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Attorneys for Plaintiffs, CHRISTOPHER VIZCARRA and
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all others similarly situated

[Additional Parties on next page]

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

CHRISTOPHER VIZCARRA and
HARVEY HUGHES, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

PODS ENTERPRISES, LLC, a Florida
limited liability company; and DOES 1 to
10, inclusive,

Defendants.

Lead Case No.: CIVSB2308694

Consolidated with Case No.: CIVSB2333346

[Assigned to Hon. Christian Towns, Dept. S26]

**SECOND AMENDED CONSOLIDATED
CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. Failure to Pay Overtime Wages in Violation of Labor Code sections 510 and 1198;**
- 2. Failure to pay all Wages and Minimum Wage in Violation of Labor Code sections 221, 223, 1182, 1194, 1197, and 1198;**
- 3. Failure to Provide Meal Periods in Violation of Labor Code sections 226.7, 512, 516, and 1198**
- 4. Failure to Provide Rest Periods in Violation of Labor Code sections 226.7, 516, and 1198;**
- 5. Failure to Timely Furnish Accurate Itemized Wage Statements in Violation of Labor Code section 226(a) and Failure to Maintain Accurate Records;**
- 6. Failure to Timely Pay Wages During Employment in Violation of Labor Code section 204;**
- 7. Failure to Provide Sick Pay in Violation of Labor Code section 246;**
- 8. Failure to Provide COVID-19 Supplemental Paid Sick Leave at the Regular Rate in Violation of Labor Code section 248 ;**

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

FEB 24 2025

BY VERONICA GONZALEZ, DEPUTY

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- 9. **Waiting Time Penalties Pursuant to Labor Code sections 201 and 203;**
- 10. **Failure to Reimburse Business Expenses in Violation of Labor Code section 2802;**
- 11. **Violations of Business & Professions Code section 17200 et seq.; and**
- 12. **Civil Penalties Pursuant to PAGA Labor Code § 2698 et seq.**

DEMAND FOR JURY TRIAL

Complaint Filed: April 17, 2023
FAC Filed: September 13, 2023

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Attorneys for Plaintiffs, CHRISTOPHER VIZCARRA and
HARVEY HUGHES, on behalf of themselves and
all others similarly situated

Plaintiffs, CHRISTOPHER VIZCARRA and HARVEY HUGHES (hereinafter “Plaintiffs”) hereby submit their Second Amended Complaint against Defendant PODS ENTERPRISES, LLC; and DOES 1 to 10 (hereinafter referred to as “Defendants”) on behalf of themselves, the class of all other similarly situated current and former employees of Defendants, and “aggrieved employees” acting as private attorneys general as follows:

NATURE OF THE CASE

1. This is a class and PAGA representative action arising out of Defendants' failure to provide their non-exempt employees with all wages, meal and rest periods, by failing to reimburse business expenses, and by failing to comply with the applicable wage order and/or the Labor Code in regard to the payment of wages.

2. PODS or Portable Demand Storage is a moving and storage company headquartered in Clearwater, Florida, which designs and engineers storage containers and logistic services to provide convenient storage and transportation solutions to make the communities more efficient and accessible. At all relevant times, Defendants issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Plaintiffs, others similarly situated, and aggrieved employees, regardless of their location or position.

3. Defendants have maintained practices across their locations which have failed and continue to fail to pay Plaintiffs and other non-exempt employees all wages. Specifically, Defendants have a company-wide policy of subjecting Plaintiffs and other non-exempt employees to work off the clock. This has resulted in Defendants' failure to pay overtime wages to Plaintiffs and other non-exempt employees. Specifically, Plaintiffs would clock out and have to work during meal breaks. This was a result of very busy delivery schedules and customers and management contacting him on his personal cell phone during meal breaks. Further, when working shifts longer than ten hours, Defendants failed to provide second meal periods.

4. Defendants also failed to provide Plaintiffs and non-exempt employees with rest breaks due to very busy delivery schedules. Specifically, Plaintiffs allege there was not enough time to take rest breaks and complete the delivery schedule. Rather, management informed Plaintiffs that

1 rest breaks should be missed so they could meet their deadlines.

2 5. Defendants also failed to reimburse Plaintiffs and other non-exempt employees for
3 business related expenses, including but not limited to cellphone related expenses. Management and
4 customers would contact Plaintiffs on their personal cellphones. Further, Plaintiffs and other non-
5 exempt employees were required to clock-out using the ADP app on their personal phones.
6 Defendants did not provide a phone allowance or reimburse Plaintiffs for the necessary expenses.

7 6. In light of the foregoing, Defendants failed to provide Plaintiffs and other non-
8 exempt employees with compliant wage statements and failed to timely pay wages during
9 employment. Also, Defendants failed to provide Plaintiffs with his final wages upon his separation
10 from employment.

11 7. Defendant also failed to pay Plaintiffs and other non-exempt employees sick wages
12 at the regular rate of pay and failed to provide Covid-19 supplemental pay. Specifically, Defendants
13 use Plaintiffs' and other non-exempt employee's PTO time rather than Covid-19 pay. Further,
14 Defendants fail to list Covid-19 supplemental pay on wage statements.

15 8. Plaintiffs bring Causes of Action One through Eleven (the "class claims") as a class
16 action on behalf of themselves and other similarly situated individuals who have worked for
17 Defendants in California, at any time from four-years prior to the filing of this complaint, through
18 the resolution of this action. Plaintiffs, on their own behalf and on behalf of all Class Members,
19 bring the class claims pursuant to Labor Code sections 200-203, 221, 223, 226, 226.7, 246, 248,
20 500, 510, 512, 1174, 1194, 1194.2, 1197, 1198, and 2802, the applicable wage order, and under
21 Business and Professions Code sections 17200-17208 for unfair competition due to Defendants'
22 unlawful, unfair, and fraudulent business acts and practices.

23 9. Plaintiffs bring Cause of Action Twelve under the Private Attorneys General Act
24 ("PAGA") of the California Labor Code, arising out of Defendants' failure to provide Aggrieved
25 Employees with all wages, meal and rest periods in compliance with the applicable wage order
26 and/or the California Labor Code, by failing to reimburse business-related expenses, and by failing
27 to comply with the applicable wage order and/or the Labor Code regarding the payment of wages.
28 The relevant time period for the PAGA action is April 17, 2022, to the present.

10. On September 26, 2023, Plaintiff Harvey Hughes filed his putative class action complaint, San Bernardino County Superior Court, Case Number CIVSB2333346. By virtue of this Second Amended Complaint, Plaintiffs intend to consolidate the two concurrent lawsuits and dismiss Case Number CIVSB2333346.

11. Plaintiffs are informed and believe, and based thereon allege, that Defendants have engaged in, among other things a system of willful violations of the Labor Code and the applicable IWC wage orders by creating and maintaining policies, practices, and customs that knowingly deny employees the above stated rights and benefits.

PARTIES

12. Plaintiff Christopher Vizcarra is an individual over the age of eighteen (18) and is now, and/or at all relevant times mentioned in this Complaint was, a resident and domiciliary of the State of California. During the relevant time period, Plaintiff Christopher Vizcarra worked for Defendants in Chino Hills, California from approximately July 2022 through approximately March 7, 2023. Plaintiff Christopher Vizcarra worked as a driver and earned approximately \$25.31 per hour.

13. Plaintiff Harvey Hughes is an individual over the age of eighteen (18) and is now, and/or at all relevant times mentioned in this Complaint was, a resident and domiciliary of the State of California. During the relevant time period, Plaintiff Harvey Hughes worked for Defendants from approximately April 2017 to July 18, 2023. Plaintiff Harvey Hughes worked in a non-exempt position as a driver.

14. Plaintiffs are informed and believe, and based thereon allege, that Defendant PODS ENTERPRISES, LLC is a Florida limited liability company. Plaintiffs are further informed and believe that at all times relevant hereto, Defendants have transacted, and continue to transact, business throughout the State of California.

15. Plaintiffs are informed and believe, and based thereon allege, that Defendants are now, and/or at all times mentioned in this Complaint were in some manner, legally responsible for the events, happenings, and circumstances alleged in this Complaint.

16. Plaintiffs are informed and believe, and based thereon allege, that at all times herein

1 mentioned, Defendants proximately caused Plaintiffs, all others similarly situated, aggrieved
2 employees, and the general public to be subjected to the unlawful practices, wrongs, complaints,
3 injuries, and/or damages alleged in this Complaint.

4 17. Plaintiffs are informed and believe, and based thereon allege, that at all times herein
5 mentioned, Defendants and DOES 1 through 10, are, and were, corporations, business entities,
6 individuals, and partnerships licensed to do business and actually doing business in the State of
7 California.

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

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

21 20. Plaintiffs are informed and believe, and based thereon allege, that at all times
22 material hereto, each of the Defendants named herein were the agent, employee, alter ego, and/or
23 joint venturer of, or working in concert with each of the other co-Defendant and were acting within
24 the course and scope of such agency, employment, joint venture, or concerted activity. To the
25 extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
26 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
27 Defendants.

28 21. At all times herein mentioned, Defendants, and each of them, were members of, and

engaged in, a joint venture, partnership, and common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

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

23. The members of the Classes (as defined below), including the representative Plaintiffs named herein, have been employed during the Class Period in California. The practices and policies which are complained of by way of this Complaint are enforced throughout the State of California.

JURISDICTION AND VENUE

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

25. Additionally, this Court has jurisdiction over Plaintiffs and the Class's claims for injunctive relief, including restitution of earned wages, arising from Defendants' unfair competition under Business and Professions Code sections 17203 and 17204. The Court also has jurisdiction over Plaintiffs' and the Class's claims pursuant to the applicable provisions.

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

27. Venue is proper in San Bernardino County because the acts which give rise to this litigation occurred in this county and because Defendants have employed class members in this

1 county and transact business in this county.

2 **FACTUAL ALLEGATIONS**

3 28. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

4 29. Defendants have engaged in, and continue to engage in, unfair business practices in
5 California by practicing, employing, and utilizing the employment practices and policies outlined
6 above.

7 ***Defendants' Failure to Pay Overtime Wages***

8 30. During the Class Period, upon information and belief, Defendants had, and continue
9 to have, a company-wide policy of discouraging and impeding Plaintiffs and members of the
10 Classes from recording hours worked that were outside of their scheduled shifts in order to limit
11 the amount of overtime employees could accrue. On information and belief, this policy of limiting
12 overtime, led Plaintiffs and members of the Classes to work off-the-clock before during their meal
13 breaks. As described above, Plaintiffs and members of the Classes would have to clock-out for
14 meal breaks and continue working off-the-clock. This work off-the-clock included but was not
15 limited to taking calls from management and customers. Plaintiffs were required to always keep
16 their cellphones on and be "on call" during their meal breaks.

17 31. Because Plaintiffs and members of the Classes worked shifts of eight (8) hours a
18 day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for
19 overtime premium pay.

20 32. Therefore, Plaintiffs and members of the Classes were not paid overtime wages for
21 all of the overtime hours they actually worked.

22 ***Defendants' Failure to Pay all Wages and Minimum Wages***

23 33. As stated above, during the relevant time period, as a result of Defendants' policy of
24 limiting the amount of overtime employees could accrue, coupled with being under Defendants'
25 control during meal breaks, Plaintiffs and members of the Classes were forced to work off-the-
26 clock. Further, Defendants failed to accrue PTO on Plaintiffs' final wage statement.

27 34. Thus, Defendants did not pay at least minimum wages for all hours worked by
28 Plaintiffs and members of the Classes. To the extent that these off-the-clock hours did not qualify

1 for overtime premium payment, Defendants did not pay at least minimum wages for those hours
2 worked off-the-clock.

3 ***Failure to Provide Compliant Meal Periods***

4 35. Plaintiffs allege that meal breaks were frequently interrupted and missed due to
5 delivery demands, and second meal breaks were never provided. Further, meal breaks were
6 frequently interrupted by management and clients as Plaintiffs were expected to leave their
7 cellphones on and answer calls. As a result, Plaintiffs and members of the Classes were forced to
8 work in excess of five (5) hours before taking a meal period.

9 36. Plaintiffs and members of the Classes did not sign valid meal period waivers on
10 days that they were entitled to meal periods and were not relieved of all duties.

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

12 37. During the relevant time period, Defendants regularly failed to authorize and permit
13 Plaintiffs and members of the Classes to take a ten (10) minute rest period per each four (4) hour
14 period worked or major fraction thereof.

15 38. Specifically, rest breaks were frequently missed due to high delivery demands and
16 were highly discouraged by management.

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

18 39. During the relevant time period, Defendants have knowingly and intentionally
19 provided Plaintiffs and members of the Classes with uniform, incomplete, and inaccurate wage
20 statements. For example, Defendants issued uniform wage statements to Plaintiffs and members of
21 the Classes that fail to correctly list: gross wages earned; total hours worked; net wages earned; and
22 all applicable hourly rates in effect during the pay period, including rates of pay for overtime
23 wages and/or meal and rest period premiums, and the corresponding number of hours worked at
24 each hourly rate.

25 40. Because Defendants did not record the time Plaintiffs and members of the Classes
26 spent working off-the-clock and deducted time from their meal periods that were missed and/or
27 interrupted (and therefore time for which they should have been paid), Defendants did not list the
28 correct amount of gross wages and net wages earned by Plaintiffs and members of the Classes in

1 compliance with Labor Code sections 226(a)(1) and 226(a)(5), respectively.

2 41. For the same reason, Defendants failed to accurately list the total number of hours
3 worked by Plaintiffs and members of the Classes and failed to list the applicable hourly rates of
4 pay in effect during the pay period and the corresponding accurate number of hours worked at each
5 hourly rate.

6 42. Because Defendants failed to provide the correct net and gross wages earned,
7 applicable rates of pay, and number of total hours worked on wage statements, Plaintiffs and
8 members of the Classes have been prevented from verifying, solely from information on the wage
9 statements themselves, that they were paid correctly and in full. Instead, Plaintiffs and members of
10 the Classes have had to look to sources outside of the wage statements themselves and reconstruct
11 time records to determine whether in fact they were paid correctly and the extent of underpayment,
12 thereby causing them injury.

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

14 43. Labor Code section 204 requires that all wages earned by any person in any
15 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
16 wages due upon termination of an employee, are due and payable between the 16th and the 26th
17 day of the month during which the labor was performed, and that all wages earned by any person in
18 any employment between the 16th and the last day, inclusive, of any calendar month, other than
19 those wages due upon termination of an employee, are due and payable between the 1st and the
20 10th day of the following month.

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

26 45. During the class period, Defendants willfully failed to pay Plaintiffs and members
27 of the Classes all wages due including, but not limited to, minimum wages, and/or meal and rest
28 period premiums, within the time periods specified by Labor Code section 204.

1 ***Defendant's Failure to Provide Sick Pay at the Regular Rate***

2 46. Plaintiffs received compensation, including incentive pay in addition to their hourly
3 wages while employed by Defendants. Those additional amounts should have been included when
4 calculating his regular rate of pay and used when paying overtime wages, premium wages, and sick
5 leave wages, but were not. Instead, Plaintiffs and members of the Classes were paid sick wages at
6 their base rate of pay.

7 ***Defendants' Failure to Provide Covid-19 Supplemental Pay***

8 47. Defendants also breached the state mandate for Covid-19, as they did not provide
9 pay for Covid-19 supplemental pay. Rather, Defendants used Plaintiffs' PTO. Further, Defendants
10 filed to list Covid-19 supplemental pay on wage statements.

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

12 48. Defendants willfully failed to pay Plaintiffs and members of the Classes who are no
13 longer employed by Defendants the earned and unpaid wages set forth above, including, but not
14 limited to, overtime wages, minimum wages, and/or meal/rest period premiums, either at the time
15 of discharge or within seventy-two (72) hours of their leaving Defendants' employ. Further,
16 Plaintiffs never received their final wages.

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

18 49. During the relevant time period, Defendants had a company-wide policy whereby
19 managers and clients would text or call Plaintiffs and members of the Classes on their personal
20 cellphones regarding deliveries. Further, Plaintiffs and members of the Classes were required to
21 clock-out using the ADP app on their cellphones.

22 50. Although Defendants required Plaintiffs and members of the Classes to use their
23 personal phones to carry out their work-related duties, Defendants failed to reimburse them for this
24 cost. Defendants could have provided Plaintiffs and members of the Classes with the actual tools
25 for use on the job, such as provided a phone allowance. Instead, Defendants passed these operating
26 costs off onto Plaintiffs and members of the Classes.

27 ***Facts Regarding Willfulness***

28 51. Plaintiffs are informed and believe, and based thereon allege, that Defendants are

1 and were advised by skilled lawyers, other professionals, employees with human resources
2 background, and advisors with knowledge of the requirements of California wage and hour laws
3 and that at all relevant times, Defendants knew or should have known, that the Plaintiff Class
4 Members, including Plaintiffs, were entitled to receive one hour of pay at the employee's regular
5 rate of compensation for each day that a meal and/or rest period was not provided and were and are
6 entitled to receive pay for all hours worked, accurate itemized wage statements, and final pay in a
7 timely manner.

8 ***Unfair Business Practices***

9 52. Defendants have further engaged in, and continue to engage in, unfair business
10 practices in California by practicing, employing, and utilizing the unlawful employment practices
11 and policies outlined above.

12 53. As a direct result of the wage and hour violations herein alleged, Plaintiffs and
13 members of the Plaintiff Class have suffered, and continue to suffer, substantial losses related to
14 the use and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in
15 seeking to compel Defendants to perform their obligations under state law, all to Plaintiffs' and the
16 Plaintiff Class Members' respective damage in amounts according to proof at the time of trial.

17 ***Plaintiffs' Exhaustion of Administrative Remedies***

18 54. Plaintiffs have complied with the procedures for bringing suit specified in Labor
19 Code section 2699.3.

20 55. By letter dated April 17, 2023, required notice was provided by Plaintiff Christopher
21 Vizcarra to the Labor and Workforce Development Agency ("LWDA") and Defendants, of the
22 specific provisions of the Labor Code alleged to have been violated, including the facts and
23 theories to support the alleged violations.

24 56. By letter dated September 25, 2023, required notice was provided by Plaintiff
25 Harvey Hughes to the Labor and Workforce Development Agency ("LWDA") and Defendants, of
26 the specific provisions of the Labor Code alleged to have been violated, including the facts and
27 theories to support the alleged violations

28 57. More than sixty-five (65) days have passed since both notices were mailed to

Defendants and the LWDA, and Plaintiffs have received no response from the LWDA indicating that it plans to investigate either notice.

58. Accordingly, Plaintiffs have satisfied the administrative prerequisites under California Labor Code Section 2699.3(a) to recover civil penalties against Defendants for violations of California Labor Code identified in this Second Amended Complaint.

CLASS ACTION ALLEGATIONS

59. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

60. 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.

61. Plaintiffs bring this suit as a class action on behalf of two classes of individuals defined as follows (collectively the “Classes”):

62. 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.

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

64. Numerosity: Plaintiffs are informed and believe, and on that basis allege, 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.

65. 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 Plaintiffs and Class Members are subject to and entitled to the benefits of California wage and hour statutes;
- b. Whether Defendants failed to pay Plaintiffs and Class Members for all hours worked;
- c. Whether Defendants failed to pay Plaintiffs and Class Members all overtime;
- d. Whether Defendants had a standard policy of not providing compliant meal breaks and premiums to Plaintiffs and members of the Plaintiff Class;
- e. Whether Defendants had a standard policy of not providing compliant rest breaks and premiums to Plaintiffs and members of the Plaintiff Class;
- f. Whether Defendants unlawfully and/or willfully failed to provide Plaintiffs and members of the Plaintiff Class with true and proper wage statements upon payment of wages, in violation of Labor Code section 226;
- g. Whether Defendants failed to timely pay wages to Plaintiffs and members of the Plaintiff Class during their employment;
- h. Whether Defendants had a standard policy of not providing Plaintiffs and members of the Plaintiff Class with sick pay at the regular rate;
- i. Whether Defendants had a standard policy of not providing Plaintiffs and members of the Plaintiff Class with Covid-19 supplemental pay;
- j. Whether Defendants unlawfully and/or willingly failed to timely pay Plaintiffs and the Terminated Sub Class upon termination;
- k. Whether Defendants failed to reimburse Plaintiffs and members of the Plaintiff Class for business-related expenses;
- l. Whether Plaintiffs 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;
- m. Whether Defendants' conduct as alleged herein violates the Unfair Business Practices Act of California (Bus. & Prof. Code, § 17200 et seq.)

///

1 66. Typicality: The claims of the named Plaintiffs are typical of the claims of the
2 members of the Plaintiff Class. Defendants' common course of conduct in failing to provide their
3 non-exempt employees with meal and rest periods and all wages in compliance with the applicable
4 wage order, or premium compensation at the regular rate in lieu thereof, failing to provide them
5 with proper wages and overtime, failing to reimburse them for work related expenses, and failing
6 to provide them with compliant wage statements has caused Plaintiffs and the proposed Class to
7 sustain the same or similar injuries and damages. Plaintiffs' claims are thereby representative of
8 and co-extensive with the claims of the proposed Class. Plaintiffs and the proposed Class sustained
9 the same or similar injuries and damages arising from Defendants' common policies, practices,
10 procedures, protocols, routines, and rules which were applied to other Class Members as well as
11 Plaintiffs. Plaintiffs seek recovery for the same type of losses, injuries, and damages as were
12 suffered by other members of the proposed class.

13 67. Adequacy of Representation: Plaintiffs are adequate representatives of the proposed
14 classes because they are members of the class, and their interests do not conflict with the interests
15 of the members they seek to represent. Plaintiffs have retained competent counsel, experienced in
16 the prosecution of complex class actions and together, Plaintiffs and their counsel intend to
17 prosecute this action vigorously for the benefit of the classes. The interests of the Class Members
18 will fairly and adequately be protected by Plaintiffs and their attorneys.

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

28 69. The various claims asserted in this action are additionally or alternatively certifiable

1 under the provisions of the Code of Civil Procedure section 382 because:

2 a. The prosecution of separate actions by hundreds of individual class members would
3 create a risk or varying adjudications with respect to individual class members, thus establishing
4 incompatible standards of conduct for Defendants, and

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

9 **FIRST CAUSE OF ACTION**

10 **Unpaid Overtime**

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

12 70. Plaintiffs incorporate herein by reference the allegations set forth above.

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

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

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

1 all hours that they worked were not recorded. For example, as described above, Plaintiffs and
2 members of the classes were required to work off-the-clock during their meal breaks.

3 74. Defendants knew or should have known that as a result of company-wide practices
4 and/or policies, that prevents Plaintiffs and members of the Classes from earning overtime,
5 Plaintiffs and members of the Classes were performing assigned duties off-the-clock before and
6 after their shifts and/or during meal periods, and were suffered or permitted to perform work for
7 which they were not paid. Because Plaintiffs and members of the Classes worked shifts of eight (8)
8 hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified
9 for overtime premium pay. Therefore, Plaintiffs and members of the Classes were not paid
10 overtime wages for all of the overtime hours they actually worked.

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

15 **SECOND CAUSE OF ACTION**

16 **Failure to Pay All Wages**

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

18 76. Plaintiffs incorporate herein by reference the allegations set forth above.

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

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

26 79. Under the applicable wage order and state regulations, Plaintiffs and the Plaintiff
27 Class are entitled to recover compensation for all hours worked, but not paid, for the four (4) years
28 preceding the filing of this action, in addition to reasonable attorney's fees and costs of suit in

1 accordance with Labor Code section 218.5, and penalties pursuant to Labor Code sections 203 and
2 206.

3 80. The applicable IWC wage order section 2(G) defines “hours worked” to mean “the
4 time during which an employee is subject to the control of an employer and includes all the time
5 the employee is suffered or permitted to work, whether or not required to do so.”

6 81. Defendants suffered or permitted Plaintiffs and members of the Classes to work
7 portions of the day for which Defendants failed to compensate them. This includes time spent
8 under Defendants’ control during meal periods as described above. Further, Defendants failed to
9 accrue PTO on Plaintiffs’ final wage statements.

10 82. Labor Code section 1194(a) provides in relevant part: “Notwithstanding any
11 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage . .
12 . is 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 83. Labor Code section 1194.2(a) provides in relevant part: “In 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
17 damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

18 84. Labor Code section 1197 provides: “The 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
20 the minimum so fixed is unlawful.”

21 85. Plaintiffs are informed and believe, and on that basis allege, that Defendants’
22 compensation schemes do not fairly compensate Plaintiffs and other Class Members for all hours
23 spent performing their job duties.

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

28 87. The failure to pay designated wages to Plaintiffs and members of the Plaintiff Class

1 for each and every hour worked violates Labor Code section 221 and 223; the applicable IWC
2 wage order section 3; and the Business and Professions Code.

3 88. During the applicable time period, Defendants have, and continue to have, a pattern
4 and practice of not providing its employees all wages, by failing to include all compensable time,
5 including time worked off-the-clock.

6 89. As a proximate result of the above-mentioned violations. Plaintiffs and the Plaintiff
7 Class have been damaged in an amount according to proof at time of trial.

8 **THIRD CAUSE OF ACTION**

9 **Non-Compliant Meal Breaks**

10 **(By Plaintiffs and Members of the Putative Class Against Defendants)**

11 90. Plaintiffs hereby incorporate by reference each and every one of the allegations
12 contained in the preceding paragraphs as if the same were fully set forth herein.

13 91. Plaintiffs are informed and believe, and on that basis allege, that Plaintiffs and the
14 Class Members regularly worked more than five (5) hours per shift and were entitled to a meal
15 period of not less than thirty (30) minutes without duty.

16 92. Nevertheless, Plaintiffs are informed and believe, and on that basis allege, that
17 Defendants routinely failed to provide Plaintiffs and the members of the Classes with such meal
18 periods without duty, notwithstanding the fact that Plaintiffs and the members of the Classes had
19 not waived their right to the same. Thus, Defendants failed to provide Plaintiffs and the members
20 of the Classes with meal periods required by Labor Code sections 226.7, 512, 516 and the
21 applicable IWC wage order section 10, and categorically failed to pay any and all meal period
22 wages due.

23 93. Plaintiffs and Class Members seek damages pursuant to Labor Code section
24 226.7(b) and the applicable IWC wage order section 10(F), in the amount of one (1) additional
25 hour of pay at the regular rate for each work day that the meal period is/was not provided to
26 Plaintiffs and any member of the Classes, the cumulative sum of which is to be determined at trial.

27 94. Under the foregoing, California employers must provide meal periods and authorize
28 and permit rest periods to all employees during their shifts. In *Augustus v. ABM Security Services*,

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

7 95. When employees must either “remain at the ready and capable of being summoned
8 to 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
10 have not been “relieve[d] . . . of all work-related duties and employer control.” *Augustus, supra*, 2
11 Cal.5th at p. 270. Such a meal or rest period is not “off duty” and therefore is “impermissible.”
12 *Ibid.*

13 96. The Supreme Court’s decision in *Augustus* is just the latest in a series of meal and
14 rest break cases that have affirmed California’s broad, protective standard for employees.¹

15 97. Moreover, as the mere existence of a facially lawful meal and rest break policy is
16 unavailing if there are practical constraints and pressures on employees to perform their duties in
17 ways that omit breaks. See *Brinker, supra*, 53 Cal.4th at p. 1040.

18 98. Yet Defendants did and does not provide Plaintiff and members of the Classes with
19 meal periods during which they are completely relieved of duty for at least thirty (30) minutes by
20 the fifth hour of work and again by the tenth hour of work.

21 99. Rather, as described above, Plaintiff was required to keep his phone on during meal
22 breaks and would be interrupted by management and clients. Defendants also failed to provide
23 second meal breaks.

24
25 ¹ See, e.g., *Brinker Restaurant Corp. v. Super. Ct.* (2012) 53 Cal.4th 1004; *Lubin v.*
26 *Wackenhut Corp.* (2016) 5 Cal.App.5th 926 , *rehg. denied* (Dec. 14, 2016); *Faulkinbury v. Boyd &*
27 *Assocs., Inc.* (2013) 216 Cal.App.4th 220; *Berlanga v. Equilon Enterprises LLC* (N.D.Cal., Aug.
28 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.*]”)

100. Thus, Defendants has failed to perform its obligations to provide Plaintiff and the members of the Plaintiff Class with off-duty meal periods by the end of the fifth hour of work and a second meal period by the end of the tenth hour of work. Defendants has also failed to pay Plaintiff and the members of the Plaintiff Class one (1) hour of pay at the regular rate for each off-duty meal period that they have been denied.

101. On July 15, 2021, the California Supreme Court issued a decision in *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858 where the court unanimously held that employers must pay premium payments to employees for missed meal, rest, and recovery breaks at the employee's "regular rate of pay" instead of their base hourly rate.

102. Defendants knew or should have known that as a result of its policies and/or practices, that Plaintiffs and members of the Classes were not actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further knew or should have known that it did not pay Plaintiffs and members of the Classes all meal period premiums when meal periods were missed, late, short, and/or interrupted. Furthermore, Defendants have engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Plaintiffs and members of the Classes have not received all premium pay for missed, interrupted, or late meal periods. Accordingly, Defendants failed to provide all meal periods in violation of Labor Code sections 226.7, 512(a), 516, and 1198.

103. Plaintiffs and members of the Classes are entitled to civil penalties, attorney's fees, costs, and interest thereon.

FOURTH CAUSE OF ACTION

Non-Compliant Rest Breaks

(By Plaintiffs and Members of the Putative Class Against Defendants)

104. Plaintiffs hereby incorporate by reference each and every one of the allegations contained in the preceding paragraphs as if the same were fully set forth herein.

105. Labor Code sections 226.7, 516, and 1198 and the applicable IWC wage order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at

1 the employee's regular rate for each workday that a meal or rest period is not provided. Labor Code
2 section 226.7 provides that no employer shall require an employee to work during any rest period
3 mandated by an applicable order of the IWC. The applicable IWC wage order provides that
4 "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as
5 practicable shall be in the middle of each work period" and that the "rest period time shall be based
6 on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or
7 major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

8 106. Plaintiffs are informed and believe, and on that basis allege, that Plaintiffs and Class
9 Members were entitled to a paid rest period of not less than ten (10) minutes without duty for each
10 and every four (4) hours or major fraction thereof worked during the workday.

11 107. Nevertheless, Plaintiffs are informed and believe, and on that basis allege, that
12 Defendants routinely failed to provide Plaintiffs and the members of the Classes with such paid rest
13 periods without duty, notwithstanding the fact that Plaintiffs and the members of the Classes had
14 not waived their right to the same. Thus, Defendants failed to provide Plaintiffs and Class
15 Members with rest periods required by Labor Code sections 226.7, 512, and 516 and the applicable
16 IWC wage order section 11, and categorically failed to pay any and all rest period wages due.

17 108. Specifically, as described above, rest breaks were not provided and highly
18 discouraged by management to meet delivery demands.

19 109. Plaintiffs and Class Members seek damages pursuant to Labor section 226.7(b) and
20 the applicable IWC wage order section 11(D), in the amount of one (1) additional hour of pay at
21 the regular rate for each work day that the rest period is/was not provided or provided late to
22 Plaintiffs and any member of the Classes, the cumulative sum of which is to be determined at trial.

23 110. Therefore, Plaintiffs and members of the Plaintiff Class are entitled to compensation
24 for Defendants' failure to provide rest periods, plus interest, attorneys' fees, expenses, and costs of
25 suit pursuant to Labor Code section 226.7(b) and the applicable wage order.

26 ///

27 ///

28 ///

1 **FIFTH CAUSE OF ACTION**

2 **Failure to Furnish Accurate Itemized Wage Statements and Maintain Accurate Records**

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

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

6 112. Labor Code section 226(a) and the applicable IWC wage order section 6(B) requires
7 employers to furnish each employee with a statement itemizing, among other things, the total hours
8 worked by the employee, on a semi-monthly basis or at the time of each payment of wages.

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

18 114. Defendants knowingly and intentionally failed to furnish Plaintiffs and the members
19 of the Classes with timely, itemized statements in compliance with Labor Code section 226(a) and
20 the applicable IWC Wage order section 6(B).

21 115. Plaintiffs are informed and believe, and on that basis allege, that Defendants
22 knowingly and intentionally failed to furnish Plaintiff and members of the Classes with timely,
23 itemized statements showing (a) total hours, (b) gross wages earned, (c) all deductions, and/or (d)
24 all applicable hourly rates in effect during each respective pay period and the corresponding
25 number of hours worked at each hourly rate by each respective individual. Defendants also failed
26 to list COVID-19 supplemental pay on wage statements.

27 116. Plaintiffs are informed and believe, and on that basis allege, that Defendants did not
28 maintain accurate business records pertaining to the total hours worked for Defendants by Plaintiffs

1 and the members of the Classes as required under Labor Code section 1174.5. This is a result of
2 missing hours worked and missed meal and rest-break premiums, as illustrated above.

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

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

14 119. During the relevant time period, Defendants failed, on a company-wide basis, to
15 keep accurate records of work and meal period start and stop times for Plaintiffs and members of
16 the Classes, in violation of Labor Code section 1198. Also, as stated, Defendants engaged in a
17 company-wide practice and/or policy of falsifying Plaintiffs’ and members of the Classes’ time
18 records by recording that compliant meal periods were taken regardless of if or when meal periods
19 were actually taken, and thereby failed to keep accurate records of meal start and end times for
20 Plaintiffs and members of the Classes.

21 120. Plaintiffs and the members of the Classes herein seek damages and penalties
22 pursuant to Labor Code section 226(e) for Defendants’ violations of Labor Code section 226(a).

23 121. Plaintiffs and Class Members also seek preliminary and permanent injunctive relief
24 and an award of reasonable attorneys’ fees and costs pursuant to Labor Code section 226(h).

25 **SIXTH CAUSE OF ACTION**

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

27 **(By Plaintiffs and Members of the Putative Class Against Defendants)**

28 122. Plaintiffs hereby incorporate by reference each and every one of the allegations

1 contained in the preceding paragraphs as if the same were fully set forth herein.

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

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

14 125. During the class period, Defendants willfully failed to pay Plaintiffs and members
15 of the Classes all wages due including, but not limited to, all wages and/or meal and rest period
16 premiums, within the time periods specified by Labor Code section 204.

17 126. As a proximate result of the above-mentioned violations. Plaintiffs and the Plaintiff
18 Class have been damaged in an amount according to proof at time of trial.

19 **SEVENTH CAUSE OF ACTION**

20 **Failure to Provide Sick Pay at the Regular Rate**

21 **(By Plaintiffs and Members of the Putative Class Against Defendant)**

22 127. Plaintiffs re-allege and incorporate all preceding paragraphs as though fully set forth
23 herein.

24 128. Sick pay must be compensated at the employee's regular rate of pay, for the
25 workweek in which the paid leave was taken, or at a rate determined by averaging over ninety (90)
26 days. Lab. Code § 246(1).

27 129. Defendants failed to pay Plaintiffs and members of the Class sick pay at the correct
28 rate. Plaintiffs received compensation in addition to hourly wages, but those additional amounts

1 were not included when calculating sick pay wages. Plaintiffs received compensation, including
2 incentives in addition to their hourly wages, while employed by Defendants, which were not
3 factored into their sick pay wages. By failing to pay Plaintiffs and Class Members for sick pay at
4 the correct rate, Defendants willfully violated Labor Code section 246.

5 130. Defendants' unlawful acts deprived Plaintiffs and the Class of all wages. Plaintiffs
6 seek reimbursement of sick pay in amounts to be determined at trial, and they are entitled to
7 recover these amounts with interest, attorneys' fees, and costs.

8 **EIGHTH CAUSE OF ACTION**

9 **Provide COVID-19 Supplemental Paid Sick Leave**

10 **(By Plaintiffs and Members of the Putative Class Against Defendant)**

11 131. Plaintiffs hereby re-allege and incorporate by reference the allegations set forth
12 above as if fully set forth herein.

13 132. Labor Code section 248.2 (b)(3) states:

- 14 a. Each hour of COVID-19 supplemental paid sick leave shall be compensated at a
15 rate equal to the following:
- 16 i. For nonexempt covered employees, by the highest of the following:
 - 17 ii. Calculated in the same manner as the regular rate of pay for the workweek in
18 which the covered employee uses COVID-19 supplemental paid sick leave,
19 whether or not the employee actually works overtime in that workweek.
 - 20 iii. Calculated by dividing the covered employee's total wages, not including
21 overtime premium pay, by the employee's total hours worked in the full pay
22 periods of the prior 90 days of employment.
 - 23 iv. The state minimum wage.
 - 24 v. The local minimum wage to which the covered employee is entitled.
- 25 b. COVID-19 supplemental paid sick leave for exempt covered employees shall be
26 calculated in the same manner as the employer calculates wages for other forms of
27 paid leave time.

28 133. Defendants failed to comply Labor Code section 248 because it uses Plaintiffs' and

1 class members' paid time off for COVID-19 related time off rather than COVID-19 supplemental
2 pay. Further, Defendants fail to list Covid-19 supplemental pay on wage statements.

3 134. Defendants are liable to Plaintiffs and the members of the Plaintiff Class alleged
4 herein for the unpaid supplemental COVID-19 sick pay.

5 135. Wherefore, Plaintiffs and the members of the Plaintiff Class request relief as
6 hereinafter provided.

7 **NINTH CAUSE OF ACTION**

8 **Waiting Time Penalties**

9 **(By Plaintiffs and Members of the Terminated Sub Class Against Defendants)**

10 136. Plaintiffs re-allege and incorporate all preceding paragraphs as though fully set forth
11 herein.

12 137. At all times, relevant herein, Defendants were required to pay their employees all
13 wages owed in a timely fashion during and at the end of their employment, pursuant to Labor Code
14 section 201-203.

15 138. As a pattern and practice, Defendants regularly failed to pay Plaintiffs and the
16 members of the Terminated Sub Class their final wages pursuant to Labor Code sections 201-203,
17 and accordingly owe waiting time penalties pursuant to Labor Code section 203.

18 139. Labor Code sections 201 and 202 provide that if an employer discharges an
19 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,
20 and that if an employee voluntarily leaves his or her employment, his or her wages shall become
21 due and payable not later than seventy-two (72) hours thereafter, unless the employee has given
22 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is
23 entitled to his or her wages at the time of quitting.

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

27 141. Specifically, Defendants willfully failed to pay Plaintiffs and members of the
28 Terminated Sub Class the earned and unpaid wages set forth above, including but not limited to,

1 overtime wages, minimum wages, and/or meal rest period premiums, either at the time of discharge
2 or within seventy-two (72) hours of their leaving Defendants' employ. Moreover, Defendants
3 failed to provided Plaintiffs with their final pay.

4 142. Plaintiffs and members of the Terminated Sub Class are entitled to recover civil
5 penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 256.

6 **TENTH CAUSE OF ACTION**

7 **Failure to Reimburse Business Expenses**

8 **(By Plaintiffs and Members of the Putative Class Against Defendants)**

9 143. Plaintiffs re-allege and incorporate all preceding paragraphs as though fully set forth
10 herein.

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

16 145. The applicable IWC wage order provides that: "[w]hen tools or equipment are
17 required by the employer or are necessary to the performance of a job, such tools and equipment
18 shall be provided and maintained by the employer, except that an employee whose wages are at
19 least two (2) times the minimum wage provided herein may be required to provide and maintain
20 hand tools and equipment customarily required by the trade or craft."

21 146. During the Class Period a company-wide policy whereby management would text or
22 call Plaintiffs and members of the Classes on their personal cellphones regarding work updates.

23 147. Although Defendants required Plaintiffs and members of the Classes to use their
24 personal phones to carry out their work-related duties, Defendants failed to reimburse them for this
25 cost. Defendants could have provided Plaintiffs and members of the Classes with the actual tools
26 for use on the job, such as provided a phone allowance. Instead, Defendants passed these operating
27 costs off onto Plaintiffs and members of the Classes. Thus, Defendants had, and continue to have, a
28 company-wide policy and/or practice of not reimbursing employees for expenses necessarily

1 incurred in violation of Labor Code section 2802.

2 148. Plaintiffs and members of the Classes are entitled to recover civil penalties,
3 attorney's fees, costs, and interest thereon.

4 **ELEVENTH CAUSE OF ACTION**

5 **Violation of California**

6 **Business and Professions Code Section 17200 et seq.**

7 **(By Plaintiffs and the Members of the Plaintiff Class Against Defendants)**

8 149. Plaintiffs re-allege and incorporate all preceding paragraphs as though fully set forth
9 herein.

10 150. Business and Professions Code section 17200 defines unfair competition to include,
11 "unlawful, unfair or fraudulent business practices."

12 151. Plaintiffs and all proposed Class Members are "persons within the meaning of
13 Business and Professions Code section 17204, who have suffered injury in fact and have lost
14 money or property as a result of Defendants' unfair competition.

15 152. Defendants has been committing, and continues to commit, acts of unfair
16 competition by engaging in the unlawful, unfair and fraudulent business practices and acts
17 described in this Complaint, including, but not limited to:

- 18 a. violations of Labor Code sections 510 and 1198;
19 b. violations of Labor Code sections 221, 223, 1182.11-1182.12, 1194, 1194.2, 1197, and
20 1198;
21 c. violations of Labor Code sections 226.7, 512, 516, and 1198;
22 d. violations of Labor Code sections 226 and 1174;
23 e. violations of Labor Code sections 201 and 202;
24 f. violations of Labor Code section 204;
25 g. violations of Labor Code section 246;
26 h. violations of Labor Code section 248;
27 i. violations of Labor Code section 1198;
28 j. violations of Labor Code section 2802; and

1 k. violations of Labor Code section 2810.5.

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

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

10 155. Plaintiffs seek a court order enjoining Defendants from the unlawful, unfair, and/or
11 fraudulent activity alleged herein.

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

14 157. Plaintiffs further seek an order requiring an audit and accounting of the payroll
15 records to determine the amount of restitution of all unpaid wages owed to themselves and
16 members of the proposed Plaintiff Class, according to proof, as well as a determination of the
17 amount of funds to be paid to current and former employees that can be identified and located
18 pursuant to a court order and supervision.

19 158. Plaintiffs seek restitution for themselves and all others similarly situated of these
20 amounts, including all earned and unpaid wages and attorneys' fees and costs, pursuant to Code of
21 Civil Procedure section 1021.5.

22 **TWELFTH CAUSE OF ACTION**

23 **Pursuant to PAGA (Labor Code § 2698 et seq.)**

24 **(On behalf of All Aggrieved Employees Against Defendants)**

25 159. Plaintiffs re-allege and incorporate all preceding paragraphs as though fully set forth
26 herein.

27 160. At all times set forth herein, the Private Attorneys General Act of 2004 (PAGA,
28 California Labor Code §§ 2698-99) applied to Defendants' employment of Plaintiffs and the

1 Aggrieved Employees.

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

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

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

15 164. Defendants have been committing, and continue to commit, violations of the
16 California Labor Code, including, but not limited to:

- 17 a. violations of Labor Code sections 510 and 1198;
- 18 b. violations of Labor Code sections 221, 223, 1182.11-1182.12, 1194, 1194.2, 1197,
19 and 1198;
- 20 c. violations of Labor Code sections 226.7, 512, 516, and 1198;
- 21 d. violations of Labor Code sections 226 and 1174;
- 22 e. violations of Labor Code sections 201 and 202;
- 23 f. violations of Labor Code section 204;
- 24 g. violations of Labor Code section 246;
- 25 h. violations of Labor Code section 248;
- 26 i. violations of Labor Code section 1198;
- 27 j. violations of Labor Code section 2802; and
- 28 k. violations of Labor Code section 2810.5.

1 165. Plaintiffs were employed by Defendants and the alleged violations have been
2 committed against them during their time of employment and they are, therefore, aggrieved
3 employees. Plaintiffs and other employees are “aggrieved employees” as defined by California
4 Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one
5 or more of the alleged violations were committed against them.

6 166. Pursuant to California Labor Code section 2699.3, aggrieved employees, including
7 Plaintiffs, may pursue a civil action arising under the PAGA after the following requirements have
8 been met:

- 9 a. The aggrieved employee shall give written notice (hereinafter “Employee’s Notice”)
10 to the LWDA and the employer of the specific provisions of the California Labor
11 Code alleged to have been violated, including the facts and theories to support the
12 alleged violations;
- 13 b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and
14 the aggrieved employee by certified mail that it does not intend to investigate the
15 alleged violations sixty (60) calendar days of the postmark date of the Employee’s
16 Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided
17 within sixty-five (65) calendar days of the postmark date of the Employee’s Notice,
18 the aggrieved employee may commence a civil action pursuant to California Labor
19 Code §2699 to recover civil penalties in addition to any other penalties to which the
20 employee may be entitled.

21 167. On April 17, 2023, Plaintiff Christopher Vizcarra provided written notice to the
22 LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code
23 alleged to have been violated, including the facts and theories to support the alleged violations.

24 168. On September 25, 2023, Plaintiff Harvey Hughes provided written notice to the
25 LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code
26 alleged to have been violated, including the facts and theories to support the alleged violations.

27 169. More than 65 calendar days have passed since the date both notices were provided
28 to the LWDA and Defendants. Accordingly, Plaintiffs have satisfied the administrative

prerequisites under California Labor Code section 2699.3(a) to recover civil penalties against Defendants for violations of California Labor Code identified in this Second Amended Complaint.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, and the Class Members pray for judgment as follows:

1. For an order certifying the proposed Plaintiffs and Terminated Sub-Class;
2. For an order that counsel for Plaintiffs be appointed class counsel
3. Certification of this class action on behalf of the proposed Plaintiffs and Terminated Sub-Class;
4. Designation of Plaintiffs as the class representatives of the Plaintiff and Terminated Sub Class;
5. For restitution of all monies due to Plaintiffs and the members of the Plaintiff Class and disgorgement of all profits from the unlawful business practices of Defendants;
6. An order appointing Plaintiffs' counsel as class counsel;
7. Prejudgment and post judgment interest on all sums awarded;
8. For compensatory damages;
9. For statutory and civil penalties pursuant to Labor Code sections 200, 226, 226.7, 226.3, 226.7, and 2699(f);
10. For interest accrued to date;
11. For costs of suit and expenses incurred herein pursuant to Labor Code sections 226 1194, and 2699(g)(1);
12. For reasonable attorneys' fees pursuant to Labor Code section 218.5, 226, 2699 (g)(1), Code of Civil Procedure section 1021.5, and/or other applicable law;
13. A declaratory judgment that Defendants has knowingly and intentionally violated the following provisions of law; and
 - a. Labor Code sections 510 and 1198 for failing to pay overtime;
 - b. Labor Code sections 1182.11-1182.12, 1194, 1194.2, 1197, 1198, 221, and 223 for failing to pay all wages;
 - c. Labor Code sections 226.7, 512, 516, and 1198 for failing to provide

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- compliant meal and rest breaks;
- d. Labor Code sections 226 and 1174 for failing to provide compliant wage statements;
- e. Labor Code section 204 for failing to pay wages timely during employment;
- f. Labor Code section 246 for failing to pay sick pay at the regular rate;
- g. Labor Code section 248 for failing to Covid-19 pay at the regular rate;
- h. Labor Code sections 201 and 202 for failing to pay wages at termination;
- i. Labor Code section 2802 for failing to reimburse business expenses; and
- j. Business and Professions Code sections 17200-08 for violating the provisions set forth herein above.

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

DATED: March 13, 2025

BRADLEY/GROMBACHER, LLP
BOKHOUR LAW GROUP, P.C.
FALAKASSA LAW, P.C.

By: Marcus J. Bradley
Marcus J. Bradley, Esq.
Kiley L. Grombacher, Esq.
Kasra B. Ramez, Esq.
Joshua S. Falakassa, Esq.
Mehrdad Bokhour, Esq.

Attorneys for Plaintiffs and others
similarly situated

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs hereby demand trial of Plaintiffs' and the members of the Classes' claims by jury
3 to the extent authorized by law.

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5 DATED: March 13, 2025

BRADLEY/GROMBACHER, LLP
BOKHOUR LAW GROUP, P.C.
FALAKASSA LAW, P.C.

6
7
8 By: Marcus J. Bradley
9 Marcus J. Bradley, Esq.
10 Kiley L. Grombacher, Esq.
11 Kasra B. Ramez, Esq.
12 Joshua S. Falakassa, Esq.
13 Mehrdad Bokhour, Esq.

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15 Attorneys for Plaintiffs and others
16 similarly situated
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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 March 13, 2025, I served the foregoing documents described as

SECOND AMENDED CONSOLIDATED CLASS AND REPRESENTATIVE 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.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed March 13, 2025, at Westlake Village, California.

Suzette Boucher
Suzette Boucher

Vizcarra v. PODS Enterprises, LLC
San Bernardino County Superior Court

Lead Case No. CIVSB2308694
(Consolidated with Case No. CIVSB2315564)

Service List

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