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ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

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By: Kayla Schuebel, DEPUTY

Attorneys for Plaintiffs, the Putative Class, and the Aggrieved Employees

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

LAMOND NASH, ESSENCE GREENWOOD,
and DESTINY NASH, individuals on behalf of
themselves, the State of California, as a private
attorneys general, and on behalf of all others
similarly situated,

Plaintiffs,

v.

PONCE GROUND SERVICE, LLC, a
California Limited Liability Company; and
DOES 1 TO 50,

Defendants.

Case Number: CIVSB2311826

**First Amended Class and Representative
Action Complaint For:**

1. Failure to Pay All Minimum Wages,
2. Failure to Pay All Overtime Wages,
3. Failure to Provide Rest Periods and Pay Missed Rest Period Premiums,
4. Failure to Provide Meal Periods and Pay Missed Meal Period Premiums,
5. Failure to Maintain Accurate Employment Records,
6. Failure to Pay Wages Timely during Employment,
7. Failure to Pay All Wages Earned and Unpaid at Separation,
8. Failure to Indemnify All Necessary Business Expenditures,
9. Failure to Furnish Accurate Itemized Wage Statements,

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- 10.** Violations of California’s Unfair
Competition Law (Bus. & Prof. Code, §§
17200–17210), and
- 11.** Penalties Pursuant to the Labor Code
Private Attorneys General Act of 2004
 (“PAGA”) for Violations of California
Labor Code Sections 142.3, 201, 202, 203,
204, 210, 226, 226.3, 226.7, 256, 510, 512,
1174, 1185, 1194, 1194.2, 1197, 1197.1,
1198, 1198.5, 1199, 2802, 2804, and Other
Provisions of the Labor Code.

Demand for Jury Trial

1 Plaintiffs Lamond Nash, Essence Greenwood, and Destiny Nash (collectively “Plaintiffs”), on
2 behalf of themselves, the State of California, as private attorneys general, and all other similarly
3 situated employees within the State of California, complain and allege of defendants Ponce Ground
4 Service, LLC and Does 1 to 50 (collectively, “Defendants”), and each of them, as follows:

5 **I. INTRODUCTION**

6 1. This is a class action complaint brought pursuant to California Code of Civil Procedure
7 section 382.

8 2. The “Class Period” as used herein, is defined as the period from May 25, 2019, and
9 continuing into the present and ongoing. Defendants’ violations of California’s laws as described more
10 fully below have been ongoing throughout the Class Period and are still ongoing.

11 3. Plaintiffs bring this class action on behalf of themselves and the following class: *All*
12 *individuals who are or were employed by Defendants as non-exempt employees in California during*
13 *the Class Period* (the “Class Members”). (Code Civ. Proc., § 382.)

14 4. Plaintiffs bring this action on behalf of themselves and the Class Members, as a class
15 action, against Defendants for:

- 16 A. Failure to pay all minimum wages,
- 17 B. Failure to pay all overtime wages,
- 18 C. Failure to provide rest periods and pay missed rest period premiums,
- 19 D. Failure to provide meal periods and pay missed meal period premiums,
- 20 E. Failure to maintain accurate employment records,
- 21 F. Failure to pay wages timely during employment,
- 22 G. Failure to pay all wages earned and unpaid at separation,
- 23 H. Failure to indemnify all necessary business expenditures,
- 24 I. Failure to furnish accurate itemized wage statements, and
- 25 J. Violations of California’s Unfair Competition Law (“UCL”) (Bus. & Prof.
26 Code, §§ 17200–17210).

1 5. This action is also a representative action brought pursuant to the California Labor Code
2 Private Attorneys General Act of 2004 (“PAGA”), codified at California Labor Code sections 2698
3 through 2699.6.

4 6. The “PAGA Period” as used herein, is defined as the period from May 24, 2022, and
5 continuing into the present and ongoing.

6 7. This PAGA action is brought on behalf of Plaintiffs, the State of California as private
7 attorney general, and on behalf of the following aggrieved employees: *All individuals who are or were*
8 *employed by Defendants as non-exempt employees in California during the PAGA Period* (the
9 “Aggrieved Employees”).

10 8. Plaintiffs are informed and believe and thereon allege that the California Industrial
11 Welfare Commission (“IWC”) Wage Order applicable to the facts of this case is IWC Wage Order 9-
12 2001 (the “Applicable Wage Order”) and possibly others that may be applicable. (Cal. Code of Regs.,
13 tit. 8, § 11090.) Plaintiffs reserve the right to amend or modify the definition of “Applicable Wage
14 Order” with greater specificity or add additional IWC Wage Orders if additional applicable wage orders
15 are discovered in litigation.

16 **II. JURISDICTION & VENUE**

17 9. This Court has subject matter jurisdiction over all causes of action asserted herein
18 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure section
19 410.10 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds
20 \$25,000, and because each cause of action asserted arises under the laws of the State of California or
21 is subject to adjudication in the courts of the State of California.

22 10. This Court has personal jurisdiction over Defendants because Defendants have caused
23 injuries in the County of San Bernardino and the State of California through their acts, and by their
24 violation of the California Labor Code and California state common law. Defendants transact millions
25 of dollars of business within the State of California. Defendants own, maintain offices, transact
26 business, have an agent or agents within the County of San Bernardino, and/or otherwise are found
27 within the County of San Bernardino, and Defendants are within the jurisdiction of this Court for
28 purposes of service of process.

1 11. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of the
2 Code of Civil Procedure. Defendants operate within California and do business within San Bernardino
3 County, California. The unlawful acts alleged herein have a direct effect on Plaintiffs and all of
4 Defendants' employees identified above within San Bernardino County and surrounding counties
5 where Defendants may remotely operate.

6 12. This matter is not appropriate for removal under the Class Action Fairness Act (28
7 U.S.C. § 1332) as the amount in controversy for Plaintiffs' and the Class Members' claims, in
8 aggregate, is less than \$5 million. Additionally, all the allegations herein occurred in the State of
9 California. As such, even if the amount in controversy did exceed \$5 million this matter would still not
10 be appropriate for removal under the "local controversy" exception to the Class Action Fairness Act.
11 (28 U.S.C. § 1332, subd. (d)(4)(A).)

12 **III. THE PARTIES**

13 **A. PLAINTIFF**

14 13. At all relevant times, Plaintiffs, who are over the age of 18, were and currently are
15 citizens of California residing in the State of California. Defendants employed Plaintiffs as non-exempt
16 hourly employees in the County of San Bernardino.

17 14. Plaintiffs bring this action on behalf of themselves and the following class pursuant to
18 section 382 of the Code of Civil Procedure as follows: *All individuals who are or were employed by*
19 *Defendants as non-exempt employees in California during the Class Period* (the "Class Members").

20 15. Plaintiffs also bring this action on behalf of themselves and the State of California, as
21 private attorneys general, and on behalf of the following group of aggrieved employees: *All individuals*
22 *who are or were employed by Defendants as non-exempt employees in California during the PAGA*
23 *Period* (the "Aggrieved Employees").

24 16. The Class Members and the Aggrieved Employees, at all times pertinent hereto, are or
25 were employees of Defendants during the relevant statutory period.

26 **B. DEFENDANTS**

27 17. Plaintiffs are informed and believe and thereon allege that Defendants were authorized
28 to and doing business in San Bernardino County and is and/or was the legal employer of Plaintiffs, the

1 other Aggrieved Employees, and the other Class Members during the applicable statutory periods.
2 Plaintiffs, the other Aggrieved Employees, and the other Class Members were, and are, subject to
3 Defendants' policies and/or practices complained of herein and have been deprived of the rights
4 guaranteed to them by: California Labor Code sections 142.3, 201, 202, 203, 204, 210, 226, 226.3,
5 226.7, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and
6 others that may be applicable; California Business and Professions Code sections 17200 through 17210
7 ("UCL"); section 3364, subdivision (b), of Title 8 of the California Code of Regulations; section 3395,
8 subdivisions (a)(1) and (c), of Title 8 of the California Code of Regulations; and the Applicable Wage
9 Order (Cal. Code of Regs., tit. 8, § 11090).

10 18. Plaintiffs are informed and believe, and based thereon allege, that during the Class
11 Period and PAGA Period, Defendants did (and continue to do) business in the State of California,
12 County of San Bernardino. Defendants operations are headquartered in San Bernardino County.

13 19. Plaintiffs do not know the true names or capacities, whether individual, partner, or
14 corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said defendants
15 are sued under such fictitious names, and Plaintiffs will seek leave from this Court to amend this
16 complaint when such true names and capacities are discovered. Plaintiffs are informed, and believe,
17 and thereon allege, that each of said fictitious defendants, whether individual, partners, or corporate,
18 were responsible in some manner for the acts and omissions alleged herein, and proximately caused
19 Plaintiffs, the other Aggrieved Employees, and the other Class Members to be subject to the unlawful
20 employment practices, wrongs, injuries, and damages complained of herein.

21 20. Plaintiffs are informed, and believe, and thereon allege, that at all times mentioned
22 herein, Defendants were and/or are the employers of Plaintiffs, the other Aggrieved Employees, and
23 the other Class Members. At all times herein mentioned, each of said Defendants participated in the
24 doing of the acts hereinafter alleged to have been done by the named Defendants. Furthermore, the
25 Defendants, and each of them, were the agents, servants, and employees of each and every one of the
26 other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting
27 within the course and scope of said agency and employment. Defendants, and each of them, approved
28 of, condoned, or otherwise ratified every one of the acts or omissions complained of herein.

21. At all relevant times, 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. Further, Plaintiffs are informed, and believe, and thereon allege, that all Defendants were joint employers for all purposes of Plaintiffs, the other Aggrieved Employees, and the other Class Members.

IV. COMMON FACTS & ALLEGATIONS

22. Plaintiffs and the other Class Members (collectively, the “Class Members”) are, and were at all relevant times, employed by the Defendants within the State of California.

23. Likewise, Plaintiffs and the other Aggrieved Employees (collectively, the “Aggrieved Employees”) are, and were at all relevant times, employed by the Defendants within the State of California.

24. The Class Members and the Aggrieved Employees are, and were, at all relevant times, non-exempt employees for the purposes of minimum wages, overtime, rest breaks, meal periods, and the other claims alleged in this complaint.

25. Specifically, Plaintiffs were employed by Defendants within the statutory Class Period and PAGA Period, working as hourly, non-exempt clerk for Defendants. Plaintiffs’ duties included communicating with the drivers and assigning inbound and outbound loads.

A. MINIMUM WAGE VIOLATIONS

26. Labor Code section 1197 requires employees to be paid at least the minimum wage fixed by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code section 1194 entitles “any employee receiving less than the legal minimum wage . . . to recover in a civil action the unpaid balance of the full amount of this minimum wage.” Likewise, the Applicable Wage Order also obligates employers to pay each employee minimum wages for all hours worked. (Cal. Code of Regs., tit. 8, § 11090.) Labor Code section 1198 makes unlawful the employment of an employee under conditions that the IWC Wage Orders prohibit.

27. These minimum wage standards apply to each hour that employees work. Therefore, an employer’s failure to pay for any particular time worked by an employee is unlawful, even if averaging

1 an employee's total pay over all hours worked, paid or not, results in an average hourly wage above
2 minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

3 28. Here, Defendants failed to fully conform their pay practices to the requirements of the
4 law during the relevant statutory periods. The Class Members and the Aggrieved Employees were not
5 compensated for all hours worked including, but not limited to, all hours they were subject to the control
6 of Defendants and/or suffered or permitted to work under the California Labor Code and the Applicable
7 Wage Order.

8 29. Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that an
9 employer who has failed to pay its employees the legal minimum wage is liable to pay those employees
10 the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages
11 due and interest thereon.

12 30. When employees, such as the Class Members, are not paid for all hours worked under
13 Labor Code section 1194, they are entitled to recover minimum wages for the time which they received
14 no compensation. (See *Sillah v. Command International Security Services* (N.D. Cal. 2015) 154
15 F.Supp.3d 891 [employees suing for failure to pay overtime could recover liquidated damages under
16 Labor Code section 1194.2 if they also showed they were paid less than minimum wage].)

17 31. Labor Code section 1197.1 authorizes employees who are paid less than the minimum
18 wage fixed by an applicable state or local law, or by an order of the IWC, a civil penalty, among other
19 damages, as follows:

20 (1) "For any initial violation that is intentionally committed, one hundred
21 dollars (\$100) for each underpaid employee for each pay period for
22 which the employee is underpaid."

23 (2) "For each subsequent violation for the same specific offense, two
24 hundred fifty dollars (\$250) for each underpaid employee for each pay
25 period for which the employee is underpaid regardless of whether the
26 initial violation is intentionally committed." (Lab. Code, § 1197.1, subd.
27 (a).)
28

1 32. As set forth above, Defendants failed to fully compensate the Class Members and the
2 Aggrieved Employees for all minimum wages. Accordingly, the Class Members are entitled to recover
3 liquidated damages for violations of Labor Code section 1197.1.

4 33. Based upon these same factual allegations, the Class Members are likewise entitled to
5 penalties under Labor Code sections 1199.

6 **B. OVERTIME VIOLATIONS**

7 34. Labor Code section 510 requires employers to compensate employees who work more
8 than eight hours in one workday, forty hours in a workweek, and for the first eight hours worked on
9 the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee.
10 (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates employers to compensate
11 employees at no less than twice the regular rate of pay when an employee works more than twelve
12 hours in a day or more than eight hours on the seventh consecutive day of work. (Lab. Code, § 510,
13 subd. (a).) These rules are also reflected in the Applicable Wage Order.

14 35. In accordance with Labor Code section 1194 and the Applicable Wage Order, the Class
15 Members and the Aggrieved Employees could not then agree and cannot now agree to work for a lesser
16 wage than the amount provided by Labor Code sections 510 or the Applicable Wage Order.

17 36. Here, Defendants violated their duty to accurately and completely compensate the Class
18 Members and the Aggrieved Employees for all overtime worked. The Class Members and the
19 Aggrieved Employees periodically worked hours that entitled them to overtime compensation under
20 the law but were not fully compensated for those hours.

21 37. These actions were and are in clear violation of California's overtime laws as set forth
22 in Labor Code sections 510, 1194, 1199, and the Applicable Wage Order. (Cal. Code of Regs., tit. 8, §
23 11090.) As a result of Defendants' faulty policies and practices, the Class Members and the Aggrieved
24 Employees were not compensated for all hours worked or paid accurate overtime compensation.

25 **C. REST BREAK VIOLATIONS**

26 38. Pursuant to Labor Code section 226.7 and the Applicable Wage Order, Defendants were
27 and are required to provide the Class Members and the Aggrieved Employees with compensated, duty-
28 free rest periods of not less than ten minutes for every major fraction of four hours worked. Under the

1 Applicable Wage Order, an employer must authorize and permit all employees to take ten minute duty
2 free rest periods for every major fraction of four hours worked. (Cal. Code of Regs., tit. 8, § 11090.)

3 39. Likewise, Labor Code section 226.7 provides that “[a]n employer shall not require an
4 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,
5 or applicable regulation, standard, or order of the Industrial Welfare Commission” (Lab. Code, §
6 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay their employees one
7 additional hour of pay at the employee’s regular rate for each workday that a “meal or rest or recovery
8 period is not provided.” (Lab. Code, § 226.7, subd. (c).) The “regular rate” for these purposes must
9 factor in all nondiscretionary payments for work performed by the employee, including non-
10 discretionary bonuses, commissions, and other forms of wage payments exceeding the employees’ base
11 hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878.) Thus, the Wage
12 Orders set when and for how long the rest period must take place and the Labor Code establishes that
13 violations of the IWC Wage Orders are unlawful and sets forth the premium pay employer must pay
14 their employees when employers fail to provide rest periods.

15 40. The California Supreme Court has held that, during required rest periods, “employers
16 must relieve their employees of all duties and relinquish any control over how employees spend their
17 break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.) Relinquishing
18 control over employees during rest periods requires that employees be “free to leave the employer’s
19 premises” and be “permitted to attend to personal business.” (*Id.* at p. 275.) The *Brinker* Court
20 explained in the context of rest breaks that employer liability attaches from adopting an unlawful
21 policy:

22 “An employer is required to authorize and permit the amount of rest break time
23 called for under the wage order for its industry. If it does not—if, for example,
24 it adopts a uniform policy authorizing and permitting only one rest break for
25 employees working a seven-hour shift when two are required—it has violated
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1 the wage order and is liable.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53
2 Cal.4th 1004, 1033.)

3 41. Here, Defendants periodically did not permit the Class Members and the Aggrieved
4 Employees to take compliant duty-free rest breaks, free from Defendants’ control as required by Labor
5 Code section 226.7, the Applicable Wage Order, and applicable precedent. (See *Augustus v. ABM*
6 *Security Services, Inc.* (2016) 2 Cal.5th 257, 269 [concluding that “during rest periods employers must
7 relieve employees of all duties and relinquish control over how employees spend their time.”].) At all
8 relevant times, the Class Members and the Aggrieved Employees were periodically not provided with
9 legally-compliant and timely rest periods of at least ten minutes for each four hour work period, or
10 major fraction thereof due to Defendants’ unlawful rest period policies/practices. The Class Members
11 and the Aggrieved Employees were often expected and required to continue working through rest
12 periods to meet the expectations Defendants and finish the workday. In some cases when the Class
13 Members and the Aggrieved Employees worked more than ten hours in a shift, Defendants failed to
14 authorize and/or permit a third mandated rest period. As a result, the Class Members and the Aggrieved
15 Employees were periodically unable to take compliant rest periods.

16 42. In such cases where Defendants did not offer the Class Members and the Aggrieved
17 Employees the opportunity to receive a compliant off-duty rest period, “the court may not conclude
18 employees voluntarily chose to skip those breaks.” (*Alberts v. Aurora Behavioral Health Care* (2015)
19 241 Cal.App.4th 388, 410 (2015) [“If an employer fails to provide legally compliant meal or rest
20 breaks, the court may not conclude employees voluntarily chose to skip those breaks.”]; *Brinker Rest.*
21 *Corp. v. Superior Court, supra*, 53 Cal.4th at p. 1033 [“No issue of waiver ever arises for a rest break
22 that was required by law but never authorized; if a break is not authorized, an employee has no
23 opportunity to decline to take it.”].)

24 43. In addition to failing to authorize and permit compliant rest periods, the Class Members
25 and the Aggrieved Employees were not compensated with one hour’s worth of pay at their regular rate
26 of compensation when they were not provided with a compliant rest period in accordance with Labor
27 Code section 226.7, subdivision (c). Thus, Defendants have violated Labor Code section 226.7 and the
28 Applicable Wage Order.

1 44. Based on the foregoing, Plaintiffs seek to recover, on behalf of themselves and other
2 non-exempt employees, rest period premiums and penalties.

3 **D. MEAL BREAK VIOLATIONS**

4 45. Labor Code section 512 and the Applicable Wage Order require employers to provide
5 employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of
6 work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for a work period of
7 more than five hours per day without providing the employee with a meal period of not less than 30
8 minutes”]; Cal. Code of Regs., tit. 8, § 11090 [“No employer shall employ any person for a work
9 period of more than five (5) hours without a meal period of not less than 30 minutes”].)
10 Additionally, an employee who works more than ten hours per day is entitled to receive a second thirty-
11 minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a) [“An employer shall not
12 employ an employee for a work period of more than 10 hours per day without providing the employee
13 with a second meal period of not less than 30 minutes”].)

14 46. “An on-duty meal period is permitted only when the nature of the work prevents an
15 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal
16 break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement must
17 include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the California
18 Department of Industrial Relations, Division of Labor Standards Enforcement (“DLSE”) and courts
19 have “found that the nature of the work exception applies: (1) where the work has some particular
20 external force that requires the employee to be on duty at all times, and (2) where the employee is the
21 sole employee of a particular employer.” (*Id.* at p. 945, internal quotation marks omitted; *Abdullah v.*
22 *U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is the employer’s obligation
23 to determine whether the nature of the work prevents an employee from being relieved before requiring
24 an employee to take an on-duty meal period.” (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at
25 p. 946.)

26 47. Here, the Class Members and the Aggrieved Employees were never asked to sign any
27 enforceable document agreeing to an on-duty meal period. Moreover, nothing in the nature of their
28 work involved the kind of “external force” that might justify on-duty meal breaks. (*Lubin v. The*

1 *Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 945.) Nevertheless, Defendants periodically did not
2 provide compliant off-duty meal periods within the first five hours of work for the Class Members and
3 the Aggrieved Employees.

4 48. As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v.*
5 *Superior Court* (2012) 53 Cal.4th 1004, 1035 [“The IWC’s wage orders have long made a meal period’s
6 duty-free nature its defining characteristic.”].) Relinquishing control over employees during meal
7 periods requires that employees be “free to leave the employer’s premises” and be “permitted to attend
8 to personal business.” (*Augustus v. ABM Security Services, Inc.*, *supra*, 2 Cal.5th at p. 275.) Under
9 Labor Code section 512, if an employer maintains a uniform policy that does not authorize and permit
10 the amount of meal time called for under the law (as specified in the Labor Code and/or applicable
11 IWC Wage Order), “it has violated the wage order and is liable.” (*Brinker Restaurant Corp. v. Superior*
12 *Court*, *supra*, 53 Cal.4th at p. 1033.)

13 49. During the applicable statutory periods here, the Class Members and the Aggrieved
14 Employees were periodically denied legally-compliant and timely off-duty meal periods of at least
15 thirty minutes due to Defendants’ unlawful meal period policy and practices. As a result of Defendants’
16 uniform meal period policies and practices, the Class Members and the Aggrieved Employees were
17 often not permitted to take compliant first meal periods before the end of the fifth hour of work. The
18 Class Members and the Aggrieved Employees were also periodically not permitted to take second meal
19 periods for shifts in excess of ten hours. Defendants thus violated Labor Code section 512 and the
20 Applicable Wage Order by failing to advise, authorize, or permit the Class Members and the Aggrieved
21 Employees to receive thirty-minute, off-duty meal periods within the first five hours of their shifts.

22 50. Labor Code section 226.7 provides that “[a]n employer shall not require an employee
23 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
24 applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab. Code, § 226.7,
25 subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage Order further obligate
26 employers to pay employees one additional hour of pay at the employee’s regular rate of compensation
27 for each workday that the meal period is not provided. (Lab. Code, § 226.7, subd. (c); Cal. Code of
28 Regs., tit. 8, § 11090 [“If an employer fails to provide an employee a meal period in accordance with

1 the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
2 employee’s regular rate of compensation for each workday that the meal period is not provided.”].)
3 The “regular rate” for these purposes must factor in all nondiscretionary payments for work performed
4 by the employee, including non-discretionary bonuses, commissions, and other forms of wage
5 payments exceeding the employees’ base hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021)
6 11 Cal.5th 858, 878.)

7 51. Accordingly, for each day that the Class Members and the Aggrieved Employees did
8 not receive compliant meal periods, they were and are entitled to receive meal period premiums
9 pursuant to Labor Code section 226.7 and the Applicable Wage Order. Defendants, however, failed to
10 pay the Class Members and the Aggrieved Employees applicable meal period premiums for many
11 workdays that the employees did not receive a compliant meal period. Thus, Defendants have violated
12 Labor Code section 226.7 and the Applicable Wage Order.

13 52. Based on the foregoing, Plaintiffs seek to recover, on behalf of themselves and other
14 non-exempt employees, meal period premiums and penalties.

15 **E. UNTIMELY WAGES DURING EMPLOYMENT**

16 53. Labor Code section 204 expressly requires employers who pay employees on a weekly,
17 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the
18 close of the payroll period.” Labor Code section 210, subdivision (a), makes employers who violate
19 Labor Code section 204 subject to a penalty of:

20 “(1) For any initial violation, one hundred dollars (\$100) for each failure to
21 pay each employee.

22 “(2) For each subsequent violation, or any willful or intentional violation, two
23 hundred dollars (\$200) for each failure to pay each employee, plus 25
24 percent of the amount unlawfully withheld.” (Lab. Code, § 210, subd.
25 (a).)

26 54. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and
27 entirely independent and apart from, any other penalty provided in this article” (Lab. Code, § 210,
28 subd. (a).)

1 55. Due to Defendants’ failure to pay the Class Members and the Aggrieved Employees the
2 wages described above, along with rest and meal break premiums, Defendants failed to timely pay the
3 Class Members and the Aggrieved Employees within seven calendar days following the close of payroll
4 in accordance with Labor Code section 204 on a regular and consistent basis. (See *Parson v. Golden*
5 *State FC, LLC* (N.D. Cal., May 2, 2016, No. 16-CV-00405-JST) 2016 WL 1734010, at p. *3–5, 2016
6 U.S. Dist. LEXIS 58299 [finding that a failure to pay rest period premiums can support claims under
7 Labor Code sections 203 and 204].)

8 **F. UNTIMELY WAGES AT SEPARATION**

9 56. Labor Code section 203 provides “if an employer willfully fails to pay . . . any wages
10 of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty”
11 for up to thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) As a result
12 of Defendants’ failure to pay the Class Members and the Aggrieved Employees for the wages described
13 above, along with rest and meal break premiums, Defendants violated and continue to violate Labor
14 Code section 203.

15 57. Due to Defendants’ faulty pay policies, those Class Members and Aggrieved Employees
16 whose employment with Defendants concluded were not compensated for each and every hour worked
17 at the appropriate rate. Defendants have failed to pay formerly-employed Class Members and
18 Aggrieved Employees whose sums were certain at the time of termination within at least seventy-two
19 hours of their resignation and have failed to pay those sums for thirty days thereafter.

20 58. Under Labor Code section 256, “[t]he Labor Commissioner shall impose a civil penalty
21 in an amount not exceeding 30 days pay as waiting time under the terms of Section 203.” (Lab. Code,
22 § 256.) This type of waiting time penalty can be recovered through PAGA because PAGA allows an
23 employee to recover civil penalties on behalf of the state against his or her employer for Labor Code
24 violations. (*Villacres v. ABM Industries Inc.* (2010) 189 Cal.App.4th 562, 579 [recovery of the section
25 256 “civil penalty falls within the PAGA”]); *Iskanian v. CLS Transportation Los Angeles, LLC* (2014)
26 59 Cal.4th 348, 381; *Esparza v. KS Industries, L.P.* (2017) 13 Cal.App.5th 1228, 1242.) Defendants
27 have failed to pay the Aggrieved Employees’ worked wages that were due within at least seventy-two
28

1 hours of their separation. Thus, the Aggrieved Employees were and are entitled to waiting time
2 penalties as civil penalties under PAGA and Labor Code section 256.

3 **G. FAILURE TO REIMBURSE BUSINESS EXPENSES**

4 59. At all relevant times herein, Defendants were subject to Labor Code section 2802, which
5 states that “an employer shall indemnify his or her employees for all necessary expenditures or losses
6 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her
7 obedience to the directions of the employer.” The purpose of this section is to “prevent employers from
8 passing along their operating expenses onto their employees.” (*Gattuso v. Harte-Hanks Shoppers, Inc.*
9 (2007) 42 Cal.4th 554, 562.)

10 60. At all relevant times herein, Defendants were subject to Labor Code section 2804, which
11 states that “any contract or agreement, express or implied, made by any employee to waive the benefits
12 of this article or any part thereof, is null and void, and this article shall not deprive any employee or his
13 personal representative of any right or remedy to which he is entitled under the laws of this State.”

14 61. Thus, the Class Members and the Aggrieved Employees were and are entitled to
15 reimbursement for the expenses they incurred during the course of their duties. The duty to reimburse
16 even extends to the use of equipment the employee may already own and would be required to pay for
17 anyway. (*Cochran v. Schwan’s Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 [“The threshold
18 question in this case is this: Does an employer always have to reimburse an employee for the reasonable
19 expense of the mandatory use of a personal cell phone, or is the reimbursement obligation limited to
20 the situation in which the employee incurred an extra expense that he or she would not have otherwise
21 incurred absent the job? The answer is that reimbursement is always required. Otherwise, the employer
22 would receive a windfall because it would be passing its operating expenses on to the employee.”].)

23 62. Here, Defendants failed to fully reimburse the Class Members and the Aggrieved
24 Employees for necessary expenditures incurred as a direct consequence and requirement of performing
25 their job duties, including the costs associated with their personal cell phone they required to perform
26 their work. Consequently, Defendants failed to comply with Labor Code section 2802.

1 **H. WAGE STATEMENT VIOLATIONS**

2 63. Defendants also failed to provide accurate itemized wage statements in accordance with
3 Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226, subdivision
4 (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
5 statement in writing showing:

- 6 (1) The gross wages earned;
- 7 (2) The total hours worked by the employee;
- 8 (3) The number of piece-rate units earned and any applicable piece rate if
9 the employee is paid on a piece rate basis;
- 10 (4) All deductions, provided that all deductions made on written orders of
11 the employee may be aggregated and shown as one item;
- 12 (5) The net wages earned;
- 13 (6) The inclusive dates of the period for which the employee is paid;
- 14 (7) The name of the employee and only the last four digits of his or her social
15 security number or an employee identification number other than a social
16 security number;
- 17 (8) The name and address of the legal entity that is the employer; and
- 18 (9) All applicable hourly rates in effect during the pay period and the
19 corresponding number of hours worked at each hourly rate by the
20 employee.

21 64. Due to Defendants' failure to pay the Class Members and the Aggrieved Employees
22 properly as described above, the wage statements issued do not indicate the correct amount of gross
23 wages earned, total hours worked, or the net wages earned, or the applicable hourly rates in effect
24 during the pay period and the corresponding number of hours worked at each hourly rate. Thus,
25 Defendants have violated Labor Code section 226, subdivisions (a)(1), (2), (5), and (9).

26 65. In addition to Labor Code section 226, subdivision (a), Defendants also knowingly and
27 intentionally failed to provide the Class Members and the Aggrieved Employees with accurate itemized
28 wage statements in violation of Labor Code section 226, subdivision (e). Defendants knew that they

1 were not providing the Class Members and the Aggrieved Employees with wage statements required
2 by California law but nevertheless failed to correct their unlawful practices and policies. (See *Garnett*
3 *v. ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d 1121, 1134 [finding the defendant knowingly and
4 intentionally violated Labor Code section 226 because the “[d]efendant knew that it was not providing
5 total hours worked to plaintiff or other employees paid on commission” even though it believed that
6 employees paid solely on commission or commission and salary “are exempt and therefore we do not
7 record hours on a wage statement.”].)

8 **I. RECORDKEEPING VIOLATIONS**

9 66. Labor Code section 226, subdivision (a), requires employers to keep an accurate record
10 of, among other things, all hours worked by employees. Labor Code section 226.3 provides, in pertinent
11 part, as follows:

12 “Any employer who violates subdivision (a) of Section 226 shall be subject to a
13 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per
14 violation in an initial citation and one thousand dollars (\$1,000) per employee
15 for each violation in a subsequent citation, for which the employer fails to
16 provide the employee a wage deduction statement or fails to keep the records
17 required in subdivision (a) of Section 226. The civil penalties provided for in
18 this section are in addition to any other penalty provided by law.” (Lab. Code, §
19 226.3, emphasis added.)

20 67. Likewise, Labor Code section 1174, subdivision (d), requires every employer, including
21 Defendants, to:

22 “Keep, at a central location in the state or at the plants or establishments at which
23 employees are employed, payroll records showing the hours worked daily by
24 and the wages paid to, and the number of piece-rate units earned by and any
25 applicable piece rate paid to, employees employed at the respective plants or
26 establishments. These records shall be kept in accordance with rules established
27 for this purpose by the commission, but in any case shall be kept on file for not
28 less than three years. An employer shall not prohibit an employee from

maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.” (Lab. Code, § 1174, subd. (d), emphasis added.)

68. As explained in detail above, Defendants failed to provide the Class Members and the Aggrieved Employees with accurate itemized wage statements. Defendants did so, in part, because they failed to accurately track hours worked by the Class Members and the Aggrieved Employees. Defendants have thus failed to keep accurate records of the “total hours worked by the employee[s]” in violation of Labor Code section 226, subdivision (a), and are therefore subject to the penalties provided by Labor Code section 226.3. These penalties are “in addition to any other penalty provided by law.” (Lab. Code, § 226.3.)

69. The failure to accurately track hours worked also resulted in a failure of Defendants to keep a record of all “payroll records showing the hours worked daily by” Defendants’ employees, including Plaintiffs and the other Class Members, in violation of Labor Code section 1174, subdivision (d).

J. POTABLE WATER VIOLATIONS

70. Labor Code section 142.3 authorizes the California Occupational Safety and Health Standards Board (“OSHSB”) to adopt occupational safety and health standards and orders. Pursuant to its authority, OSHSB has adopted the “Maria Isabel Vasquez Jimenez Heat Illness Standard,” which applies to all outdoor places of employment. (Cal. Code Regs., tit. 8, § 3395, subd. (a)(1).) This standard requires that all outdoor employees have access to potable water that is “fresh, pure, suitably cool” and provided to employees free of charge. The water must be located as close as practicable to the areas where employees are working. If not plumbed or otherwise continuously supplied, it must be furnished at the beginning of the shift in sufficient quantity to provide one quart per employee per hour for the entire shift. (Cal. Code Regs., tit. 8, § 3395, subd. (c).)

71. Here, Defendants failed to provide the Class Members and the Aggrieved Employees water that was fit to drink, or potable, and free from odors that would discourage workers from drinking the water. No clean water source was made available to Defendants’ employees, including the Class Members and the Aggrieved Employees. This failure, in addition to violating OSHSB’s safety and health standards (and, by extension, the Labor Code), resulted in a failure to provide adequate cool-

1 down recovery periods pursuant to Labor Code section 226.7. (Lab. Code, § 226.7, subd. (c) [“If an
2 employer fails to provide an employee a meal or rest or recovery period in accordance with a state law,
3 including, but not limited to, an applicable statute or applicable regulation, standard, or order of the
4 Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division
5 of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at
6 the employee’s regular rate of compensation for each workday that the meal or rest or recovery period
7 is not provided.”], emphasis added.)

8 **K. FAILURE TO PROVIDE RESTROOMS**

9 72. Labor Code section 142.3 authorizes the California Occupational Safety and Health
10 Standards Board (“OSHSB”) to adopt occupational safety and health standards and orders. Pursuant to
11 its authority, OSHSB has adopted a standard requiring California employers to provide separate toilet
12 facilities for males and females based on the numbers of employees of each sex. (Cal. Code Regs., tit.
13 8, § 3364.) These toilet facilities must be “kept clean, maintained in good working order and be
14 accessible to the employees at all times.” (Cal. Code Regs., tit. 8, § 3364, subd. (b).) Likewise, “[w]here
15 practicable, toilet facilities should be within 200 feet of locations at which workers are regularly
16 employed” (Cal. Code Regs., tit. 8, § 3364, subd. (b).)

17 73. Here, Defendants failed to provide the Class Members and the Aggrieved Employees
18 with suitable toilet facilities within a reasonable distance of their worksite. The Class Members and the
19 Aggrieved Employees were often forced to urinate and defecate outdoors in unsanitary, humiliating,
20 and exposed conditions. This failure, in addition to violating OSHSB’s safety and health standards
21 (and, by extension, the Labor Code), resulted in a failure to provide adequate cool-down recovery
22 periods pursuant to Labor Code section 226.7, subdivision (c).

23 **V. CLASS ACTION ALLEGATIONS**

24 74. As mentioned above, Plaintiffs bring this action on behalf of themselves and the Class
25 Members pursuant to section 382 of the Code of Civil Procedure.

26 75. **Numerosity/Ascertainability:** The Class Members are so numerous that joinder of all
27 members would be unfeasible and not practicable. The membership of the class is unknown to Plaintiffs
28 at this time; however, it is estimated that the number of Class Members is greater than 100 individuals.

1 The identity of such membership is readily ascertainable via inspection of Defendants' employment
2 records.

3 76. **Common Questions of Law and Fact Predominate/Well Defined Community of**
4 **Interest:** There are common questions of law and fact as to Plaintiffs and all other similarly situated
5 non-exempt employees, which predominate over questions affecting only individual members
6 including, without limitation to:

7 A. Whether Defendants' pay policies/practices resulted in a failure to pay the Class
8 Members for all hours worked, including all minimum wages;

9 B. Whether Defendants' pay policies/practices resulted in a failure to pay the Class
10 Members for all required overtime wages at the Class Members' regular rate of pay;

11 C. Whether Defendants' rest period policies and practices afforded legally
12 compliant rest periods or compensation in lieu thereof;

13 D. Whether Defendants' meal period policies and practices afforded legally
14 compliant meal periods or compensation in lieu thereof;

15 E. Whether Defendants maintained accurate employment records;

16 F. Whether Defendants timely paid all wages during employment;

17 G. Whether Defendants timely paid all wages earned and unpaid at separation;

18 H. Whether Defendants indemnified their employees for all necessary business
19 expenditures;

20 I. Whether Defendants furnished legally-compliant wage statements to the Class
21 Members pursuant to Labor Code section 226; and

22 J. Whether Defendants' violations of the Labor Code and the Applicable Wage
23 Order amounted to a violation of California's UCL.

24 77. **Predominance of Common Questions:** Common questions of law and fact
25 predominate over questions that affect only individual Class Members. The common questions of law
26 set forth above are numerous and substantial and stem from Defendants' uniform policies and practices
27 applicable to each individual class member, such as Defendants' uniform policy and practice of failing
28 to pay for all hours worked, Defendants' uniform policies and practices which failed to provide

1 compliant rest periods, Defendants' uniform policies and practices which failed to provide compliant
2 meal periods, Defendants' failure to provide accurate itemized wage statements, and others. As such,
3 the common questions predominate over individual questions concerning each individual class
4 member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

5 78. **Typicality:** The claims of Plaintiffs are typical of the claims of the Class Members
6 because Plaintiffs were employed by Defendants as non-exempt employees in California during the
7 statute(s) of limitation applicable to each cause of action pleaded in this complaint. As alleged herein,
8 Plaintiffs, like the other Class Members, were deprived of minimum, regular, and overtime wages
9 because of Defendants' unlawful timekeeping policies and practices, were deprived of rest periods and
10 premium wages in lieu thereof, were deprived of meal periods and premium wages in lieu thereof, were
11 subject to Defendants' uniform rest period policies and practices, were subject to Defendants' uniform
12 meal period policies and practices, were not provided accurate itemized wage statements, were not paid
13 all wages in full and on time, , and were subject to other similar policies and practices to which the
14 Class Members were subject.

15 79. **Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary steps
16 to represent fairly and adequately the interests of the Class Members. Moreover, Plaintiffs' attorneys
17 are ready, willing, and able to fully and adequately represent the Class Members and Plaintiffs.
18 Plaintiffs' attorneys have prosecuted numerous wage-and-hour class actions in state and federal court
19 in the past and are committed to vigorously prosecuting this action on behalf of the Class Members.

20 80. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
21 important public interest in establishing minimum working conditions and standards in California.
22 These laws and labor standards protect the average working employee from exploitation by employers
23 who have the responsibility to follow the laws and who may seek to take advantage of superior
24 economic and bargaining power in setting onerous terms and conditions of employment. The nature of
25 this action and the format of laws available to Plaintiffs and the Class Members make the class action
26 format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each
27 employee were required to file an individual lawsuit, Defendants would necessarily gain an
28

1 unconscionable advantage since they would be able to exploit and overwhelm the limited resources of
2 each individual plaintiff with their vastly superior financial and legal resources.

3 81. Moreover, requiring each Class Member to pursue an individual remedy would also
4 discourage the assertion of lawful claims by employees who would be disinclined to file an action
5 against their former or current employer for real and justifiable fear of retaliation and permanent
6 damages to their careers at subsequent employment. Further, the prosecution of separate actions by the
7 individual Class Members, even if possible, would create a substantial risk of inconsistent or varying
8 verdicts or adjudications with respect to the individual Class Members against Defendants herein, and
9 which would establish potentially incompatible standards of conduct for Defendants or legal
10 determinations with respect to individual Class Members which would, as a practical matter, be
11 dispositive of the interest of the other Class Members not parties to adjudications or which would
12 substantially impair or impede the ability of the Class Members to protect their interests.

13 82. Further, the claims of the individual Class Members are not sufficiently large to warrant
14 vigorous individual prosecution considering the concomitant costs and expenses attending thereto. As
15 such, the Class Members identified above are maintainable as a class under section 382 of the Code of
16 Civil Procedure.

17 **VI. EXHAUSTION OF REMEDIES**

18 83. Plaintiffs have fully and completely exhausted administrative remedies under PAGA
19 prior to proceeding with the PAGA claims stated in this complaint. Plaintiffs filed a PAGA notice
20 online with the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified mail
21 to Defendants setting forth the facts and theories of the violations alleged against Defendants, as
22 prescribed by PAGA. (Lab. Code, §§ 2698–2699.6.)

23 84. As required by PAGA, Plaintiffs submitted the \$75.00 filing fee with the LWDA by
24 regular mail. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), no notice was received by
25 Plaintiff from the LWDA evidencing its intention to investigate within sixty-five calendar days of the
26 postmark date of the PAGA notice. Plaintiffs are therefore entitled to commence and proceed with a
27 civil action pursuant to Labor Code section 2699.
28

1 **VII. CAUSES OF ACTION**

2 **First Cause of Action**

3 *Failure to Pay All Minimum Wages*

4 *(Against All Defendants)*

5 85. Plaintiffs reallege and incorporate by reference all previous paragraphs.

6 86. Section 4 of the Applicable Wage Order and Labor Code section 1197 establish the right
7 of employees to be paid minimum wages for all hours worked, in amounts set by state law. (Lab. Code,
8 § 1197; Cal. Code of Regs., tit. 8, § 11090.) Labor Code sections 1194, subdivision (a), and 1194.2,
9 subdivision (a), provide that an employee who has not been paid the legal minimum wage as required
10 by Labor Code section 1197 may recover the unpaid balance, together with attorneys' fees and costs
11 of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued
12 thereon.

13 87. Here, Defendants failed to fully conform their pay practices to the requirements of the
14 law during the relevant statutory periods. Plaintiffs and the other Class Members were not compensated
15 for all hours worked including, but not limited to, all hours they were subject to the control of
16 Defendants and/or suffered or permitted to work under the Labor Code and the Applicable Wage Order.

17 88. Labor Code section 1198 makes unlawful the employment of an employee under
18 conditions that the IWC Wage Orders prohibit. Labor Code sections 1194, subdivision (a), and 1194.2,
19 subdivision (a), provide that an employer who has failed to pay its employees the legal minimum wage
20 is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages
21 in an amount equal to the wages due and interest thereon.

22 89. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
23 Plaintiffs and the other Class Members have sustained economic damages, including but not limited to
24 unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to recover
25 economic and statutory damages and penalties and other appropriate relief because of Defendants'
26 violations of the Labor Code and Applicable Wage Order.

27 90. Defendants' practices and policies regarding illegal employee compensation are
28 unlawful and create an entitlement to recovery by Plaintiffs and the other Class Members in a civil

1 action for the unpaid amount of minimum wages, liquidated damages, including interest thereon,
2 statutory penalties, attorney' s fees, and costs of suit according to Labor Code sections 204, 218.5,
3 1194, 1194.2, 1197, and 1198, and Code of Civil Procedure section 1021.5.

4 **Second Cause of Action**

5 *Failure to Pay All Overtime Wages*

6 *(Against All Defendants)*

7 91. Plaintiffs reallege and incorporate by reference all previous paragraphs.

8 92. This cause of action is brought pursuant to Labor Code sections 204, 510, 1194, and
9 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours
10 worked and provide a private right of action for the failure to pay all overtime compensation for
11 overtime work performed. At all times relevant herein, Defendants were required to properly pay
12 Plaintiffs and the other Class Members for all overtime wages earned pursuant to Labor Code section
13 1194 and the Applicable Wage Order. Defendants caused Plaintiffs and the other Class Members to
14 work overtime hours but did not compensate them at one and one-half times their regular rate of pay
15 for such hours in accordance with California law. Likewise, Defendants caused Plaintiffs and the other
16 Class Members to work double-time hours but did not compensate them at twice their regular rate of
17 pay for such hours in accordance with California law.

18 93. Defendants failed to fully conform their pay practices to the requirements of California
19 law. This unlawful conduct includes but is not limited to Defendants' uniform and unlawful pay
20 policies and practices of failing to accurately record all the time that non-exempt employees were under
21 the supervision and control of Defendants. The foregoing policies and practices are unlawful and allow
22 Plaintiffs and the other Class Members to recover in a civil action the unpaid amount of overtime
23 premiums owing, including interest thereon, statutory penalties, attorney's fees, and costs of suit
24 according to Labor Code section 204, 510, 1194, and 1198, the Applicable Wage Order, and Code of
25 Civil Procedure section 1021.5.

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100. As a result, Defendants are responsible for paying premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the Applicable Wage Order and Labor Code sections 226.7 and 512, and Civil Code sections 3287, subdivision (b), and 3289. (See Cal. Code of Regs., tit. 8, § 11090.)

Fifth Cause of Action

Failure to Maintain Accurate Employment Records

(Against All Defendants)

101. Plaintiffs reallege and incorporate by reference all previous paragraphs.

102. Pursuant to California Labor Code section 1174, subdivision (d), an employer shall keep at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and wages paid to employees employed at the respective plants or establishments. These records must be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

103. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records.

104. Defendant has intentionally and willfully failed to keep accurate and complete records showing the hours worked daily and wages paid to Plaintiffs and the other Class Members. Thus, Plaintiffs and the other Class Members have been denied their legal right and protected interest in having available at a central location at the plant or establishment where they are employed, accurate and complete payroll records showing the hours worked daily by, and the wages paid to, employees at those respective locations pursuant to Labor Code 1174.

Sixth Cause of Action

Failure to Pay Wages Timely during Employment

(Against All Defendants)

105. Plaintiffs reallege and incorporate by reference all previous paragraphs.

106. Labor Code section 200 provides that “wages” include all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, pieces, commission basis, or other method of calculation. Labor Code section 204 states that all

1 wages earned by any person in any employment are payable twice during the calendar month and must
2 be paid not more than seven days following the close of the period when the wages were earned. Labor
3 Code section 210, subdivision (a), makes employers who violate Labor Code section 204 subject to a
4 penalty of \$100 for any initial failure to timely pay each employee's full wages and \$200 for each
5 subsequent violation, plus 25% of the amount unlawfully withheld.

6 107. Labor Code section 216 establishes that it is a misdemeanor for any person, with regards
7 to wages due, to "falsely deny the amount or validity thereof, or that the same is due, with intent to
8 secure himself, his employer or other person, any discount upon such indebtedness, or with intent to
9 annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due."

10 108. Defendants as a matter of established company policy and procedure in the State of
11 California, scheduled, required, suffered, and/or permitted Plaintiffs and the other Class Members, to
12 work without full compensation, to work without legally-compliant off-duty meal periods, to work
13 without legally-compliant off-duty rest periods, and thereby failed to fully pay Plaintiffs and the other
14 Class Members within seven days of the close of payroll, as required by law.

15 109. Defendants, as a matter of established company policy and procedure in the State of
16 California, falsely deny they owe Plaintiffs and the other Class Members these wages, with the intent
17 of securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress, hinder, delay,
18 and/or defraud Plaintiffs and the other Class Members.

19 110. Defendants' pattern, practice, and uniform administration of its corporate policy of
20 illegally denying employees compensation, as described herein, is unlawful and entitles Plaintiffs and
21 the other Class Members to recover, pursuant to Labor Code section 218, the unpaid balance of the
22 compensation owed to them in a civil action and any applicable penalties, attorney fees, and interest
23 owed to them pursuant to Labor Code sections 210 and 218.5.

24 **Seventh Cause of Action**

25 *Failure to Pay All Wages Earned and Unpaid at Separation*

26 *(Against All Defendants)*

27 111. Plaintiffs reallege and incorporate by reference all previous paragraphs.
28

112. The actionable period for this cause of action is three years prior to the filing of this complaint through the present, and ongoing until the violations are corrected or the class is certified. (*Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, 1395; *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1109; Code Civ. Proc., § 338, subd. (a).) Labor Code sections 201 and 202 of the California Labor Code require Defendants to pay all compensation due and owing to its former employees (including the formerly-employed Class Members) during the actionable period for this cause of action at or around the time that their employment is or was terminated, or ended.

113. Section 203 of the Labor Code provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty workdays.

114. Due to Defendants' faulty pay policies, those Class Members whose employment with Defendants has concluded were not compensated for each and every hour worked at the appropriate rate. Defendants have willfully failed to pay those formerly-employed Class Members whose sums were certain at the time of termination within seventy-two hours of their resignation and have failed to pay those sums for thirty days thereafter as required by Labor Code sections 201 through 203.

115. As a result, Defendants are liable to the formerly-employed Class Members for waiting time penalties amounting to thirty days wages for the formerly-employed Class Members pursuant to Labor Code section 203. (See, e.g., DLSE Manual, § 4.3.4 [failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties].)

Eighth Cause of Action

Failure to Indemnify All Necessary Business Expenditures

(Against All Defendants)

116. Plaintiffs reallege and incorporate by reference all previous paragraphs.

117. California Labor Code Section 2802 states that employers must “indemnify” an employee for “all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” Likewise, Labor Code section 2804 states that “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall

1 not deprive any employee or his personal representative of any right or remedy to which he is entitled
2 under the laws of this State.”

3 118. Here, Plaintiffs and the other Class Members paid out of pocket for necessary business
4 expenditures incurred as a direct consequence and requirement of performing their job duties, including
5 the costs associated with their personal cell phone they required to perform their work. Despite knowing
6 that Plaintiffs and the other Class Members incurred these necessary business expenses, and requiring
7 Plaintiffs and the other Class Members to use such items, Defendants did not reimburse them.

8 119. Thus, Plaintiffs and the other Class Members are entitled to recover the cost of such
9 necessary business expenses, plus interest from the date each incurred such business expenses, plus
10 fees and costs. (Lab. Code, § 2802, subds. (b), (c).)

11 **Ninth Cause of Action**

12 *Failure to Furnish Accurate Itemized Wage Statements*

13 *(Against All Defendants)*

14 120. Plaintiffs reallege and incorporate by reference all previous paragraphs.

15 121. Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the
16 time of each payment to furnish an itemized wage statement in writing showing:

- 17 (1) The gross wages earned;
- 18 (2) The total hours worked by the employee;
- 19 (3) The number of piece-rate units earned and any applicable piece rate if
20 the employee is paid on a piece rate basis;
- 21 (4) All deductions, provided that all deductions made on written orders of
22 the employee may be aggregated and shown as one item;
- 23 (5) The net wages earned;
- 24 (6) The inclusive dates of the period for which the employee is paid;
- 25 (7) The name of the employee and only the last four digits of his or her social
26 security number or an employee identification number other than a social
27 security number;
- 28 (8) The name and address of the legal entity that is the employer; and

1 (9) All applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate by the
3 employee.

4 122. As set forth above, Defendants issued and continues to issue wage statements to its non-
5 exempt employees including Plaintiffs and the other Class Members that are inadequate under Labor
6 Code section 226, subdivision (a). By failing to pay Plaintiffs and the other Class Members properly
7 as described above, Defendants failed to include required information on their wage statements,
8 including, but not limited to, the gross wages earned, the net wages earned in violation of Labor Code
9 section 226, subdivision (a).

10 123. Defendants' failure to comply with Labor Code section 226, subdivision (a), of the
11 Labor Code was knowing and intentional. (Lab. Code, § 226, subd. (e)).

12 124. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiffs
13 and the other Class Members in violation of Labor Code section 226, subdivision (a), Plaintiffs and the
14 other Class Members are each entitled to recover an initial penalty of \$50, and subsequent penalties of
15 \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per each Class
16 Member from Defendants pursuant to Labor Code section 226, subdivision (e), along with costs and
17 reasonable attorneys' fees.

18 **Tenth Cause of Action**

19 *Violations of California's Unfair Competition Law*

20 *(Against All Defendants)*

21 125. Plaintiffs reallege and incorporate by reference all previous paragraphs.

22 126. Defendants have engaged and continue to engage in unfair and/or unlawful business
23 practices in California in violation of California Business and Professions Code section 17200 through
24 17210, by committing the unlawful acts described above. Defendants' utilization of these unfair and
25 unlawful business practices deprived and continue to deprive Plaintiffs and the other Class Members
26 of compensation to which they are legally entitled. These practices constitute unfair and unlawful
27 competition and provide an unfair advantage over Defendants' competitors who have been and/or are
28

1 currently employing workers and attempting to do so in honest compliance with applicable wage and
2 hour laws.

3 127. Because Plaintiffs are a victim of Defendants' unfair and unlawful conduct alleged
4 herein, Plaintiffs for themselves and on behalf of the Class Members, seek full restitution of monies,
5 as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted
6 by Defendants pursuant to Business and Professions Code sections 17203 and 17208.

7 128. The acts complained of herein occurred within the four years prior to the initiation of
8 this action and are continuing into the present and ongoing.

9 129. Plaintiffs were compelled to retain the services of counsel to file this Court action to
10 protect their interests and those of the Class Members, to obtain restitution and injunctive relief on
11 behalf of Defendants' current non-exempt employees and to enforce important rights affecting the
12 public interest. Plaintiffs have thereby incurred the financial burden of attorneys' fees and costs, which
13 Plaintiffs are entitled to recover under Code of Civil Procedure section 1021.5.

14 **Eleventh Cause of Action**

15 *Penalties Pursuant to PAGA for Violations of California Labor Code Sections 142.3,*
16 *201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 1174, 1185, 1194, 1194.2,*
17 *1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and Other Provisions of the Labor*
18 *Code*
19 *(Against All Defendants)*

20 130. Plaintiffs reallege and incorporate by reference all previous paragraphs.

21 131. Based on the above allegations incorporated by reference, Defendants violated Labor
22 Code sections 142.3, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 1174, 1185, 1194,
23 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and others that may be applicable; section 3364,
24 subdivision (b), of Title 8 of the California Code of Regulations; section 3395, subdivisions (a)(1) and
25 (c), of Title 8 of the California Code of Regulations; and the Applicable Wage Order (Cal. Code of
26 Regs., tit. 8, § 11090), and others that may be applicable.

27 132. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code sections
28 2698 through 2699.6 because of Defendants' violation of Labor Code sections 142.3, 201, 202, 203,

204, 210, 226, 226.3, 226.7, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and others that may be applicable; section 3364, subdivision (b), of Title 8 of the California Code of Regulations; section 3395, subdivisions (a)(1) and (c), of Title 8 of the California Code of Regulations; and the Applicable Wage Order (Cal. Code of Regs., tit. 8, § 11090), and others that may be applicable.

133. Under Labor Code section 2699, subdivision (f)(2), and 2699.5, for each such violation, Plaintiffs and the Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

A. \$100 for the initial violation per employee per pay period; and

B. \$200 for each subsequent violation per employee per pay period.

134. Moreover, under Labor Code section 256, the Aggrieved Employees are entitled to penalties “in an amount not exceeding 30 days pay as waiting time under the terms of Section 203” through PAGA. (Lab. Code, §§ 256, 2699.)

135. These penalties must be allocated seventy-five percent to the Labor and Workforce Development Agency (“LWDA”) and twenty-five percent to the affected employees. These penalties may be stacked separately for each of Defendants violations of the California Labor Code. (*Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 780–781 [citing with approval *Stoddart v. Express Services, Inc.* (E.D. Cal., Sept. 16, 2015, No. 2:12-CV-01054-KJM) 2015 WL 5522142, at *9, for the proposition that plaintiff could pursue separate claims for penalties under Labor Code section 226, subdivision (e), and penalties for Labor Code section 226, subdivision (a), violations]; see also *Hernandez v. Towne Park, Ltd.* (C.D. Cal., June 22, 2012, No. CV 12-02972 MMM JCGX) 2012 WL 2373372, at *17 fn. 70 [noting that federal courts applying California law have found that “PAGA penalties can be stacked, i.e., multiple PAGA penalties can be assessed for the same pay period for different Labor Code violations.”], internal quotation marks omitted).

136. In addition, to the extent permitted by law, Defendants failed to provide Plaintiffs and all Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code section 226, subdivision (a). Plaintiffs seek separate PAGA penalties for Defendants’ violations of

1 Labor Code section 226, subdivisions (a) and (e). (*Lopez v. Friant & Associates, LLC, supra*, 15
2 Cal.App.5th at pp. 780, 788.)

3 137. For violations of Labor Code section 226, subdivision (a), Plaintiffs seek the default
4 penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that “[a]ny
5 employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount
6 of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand
7 dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails
8 to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of
9 Section 226.” Accordingly, through PAGA and to the extent permitted by law Plaintiffs and the
10 Aggrieved Employees are entitled to recover penalties for violations of Labor Code section 226.3 and
11 seek default PAGA penalties for each of Defendants’ numerous violations of Labor Code section 226,
12 subdivision (e).

13 138. Labor Code section 210 provides that “in addition to, an entirely independent and apart
14 from, any other penalty provided in this article, every person who fails to pay the wages of each
15 employee as provided in Sections . . . 204 . . . shall be subject to a civil penalty as follows: (1) For any
16 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
17 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure
18 to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty
19 compensation policies and practices, Plaintiffs and the Aggrieved Employees are also entitled to
20 recover penalties under Labor Code section 210 through PAGA.

21 139. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
22 liquidated damages, in the amount of: (1) one hundred dollars (\$100) for any initial violation that is
23 intentionally committed for each underpaid employee for each pay period for which the employee is
24 underpaid, and (2) two hundred fifty dollars (\$250) for each subsequent violation for the same specific
25 offense for each underpaid employee for each pay period for which the employee is underpaid
26 regardless of whether the initial violation is intentionally committed. Accordingly, through PAGA and
27 to the extent permitted by law, Plaintiffs and the Aggrieved Employees are entitled to recover pursuant
28 to Labor Code section 1197.1.

1 140. Plaintiffs were compelled to retain the services of counsel to file this action to protect
2 their interests and those of the Aggrieved Employees, and to assess and collect the wages and penalties
3 owed by Defendants. Plaintiffs have thereby incurred attorneys' fees and costs, which Plaintiff is also
4 entitled to recover under Labor Code section 2699, subdivision (g)(1).

5 **VIII. DEMAND FOR JURY TRIAL**

6 141. Plaintiffs hereby demand trial by jury of Plaintiffs' and the Class Members' claims
7 against Defendants.

8 **IX. PRAYER FOR RELIEF**

9 Plaintiffs pray for judgment for self and for all others on whose behalf this suit is brought against
10 Defendants, as follows:

- 11 1. For an order certifying the proposed class;
- 12 2. For an order appointing Plaintiffs as representatives of the class;
- 13 3. For an order appointing Plaintiffs' counsel as counsel for the class;
- 14 4. For the failure to pay all minimum wages, compensatory, consequential, general, and
15 special damages according to proof pursuant to Labor Code sections 1194, 1194.2,
16 1197, and others as may be applicable;
- 17 5. For the failure to pay all overtime wages, compensatory, consequential, general, and
18 special damages according to proof pursuant to Labor Code sections 204, 510, 1194,
19 1198, and others as may be applicable;
- 20 6. For the failure to provide rest periods and pay missed rest period premiums,
21 compensatory, consequential, general, and special damages according to proof pursuant
22 to Labor Code section 226.7;
- 23 7. For the failure to provide meal periods and pay missed meal period premiums,
24 compensatory, consequential, general, and special damages according to proof pursuant
25 to Labor Code sections 226.7 and 512;
- 26 8. For the failure to maintain accurate employment records, penalties pursuant to Labor
27 Code sections 226.3, 1174.5, and others that may be applicable;
- 28

- 1 **9.** For the failure to pay wages timely during employment, the unpaid balance of the
2 compensation owed to Plaintiffs and the other Class Members and any applicable
3 penalties owed to them pursuant to Labor Code section 210;
- 4 **10.** For the failure to pay all wages earned and unpaid at separation, statutory waiting time
5 penalties pursuant to Labor Code sections 201 through 203, for the Class Members who
6 quit or were fired in an amount equal to their daily wage multiplied by thirty days, as
7 may be proven;
- 8 **11.** For the failure to indemnify all necessary business expenditures, all unreimbursed
9 business expenses, and interest thereon, that are owed, pursuant to Labor Code section
10 2802, and attorney fees, pursuant to Labor Code section 2802, subdivision (c);
- 11 **12.** For the violations of California’s Unfair Competition Law, restitution to Plaintiffs and
12 the other Class Members of all money and/or property unlawfully acquired by
13 Defendants by means of any acts or practices declared by this Court to be in violation
14 of Business and Professions Code sections 17200 through 17210;
- 15 **13.** For the claim of penalties pursuant to PAGA and other provisions of the California
16 Labor Code, a civil penalty in the amount of \$100 for the initial violation and \$200 for
17 each subsequent violation as specified in Labor Code section 2699, subdivision (f)(2),
18 in the representative action brought on behalf of Plaintiffs and the Aggrieved Employees
19 pursuant the Labor Code Private Attorneys General Act of 2004, and for civil penalties
20 available under Labor Code section 210 and Labor Code section 256;
- 21 **14.** Prejudgment interest on all due and unpaid wages pursuant to Labor Code section 218.6
22 and Civil Code sections 3287 and 3289;
- 23 **15.** On all causes of action for which attorneys’ fees may be available, for attorneys’ fees
24 and costs as provided by Labor Code sections 218.5, 226, Code of Civil Procedure
25 section 1021.5, and others as may be applicable;
- 26 **16.** For an order enjoining Defendants, and each of them, and their agents, servants, and
27 employees, and all persons acting under, in concert with, or for them, from acting in
28 derogation of any rights or duties adumbrated in this complaint; and

17. For such other and further relief, this Court may deem just and proper.

Dated: October 25, 2023

MELMED LAW GROUP P.C.


JOANNE H. KIM

Attorney for Plaintiffs, the Putative Class, and the
Aggrieved Employees

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

I am over the age of 18 years and am employed in the county of Los Angeles, State of California. I am not a party to the action. My business address is 1801 Century Park East, Suite 850, Los Angeles, CA 90067.

I declare that on the date hereof, October 25, 2023, I served the foregoing document(s) described as:

- First Amended Class and Representative Action Complaint

By causing a true copy thereof to be sent to the following individuals and/or parties:

GORDON REES SCULLY MANSUKHANI LLP

Peter Choi

pchoi@grsm.com

Jennifer Weatherup

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Diane Gonzales

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633 W. 5th St., 52nd Floor

Los Angeles, California 90071

[XX] BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the e-mail addresses listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of California that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on October 25, 2023, in Los Angeles, California.

Gloria Ibarra

Gloria Ibarra