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 himself and others similarly situated

[Additional counsel on following page]

**SUPERIOR COURT OF CALIFORNIA
 COUNTY OF LOS ANGELES**

TUOYO OGBE, on behalf of himself
 and all others similarly situated,

Plaintiff,

v.

O'NEIL DIGITAL SOLUTIONS LLC, a
 Delaware Limited Liability Company; and
 DOES 1 to 10, inclusive,

Defendants.

FILED

Superior Court of California
 County of Los Angeles

06/28/2023

David W. Slayton, Executive Officer / Clerk of Court

By: K. Martinez Deputy

CASE NO. 23STCV09250

**FIRST AMENDED CLASS ACTION
 COMPLAINT:**

1. Failure to Pay Overtime Wages in Violation of Labor Code sections 510 and 1198;
2. Failure to pay all Wages and Minimum Wages in Violation of Labor Code sections 1182, 1194, 1197, 1198;
3. Failure to Provide Compliant Meal Breaks in Violation of Labor Code section 226.7;
4. Failure to Provide Compliant Rest Breaks in Violation of Labor Code section 226.7;
5. Failure to Timely Pay Wages During Employment in Violation of Labor Code section 204;
6. Failure to Timely Furnish Accurate Itemized Wage Statements in Violation of Labor Code section 226(a) and Failure to Maintain Accurate Records;
7. Waiting Time Penalties Pursuant to Labor Code sections 201, 203;
8. Failure to Provide Sick Pay in Violation of Labor Code Section 246;
9. Failure to Reimburse Business Expenses in violation of Labor Code section 2802;
10. Violations of Business & Professions Code section 17200 et seq.; and
11. Civil Penalties Pursuant to PAGA, Labor Code §§ 2698, et seq.

DEMAND FOR JURY TRIAL

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1 Plaintiff, TUOYO OGBE (hereinafter “Plaintiff”) hereby submits his First Amended Complaint
2 against Defendants O’NEIL DIGITAL SOLUTIONS, LLC, a Delaware Limited Liability Company;
3 and DOES 1 to 10 (hereinafter referred to as “Defendants”) on behalf of himself and the class of all
4 other similarly situated current and former employees of Defendants as follows:

5 **NATURE OF THE CASE**

6 1. This is a class action and Private Attorneys’ General Act (“PAGA”) representative
7 action arising out of Defendants’ failure to provide their non-exempt employees with all wages,
8 compliant meal and rest breaks, failure to reimburse business expenses, failure to timely pay all wages
9 during employment, failure to timely pay all wages at time of separation of employ, and failure to
10 provide compliant wage statements.

11 2. O’Neil Digital Solutions offers technology in multi-channel document delivery and
12 marketing communications. O’Neil Digital Solutions is headquartered in Los Angeles, California. At all
13 relevant times, Defendants issued and maintained uniform, standardized scheduling and timekeeping
14 practices and procedures for all non-exempt, hourly paid employees in California, including Plaintiff
15 and others similarly situated, regardless of their position.

16 3. Defendants have maintained practices which have failed and continue to fail to pay
17 Plaintiff and other non-exempt employees all wages. Specifically, Defendants have a company-wide
18 policy of rounding hours worked to the nearest quarter hour. Further, Defendants required Plaintiff and
19 other non-exempt employees to work off-the-clock, including during their meal periods. This has
20 resulted in Defendants’ failure to pay all overtime and/or minimum wages to Plaintiff and other non-
21 exempt employees. Overtime is also paid at the base rate and fails to incorporate non-discretionary
22 bonuses including Shift Bonus and Attendance Bonus. For the same reason, sick pay is also paid at the
23 base rate.

24 4. Defendants also failed to provide Plaintiff and non-exempt employees with compliant
25 meal and rest breaks. Plaintiff alleges he rarely received a non-interrupted compliant meal break.
26 Rather, meal breaks would be frequently interrupted by management asking Plaintiff to return back to
27 work. Further, Plaintiff was frequently the only one working at his location and when working long
28 shifts was unable to take a second meal period. Plaintiff had a very heavy workload and for this reason,

1 rest breaks were also rarely provided.

2 5. Defendants also failed to reimburse Plaintiff and other non-exempt employees for
3 business-related expenses. This includes but is not limited to cellphone use. Specifically, management
4 would frequently call and text Plaintiff on his personal cellphone regarding work updates, but Plaintiff
5 was never reimbursed for this cost.

6 6. In light of the foregoing, Defendants failed to provide Plaintiff and other non-exempt
7 employees with compliant wage statements and failed to timely pay wages during employment in
8 addition to final wages upon termination or separation from employment. Further, Defendants provide
9 non-compliant wage statements because when employees receive differential pay of either 10% or 15%,
10 the hourly rate multiplied by the hours results in a different amount than what is provided on wage
11 statements. For example, on Plaintiff's pay statement with the pay date of 12/31/21 he received a shift
12 differential of 10% at the rate of 20.470 for 16 hours of work and was paid \$360.27. However, if
13 multiplied correctly would have yielded \$327.52. Thus, the wage statements are incorrect.

14 7. Plaintiff brings Causes of Action One through Ten (the "class claims") as a class action
15 on behalf of himself and other similarly situated individuals who have worked for Defendants in
16 California, at any time from four-years prior to the filing of this complaint, through the resolution of this
17 action. Plaintiff, on his own behalf and on behalf of all Class Members, brings the class claims pursuant
18 to Labor Code sections 200-203, 204, 226, 226.7, 510, 1174, 1194, 1194.2, 1197, 1198, 2802, the
19 applicable Industrial Welfare Commission ("IWC") wage order and under Business & Professions
20 Code sections 17200-17208, for unfair competition due to Defendants' unlawful, unfair and fraudulent
21 business acts and practices.

22 8. Plaintiff brings Cause of Action Eleven as a proxy of the State of California on behalf
23 of other aggrieved employees for penalties under the Private Attorneys General Act (PAGA). PAGA
24 provides that any civil penalty assessed and collected by the Labor and Workforce Development
25 Agency (LWDA) for violations of applicable provisions of the California Labor Code may, as an
26 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself
27 and other current or former employees pursuant to procedures outlined in California Labor Code §
28 2699.3. PAGA also provides that an aggrieved employee can bring a civil action on behalf of other

1 aggrieved employees for violation of any other Labor Code provision that does not itself contain a civil
2 penalty, in which case the civil penalties are assessed at \$100 for each aggrieved employee per pay
3 period for the initial violation and \$200 for each aggrieved employee per pay period for each
4 subsequent violation.

5 9. On April 25, 2023, Plaintiff provided written notice to the LWDA and by certified mail
6 to Defendants of the specific provisions of the California Labor Code alleged to have been violated,
7 including the facts and theories to support the alleged violations. More than 65 calendar days have
8 passed since the date notice was provided to the LWDA and Defendant. Accordingly, Plaintiff has
9 satisfied the administrative prerequisites under California Labor Code Section 2699.3(a) to recover civil
10 penalties against Defendant for violations of California Labor Code identified in this First Amended
11 Complaint.

12 10. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
13 engaged in, among other things a system of willful violations of the Labor Code and the applicable IWC
14 wage orders by creating and maintaining policies, practices and customs that knowingly deny
15 employees the above stated rights and benefits.

16 **PARTIES**

17 11. Plaintiff, Tuoyo Ogbe is an individual over the age of eighteen (18) and is now, and/or
18 at all relevant times mentioned in this First Amended Complaint was, a resident and domiciliary of the
19 State of California. During the relevant time period, Plaintiff worked for Defendants in Culver City,
20 California from approximately 2017 through approximately December 1, 2022. Plaintiff was employed
21 as a digital press operator and earned approximately \$21.09 per hour.

22 12. Plaintiff is informed and believes, and based thereon alleges, that Defendant O'Neil
23 Digital Solutions, LLC, is a Delaware Limited Liability Company. Plaintiff is further informed and
24 believes that at all times relevant hereto, Defendant has transacted, and continues to transact, business
25 throughout the State of California.

26 13. Plaintiff is informed and believes, and based upon such information and belief alleges,
27 that Defendants are, now and/or at all times mentioned in this Complaint were in some manner legally
28 responsible for the events, happenings and circumstances alleged in this Complaint.

1 14. Plaintiff is further informed and believes, and based upon such information and belief
2 alleges, that at all times herein mentioned, Defendants proximately caused Plaintiff, all others similarly
3 situated, and the general public to be subjected to the unlawful practices, wrongs, complaints, injuries
4 and/or damages alleged in this Complaint.

5 15. Plaintiff is informed and believes and based thereon alleges that at all times herein
6 mentioned Defendants and DOES 1 through 10, are and were corporations, business entities,
7 individuals, and partnerships, licensed to do business and actually doing business in the State of
8 California.

9 16. Plaintiff does not know the true names or capacities, whether individual, partner or
10 corporate, of the Defendants sued herein as DOES 1 through 10, inclusive, and for that reason, said
11 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint
12 when the true names and capacities are known. Plaintiff is informed and believes and based thereon
13 alleges that each of said fictitious Defendants were responsible in some way for the matters alleged
14 herein and proximately caused Plaintiff and members of the general public and class to be subject to the
15 illegal employment practices, wrongs and injuries complained of herein.

16 17. At all times herein mentioned, each of said Defendants participated in the doing of the
17 acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,
18 and each of them, were the agents, servants and employees of each of the other Defendants, as well as
19 the agents of all Defendants, and at all times herein mentioned, were acting within the course and scope
20 of said agency and employment.

21 18. At all times herein mentioned, the acts and omissions of various Defendants, and each
22 of them, concurred and contributed to the various acts and omissions of each and all of the other
23 Defendants in proximately causing the injuries and damages as herein alleged. At all times herein
24 mentioned, Defendants, and each of them, ratified each and every act or omission complained of
25 herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts and
26 omissions of each and all of the other Defendants in proximately causing the damages as herein
27 alleged.

28 19. The members of the classes (as defined below), including the representative Plaintiff

1 named herein, have been employed during the Class Period in California. The practices and policies
2 which are complained of by way of this Complaint are enforced throughout the State of California.

3 **JURISDICTION AND VENUE**

4 20. The Court has jurisdiction over this class action pursuant to article 6, section 10 of the
5 California Constitution and California Code of Civil Procedure section 410.10.

6 21. Additionally, this Court has jurisdiction over Plaintiff's and the Class' claims for
7 injunctive relief, including restitution of earned wages, arising from Defendants' unfair competition
8 under Business & Professions Code sections 17203 and 17204. The Court also has jurisdiction over
9 Plaintiff's and the Class' claims as pursuant to the applicable Labor Code provisions. The Court also has
10 jurisdiction over Plaintiff's and the Aggrieved Employees' claims for penalties pursuant to the Private
11 Attorneys General Act of 2004, Labor Code section 2698 *et. seq.*

12 22. The Court has jurisdiction over Defendants because they are authorized to do business
13 in the State of California and are registered with the California Secretary of State. Defendants do
14 sufficient business with sufficient minimum contacts in California, and/or otherwise intentionally avails
15 itself of the California market through the advertising, marketing and sale of goods and services, to
16 render the exercise of jurisdiction over Defendants by the California court consistent with traditional
17 notions of fair play and substantial justice.

18 23. Venue is proper in Los Angeles County because the acts which give rise to this
19 litigation occurred in this county and because Defendants have employed class members in this county
20 and transacts business in this county.

21 **FACTUAL ALLEGATIONS**

22 24. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

23 25. Defendants have engaged in, and continue to engage in, unfair business practices in
24 California by practicing, employing and utilizing the employment practices and policies outlined above.

25 ***Defendant's Failure to Pay Overtime Wages***

26 26. During the Class Period, upon information and belief, Defendants have, and continue to
27 have, a company-wide policy of discouraging and impeding Plaintiff and other non-exempt employees
28 from recording hours worked that were outside of their scheduled shifts in order to limit the amount of

overtime employees could accrue. On information and belief, this policy of limiting overtime, led Plaintiff and other non-exempt employees to work off-the-clock during meal periods. For example, Plaintiff alleges that he would clock out for meal periods and then would be called back to work by his supervisor. This time was unpaid and off-the-clock. Consequently, Plaintiff and members of the Classes performed work during meal periods for which they were not paid. Further, on information and belief, because Defendants frowned upon employees accruing meal period penalties, employees were required to continue working after clocking out for their meal periods. Thus, Plaintiff and members of the Classes performed work during meal periods for which they were not paid. Defendants knew or should have known that as a result of these company-wide practices and/or policies, Plaintiff and members of the Classes were performing assigned duties off-the-clock and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Plaintiff and members of the Classes worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay.

27. Defendants also had a policy of rounding hours worked to the nearest quarter hour. This, resulted in unpaid wages some of which should have been overtime hours. Therefore, Plaintiff and members of the Classes were not paid overtime wages for all of the overtime hours they actually worked. Overtime is also paid at the base rate and fails to incorporate non-discretionary bonuses including Shift Bonus and Attendance Bonus.

Defendants' Failure to Pay all Wages and Minimum Wages

28. As stated above, during the relevant time period, Defendants has a policy of subjecting Plaintiff and members of the Classes to work off-the-clock and rounded hours worked to the nearest quarter hour as described above.

29. Thus, Defendants did not pay at least minimum wages for all hours worked by Plaintiff and members of the Classes.

Defendants' Failure to Provide Compliant Meal Breaks

30. Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC wage order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor

1 Code sections 226.7 and 512(a) and the applicable IWC wage order, an employer may not require,
2 cause or permit an employee to work for a period of more than five (5) hours per day without providing
3 the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the
4 total work period per day of the employee is not more than six (6) hours, the meal period may be
5 waived by mutual consent of both the employer and the employee. Under California law, first meal
6 periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court* (2012) 53
7 Cal.4th 1004, 1041-1042.

8 31. As stated above, Defendants failed to provide compliant meal breaks to Plaintiff and
9 members of the Classes. On the occasion meal breaks were provided to Plaintiff, they would be
10 interrupted by management due to the demanding nature of the job. Moreover, Defendants failed to
11 provide second meal periods as Plaintiff would be the only one working. Defendants also failed to
12 provide meal period premiums on shifts where meals were missed entirely. Plaintiff and members of
13 the Classes are entitled to a meal premium for each shift that a meal period was non-compliant.

14 ***Defendants' Failure to Provide Compliant Rest Breaks***

15 32. Labor Code sections 226.7, 516, and 1198, and the applicable IWC wage order require
16 employers to provide rest periods and to pay an employee one (1) additional hour of pay at the
17 employee's regular rate for each work day that a meal or rest period is not provided. Labor Code
18 section 226.7 provides that no employer shall require an employee to work during any rest period
19 mandated by an applicable order of the IWC. The applicable IWC wage order provides that "[e]very
20 employer shall authorize and permit all employees to take rest periods, which insofar as practicable
21 shall be in the middle of each work period" and that the "rest period time shall be based on the total
22 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
23 thereof" unless the total daily work time is less than three and one-half (3½) hours.

24 33. To comply with its obligation to authorize and permit rest periods under Labor Code
25 section 226.7 and the applicable IWC wage order, an employer must "relinquish any control over how
26 employees spend their break time, and relieve their employees of all duties—including the obligation
27 that an employee remains on call. A rest period, in short, must be a period of rest." *Augustus, et al. v.*
28 *ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269-270.

1 34. Rest breaks were also frequently missed due the demanding nature of the job and
2 management requiring Plaintiff to continue working. Further, on the occasion that rest breaks were
3 provided, they were interrupted by management. As a result, Defendants controlled how Plaintiff and
4 class members could spend their rest breaks. Defendants failed to provide rest break premiums.

5 35. Accordingly, Defendants failed to authorize and permit all rest periods in violation of
6 Labor Code sections 226.7, 516, and 1198.

7 ***Defendants' Failure to Provide Compliant Wage Statements***

8 36. During the class period, Defendants have knowingly and intentionally provided
9 Plaintiff and other non-exempt employees with uniform, incomplete, and inaccurate wage statements.
10 For example, Defendants issued uniform wage statements to Plaintiff and members of the Classes that
11 fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable
12 hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal
13 period premiums, and the corresponding number of hours worked at each hourly rate. Further,
14 Defendants provide non-compliant wage statements because when employees receive differential pay
15 of either 10% or 15%, the hourly rate multiplied by the hours results in a different amount than what is
16 provided on wage statements. For example, on Plaintiff's pay statement with the pay date of 12/31/21
17 he received a shift differential of 10% at the rate of 20.470 for 16 hours of work and was paid \$360.27.
18 However, if multiplied correctly would have yielded \$327.52. Thus, the wage statements are incorrect.

19 37. Because Defendants did not record the time Plaintiff and members of the Classes spent
20 working off-the-clock, Defendants did not list the correct amount of gross wages and net wages earned
21 by Plaintiff and other non-exempt employees in compliance with section 226(a)(1) and section
22 226(a)(5), respectively.

23 38. Defendants also failed to list the total number of hours worked by Plaintiff and
24 members of the Classes and failed to list the applicable hourly rates of pay in effect during the pay
25 period and the corresponding accurate number of hours worked at each hourly rate.

26 39. Because Defendants failed to provide the correct net and gross wages earned, applicable
27 rates of pay, and number of total hours worked on wage statements, Plaintiff and members of the
28 Classes have been prevented from verifying, solely from information on the wage statements

1 themselves, that they were paid correctly and in full. Instead, Plaintiff and members of the Classes have
2 had to look to sources outside of the wage statements themselves and reconstruct time records to
3 determine whether in fact they were paid correctly and the extent of underpayment, thereby causing
4 them injury.

5 ***Defendants' Failure to Timely Pay all Wages During Employment***

6 40. Labor Code section 204 requires that all wages earned by any person in any
7 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
8 wages due upon termination of an employee, are due and payable between the 16th and the 26th day of
9 the month during which the labor was performed, and that all wages earned by any person in any
10 employment between the 16th and the last day, inclusive, of any calendar month, other than those
11 wages due upon termination of an employee, are due and payable between the 1st and the 10th day of
12 the following month.

13 41. Labor Code section 204 also requires that all wages earned for labor in excess of the
14 normal work period shall be paid no later than the payday for the next regular payroll period.
15 Alternatively, Labor Code section 204 provides that the requirements of this section are deemed
16 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid
17 not more than seven (7) calendar days following the close of the payroll period.

18 42. During the class period, Defendants willfully failed to pay Plaintiff and members of the
19 Classes all wages due including, but not limited to, minimum wages, and/or meal and rest period
20 premiums, within the time periods specified by Labor Code section 204.

21 ***Defendants' Failure to Timely Pay Final Wage Upon Termination***

22 43. Defendants willfully failed to pay Plaintiff and members of the Classes who are no
23 longer employed by Defendants the earned and unpaid wages set forth above, including but not limited
24 to, minimum wages, and/or meal rest period premiums, either at the time of discharge, or within
25 seventy-two (72) hours of their leaving Defendants' employ.

26 ***Defendants' Failure to Provide Sick Pay at the Regular Rate***

27 44. Plaintiff received compensation, in addition to his hourly wages while employed by
28 Defendants, including differentials, Spot Bonus and Attendance Bonus. Those additional amounts

1 should have been included when calculating his regular rate of pay and used when paying overtime
2 wages, premium wages, and sick leave wages, but were not. Instead, Plaintiff and members of the
3 Classes were paid sick wages at their base rate of pay.

4 ***Defendants' Failure to Reimburse Business Expenses***

5 45. During the relevant time period, Defendants had a company-wide policy of requiring
6 Plaintiff and members of the Classes to use their own cellphones to communicate with management.
7 Specifically, Defendants would call and text Plaintiff on his personal cellphone for work updates.
8 Plaintiff and members of the Classes were not reimbursed.

9 ***Facts Regarding Willfulness***

10 46. Plaintiff is informed and believes, and based thereon alleges, that Defendants are and
11 were advised by skilled lawyers, other professionals, employees with human resources background and
12 advisors with knowledge of the requirements of California wage and hour laws and that at all relevant
13 times, Defendants knew or should have known, that members of the Classes, including Plaintiff, were
14 entitled to receive one hour of pay at the employee's regular rate of compensation for each day that a
15 meal and/or rest period was not provided and were and are entitled to received pay for all hours
16 worked, accurate itemized wage statements, and final pay in a timely manner.

17 ***Unfair Business Practices***

18 47. Defendants have further engaged in, and continue to engage in, unfair business
19 practices in California by practicing, employing and utilizing the unlawful employment practices and
20 policies outlined above.

21 48. As a direct result of the wage and hour violations herein alleged, Plaintiff and members
22 of the Classes have suffered, and continue to suffer substantial losses related to the use and enjoyment
23 of wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel
24 Defendants to perform their obligations under state law, all to Plaintiff's and members of the Classes'
25 respective damage in amounts according to proof at the time of trial.

26 ***Plaintiff's Exhaustion of Administrative Remedies***

27 49. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
28 section 2699.3.

50. By letter dated April 25, 2023, required notice was provided to Labor and Workforce Development Agency (“LWDA”) and Defendants, of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

51. More than sixty-five (65) days have passed since the date the notice was mailed to Defendant and the LWDA, and Plaintiff has received no response from the LWDA indicating that it plans to investigate.

52. Accordingly, Plaintiff has satisfied the administrative prerequisites under California Labor Code Section 2699.3(a) to recover civil penalties against Defendant for violations of California Labor Code identified in this First Amended Complaint.

CLASS ACTION ALLEGATIONS

53. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

54. Pursuant to Code of Civil Procedure section 382, this action is brought and may be properly maintained as a class action. This action satisfies the ascertainability, numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

55. Plaintiff brings this suit as a class action on behalf of two classes of individuals defined as follows (collectively the “Classes”):

56. Plaintiff Class: All persons who have been, or currently are, employed by Defendants and who held, or hold, job positions which Defendants have classified as “non-exempt” employees in the State of California, at any time since four years prior to filing this action, through the date judgment is rendered in this action.

57. Terminated Sub Class: All members of the Plaintiff Class whose employment ended during the Class Period.

58. Numerosity: Plaintiff is informed and believes, and on that basis alleges, that during the class period hundreds of class members have been employed by Defendants as non-exempt employees in the State of California. Because so many persons have been employed by Defendants in this capacity, the members of the Plaintiff Class are so numerous that joinder of all members is impossible and/or impracticable.

59. *Common Questions of Law and/or Fact:* Common questions of law and fact, exist as to

all members of the Plaintiff Class and predominate over any questions affecting solely individual members of the Plaintiff Class. Among the questions of law and fact, that are relevant to the adjudication of Class Members' claims are as follows:

- a. Whether Plaintiff and Class Members are subject to and entitled to the benefits of California wage and hour statutes;
- b. Whether Defendants failed to pay Plaintiff and Class Members for all hours worked;
- c. Whether Defendants had a standard policy of not providing compliant meal breaks to Plaintiff and members of the Plaintiff Class;
- d. Whether Defendants had a standard policy of not providing compliant rest breaks to Plaintiff and members of the Plaintiff Class;
- e. Whether Defendants unlawfully and/or willfully failed to provide Plaintiff and members of the Plaintiff Class with true and proper wage statements upon payment of wages, in violation of Labor Code section 226;
- f. Whether Defendants unlawfully/or willingly failed to timely pay Plaintiff and the Terminated Sub Class upon termination;
- g. Whether Defendants failed to timely pay wages to Plaintiff and members of the Plaintiff Class during their employment;
- h. Whether Defendants failed to provide Plaintiff and members of the Plaintiff Class with sick pay wages at the regular rate;
- i. Whether Defendants failed to reimburse Plaintiff and members of the Plaintiff Class for business-related expenses;
- j. Whether Plaintiff and members of the Plaintiff Class sustained damages, and if so, the proper measure of such damages, as well as interest, penalties, costs, attorneys' fees, and equitable relief;
- k. Whether Defendants' conduct as alleged herein violates the Unfair Business Practices Act of California (Bus. & Prof. Code, § 17200, et seq.)

60. Typicality: The claims of the named Plaintiff are typical of the claims of the members of the Plaintiff Class. Defendants' common course of conduct in failing to provide their non-exempt

employees with meal and rest periods and all wages in compliance with the applicable wage order or premium compensation at the regular rate in lieu thereof, failing to provide them with compliant wage statements, failing to timely pay wages during employment and/or at termination, failing to provide sick pay at the regular rate, and failing to reimburse business expenses has caused Plaintiff and the proposed Class to sustain the same or similar injuries and damages. Plaintiff's claims are thereby representative of and co-extensive with the claims of the proposed Class. Plaintiff and the proposed Class sustained the same or similar injuries and damages arising from Defendants' common policies, practices, procedures, protocols, routines, and rules which were applied to other class members as well as Plaintiff. Plaintiff seeks recovery for the same type of losses, injuries, and damages as were suffered by other members of the proposed class.

61. Adequacy of Representation: Plaintiff is an adequate representative of the proposed classes because he is a member of the class, and his interests do not conflict with the interests of the members he seeks to represent. Plaintiff has retained competent counsel, experienced in the prosecution of complex class actions, and together Plaintiff and his counsel intend to prosecute this action vigorously for the benefit of the classes. The interests of the Class Members will fairly and adequately be protected by Plaintiff and his attorneys.

62. Superiority of Class Action: A class action is superior to other available methods for the fair and efficient adjudication of this litigation since individual litigation of the claims of all Class Members is impracticable. It would be unduly burdensome to the courts if these matters were to proceed on an individual basis, because this would potentially result in hundreds of individual, repetitive lawsuits. Further, individual litigation presents the potential for inconsistent or contradictory judgments, and the prospect of a "race to the courthouse," and an inequitable allocation of recovery among those with equally meritorious claims. By contrast, the class action device presents far fewer management difficulties, and provides the benefit of a single adjudication, economics of scale, and comprehensive supervision by a single court.

63. The various claims asserted in this action are additionally or alternatively certifiable under the provisions of the California Code of Civil Procedure section 382 because:

a. The prosecution of separate actions by hundreds of individual Class Members

would create a risk or varying adjudications with respect to individual class members, thus establishing incompatible standards of conduct for Defendants, and

b. The prosecution of separate actions by individual Class Members would also create the risk of adjudications with respect to them that, as a practical matter, would be dispositive of the interest of the other Class Members who are not a party to such adjudications and would substantially impair or impede the ability of such non-party class members to protect their interests.

FIRST CAUSE OF ACTION

Unpaid Overtime

(By Plaintiff and Members of the Putative Class Against All Defendants)

64. Plaintiff incorporates herein by reference the allegations set forth above.

65. At all times relevant herein, which comprise the time period not less than four (4) years preceding the filing of this action, Defendants were required to compensate their hourly employees for all overtime hours worked.

66. California Labor Code sections 510 and 1198 and the applicable IWC wage order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of one-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC wage order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

67. Defendants willfully failed to pay all overtime wages owed to Plaintiff and members of the Classes. During the relevant time period, Plaintiff and members of the Classes were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

68. Defendants knew or should have known that as a result of company-wide practices

1 and/or policies, that prevents Plaintiff and members of the Classes from earning overtime, Plaintiff and
2 members of the Classes were performing assigned duties off-the-clock during meal periods, and were
3 suffered or permitted to perform work for which they were not paid. Because Plaintiff and members of
4 the Classes worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of
5 this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and members of the
6 Classes were not paid overtime wages for all of the overtime hours they actually worked. Further,
7 Defendants maintained a company-policy whereby it rounded hours worked to the nearest quarter hour.
8 This resulted in unpaid wages including overtime wages.

9 69. Defendants also failed to incorporate non-discretionary pay into the regular rate for
10 overtime. Specifically, Plaintiff and members of the classes received spot bonuses and attendance
11 bonuses that were not incorporated into the regular rate.

12 70. Defendants' failure to pay Plaintiff and members of the Classes the balance of overtime
13 compensation, as required by California law, violates the provisions of Labor Code sections 510 and
14 1198. Plaintiff and members of the Classes are entitled to recover civil penalties, attorney's fees, costs,
15 and interest thereon.

16 **SECOND CAUSE OF ACTION**

17 **Failure to Pay All Wages**

18 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

19 71. Plaintiff incorporates herein by reference the allegations set forth above.

20 72. At all times relevant herein, which comprise the time period not less than four (4) years
21 preceding the filing of this action, Defendants were required to compensate their hourly employees for
22 all hours worked.

23 73. For at least the four (4) years preceding the filing of this action, Defendants failed to
24 compensate employees for all hours worked. Defendants implemented policies that actively prevented
25 employees from being compensated for all time worked by subjecting Plaintiff and members of the
26 Classes to work off-the-clock and rounding hours worked to the nearest quarter hour as mentioned
27 above.

28 74. Under the above-mentioned wage order and state regulations, Plaintiff and members of

1 the Classes are entitled to recover compensation for all hours worked, but not paid, for the four (4)
2 years preceding the filing of this action, in addition to reasonable attorney's fees and costs of suit in
3 accordance with Labor Code section 218.5, and penalties pursuant to Labor Code sections 203 and 206.

4 75. The applicable IWC wage order defines “hours worked” to mean “the time during
5 which an employee is subject to the control of an employer and includes all the time the employee is
6 suffered or permitted to work, whether or not required to do so.”

7 76. Defendants suffered or permitted Plaintiff and members of the Classes to work portions
8 of the day for which Defendants failed to compensate them. Specifically, Plaintiff alleges that he had to
9 undergo an off-the-clock bag check once per month.

10 77. Labor Code section 1194(a) provides in relevant part: “[n]otwithstanding any
11 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage ... is
12 entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage ...
13 including interest thereon, reasonable attorney’s fees, and costs of suit.”

14 78. Labor Code section 1194.2(a) provides in relevant part: “[i]n any action under section
15 1193.6 or section 1194 to recover wages because of the payment of a wage less than the minimum
16 wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages
17 in an amount equal to the wages unlawfully unpaid and interest thereon.”

18 79. Labor Code section 1197 provides: “[t]he minimum wage for employees fixed by the
19 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
20 minimum so fixed is unlawful.”

21 80. Plaintiff is informed and believes, and therefore alleges, that Defendants’ compensation
22 schemes do not fairly compensate Plaintiff and members of the Classes for all hours spent performing
23 their job duties.

24 81. The failure to pay at least minimum wages to Plaintiff and members of the Plaintiff
25 Class for each and every hour worked violates Labor Code sections 1182.11-1182.12, 1194, 1194.2,
26 and 1197; the applicable IWC wage order section 4; and Business & Professions Code.

27 82. The failure to pay designated wages to Plaintiff and members of the Classes for each
28 and every hour worked violates Labor Code sections 221 and 223; the applicable IWC Wage Order;

1 and Business & Professions Code.

2 83. During the applicable time period, Defendants have and continue to have a pattern and
3 practice of not providing its employees all wages, by failing to include all compensable time, including
4 time worked off-the-clock. Thus, Defendants did not pay at least minimum wages for all hours worked
5 by Plaintiff and members of the Classes. To the extent that these off-the-clock hours did not qualify for
6 overtime premium payment, Defendants did not pay at least minimum wages for those hours worked
7 off-the-clock.

8 84. As a proximate result of the above-mentioned violations. Plaintiff and the members of
9 the Classes have been damaged in an amount according to proof at time of trial.

10 **THIRD CAUSE OF ACTION**

11 **Non-Compliant Meal Breaks in Violation of Labor Code sections 200, 226.7, 512**

12 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

13 85. Plaintiff hereby incorporates by reference each and every one of the allegations
14 contained in the preceding paragraphs as if the same were fully set forth herein.

15 86. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and members of the
16 Classes regularly worked more than five (5) hours per shift and were entitled to a meal period of not
17 less than thirty (30) minutes without duty.

18 87. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that Defendants
19 routinely failed to provide Plaintiff and the members of the Classes with such meal periods without
20 duty, notwithstanding the fact that Plaintiff and the members of the Classes had not waived their right
21 to the same. Thus, Defendants failed to provide Plaintiff and the members of the Classes with meal
22 periods required by Labor Code sections 226.7, 512, 516 and IWC wage order, section 11 and
23 categorically failed to pay any and all meal period wages due.

24 88. Plaintiff and Class Members seek damages pursuant to Labor Code section 226.7(b)
25 and IWC wage order section 11(D), in the amount of one additional hour of pay at the regular rate for
26 each work day that the meal period is/was not provided to Plaintiff and any member of members of the
27 Classes, the cumulative sum of which is to be determined at trial.

28 89. Under the foregoing, California employers must provide meal periods and authorize

1 and permit rest periods to all employees during their shifts. In *Augustus v. ABM Security Services, Inc.*
2 (2016) 2 Cal.5th 257, the California Supreme Court reaffirmed that the required meal and rest periods
3 must be “off-duty,” which means that employees must be relieved of “all work-related duties,”
4 including the duty to remain “on call,” and they must be “free from employer control” over how they
5 “spend their time.” *Id.* at 264, 269. Employees must have the freedom to use meal and rest periods for
6 their own purposes. *Id.* at 270; *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1038-39.

7 90. When employees must either “remain at the ready and capable of being summoned to
8 action,” “respond ... when the employer seeks contact with [them],” “perform ... other work if the
9 employer so requests,” and/or remain “on call” during their meal and rest periods, the employees have
10 not been “relieve[d] ... of all work-related duties and employer control.” *Augustus, supra*, 2 Cal.5th at
11 270. Such a meal or rest period is not “off duty” and therefore is “impermissible.” *Ibid.*

12 91. The Supreme Court’s decision in *Augustus* is just the latest in a series of meal and rest
13 break cases that have affirmed California’s broad, protective standard for employees.¹ Moreover, as the
14 mere existence of a facially lawful meal and rest break policy is unavailing if there are practical
15 constraints and pressures on employees to perform their duties in ways that omit breaks. *See Brinker,*
16 *supra*, 53 Cal.4th at p. 1040.

17 92. Yet Defendants did and do not provide Plaintiff and members of the Plaintiff Class with
18 meal periods during which they are completely relieved of duty for at least thirty (30) minutes by the
19 fifth hour of work and again by the tenth hour of work. As stated above, Defendants failed to provide
20 compliant meal breaks to Plaintiff and members of the Classes due to heavy workloads and
21 management contacting Plaintiff and members of the classes during meals. Moreover, Defendants
22 failed to provide second meal periods.

23 93. Thus, Defendants have failed to perform its obligations to provide Plaintiff and the
24 members of the Classes with off-duty meal periods by the end of the fifth hour of work and a second

25
26 ¹ See, e.g., *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004; *Lubin v.*
27 *Wackenhut Corp.* (2016) 5 Cal.App.5th 926, *reh’g denied* (Dec. 14, 2016); *Faulkinbury v. Boyd &*
28 *Assocs., Inc.*, 216 (2013) Cal.App.4th 220; *Berlanga v. Equilon Enterprises LLC* (N.D. Cal., Aug.
31, 2017, No. 17-cv-00282-MMC) 2017 WL 3782245 at *3 (a policy requiring employees to
“remain in contact with supervisors and other employees working in their units throughout their
shifts... would appear to be unlawful under [*Augustus*].”)

1 meal period by the end of the tenth hour of work. Defendants also have failed to pay Plaintiff and the
2 members of the Plaintiff Class one (1) hour of pay at the regular rate for each non-compliant meal
3 break.

4 94. On July 15, 2021, the California Supreme Court issued a decision in *Ferra v. Loews*
5 *Hollywood Hotel, LLC* (2021) 11 Cal.5th 858 where the court unanimously held that employers must
6 pay premium payments to employees for missed meal, rest, and recovery breaks at the employee's
7 "regular rate of pay" instead of their base hourly rate. The regular rate of pay may be higher than the
8 base hourly rate because the regular rate of pay must include all nondiscretionary incentive payments,
9 including shift differential pay.

10 95. Plaintiff and members of the Plaintiff Class are thus entitled to compensation for
11 Defendants' failure to provide compliant meal periods, plus interest, attorneys' fees, expenses, and
12 costs of suit pursuant to Labor Code section 226.7(b) and the applicable wage order.

13 **FOURTH CAUSE OF ACTION**

14 **Non-Compliant Rest Breaks in Violation of Labor Code sections 200, 226.7, 512**

15 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

16 96. Plaintiff hereby incorporates by reference each and every one of the allegations
17 contained in the preceding paragraphs as if the same were fully set forth herein.

18 97. Plaintiff is informed and believes, and thereon allege, that Plaintiff and members of the
19 Classes were entitled to a paid rest period of not less than ten (10) minutes without duty for each and
20 every four (4) hours worked during the workday.

21 98. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that Defendants
22 routinely failed to provide Plaintiff and members of the Classes with such paid rest periods without
23 duty, notwithstanding the fact that Plaintiff and members of the Classes had not waived their right to
24 the same. Thus, Defendants failed to provide Plaintiff and Class Members with rest periods required by
25 Labor Code sections 226.7, 512, and 516, IWC wage order, section 12 and categorically failed to pay
26 any and all rest period wages due.

27 99. Plaintiff alleges that rest breaks were frequently missed due to heavy workloads and on
28 the occasion rest breaks were provided they would be interrupted by management. There were also

1 many occasions where Plaintiff was the only one working and would be unable to take a rest break.

2 100. Plaintiff and Class Members seek damages pursuant to Labor Code section 226.7(b)
3 and the applicable IWC wage order section 12(B), in the amount of one additional hour of pay at the
4 regular rate for each work day that the rest period is/was not provided or provided late to Plaintiff and
5 any member of the Classes, the cumulative sum of which is to be determined at trial.

6 101. Therefore, Plaintiff and members of the Plaintiff Class are entitled to compensation for
7 Defendants' failure to provide rest periods, plus interest, attorneys' fees, expenses, and costs of suit
8 pursuant to Labor Code sections 226.7(b) and the applicable wage order.

9 **FIFTH CAUSE OF ACTION**

10 **Failure to Provide Sick Pay**

11 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

12 102. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth
13 herein.

14 103. Sick pay must be compensated at the employee's regular rate of pay, for the workweek
15 in which the paid leave was taken, or at a rate determined by averaging over 90-days. (Lab. Code §
16 246(1).)

17 104. Defendants failed to pay Plaintiff and members of the Class sick pay at the correct rate.
18 Plaintiff received compensation in addition to hourly wages, but those additional amounts were not
19 included when calculating sick pay wages. Plaintiff received compensation, including shift differentials
20 spot bonuses and attendance bonuses in addition to his hourly wages while employed by Defendant,
21 which was not factored into his sick pay wages. By failing to pay Plaintiff and Class Members for sick
22 pay at the correct rate, Defendants willfully violated Labor Code section 246.

23 105. Defendants' unlawful acts deprived Plaintiff and the Class of all wages. Plaintiff seeks
24 to represent of sick pay in amounts to be determined at trial, and they are entitled to recover these
25 amounts with interest, attorneys' fees, and costs.

26 ///

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1 **SIXTH CAUSE OF ACTION**

2 **Failure to Timely Pay Wages During Employment**

3 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

4 106. Plaintiff hereby incorporates by reference each and every one of the allegations
5 contained in the preceding paragraphs as if the same were fully set forth herein.

6 107. Labor Code section 204 requires that all wages earned by any person in any
7 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
8 wages due upon termination of an employee, are due and payable between the 16th and the 26th day of
9 the month during which the labor was performed, and that all wages earned by any person in any
10 employment between the 16th and the last day, inclusive, of any calendar month, other than those
11 wages due upon termination of an employee, are due and payable between the 1st and the 10th day of
12 the following month.

13 108. Labor Code section 204 also requires that all wages earned for labor in excess of the
14 normal work period shall be paid no later than the payday for the next regular payroll period.
15 Alternatively, Labor Code section 204 provides that the requirements of this section are deemed
16 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid
17 not more than seven (7) calendar days following the close of the payroll period.

18 109. During the class period, Defendants willfully failed to pay Plaintiff and members of the
19 Classes all wages due including, but not limited to, minimum wages, and/or meal and rest period
20 premiums, within the time periods specified by Labor Code section 204.

21 110. As a proximate result of the above-mentioned violations. Plaintiff and the Plaintiff
22 Class have been damaged in an amount according to proof at time of trial.

23 **SEVENTH CAUSE OF ACTION**

24 **Failure to Furnish Accurate Itemized Wage Statements and Failure to Maintain Accurate**

25 **Records**

26 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

27 111. Plaintiff hereby incorporates by reference each and every one of the allegations
28 contained in the preceding paragraphs as if the same were fully set forth herein.

1 112. Labor Code section 226(a) and the applicable IWC wage order section 7(B) requires
2 employers to furnish each employee with a statement itemizing, among other things, the total hours
3 worked by the employee, on a semi-monthly basis or at the time of each payment of wages.

4 113. Labor Code section 226(e) provides that if an employer fails to comply with providing
5 an employee with properly itemized wage statements as set forth in 226(a), then the employee is
6 entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation
7 occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000.
8 Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be
9 subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and
10 \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide
11 the employee a wage statement or fails to keep the required records pursuant to section 226(a).

12 114. Defendants knowingly and intentionally failed to furnish Plaintiff and the members of
13 the Classes with timely, itemized statements in compliance with Labor Code section 226(a) and the
14 applicable IWC wage order section 7(B).

15 115. Plaintiff is informed and believes, and thereon alleges, that Defendants knowingly and
16 intentionally failed to furnish Plaintiff and members of the Classes with timely, itemized statements
17 showing (a) total hours, (b) gross wages earned, (c) all deductions, and/or (d) all applicable hourly rates
18 in effect during each respective pay period and the corresponding number of hours worked at each
19 hourly rate by each respective individual. This is a result of failing to pay for all hours worked and for
20 failing to provide meal and rest break premiums. Further, Defendants provide non-compliant wage
21 statements because when employees receive differential pay of either 10% or 15%, the hourly rate
22 multiplied by the hours results in a different amount than what is provided on wage statements. For
23 example, on Plaintiff's pay statement with the pay date of 12/31/21 he received a shift differential of
24 10% at the rate of 20.470 for 16 hours of work and was paid \$360.27. However, if multiplied correctly
25 would have yielded \$327.52. Thus, the wage statements are incorrect.

26 116. Plaintiff is informed and believes, and thereon alleges, that Defendants did not maintain
27 accurate business records pertaining to the total hours worked for Defendants by Plaintiff and the
28 members of the Classes as required under Labor Code section 1174.5. This is a result of missing hours

1 worked and missed meal and rest-break premiums.

2 117. As a result of not having kept accurate records, Plaintiff and the Class Members
3 suffered injuries in the form of confusion over whether they received all wages owed to them, and
4 difficulty and expense in reconstructing pay records in addition to other injuries which may come to
5 light during the discovery process.

6 118. Labor Code section 1198 provides that the maximum hours of work and the standard
7 conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable
8 IWC wage order. Section 1198 further provides that “[t]he employment of any employees for longer
9 hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”
10 Pursuant to the applicable IWC wage order, employers are required to keep accurate time records
11 showing when the employee begins and ends each work period and meal period.

12 119. Plaintiff and the members of the Classes herein seek damages and penalties pursuant to
13 Labor Code section 226(e) for Defendants’ violations of Labor Code section 226(a).

14 120. Plaintiff and Class Members also seek preliminary and permanent injunctive relief and
15 an award of reasonable attorneys’ fees and costs pursuant to Labor Code section 226(h). Plaintiff and
16 the members of the Classes also request relief as described below.

17 **EIGHTH CAUSE OF ACTION**

18 **Waiting Time Penalties**

19 **(By Plaintiff and Members of the Terminated Sub Class Against All Defendants)**

20 121. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth
21 herein.

22 122. At all times, relevant herein, Defendants were required to pay their employees all wages
23 owed in a timely fashion during and at the end of their employment, pursuant to Labor Code sections
24 201-203.

25 123. As a pattern and practice, Defendants regularly failed to pay Plaintiff and the members
26 of the Terminated Sub Class their final wages pursuant to Labor Code sections 201-203, and
27 accordingly owe waiting time penalties pursuant to Labor Code section 203.

28 124. Labor Code sections 201 and 202 provide that if an employer discharges an employee,

1 the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an
2 employee voluntarily leaves his or her employment, his or her wages shall become due and payable not
3 later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours
4 previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages
5 at the time of quitting.

6 125. On information and belief, Defendants have a company-wide practice or policy of
7 paying departing employees their final wages late, instead of adhering to the time requirements set forth
8 in Labor Code sections 201 and 202.

9 126. Specifically, Defendants willfully failed to pay Plaintiff and members of the Terminated
10 Sub Class the earned and unpaid wages set forth above, including but not limited to, minimum wages,
11 and/or meal rest period premiums, either at the time of discharge, or within seventy-two (72) hours of
12 their leaving Defendants' employ.

13 127. Plaintiff and members of the Terminated Sub Class are entitled to recover civil
14 penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 256.

15 **NINTH CAUSE OF ACTION**

16 **Failure to Reimburse Business Expenses**

17 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

18 128. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth
19 herein.

20 129. Labor Code section 2802 requires employers to pay for all necessary expenditures and
21 losses incurred by the employee in the performance of his or her job. The purpose of Labor Code
22 section 2802 is to prevent employers from passing off their cost of doing business and operating
23 expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137,
24 1144.

25 130. The applicable wage order, IWC wage order section 9(B), provides that: "[w]hen tools
26 or equipment are required by the employer or are necessary to the performance of a job, such tools and
27 equipment shall be provided and maintained by the employer, except that an employee whose wages
28 are at least two (2) times the minimum wage provided herein may be required to provide and maintain

1 hand tools and equipment customarily required by the trade or craft.”

2 131. During the relevant time period, Defendants had a company-wide policy of requiring
3 Plaintiff and members of the Classes to use their own cellphones. Specifically, Defendants would call
4 and text Plaintiff and members of the Classes on their personal cellphones for work-related updates.
5 Defendants passed these operating costs off onto Plaintiff and members of the Classes.

6 132. Thus, Defendants had, and continue to have, a company-wide policy and/or practice of
7 not reimbursing employees for expenses necessarily incurred in violation of Labor Code section 2802.

8 133. Plaintiff and members of the Classes are entitled to recover civil penalties, attorney’s
9 fees, costs, and interest thereon.

10 **TENTH CAUSE OF ACTION**

11 **Violation of Business and Professions Code Section 17200 et seq.**

12 **(By Plaintiff and the Members of the Plaintiff Class Against All Defendants)**

13 134. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth
14 herein.

15 135. Business and Professions Code section 17200 defines unfair competition to include,
16 “unlawful, unfair or fraudulent business practices.”

17 136. Plaintiff and all proposed Class Members are “persons within the meaning of Business
18 and Professions Code section 17204, who have suffered injury in fact and have lost money or property
19 as a result of Defendants’ unfair competition.

20 137. Defendants have been committing, and continue to commit, acts of unfair competition
21 by engaging in the unlawful, unfair and fraudulent business practices and acts described in this
22 Complaint, including, but not limited to:

- 23 a. Violations of Labor Code sections 510 and 1198.
24 b. violations of Labor Code sections 1182.11-1182.12, 1194, 1194.2, 1197, 1198;
25 c. violations of Labor Code sections 226.7, and 1198;
26 d. violations of Labor Code section 226, 1174;
27 e. violations of Labor Code sections 201 and 202;
28 f. violations of Labor Code section 204;

- g. violations of Labor Code section 246;
- h. violations of Labor Code section 2802; and
- i. violations of the applicable wage order.

138. As a result of its unlawful, unfair, and/or fraudulent business acts and practices, Defendants have reaped and continue to reap unfair benefits and illegal profits at the expense of Plaintiff and proposed Class Members. Defendants' unlawful, unfair, and/or fraudulent conduct has also enabled Defendants to gain an unfair competitive advantage over law-abiding employers and competitors.

139. The Business and Professions Code section 17203 provides that the Court may restore to an aggrieved party any money or property acquired by means of the unlawful, unfair, and/or fraudulent business acts or practices.

140. Plaintiff seeks a court order enjoining Defendants from the unlawful, unfair, and/or fraudulent activity alleged herein.

141. Pursuant to Civil Code section 3287(a), Plaintiff and other members of the Plaintiff Class are entitled to recover pre-judgment interest on wages earned, but not paid.

142. Plaintiff further seeks an order requiring an audit and accounting of the payroll records to determine the amount of restitution of all unpaid wages owed to himself and members of the proposed Plaintiff Class, according to proof, as well as a determination of the amount of funds to be paid to current and former employees that can be identified and located pursuant to a court order and supervision.

143. Plaintiff seeks restitution for himself and all others similarly situated of these amounts, including all earned and unpaid wages and attorneys' fees and costs pursuant to Code of Civil Procedure section 1021.5.

ELEVENTH CAUSE OF ACTION

Civil Penalties Pursuant to PAGA (Labor Code §§ 2698, et seq.)

(On Behalf of All Aggrieved Employees Against Defendant)

144. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

1 145. At all times set forth herein, the Private Attorneys General Act of 2004 (PAGA,
2 California Labor Code §§ 2698-99) applied to Defendant’s employment of Plaintiff and the proposed
3 Class Members.

4 146. At all times set forth herein, California Labor Code § 2699(a) has provided that any
5 provision of law under the California Labor Code that provides for a civil penalty to be assessed and
6 collected by the Labor and Workforce Development Agency (LWDA) for violations of the California
7 Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved
8 employee on behalf of himself and other current or former employees pursuant to procedures outlined
9 in California Labor Code § 2699.3.

10 147. At all times set forth herein, the PAGA has also provided that for the violation of any
11 Labor Code provision that does not itself contain a civil penalty, there are established civil penalties of
12 \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved
13 employee per pay period for each subsequent violation. Cal. Lab. C. § 2699(f).

14 148. A civil action under PAGA may be brought by an “aggrieved employee,” any person
15 that was employed by the alleged violator and against whom one or more of the alleged violations was
16 committed.

17 149. Defendant has been committing, and continues to commit, violations of the California
18 Labor Code, including, but not limited to:

- 19 a. Labor Code sections 510 and 1198 for failure to pay overtime wages;
- 20 b. Labor Code sections 1182.11-1182.12, 1194, 1194.2, 1197, 1198 for
21 failing to pay all wages;
- 22 c. Labor Code sections 226.7, for failing to provide compliant meal and
23 rest breaks;
- 24 d. Labor Code section 246 for failing to pay sick pay wages at the regular
25 rate;
- 26 e. Labor Code section 226, 1174 for failing to provide compliant wage
27 statements and failing to maintain accurate records;
- 28 f. Labor Code section 204 for failing to timely pay wages during

employment;

g. Labor Code sections 201 and 202 for failing to pay wages at termination; and,

h. Labor Code section 2802 for failing to reimburse business expenses;

150. Plaintiff was employed by Defendants and the alleged violations have been committed against him during his time of employment and he is, therefore, an aggrieved employee. Plaintiff and other employees are “aggrieved employees” as defined by California Labor Code §2699(c) in that they are all current or former employees of Defendant, and one or more of the alleged violations were committed against them.

151. Pursuant to California Labor Code § 2699.3, aggrieved employees, including Plaintiff, may pursue a civil action arising under the PAGA after the following requirements have been met:

a. The aggrieved employee shall give written notice (hereinafter “Employee’s Notice”) to the LWDA and the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations;

b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violations sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code §2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

152. By letter dated April 25, 2023, required notice was provided to the Labor and Workforce Development Agency (“LWDA”) and Defendant, of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

153. More than sixty-five (65) days have passed since the date the notice was mailed to Defendant and the LWDA, and Plaintiff has received no response from the LWDA indicating that it

1 plans to investigate. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor
2 Code Section 2699.3(a) to recover civil penalties against Defendant for violations of California Labor
3 Code identified in this First Amended Complaint.

4 154. Accordingly, Plaintiff and the other aggrieved employees are entitled to and seek to
5 recover civil penalties for Defendant's violations of the Labor Code during the applicable limitations
6 period.

7 155. Pursuant to California Labor Code Section 2699(g), Plaintiff, on behalf of himself and
8 the other aggrieved employees, is entitled to an award of reasonable attorneys' fees and costs.

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff, the Class Members, and the Aggrieved Employees, pray for judgment as
12 follows:

- 13 1. For an order certifying the proposed Plaintiff Class and Terminated Sub-Class;
- 14 2. For an order that counsel for Plaintiff be appointed class counsel
- 15 3. Certification of this class action on behalf of the proposed Plaintiff Class and
16 Terminated Sub-Class;
- 17 4. Designation of Plaintiff as the class representative of the Plaintiff and Terminated Sub
18 Class;
- 19 5. For restitution of all monies due to Plaintiff and the members of the Plaintiff Class and
20 disgorgement of all profits from the unlawful business practices of Defendants
- 21 6. Prejudgment and post judgment interest on all sums awarded;
- 22 7. For compensatory damages;
- 23 8. For statutory and civil penalties pursuant to Labor Code sections 200, 226, 226.7;
- 24 9. For interest accrued to date;
- 25 10. For costs of suit and expenses incurred herein pursuant to Labor Code sections 226
26 1194, and 2699 (g)(1);;
- 27 11. For reasonable attorneys' fees pursuant to Labor Code sections 218.5, 226, 2699 (g)(1);
28 Code of Civil Procedure section 1021.5, and/or other applicable law; and

1 12. A declaratory judgment that Defendants have knowingly and intentionally violated the
2 following provisions of law;

3 i. Labor Code sections 510 and 1198 for failure to pay overtime wages;

4 j. Labor Code sections 1182.11-1182.12, 1194, 1194.2, 1197, 1198 for
5 failing to pay all wages;

6 k. Labor Code sections 226.7, for failing to provide compliant meal and
7 rest breaks;

8 l. Labor Code section 246 for failing to pay sick pay wages at the regular
9 rate;

10 m. Labor Code section 226, 1174 for failing to provide compliant wage
11 statements and failing to maintain accurate records;

12 n. Labor Code section 204 for failing to timely pay wages during
13 employment;

14 o. Labor Code sections 201 and 202 for failing to pay wages at
15 termination;

16 p. Labor Code section 2802 for failing to reimburse business expenses;

17 q. Business & Professions Code sections 17200-08 for violating the
18 provisions set forth herein above.

19 13. For all such other and further relief that the Court may deem just and proper.

20 DATED: June 28, 2023

BRADLEY/GROMBACHER, LLP
MAJARIAN LAW GROUP APC

21
22
23 By: _____



Marcus Bradley, Esq.
Kiley Grombacher, Esq.
Lirit King, Esq.
Sahag Majarian, Esq.
Garen Majarian, Esq.

Attorneys for Plaintiff and others similarly
situated

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands trial of Plaintiff's and the members of the Classes' claims by jury to
3 the extent authorized by law.

4
5 DATED: June 28, 2023

BRADLEY/GROMBACHER, LLP
MAJARIAN LAW GROUP APC

6
7 By: 

Marcus Bradley, Esq.
Kiley Grombacher, Esq.
Lirit King, Esq.
Sahag Majarian, Esq.
Garen Majarian, Esq.

11 Attorneys for Plaintiff and others similarly
12 situated

PROOF OF SERVICE

STATE OF CALIFORNIA COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action; my business address 31365 Oak Crest Drive, Suite 240, Westlake Village, CA 91361.

On June 28, 2023, I served the foregoing documents described as

FIRST AMENDED CLASS ACTION COMPLAINT

on all interested parties in this action as follows: **SEE ATTACHED SERVICE LIST**

- [X] **(VIA US MAIL)** I caused such envelope(s) to be deposited in the mail at Westlake Village, California with postage thereon fully prepaid. 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
- [X] **(BY ELECTRONIC MAIL)** On the above date, I served the aforementioned document(s) by electronic mail to the parties' email addresses as they are known to me on the attached Service List. My email address is sboucher@bradleygrombacher.com. I did not receive, under a reasonable period of time, any indication that the email did not go through.
- [X] **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed June 28, 2023, at Westlake Village, California.



Suzette Boucher

Tuoyo Ogbe v. O'Neil Digital Solutions LLC
Los Angeles County Superior Court Case No. 23STCV09250

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