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| <b>CASE ATTACHMENT COVER PAGE</b>                                                                                                                                                                                                                                                           |                              | (ENDORSED)<br><b>ELECTRONICALLY<br/>FILED</b><br><br>BY SUPERIOR COURT<br>OF CALIFORNIA, COUNTY OF<br><b>San Bernardino</b><br>on <b>Jul 10, 2023</b><br><i>CLERK OF THE SUPERIOR COURT</i><br><i>Deputy Clerk: Stephanie D Paniagua</i> |
| <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO</b><br><br>STREET ADDRESS: <b>247 West Third Street</b><br>MAILING ADDRESS:<br>CITY AND ZIP CODE: <b>San Bernardino, CA 92415</b><br>BRANCH NAME: <b>San Bernardino Justice Center</b><br>WEBSITE: <b>http://www.sb-court.org</b> |                              |                                                                                                                                                                                                                                          |
| ATTACHMENT NAME: <b>Answer: First Amended Complaint</b>                                                                                                                                                                                                                                     |                              |                                                                                                                                                                                                                                          |
| CASE NAME: <b>Clarence Phillips vs. Hardy Window Company</b>                                                                                                                                                                                                                                | CASE NUMBER:<br>CIVSB2312048 |                                                                                                                                                                                                                                          |
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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO

CLARENCE PHILLIPS, individually, on a  
representative basis, and on behalf of all  
others similarly situated;

Plaintiff,

vs.

HARDY WINDOW COMPANY, a  
California Corporation; and DOES 1 through  
20, inclusive;

Defendants.

Case No.: CIVSB2312048

*[Assigned to Hon. Judge David Cohn, Dept  
S26, for all purposes]*

**FIRST AMENDED COMPLAINT**

**CLASS ACTION COMPLAINT**

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

**PAGA CLAIMS**

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

**JURY TRIAL DEMANDED**

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

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

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

11 2. Plaintiff was employed by Defendants from approximately March 2022 through  
12 May 2023.

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

16 4. Plaintiff and the Represented Employees were not provided all minimum, regular,  
17 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours  
18 worked. This violates California law. *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829  
19 (California law “do[es] not allow employers to require employees to routinely work for minutes  
20 off the clock without compensation”); *Frlekin v. Apple Inc* (2020) 8 Cal.5th 1038 (tasks are  
21 compensable when employee is under company’s control and where the tasks served the  
22 employer’s interests).

23 5. Also, at all relevant times, Defendants utilized a rounding policy and practice that  
24 routinely undercompensated the Represented Employees and resulted in a net benefit to  
25 Defendants and a net loss for the Represented Employees. In other words, Defendants’ rounding  
26 policy is not neutral and results in systematic undercompensation for the Represented  
27 Employees, in violation of California law. *See’s Candy Shops, Inc. v. Superior Court* (2012) 210  
28 Cal.App.4th 889, 903 (rounding policy is illegal where it is not “neutral, both facially and as

1 applied”). Moreover, all underpayments caused by this rounding policy violate California law  
2 and lead to minimum, regular, and overtime wage violations under *Camp v. Home Depot U.S.A.*  
3 *Inc.* (2022) 84 Cal. App. 5th 638, 660 (if an employer “can capture and has captured the exact  
4 time an employee has worked during a shift, the employer must pay the employee for ‘all the  
5 time’ worked”).

6 6. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the  
7 Represented Employees. At all relevant times, Plaintiff and the Represented Employees were  
8 paid on an hourly basis plus additional earned nondiscretionary compensation. However, on the  
9 occasions when Plaintiff and the Represented Employees worked overtime hours and received  
10 additional earned compensation during the same workweek, Defendants failed to include these  
11 amounts in the calculations for the regular rate of pay – in violation of California law.

12 7. Plaintiff and the Represented Employees would often work at two or more base  
13 rates of pay in the same workweek. Yet, when the Represented Employees worked overtime and  
14 worked at two or more base rates of pay in the same workweek, Defendants illegally paid  
15 overtime at the “rate-in-effect” method rather than using the correct “weighted average” method.  
16 *See DLSE Manual § 49.2.6.2* (when an employee performs prevailing and non prevailing jobs  
17 during the same workweek, the company is required to pay overtime at the “weighted average”  
18 of the blended rate, averaging the normal base hourly rate and prevailing wage rate).

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

26 9. Defendants also failed to provide Plaintiff and the Represented Employees with  
27 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as  
28 mandated by California law. Defendants did not schedule rest breaks for Plaintiff and the

1 Represented Employees, and the Represented Employees were often not authorized and/or  
2 permitted to take mandated rest breaks due to being overwhelmed by their hectic workload.  
3 Furthermore, Defendants illegally required the Represented Employees to combine their rest  
4 breaks with their meal periods and, on occasions when Plaintiff and the Represented Employees  
5 worked longer shifts, Defendants failed to authorize and/or permit additional rest breaks.

6 10. Also, Defendants required Plaintiff and the Represented Employees to incur  
7 substantial business-related expenses and costs to carry out their duties for Defendants without  
8 reimbursement without reimbursement. For example, Plaintiff and the Represented Employees  
9 were explicitly required to provide their own expensive tools to carry out their tasks for  
10 Defendants, including cordless power drill, cordless impact gun, additional batteries, and other  
11 tools. Yet Defendants did not reimburse the Represented Employees for such expenses.

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

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

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

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

underpaid employee as set forth in Labor Code § 558 and under California law.

15. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and monetary relief against Defendants and each of them, on behalf of himself and the Represented Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees, penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, among possibly other sections inadvertently omitted. Plaintiff also reserves the right to name additional representatives throughout the State of California.

## **II. JURISDICTION**

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

## **III. VENUE**

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

## **IV. PARTIES**

### **Plaintiff**

18. Plaintiff and Class Representative Clarence Phillips was employed by Defendants from approximately March through May 2023 and performed work for Defendants in the City of Ontario, which is in San Bernardino County.

### **Defendants**

19. Plaintiff is informed and believes and thereon alleges that Defendant Hardy Window Company is a California corporation that maintains operations and employs the Represented Employees throughout California, including San Bernardino County.

20. Plaintiff is ignorant of the true names, capacities, relationships, and extent of participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,

1 inclusive, but on information and belief alleges that those Defendants are legally responsible for  
2 the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of  
3 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious  
4 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE  
5 Defendants when ascertained.

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

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

19         23. Plaintiff is informed and believes and thereon alleges that, in conducting  
20 themselves in the manner described herein, Defendants, and each of them, were acting in active  
21 concert with one another such that the acts of each were and are fully attributable to the others in  
22 all material respects. Plaintiff is further informed and believes that at all relevant times  
23 Defendants and each of them are now, and at all material times herein mentioned were, the  
24 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining  
25 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and  
26 purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of  
27 their remaining co-Defendants.

28 ///

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

9 **V. CLASS ACTION ALLEGATIONS**

10           25. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
11 as if fully alleged herein.

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

14           27. The relevant time period for this class action is defined as the period beginning  
15 four years prior to the filing of this action until class certification (the “Relevant Time Period”).

16           28. The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to  
17 represent is defined as follows:

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

20           29. Plaintiff also seeks to represent the following subclasses:

21                   **Meal Break Subclass**

22                   All Represented Employees who worked a shift in excess of  
23                   5 hours during the Relevant Time Period.

24                   **Rest Break Subclass**

25                   All Represented Employees who worked a shift of at least  
26                   3.5 hours during the Relevant Time Period.

27           ///

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1                    **Unreimbursed Expense Subclass**

2                    All Represented Employees who were required to incur  
3                    expenses to discharge their duties for Defendants without  
4                    reimbursement during the Relevant Time Period.

5                    **Waiting Time Penalties Subclass**

6                    All Represented Employees who separated from their  
7                    employment with Defendants during the period three years  
8                    before the filing of this action and ending when final  
9                    judgment is entered.

10                  **Wage Statement Penalties Subclass**

11                  All Represented Employees during the period one year  
12                  before the filing of this action and ending when final  
13                  judgment is entered.

14                  30.      Plaintiff reserves the right to amend or modify the class description with greater  
15                  specificity or further division into subclasses or limitation to particular issues as appropriate.

16                  31.      Plaintiff, as Class Representative, is a member of the class and subclasses that he  
17                  seeks to represent.

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

21                  33.      **Numerosity:** The potential members of the Class as defined are so numerous that  
22                  a joinder of all Represented Employees is impracticable. Although the exact number is currently  
23                  unknown to Plaintiff, this information is easily ascertainable from Defendants' records.

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

27                  ///

28                  ///

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

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

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

12                   iv.       Whether Defendants violated the California Labor Code and applicable  
13 IWC Wage Order by failing to provide compliant rest breaks to Plaintiff and the Rest Break  
14 Subclass and whether Defendants failed to compensate Plaintiff and the Rest Break Subclass  
15 with one additional hour of wages at the regular rate of pay for each instance when a paid rest  
16 break was not provided;

17                   v.       Whether Defendants violated the California Labor Code and applicable  
18 IWC Wage Order by failing to reimburse Plaintiff and the Unreimbursed Expense Subclass for  
19 business expenses incurred while discharging their duties or in obedience to the directions of  
20 their employer;

21                   vi.       Whether Defendants violated the California Labor Code by failing to  
22 timely pay all wages due upon separation of employment between Defendants and Plaintiff and  
23 the Waiting Time Penalties Subclass, whether such separation was voluntary or involuntary;

24                   vii.       Whether Defendants violated the California Labor Code by failing to  
25 provide Plaintiff and the Wage Statement Penalties Subclass with complete, accurate, itemized  
26 wage statements;

27                   viii.       Whether Defendants violated California Business & Professions Code §§  
28 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest

breaks, failure to provide mandated meal periods, failure to reimburse business expenses, and failure to timely pay final wages; and

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

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

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

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

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

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

4 *Plaintiff and the Represented Employees Against All Defendants*

5 38. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
6 as if fully alleged herein.

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

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

15 41. As a result of these policies and practices, Defendants failed to pay Plaintiff and  
16 the Represented Employees for all hours worked.

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

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

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

27 45. At all material times, Defendants DOES 1 through 20 were and/or are the  
28 employer of Plaintiff and the Represented Employees or were persons acting on behalf of said

1 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be  
2 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California  
3 Labor Code regulating hours and days of work respectively.

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

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

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

## 12 **SECOND CAUSE OF ACTION**

### 13 **FAILURE TO PAY OVERTIME WAGES**

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

15 *Plaintiff and the Represented Employees Against All Defendants*

16 49. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
17 as if fully alleged herein.

18 50. Plaintiff and the Represented Employees were employees of Defendants who did  
19 not receive proper protections and benefits of the laws governing payment of overtime wages.

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

26 52. At all relevant times, Plaintiff and the Represented Employees were required by  
27 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to  
28 Defendants' failure to accurately record and compensate for all hours worked Plaintiff and the

1 Represented Employees did not receive proper overtime compensation.

2 53. Additionally, at all relevant times, Plaintiff and the Represented Employees were  
3 paid on an hourly basis plus additional earned nondiscretionary compensation. However, on the  
4 occasions when Plaintiff and the Represented Employees worked overtime hours and received  
5 additional earned compensation during the same workweek, Defendants failed to properly  
6 include these amounts in the calculations for the regular rate of pay – violating the well-  
7 established rule that overtime must always be paid at time and one-half the regular rate of pay.

8 54. Also, Plaintiff and the Represented Employees would often work at two or more  
9 base rates of pay in the same workweek. Yet, when the Represented Employees worked overtime  
10 and worked at two or more base rates of pay in the same workweek, Defendants illegally paid  
11 overtime at the “rate-in-effect” method rather than using the correct “weighted average” method.  
12 *See DLSE Manual § 49.2.6.2* (when an employee performs prevailing and non prevailing jobs  
13 during the same workweek, the company is required to pay overtime at the “weighted average”  
14 of the blended rate, averaging the normal base hourly rate and prevailing wage rate).

15 55. As a result of these policies and practices, Defendants failed to pay Plaintiff and  
16 the Represented Employees for all overtime hours worked.

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

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

24 58. Defendants’ conduct was willful, as Defendants knew that Plaintiff and the  
25 Represented Employees were entitled to be paid proper overtime wages throughout the statutory  
26 period, yet Defendants chose not to pay them in accordance thereto.

27 59. At all material times, Defendants DOES 1 through 20 were and/or are the  
28 employer of Plaintiff and the Represented Employees or were persons acting on behalf of said

1 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be  
2 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California  
3 Labor Code regulating hours and days of work respectively.

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

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

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

### 11 **THIRD CAUSE OF ACTION**

#### 12 **FAILURE TO PROVIDE MEAL PERIODS**

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

14 *Plaintiff and the Meal Break Subclass Against All Defendants*

15 63. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
16 as if fully alleged herein.

17 64. Plaintiff and the Meal Break Subclass are and/or were employees of Defendants  
18 who did not receive proper protections and benefits of the laws governing mandatory meal  
19 periods.

20 65. Labor Code § 226.7 requires employers, including Defendants, to provide  
21 employees with meal periods as mandated by the Industrial Welfare Commission.

22 66. Labor Code § 512(a), in part, provides that employers, including Defendants, may  
23 not employ an employee for a work period of more than five hours per day without providing an  
24 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,  
25 except that if the total work period per day of the employee is no more than six hours, the meal  
26 period may be waived by mutual consent of both the employer and the employee. Employers  
27 may not employ an employee for a work period more than 10 hours per day without providing  
28 the employee with a second meal period of not less than 30 minutes.

1           67. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),  
2 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of  
3 pay for each meal period that is missed.

4           68. At all relevant times herein, Plaintiff and the Meal Break Subclass were denied  
5 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and  
6 practices, Plaintiff and the Represented Employees were subjected to meal period violations  
7 when they were: (1) unable to take a meal period due to workload, (2) forced to take an on-duty  
8 meal period while under the control of the Company, (3) forced to take a shortened meal period,  
9 (4) forced to take a meal period after the 5th hour of work, and (5) not provided mandated  
10 second meal periods for shifts in excess of 10 hours.

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

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

18           71. On information and belief, Plaintiff and the Meal Break Subclass did not  
19 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers  
20 obtained from Plaintiff and the Meal Break Subclass were not willfully obtained, were not  
21 voluntarily agreed to, were a condition of employment, or were a part of a contract of an  
22 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Meal Break Subclass  
23 to take meal periods in accordance with California law.

24           72. By their failure to provide Plaintiff and the Meal Break Subclass with meal  
25 periods as required by California law, and failing to pay one hour of additional wages in lieu of  
26 each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and  
27 IWC Wage Order § 11. Accordingly, Defendants are liable for one hour of additional wages at  
28 the employee's regular rate of compensation for each work day that a meal period was not

1 lawfully provided in an amount to be proven at time of trial.

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

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE REST BREAKS**

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

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

9 74. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
10 as if fully alleged herein.

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

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

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

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

23 79. At all relevant times, Defendants also failed to provide Plaintiff and the Rest  
24 Break Subclass with 10 minutes of net rest break time for every 4 hours worked, or major  
25 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks for the  
26 Rest Break Subclass and the Rest Break Subclass were often not authorized and/or permitted to  
27 take mandated rest breaks due to being overwhelmed by their hectic workload. Furthermore, on  
28 occasions when the Rest Break Subclass worked longer shifts, Defendants failed to authorize

1 and/or permit mandated third or fourth rest breaks.

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

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

9 82. By their failure to provide Plaintiff and the Rest Break Subclass with rest breaks  
10 as required by California law, and failing to pay one hour of additional wages in lieu of each rest  
11 break not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage  
12 Order § 12. Accordingly, Defendants are liable for one hour of additional wages at the  
13 employee's regular rate of compensation for each workday that a paid rest break was not  
14 lawfully provided in an amount to be proven at time of trial.

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

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

20 (Labor Code § 2802)

21 *Plaintiff and the Unreimbursed Expense Subclass against All Defendants*

22 84. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
23 as if fully alleged herein.

24 85. Plaintiff and the Represented Employees are and/or were employees of  
25 Defendants who did not receive proper protections and benefits of the laws governing  
26 reimbursement of business expenses.

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

1           87.     At all relevant times herein mentioned, as a condition of employment, Defendants  
2 required Plaintiff and the Unreimbursed Expense Subclass to incur substantial business-related  
3 expenses and costs without reimbursement.

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

8           89.     At all relevant times herein, Defendants failed to reimburse the Unreimbursed  
9 Expense Subclass, including Plaintiff, for expenses incurred while discharging duties to  
10 Defendants, thereby receiving an economic benefit.

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

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

22           92.     Furthermore, Labor Code § 2802(c) states that "[f]or the purposes of this section,  
23 the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not  
24 limited to, attorney's fees incurred by the employee in enforcing the rights granted by this  
25 section." Therefore, Plaintiff and the Represented Employees seek to recover the unreimbursed  
26 expenses, interest on the unreimbursed expenses, and the costs and attorney's fees necessarily  
27 incurred in pursuing same. The exact amount of reimbursements, interest, costs, and attorney's  
28 fees will be in an amount to be proved at the time of trial.

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1 or not the employee actually works overtime in that workweek.” Additionally, Labor Code §  
2 246(1)(2) states that the paid sick time must be “calculated by dividing the employee’s total  
3 wages, not including overtime premium pay, by the employee’s total hours worked in the full  
4 pay periods of the prior 90 days of employment.” Here, Defendants only calculated and paid sick  
5 pay at the base rate of pay, rather than at the rate required by Labor Code § 246, leading to  
6 unpaid sick pay and violations of Labor Code §§ 201 – 203.

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

### 13 **SEVENTH CAUSE OF ACTION**

#### 14 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

15 (Labor Code § 226)

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

17 102. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
18 as if fully alleged herein.

19 103. Plaintiff and the Wage Statement Penalties Subclass are and/or were employees of  
20 Defendants who did not receive proper protections and benefits of the laws governing the  
21 provision of accurate itemized wage statements.

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

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1           105. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff  
2 and the Wage Statement Penalties Subclass due to violations including: failure to accurately state  
3 total hours worked (for example, the wage statements failed to accurately reflect the  
4 compensable hours worked); failure to accurately state gross wages earned; failure to accurately  
5 state all deductions; failure to accurately state net wages earned; failure to state the applicable  
6 hourly rates (including the accurate overtime rate of pay); failure to accurately state the  
7 corresponding number of hours worked at each hourly rate; and failure to accurately identify the  
8 name and address of the legal entity of the employer.

9           106. Additionally, Defendants' wage statements directly violated Labor Code § 226(a)  
10 each period due to the failure to pay and report premium wages for denied meal periods and rest  
11 breaks under § 226.7.

12           107. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect  
13 to Plaintiff and the Wage Statement Penalties Subclass because Defendants failed to provide a  
14 wage statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the  
15 requirements of Labor Code § 226(a).

16           108. Defendants' failure to provide the required writing deprived Plaintiff and the  
17 Wage Statement Penalties Subclass of the ability to know, understand, and question the  
18 calculation and rate of pay and hours used to calculate the wages paid by Defendants. Therefore,  
19 Plaintiff and the Wage Statement Penalties Subclass had no way to dispute the resulting  
20 miscalculation of wages, all of which resulted in an unjustified economic enrichment to said  
21 Defendants. As a direct result, Plaintiff and the Wage Statement Penalties Subclass have suffered  
22 and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost  
23 interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully  
24 perform its obligation under state law, all to their respective damages in amounts according to  
25 proof at trial.

26           109. As a result of Defendants' knowing and intentional failure to comply with Labor  
27 Code § 226(a), Plaintiff and the Wage Statement Penalties Subclass have suffered an injury in  
28 that each was prevented from knowing, understanding and disputing the wage payments paid to

1 them. Furthermore, Plaintiff and the Wage Statement Penalties Subclass have each suffered an  
2 injury in that the failure to show all wages earned on the itemized wage statements resulted in  
3 Plaintiff and the Represented Employees being denied all necessary deductions, payments, and  
4 withholdings owed by the employer, including, but not limited to, the failure to make all  
5 necessary contributions for unemployment benefits, social security benefits, proper payment of  
6 taxes and withholdings, and other mandated state and federal benefits.

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

10 111. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages  
11 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and  
12 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus  
13 attorney's fees and costs, to Plaintiff and the Wage Statement Penalties Subclass who were  
14 injured by Defendants' failure to comply with Labor Code § 226(a). The exact amount of the  
15 applicable penalty is all in an amount to be shown according to proof at trial.

16 **EIGHTH CAUSE OF ACTION**

17 **UNFAIR AND UNLAWFUL COMPETITION**

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

19 *Plaintiff and the Represented Employees against All Defendants*

20 112. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
21 as if fully alleged herein.

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

26 114. Defendants, and each of them, are "persons" as defined under Business &  
27 Professions Code § 17021.

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1           115. As alleged herein, Defendants engaged in conduct that violated California's wage  
2 and hour laws, including failure to pay minimum, regular, and overtime wages, failure to provide  
3 mandated meal periods and rest breaks, failure to reimburse business expenses, and failure to  
4 timely pay wages upon separation of employment, all to decrease their costs and increase profits.

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

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

11           118. Defendants' violations of the California Labor Code and IWC Wage Orders and  
12 its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business  
13 practices because it was done in a systematic manner over a period of time to the detriment of the  
14 Plaintiff and all others similarly-situated.

15           119. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,  
16 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.  
17 Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code  
18 of Civil Procedure § 1021.5.

19           120. A violation of California Business & Professions Code § 17200, *et seq.* may be  
20 predicated on the violation of any state or federal law. All of the acts described herein as  
21 violations of, among other things, the California Labor Code and IWC Wage Orders, are  
22 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,  
23 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business  
24 practices in violation of California Business and Professions Code §§ 17200, *et seq.*

25           121. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,  
26 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a  
27 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of  
28 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,

1 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable  
2 harm unless Defendants, and each of them, are restrained from continuing to engage in said  
3 unfair, unlawful and/or fraudulent business practices.

4 122. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,  
5 and does, seek such relief as may be necessary to disgorge the profits which Defendants have  
6 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the  
7 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the  
8 Represented Employees are not obligated to establish individual knowledge of the unfair  
9 practices of Defendants in order to recover restitution.

10 123. Plaintiff, individually, and on behalf of the Represented Employees, is further  
11 entitled to and do seek a declaration that the above described business practices are unfair,  
12 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from  
13 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in  
14 the future.

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

21 **VI. PAGA CAUSES OF ACTION (Cal. Lab. Code. §§ 2698 – 2699.5)**

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

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

127. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. More than sixty-five (65) days have elapsed since the date Plaintiff provided the written notice of the claims alleged herein without the LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiff has fully satisfied the administrative prerequisites to suit under the PAGA.

## NINTH CAUSE OF ACTION

## PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES

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

*Plaintiff and the Aggrieved Employees against All Defendants*

128. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

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

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

131. As a result of this policy and practice, Defendants failed to pay Plaintiff and the Aggrieved Employees for all hours worked.

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

4           133. Plaintiff is informed and believes and thereon alleges that Defendants  
5 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved  
6 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

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

10                                   **TENTH CAUSE OF ACTION**

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

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

13                                   *Plaintiff and the Aggrieved Employees against All Defendants*

14           135. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
15 as if fully alleged herein.

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

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

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

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1           139.   Additionally, Defendants paid Plaintiff and the Aggrieved Employees on an  
2 hourly basis but also paid additional nondiscretionary compensation (such as bonuses). However,  
3 during workweeks where the Aggrieved Employees worked overtime hours and earned  
4 additional nondiscretionary compensation, Defendants failed to include that compensation in the  
5 calculations for the regular rate of pay – violating the well-established rule that overtime must  
6 always be paid at time and one-half the regular rate of pay.

7           140.   Also, Plaintiff and the Aggrieved Employees would often work at two or more  
8 base rates of pay in the same workweek. Yet, when the Aggrieved Employees worked overtime  
9 and worked at two or more base rates of pay in the same workweek, Defendants illegally paid  
10 overtime at the “rate-in-effect” method rather than using the correct “weighted average” method.  
11 *See* DLSE Manual § 49.2.6.2 (when an employee performs prevailing and non prevailing jobs  
12 during the same workweek, the company is required to pay overtime at the “weighted average”  
13 of the blended rate, averaging the normal base hourly rate and prevailing wage rate).

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

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

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

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

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1 **ELEVENTH CAUSE OF ACTION**

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

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

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 145. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
6 as if fully alleged herein.

7 146. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants  
8 who did not receive proper protections and benefits of the laws governing meal periods.

9 147. Labor Code § 226.7 requires employers, including Defendants, to provide  
10 employees with meal periods as mandated by the Industrial Welfare Commission.

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

18 149. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),  
19 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of  
20 pay for each meal period that is missed.

21 150. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied  
22 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and  
23 practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when  
24 they were: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal  
25 period while under the control of the Company, (3) forced to take a shortened meal period, (4)  
26 forced to take a meal period after the 5th hour of work, and (5) not provided mandated second  
27 meal periods for shifts in excess of 10 hours.

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

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

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

14                           **TWELFTH CAUSE OF ACTION**

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

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

17                           *Plaintiff and the Aggrieved Employees against All Defendants*

18           154. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
19 as if fully alleged herein.

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

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

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

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

4           159. At all relevant times, Defendants also failed to provide Plaintiff and the  
5 Aggrieved Employees with 10 minutes of net rest break time for every 4 hours worked, or major  
6 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks for the  
7 Aggrieved Employees, the Aggrieved Employees were unable to leave the premises for breaks,  
8 and the Aggrieved Employees were often not authorized and/or permitted to take mandated rest  
9 breaks due to being overwhelmed by their hectic workload. Furthermore, on occasions when the  
10 Aggrieved Employees worked longer shifts, Defendants failed to authorize and/or permit  
11 mandated third rest breaks.

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

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

19                           **THIRTEENTH CAUSE OF ACTION**

20                           **FAILURE TO REIMBURSE BUSINESS EXPENSES**

21                           (Labor Code § 2802)

22                           *Plaintiff and the Aggrieved Employees against All Defendants*

23           162. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
24 as if fully alleged herein.

25           163. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants  
26 who did not receive proper protections and benefits of the laws governing reimbursement of  
27 business expenses.

28           ///

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

3           165. At all relevant times herein mentioned, as a condition of employment, Defendants  
4 required Plaintiff and the Aggrieved Employees to incur substantial business-related expenses  
5 and costs without reimbursement. For example, Plaintiff and the Aggrieved Employees were  
6 explicitly required to provide their own expensive tools to carry out their tasks for Defendants,  
7 including cordless power drill, cordless impact gun, additional batteries, and other tools. Yet  
8 Defendants did not reimburse the Aggrieved Employees for such expenses.

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

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

15                                   **FOURTEENTH CAUSE OF ACTION**

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

17                                   (Labor Code § 204)

18                                   *Plaintiff and the Aggrieved Employees against All Defendants*

19           168. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
20 as if fully alleged herein.

21           169. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants  
22 who did not receive proper protections and benefits of the laws regarding the timing of payment  
23 of wages each period.

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

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

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

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

13 **FIFTEENTH CAUSE OF ACTION**

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

15 (Labor Code §§ 201 – 203)

16 *Plaintiff and the Aggrieved Employees against All Defendants*

17 174. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
18 as if fully alleged herein.

19 175. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants  
20 who did not receive proper protections and benefits of the laws governing the timing and  
21 payment of final wages.

22 176. Labor Code § 201 requires that the employer immediately pay any wages, without  
23 abatement or reduction, to any employee who is discharged.

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

27 ///

28 ///

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

179. At all relevant times here, Defendants did not provide Plaintiff and the Aggrieved Employees with all wages due and owing upon separation of employment, including, but not limited to, minimum, regular, and overtime wages, vacation and sick pay at the proper rates, and meal and rest period premiums, within the time specified by Labor Code §§ 201 – 203.

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

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

## **SIXTEENTH CAUSE OF ACTION**

## PAGA ASSESSMENT FOR

### FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226)

*Plaintiff and the Aggrieved Employees against All Defendants*

182. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

183. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing the provision of accurate itemized wage statements.

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

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

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

10 186. Additionally, Defendants' wage statements directly violated Labor Code § 226(a)  
11 each period due to the failure to pay and report premium wages for denied meal periods and rest  
12 breaks under § 226.7.

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

16 **VII. PRAYER FOR RELIEF**

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

- 20 1. As to the Ninth through Sixteenth Causes of Action, the assessment of all  
21 applicable and available remedies under PAGA;
- 22 2. For reasonable attorneys' fees and costs as permitted under PAGA;
- 23 3. That the First through Eighth Causes of Action be certified as a class action;
- 24 4. That Plaintiff be appointed as Class Representative;
- 25 5. That counsel for Plaintiff be appointed Class Counsel;
- 26 6. For all applicable statutory penalties recoverable under the First through Eighth  
27 Causes of Action to the extent permitted by law, including those pursuant to Labor Code and  
28 Orders of the Industrial Welfare Commission;

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

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

5           9.       For a declaratory judgment that Defendants have violated Labor Code §§ 200,  
6 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194,  
7 1197, 1198, 1199, and 2802, among other sections inadvertently omitted;

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

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

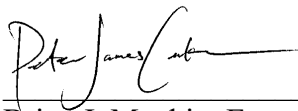
12          12.      For such other relief as the Court deems just and proper.

13                               **DEMAND FOR JURY TRIAL**

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

16  
17 Dated: July 10, 2023

LAUBY, MANKIN & LAUBY LLP

18  
19 BY:   
20 Brian J. Mankin, Esq.  
21 Peter J. Carlson, Esq.  
22 Attorneys for Plaintiff  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**  
**(Pursuant to CCP §§ 1013(a)(1) and 2015.5)**

STATE OF CALIFORNIA     )  
                                          ) ss.  
COUNTY OF RIVERSIDE     )

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 5198 Arlington Avenue, PMB 513, Riverside, CA 92504.

On July 10, 2023, I caused to be served the foregoing document(s) described as follows:

**FIRST AMENDED COMPLAINT**

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

☐ **By Mail** I deposited such envelope in the mail at Riverside, California. The envelope was mailed with postage thereon fully prepaid.

☐ **By Facsimile** I sent this document via fax to all parties as listed on attached service list, on

☐ **By Overnight Service** I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address [tracie@lmlfirm.com](mailto:tracie@lmlfirm.com) to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

☐ **By Certified Mail-Return Receipt Requested** I caused such envelope with postage fully prepaid thereon, to be placed in the United States mail at Riverside, California

☐ **By Personal Service** I caused said document(s) to be personally served by hand on the parties listed on the attached service list.

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 10, 2023, Riverside, California.

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

  
Tracie Chiarito, Declarant

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