As a direct result, Plaintiff and the Wage Statement Penalties Subclass have suffered
10 and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost
11 interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully
12 perform its obligation under state law, all to their respective damages in amounts according to
13 proof at trial.

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

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

26 105. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
27 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and
28 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus

1 attorney's fees and costs, to Plaintiff and the Wage Statement Penalties Subclass who were
2 injured by Defendants' failure to comply with Labor Code § 226(a). The exact amount of the
3 applicable penalty is all in an amount to be shown according to proof at trial.

4 **EIGHTH CAUSE OF ACTION**

5 **UNFAIR AND UNLAWFUL COMPETITION**

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

7 *Plaintiff and the Represented Employees against All Defendants*

8 106. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
9 alleged herein.

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

14 108. Defendants, and each of them, are "persons" as defined under Business &
15 Professions Code § 17021.

16 109. As alleged herein, Defendants engaged in conduct that violated California's wage
17 and hour laws, including failure to pay minimum, regular, and overtime wages, failure to provide
18 mandated meal periods and rest breaks, and failure to timely pay wages each period and upon
19 separation of employment, all to decrease their costs and increase their profits.

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

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

26 112. Defendants' violations of the California Labor Code and IWC Wage Orders and
27 its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business
28 practices because it was done in a systematic manner over a period of time to the detriment of the

1 Plaintiff and all others similarly-situated.

2 113. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
3 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
4 Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code
5 of Civil Procedure § 1021.5.

6 114. A violation of California Business & Professions Code § 17200, et seq. may be
7 predicated on the violation of any state or federal law. All of the acts described herein as
8 violations of, among other things, the California Labor Code and IWC Wage Orders, are
9 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,
10 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
11 practices in violation of California Business and Professions Code §§ 17200, et seq.

12 115. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
13 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
14 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
15 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
16 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
17 harm unless Defendants, and each of them, are restrained from continuing to engage in said
18 unfair, unlawful and/or fraudulent business practices.

19 116. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
20 and does, seek such relief as may be necessary to disgorge the profits which Defendants have
21 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the
22 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
23 Represented Employees are not obligated to establish individual knowledge of the unfair
24 practices of Defendants in order to recover restitution.

25 117. Plaintiff, individually, and on behalf of the Represented Employees, is further
26 entitled to and do seek a declaration that the above described business practices are unfair,
27 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
28 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in

1 the future.

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

8 **VI. LABOR CODE PRIVATE ATTORNEYS GENERAL ACT CAUSES OF ACTION**
9 **(Cal. Lab. Code. §§ 2698 – 2699.5)**

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

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

21 121. Pursuant to Labor Code § 2699.3(a), Plaintiff has provided written notice by
22 online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified mail
23 to Defendants of the specific provisions of the Labor Code alleged to have been violated,
24 including the facts and theories to support the alleged violations.

25 122. Therefore, as more than sixty-five (65) days have passed since that date, Plaintiff
26 has fully satisfied the administrative prerequisites to suit under the PAGA and this Complaint
27 will be deemed amended to include the PAGA allegations enumerated below. Once this occurs,
28 Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to Labor Code §

2699, as well as attorneys' fees, costs, and/or other damages as permitted by PAGA through a representative action pursuant to the PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Plaintiff is not required to, nor does he, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

NINTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES

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

Plaintiff and the Aggrieved Employees against All Defendants

123. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

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

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

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

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

128. 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.

129. 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,

1 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

2 **TENTH CAUSE OF ACTION**

3 **PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES**

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

5 *Plaintiff and the Aggrieved Employees against All Defendants*

6 130. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
7 alleged herein.

8 131. Plaintiff and the Aggrieved Employees were employees of Defendants who did
9 not receive proper protections and benefits of the laws governing payment of overtime wages.

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

16 133. At all relevant times, Plaintiff and the Aggrieved Employees were required by
17 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week and/or on a
18 seventh consecutive day in a workweek, without receiving proper overtime compensation.

19 134. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the
20 Aggrieved Employees due to the failure to include all earned and nondiscretionary compensation
21 in the calculation for the regular rate of pay and overtime rate.

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

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

1 137. 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 **ELEVENTH CAUSE OF ACTION**

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

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

7 *Plaintiff and the Aggrieved Employees against All Defendants*

8 138. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
9 herein.

10 139. 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 mandatory meal
12 periods.

13 140. Labor Code § 226.7 requires employers, including Defendants, to provide
14 employees with meal periods as mandated by the Industrial Welfare Commission.

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

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

25 143. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied
26 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
27 practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when
28 they were: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal

1 period while under the control of the Company, (3) forced to take a shortened meal period, (4)
2 forced to take a meal period after the 5th hour of work, and (5) not provided a mandated second
3 meal period for shifts in excess of 10 hours.

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

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

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

17 **TWELFTH CAUSE OF ACTION**

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

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

20 *Plaintiff and the Aggrieved Employees against All Defendants*

21 147. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
22 herein.

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

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

27 150. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
28 permit all employees to take rest periods, which insofar as practicable shall be in the middle of

1 each work period. Employees shall receive a 10-minute rest period every four hours or major
2 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
3 hours worked, for which there shall be no deduction from wages.

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

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

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

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

22 **THIRTEENTH CAUSE OF ACTION**

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

24 (Labor Code § 2802)

25 *Plaintiff and the Unreimbursed Expense Subclass Against All Defendants*

26 155. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
27 herein.

28 ///

1 156. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
2 who did not receive proper protections and benefits of the laws governing reimbursement of
3 business expenses.

4 157. Labor Code § 2802(a) requires that the employer indemnify its employees for
5 expenses and losses incurred while discharging their duties or in obedience to the directions of
6 their employer.

7 158. Moreover, at all relevant times, Defendants required Plaintiff and the Represented
8 Employees to incur necessary business-related expenses and costs without reimbursement. For
9 example, Plaintiff was required to acquire and maintain the necessary tools and gear to perform
10 his duties.

11 159. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
12 failed to reimburse Plaintiff and the Aggrieved Employees for expenses incurred as a direct
13 consequence of employment with Defendants and/or under the direction of Defendants.

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

17 **FOURTEENTH CAUSE OF ACTION**

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

19 (Labor Code § 204)

20 *Plaintiff and the Aggrieved Employees against All Defendants*

21 161. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
22 herein.

23 162. Plaintiff and the Aggrieved Employees are and/or were “nonexempt” employees
24 of Defendants who did not receive proper protections and benefits of the laws regarding the
25 timing of payment of wages each period.

26 163. Labor Code § 204(a) states that all wages earned by a person are due and payable
27 twice during each calendar month, and further states that wages earned during the first through
28 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that

1 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
2 the following month.

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

6 165. At all relevant times herein, Defendants did not provide Plaintiff and the
7 Aggrieved Employees with all wages due and owing each period within the time required by
8 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Aggrieved
9 Employees with all wages due and owing each pay period, including, but not limited to,
10 minimum, regular, and overtime wages, as well as meal and rest period premiums, within the
11 time specified by Labor Code § 204.

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

15 **FIFTEENTH CAUSE OF ACTION**

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

17 (Labor Code §§ 201 – 203 and 256)

18 *Plaintiff and the Aggrieved Employees against All Defendants*

19 167. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
20 herein.

21 168. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees
22 of Defendants who did not receive proper protections and benefits of the laws governing the
23 timing and payment of final wages.

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

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

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

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

SIXTEENTH CAUSE OF ACTION

Plaintiff and the Aggrieved Employees against All Defendants

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

1 corresponding number of hours worked at each hourly rate by the employee.

2 178. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
3 and the Aggrieved Employees because due to violations including: failure to accurately state
4 total hours worked (the wage statements failed to accurately reflect total compensable hours);
5 failure to accurately state gross wages earned; failure to accurately state all deductions; failure to
6 accurately state net wages earned; failure to state the applicable hourly rates (including the
7 accurate overtime rate of pay); failure to accurately state the corresponding number of hours
8 worked at each hourly rate, failure to accurately name and list the address of the legal entity that
9 is the employer, and; the failure to accurately state the amount and rate of pay for meal and rest
10 break premiums under Labor Code § 226.7.

11 179. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
12 to because Defendants failed to provide a wage statement to Plaintiff and the Aggrieved
13 Employees that complied with the requirements of Labor Code § 226(a).

14 180. As a result of the Defendants' violations of Labor Code § 226(a), Plaintiff seeks
15 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
16 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.
17 See *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 675 ("Section
18 226.3 provides the civil penalty for failure to comply" with Labor Code § 226).

19 **VII. PRAYER FOR RELIEF**

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

- 23 1. That the First through Eighth Causes of Action be certified as a class action;
- 24 2. That Plaintiff be appointed as Class Representative;
- 25 3. That counsel for Plaintiff be appointed Class Counsel;
- 26 4. For all applicable statutory penalties recoverable under the First through Eighth
- 27 Causes of Action to the extent permitted by law, including those pursuant to Labor Code and
- 28 Orders of the Industrial Welfare Commission;

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

3 6. For injunctive relief and/or restitution as provided by the Labor Code and
4 Business and Professions Code § 17200, *et seq.*;

5 7. As to the Ninth through Sixteenth Causes of Action, the assessment of all
6 applicable and available remedies under the PAGA;

7 8. For reasonable attorneys' fees and costs as permitted under the PAGA;

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

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

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

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

16 **DEMAND FOR JURY TRIAL**

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

19
20 Dated: July 12, 2023

LAUBY, MANKIN & LAUBY LLP

21
22 BY:

23 Brian J. Mankin, Esq.
24 Kristina Bui Carlson, Esq.
25 Attorneys for Plaintiff
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On July 18, 2023, I caused to be served the foregoing document(s) described as follows:

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

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

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