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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN JOAQUIN**

13 SOMALIA GOODWIN, JUAN CARLOS
14 QUEVEDO, DUSTIN JOHNSON and
JOHN A. MCGEHEE, as individuals on
15 behalf of themselves and on behalf of all
others similarly situated,

16 Plaintiffs,

17
18 v.

19 SAVE MART SUPERMARKETS, LLC, a
20 California Limited Liability Company; and
DOES 1-100, inclusive,

21 Defendants.
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28

Case No.: STK-CV-UOE-2023-2062

**THIRD AMENDED CLASS ACTION
COMPLAINT FOR:**

1. **Recovery of Unpaid Minimum Wages and Liquidated Damages**
2. **Recovery of Unpaid Overtime Wages**
3. **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
4. **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
5. **Failure to Furnish Accurate Itemized Wage Statements**
6. **Failure to Timely Pay All Wages Due Upon Separation of Employment**
7. **Failure to Pay Reporting Time Pay**
8. **Failure to Reimburse Business Expenses**
9. **Unfair Competition and**
10. **Violation of the Private Attorneys General Act of 2004**

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1 Plaintiffs, SOMALIA GOODWIN (“Plaintiff Goodwin”), JUAN CARLOS QUEVEDO
2 (“Plaintiff Quevedo”), DUSTIN JOHNSON (“Plaintiff Johnson”) and JOHN A. MCGEHEE
3 (“Plaintiff McGehee) (collectively “PLAINTIFFS”), individuals on behalf of PLAINTIFFS and all
4 other similarly situated Class Members (as defined below) and Aggrieved Employees (defined
5 below), hereby files this Third Amended Complaint against Defendants SAVE MART
6 SUPERMARKETS LLC, a California Limited Liability Company; and DOES 1-100, inclusive,
7 (collectively referred to herein as “DEFENDANTS”). PLAINTIFFS are informed and believe and
8 thereon allege as follows:

9 **JURISDICTION AND VENUE**

10 1. This court possesses original subject matter jurisdiction over this matter. Venue is
11 proper in the County of San Joaquin pursuant to California Code of Civil Procedure section 395.5
12 because DEFENDANTS transact business within this judicial district, DEFENDANTS employed
13 Plaintiff Goodwin to work in this judicial district and some of the acts, omissions, and conduct
14 alleged by PLAINTIFFS herein occurred in this this judicial district. *See also Crestwood Behavioral*
15 *Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a PAGA action is proper in
16 any county where the defendants committed Labor Code violations against some of its employees).

17 **THE PARTIES**

18 2. Plaintiff Goodwin is, and at all relevant times, was an individual domiciled in the
19 State of California and a citizen of the State of California. Plaintiff Goodwin was employed by
20 DEFENDANTS in the State of California as a non-exempt employee from in or around end of 2021
21 to approximately April 15, 2022. Plaintiff Goodwin worked for DEFENDANTS as a deli clerk. As
22 a deli clerk, PLAINTIFF was tasked with customer service duties. Plaintiff Goodwin was paid
23 approximately \$15.25 per hour.

24 3. Plaintiff McGehee was, at all times relevant to this action, a resident of California.
25 Plaintiff McGehee was employed by Defendants in approximately July 2021, as a Non-Exempt
26 Employee with the title of Produce Clerk and worked during the liability period for Defendants until
27 Plaintiff’s separation from Defendants’ employ in approximately May 25, 2022. Plaintiff
28 McGehee’s duties included but were not limited to putting produce on the displays.

1 4. Plaintiff Quevedo was employed by Defendants as a non-exempt “Meat Cutter” from
2 approximately March 8, 2021 to approximately June 18, 2023 at Save Mart’s Contra Costa location.
3 Throughout Plaintiff’s employment with Defendants, Plaintiff was paid at a rate of less than 130%
4 the minimum wage.

5 5. Plaintiff Johnson was employed by DEFENDANTS in California from November
6 2020 to February 2023. Plaintiff was at all times classified by DEFENDANTS as a non-exempt
7 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
8 payment of minimum and overtime wages due for all time worked.

9 6. DEFENDANT SAVE MART SUPERMARKETS LLC is a California limited
10 liability company and California corporation and, at all relevant times, were authorized to do
11 business within the State of California and are doing business in the State of California.

12 7. DEFENDANTS own, operate, or otherwise manage grocery stores throughout
13 Northern California.

14 8. The true names and capacities of the DOE Defendants sued herein as DOES 1
15 through 100, inclusive, are currently unknown to PLAINTIFFS, who therefore sue each such
16 Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally
17 responsible for the unlawful acts alleged herein. PLAINTIFFS will seek leave of Court to amend
18 this Complaint to reflect the true names and capacities of the Doe Defendants when such identities
19 become known.

20 9. PLAINTIFFS are further informed and believe that, at all relevant times, each
21 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
22 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
23 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
24 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
25 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
26 complaint. PLAINTIFFS are further informed and believe and thereon allege that each Defendant
27 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
28 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,

1 controlled, aided and abetted the conduct of all other Defendants.

2 **CLASS ALLEGATIONS**

3 10. PLAINTIFFS bring this action on behalf of PLAINTIFFS, and all others similarly
4 situated as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFFS
5 seeks to represent are defined as follows and referred to as the “Class” or “Class Members”:

6 All current and former non-exempt employees that worked either
7 directly or via a staffing agency for DEFENDANTS at any location
8 in California at any time within the four years prior to the filing of the
9 initial Complaint (“Class Period”).

10 a. Numerosity. While the exact number of Class Members is unknown to
11 PLAINTIFFS at this time, the Class is so numerous that the individual joinder
12 of all members is impractical under the circumstances of this case. PLAINTIFFS
13 are informed and believe the Class consists of at least 100 individuals.

14 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
15 because common questions of law and fact predominate over individual issues.
16 Common questions include, but are not limited to, the following: (1) whether
17 DEFENDANTS understated hours worked and failed to pay all amounts due to
18 PLAINTIFFS and the Class Members for wages earned, including minimum
19 and overtime wages, under California law; (2) whether DEFENDANTS
20 provided PLAINTIFFS and the Class Members with all meal periods or
21 premium payments in lieu thereof in compliance with California law; (3)
22 whether DEFENDANTS provided PLAINTIFFS and the Class Members with
23 all rest periods or premium payments in lieu thereof, in compliance with
24 California law; (4) whether DEFENDANTS provided PLAINTIFFS and Class
25 Members with accurate, itemized wage statements in compliance with
26 California law, displaying, including but not limited to, the total hours worked
27 during the pay period; (5) whether DEFENDANTS timely paid PLAINTIFFS
28 and the Class Members all wages due upon separation of employment; (6)

1 whether DEFENDANTS failed to reimburse PLAINTIFFS and the Class
2 Members for all business expenses; (7) whether DEFENDANTS failed to Pay
3 Vested Vacation Pay at Separation; (8) whether DEFENDANTS failed to pay
4 reporting time pay; and (9) whether DEFENDANTS violated California
5 Business and Professions Code sections 17200, *et seq.*

6 c. Ascertainable Class. The proposed Class is ascertainable as members can be
7 identified and located using information in DEFENDANTS' business, payroll
8 and personnel records.

9 d. Typicality. PLAINTIFFS' claims are typical of the claims of the Class
10 Members. PLAINTIFFS suffered a similar injury as members of the Class as a
11 result of DEFENDANTS' common practices regarding, *inter-alia*, failure to
12 calculate and pay all owed minimum and overtime wages, failure to provide
13 proper meal periods and rest periods or premium compensation in lieu thereof,
14 failure to provide accurate wage statements, failure to reimburse business
15 expenses, and failure to timely pay all wages due upon separation of
16 employment.

17 e. Adequacy. PLAINTIFFS will fairly and adequately protect the interests of the
18 Class Members. PLAINTIFFS have no interests adverse to the interests of the
19 other Class Members. Counsel who represent PLAINTIFFS are competent and
20 experienced in litigating similar class action cases and are California lawyers in
21 good standing. Counsel for PLAINTIFFS have the experience and resources to
22 vigorously prosecute this case.

23 f. Superiority. A class action is superior to other available means for the fair and
24 efficient adjudication of this controversy since individual joinder of all members
25 of the class is impractical. Class action treatment will permit a large number of
26 similarly situated persons to prosecute their common claims in a single forum
27 simultaneously, efficiently, and without the unnecessary duplication of effort
28 and expense that numerous individual actions would engender. Furthermore, as

1 the damages suffered by each individual member of the Class may be relatively
2 small, the expenses and burden of individual litigation would make it difficult
3 or impossible for individual members of the Class to redress the wrongs done to
4 them, while an important public interest will be served by addressing the matter
5 as a class action. The cost to the court system of adjudication of such
6 individualized litigation would be substantial. Individualized litigation would
7 also present the potential for inconsistent or contradictory judgments. Finally,
8 the alternative of filing a claim with the California Labor Commissioner is not
9 superior, given the lack of discovery in such proceedings, the fact that there are
10 fewer available remedies, and the losing party has the right to a trial de novo in
11 the Superior Court.

12 **FACTUAL AND LEGAL ALLEGATIONS**

13 11. During the relevant period, PLAINTIFFS, and each of the Class Members and
14 Aggrieved Employees worked for DEFENDANTS in the State of California. At all times referenced
15 herein, DEFENDANTS exercised control over PLAINTIFFS and Class Members and Aggrieved
16 Employees and suffered and/or permitted them to work.

17 12. Plaintiff Goodwin was employed by DEFENDANTS as a non-exempt employee.
18 Plaintiff Goodwin worked for DEFENDANTS as a deli clerk at, including but not limited to,
19 DEFENDANTS' Stockton, California location from around 2021 through April 15, 2022. Plaintiff
20 Goodwin regularly worked at least nine (9) hours per day, at least five (5) days per week.

21 13. Plaintiff McGehee was employed by DEFENDANTS as a non-exempt employee.
22 Plaintiff McGehee worked for DEFENDANTS as a Produce Clerk at, including but not limited to,
23 DEFENDANTS' Santa Rosa, California location from around July 2021 through May of 2022.
24 Plaintiff McGehee regularly worked well over eight (8) hours in a day and forty (40) hours in a work
25 week.

26 14. Plaintiff Quevedo was employed by Defendants as a non-exempt "Meat Cutter" from
27 approximately March 8, 2021 to approximately June 18, 2023 at Save Mart's Contra Costa location.
28 Throughout Plaintiff's employment with Defendants, Plaintiff was paid at a rate of less than 130%

1 the minimum wage.

2 15. Plaintiff Johnson was employed by DEFENDANTS in California from November
3 2020 to February 2023. Plaintiff was at all times classified by DEFENDANTS as a non-exempt
4 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
5 payment of minimum and overtime wages due for all time worked.

6 16. At all relevant times, PLAINTIFFS were non-exempt employees that were paid on
7 an hourly basis for time counted by DEFENDANTS as hours worked.

8 17. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
9 PLAINTIFFS and Class Members and Aggrieved Employees for all hours worked, resulting in the
10 underpayment of minimum and overtime wages. DEFENDANTS failed to compensate
11 PLAINTIFFS and Class Members and Aggrieved Employees for all hours worked by virtue of,
12 DEFENDANTS' and failure to relieve employees of all duties/employer control during unpaid meal
13 periods or otherwise unlawful practices for missed or improper meal periods, as explained below.

14 18. Based on information and belief, Class Members and Aggrieved Employees were
15 not paid for all hours worked due to DEFENDANTS' policy and/or practice of mandated off-the
16 clock work policies and/or practices. For example, at times, DEFENDANTS required PLAINTIFFS
17 to clock out for the end of her shift but to continue completing work duties she had not completed
18 within the course of her scheduled shift, such as, but not limited to, stocking items and/or completing
19 other work tasks, resulting in the underpayment of wages owed to PLAINTIFFS. Based on
20 information and belief, DEFENDANTS required other Class Members and Aggrieved Employees
21 to assist customers and/or complete other work tasks after clocking out for a shift. This work time
22 was completed off-the-clock/outside of the scheduled shift and was uncompensated resulting in
23 unpaid minimum and overtime wages owed to Class Members and Aggrieved Employees.

24 19. Based on information and belief, DEFENDANTS did not compensate Class
25 Members and Aggrieved Employees for time spent donning and doffing personal protective
26 equipment and/or uniforms/work clothing (e.g., rubber gloves, hairnets, aprons, hats, and/or face
27 masks) during meal periods, rest periods, before the start of a scheduled shift, and after completing
28 a scheduled shift.

1 20. Based on information and belief, at times, DEFENDANTS' electronic time-keeping
2 system / computer terminal malfunctioned such that Class Members and Aggrieved Employees were
3 required to either reinitiate and/or otherwise troubleshoot the system and/or wait for the system to
4 boot prior to being able to clock in and/or were unable to clock in at all for the start of their shifts
5 and/or clock back in from meal periods, resulting in off-the-clock work and the underpayment of
6 wages owed to Class Members and Aggrieved Employees. Based on information and belief, Class
7 Members and Aggrieved Employees experienced the same issues when clocking out for shifts and/or
8 back in for meal periods. This time spent under DEFENDANTS' control was not recorded and not
9 compensated and resulted in unpaid minimum wages owed to Class Members and Aggrieved
10 Employees.

11 21. Based on information and belief, DEFENDANTS required Class Members and
12 Aggrieved Employees to undergo security checks prior to clocking in for the start of their shifts,
13 before clocking back in from meal periods and/or after clocking out for their shifts, resulting in
14 uncompensated work time, and the underpayment of minimum and overtime wages owed to Class
15 Members and Aggrieved Employees.

16 22. Based on information and belief, PLAINTIFFS and other Class Members and
17 Aggrieved Employees were required to complete other off-the-clock work tasks before clocking in
18 for the start of their shifts, after clocking out for the end of their shifts and/or during uncompensated
19 meal periods, resulting in significant off-the-clock work and the underpayment of minimum and
20 overtime wages owed to PLAINTIFFS and other Class Members and Aggrieved Employees.

21 23. Based on information and belief, DEFENDANTS failed to pay Class Members and
22 Aggrieved Employees for time they were required to spend completing orientation, policy
23 questionnaires, and/or time spent completing the onboarding process including but not limited to
24 reviewing various documents and policies provided by DEFENDANTS, as well as pre- and post-
25 shift duties that DEFENDANTS required PLAINTIFFS and Class Members and Aggrieved
26 Employees to conduct while off-the-clock. Based on information and belief, this work time was
27 completed off-the-clock and was not compensated.

28 24. DEFENDANTS' failure to pay for all time worked by virtue of its failure to provide

1 lawful meal periods, and/or other off-the-clock work practices and policies, resulted in the
2 underpayment of minimum wages owed to PLAINTIFFS and Class Members and Aggrieved
3 Employees as well as unpaid overtime wages for those Class Members and Aggrieved Employees
4 who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

5 25. Based on information and belief, DEFENDANTS had actual and/or constructive
6 knowledge that its failure to provide lawful meal periods (as described below) and/or other off-the-
7 clock work resulted in the underpayment of minimum wages owed to PLAINTIFFS and other Class
8 Members and Aggrieved Employees, in violation of California's minimum and overtime wage laws.

9 26. Based on information and belief, DEFENDANTS failed and continue to fail to pay
10 Class Members and Aggrieved Employees two times their regular rate of pay for time worked
11 beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh
12 consecutive day of work in a work week, in violation of California's overtime laws.

13
14 27. **Meal Period Violations.** PLAINTIFFS and other Class Members and Aggrieved
15 Employees consistently worked shifts of at least five and one-half hours or more, entitling them to
16 at least one meal period. However, PLAINTIFFS and other Class Members and Aggrieved
17 Employees would not receive legally compliant thirty (30) minute first and second meal periods.
18 Based on information and belief, Class Members and Aggrieved Employees were consistently
19 unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take
20 late meal periods, interrupted meal periods, and/or work through part or all their meal periods due
21 to understaffing, the nature and constraints of their job duties and/or commentary from supervisors
22 pressuring them to take non-compliant meal periods or skip meal periods completely.

23 28. Based on information and belief, other Class Members and Aggrieved Employees
24 were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had
25 their meal periods interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise
26 on duty due to commentary from supervisors, understaffing, the nature and constraints of their job
27 duties, and/or the need to meet DEFENDANTS' goals and expectations. For example, at times,
28 PLAINTIFFS' meal periods were interrupted and/or late at least once per week due to the need to

1 assist customers, prepare food and/or complete other work tasks. Notably, wage statements issued
2 by DEFENDANTS to PLAINTIFFS do not reflect the payment of a single meal period premium to
3 PLAINTIFFS during their employment. Based on information and belief, other Class Members and
4 Aggrieved Employees were from time to time required to clock out but to continue working during
5 unpaid meal periods and/or were required to take their meal periods late (i.e. after working more
6 than five (5) hours) due to the need to assist customers and/or complete other work tasks but were
7 not paid any and/or all owed meal period premiums at the proper rates.

8 29. Based on information and belief, DEFENDANTS implemented policies and/or
9 practices that failed to relieve Class Members and Aggrieved Employees of all duties and
10 DEFENDANTS' control during unpaid meal periods.

11 30. Based on information and belief, DEFENDANTS required Class Members and
12 Aggrieved Employees to complete off-the-clock work prior to their scheduled shift time which
13 DEFENDANTS failed to take into account when scheduling meal periods for Class Members and
14 Aggrieved Employees. Based on information and belief, meal periods were late, in part due to
15 unaccounted pre-shift off-the-clock work.

16 31. Moreover, per DEFENDANTS' uniform policy and practice, Class Members and
17 Aggrieved Employees who worked shifts of more than ten hours did not receive a second legally
18 compliant thirty (30) minute second meal period.

19 32. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFFS
20 and other Class Members and Aggrieved Employees as to the timing and duty-free nature of meal
21 periods. Based on further information and belief, DEFENDANTS did not have a compliant written
22 meal period policy, nor did DEFENDANTS have any sort of compliant policy in practice.

23 33. Based on information and belief, DEFENDANTS had actual and/or constructive
24 knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which
25 were free of DEFENDANTS' control owed to PLAINTIFFS and other Class Members and
26 Aggrieved Employees, in violation of California's meal period laws.

27 34. DEFENDANTS failed to pay PLAINTIFFS and other Class Members and Aggrieved
28 Employees, an additional hour of wages at their respective regular rates of compensation for each

1 workday a lawful meal period was not provided. DEFENDANTS either failed to pay a meal period
2 premium at all for each workday a lawful meal period was not provided and/or failed to pay the
3 proper meal period premium for failure to incorporate all non-discretionary remuneration, including
4 but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into
5 the regular rate or compensation for purposes of calculating the owed meal period premium.

6 35. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide
7 PLAINTIFFS and other Class Members and Aggrieved Employees with legally compliant rest
8 periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable,
9 are provided in the middle of the work period, as required by law.

10 36. PLAINTIFFS and other Class Members and Aggrieved Employees were not
11 adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest
12 periods per California law. Based on information and belief, DEFENDANTS had no policy in place
13 nor instruction as to the taking of duty-free rest periods.

14 37. Based on information and belief, DEFENDANTS did not have a have a compliant
15 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
16 practice. For example, PLAINTIFFS often had to work through their rest periods due to lack of
17 coverage, the need to assist customers and/or complete other work tasks. During many shifts, the
18 store was simply too busy for PLAINTIFFS to be able to take a full ten-minute rest period.

19 38. Moreover, on information and belief, DEFENDANTS failed to authorize and permit
20 rest periods that were a “net” ten minutes in a suitable rest area and instead, to the extent rest periods
21 were provided at all, limited Class Members and Aggrieved Employees to only ten-minute rest
22 periods, requiring them to be back at their workstations within ten minutes of leaving, in violation
23 of California rest period law. DEFENDANTS’ failure to communicate that the rest period is a net
24 ten minutes deprived Class Members and Aggrieved Employees of their rights to a full rest period,
25 as such as policy only relieves Class Members and Aggrieved Employees from their workstation
26 for ten minutes to travel to and from a rest area and be back at the workstation by the end of that ten
27 minutes.

28 39. Based on information and belief, Class Members and Aggrieved Employees’ rest

1 periods were interrupted, cut short, on duty, restricted to work premises and/or late due to
2 understaffing, the nature and constraints of their job duties, and/or due to commentary from
3 supervisors/managers pressuring them to skip rest periods completely or otherwise take non-
4 compliant rest periods.

5 40. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
6 lasting longer than ten hours.

7 41. Based on information and belief, DEFENDANTS implemented policies and/or
8 practices that failed to relieve PLAINTIFFS and other Class Members and Aggrieved Employees
9 of all duties and DEFENDANTS' control during rest periods.

10 42. Based on information and belief, Class Members and Aggrieved Employees were
11 pressured to complete their work duties according to a designated schedule such that rest periods
12 were only taken once tasks were completed, and/or as time permitted.

13 43. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
14 which PLAINTIFFS and Class Members and Aggrieved Employees experienced a missed/unlawful
15 rest period in violation of California law. DEFENDANTS either failed to pay a rest period premium
16 at all for each workday a proper rest period was not provided and/or failed to pay the proper rest
17 period premium for failure to incorporate all non-discretionary remuneration, including but not
18 limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
19 regular rate of compensation for purposes of calculating the owed rest period premium.

20 44. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
21 provide PLAINTIFFS and other Class Members and Aggrieved Employees with accurate wage
22 statements that complied with Labor Code section 226. As DEFENDANTS failed to provide
23 PLAINTIFFS and Class Members and Aggrieved Employees with meal and rest periods that
24 complied with Labor section 226.7, the wage statements DEFENDANTS issued to PLAINTIFFS
25 and Class Members and Aggrieved Employees failed and continue to fail to correctly set forth the
26 gross wages earned, the total hours worked, the net wages earned, and all applicable hourly rates in
27 effect during the pay period and the corresponding number of hours worked at each hourly rate by
28 the employee.

1 45. DEFENDANTS issued wage statements to PLAINTIFFS and Class Members and
2 Aggrieved Employees that also failed to indicate the earned gross and net wages earned during the
3 pay period, correct applicable rates of pay for all hours worked, and accurate total hours worked by
4 PLAINTIFFS and Class Members and Aggrieved Employees (by virtue of an inaccurate accounting
5 of overtime hours worked, failure to relieve Class Members and Aggrieved Employees of all duties
6 and employer control during unpaid meal periods, and/or other off-the-clock work policies and
7 practices) which results in a violation of Labor Code section 226(a).

8 46. Based on information and belief, wage statements issued by DEFENDANTS failed
9 to list the inclusive dates of the pay period for which the Class Members and Aggrieved Employees
10 is being paid. For example, DEFENDANTS' wage statements provided to PLAINTIFFS list a
11 category for "Retro Pay" and/or "Retro-Regular" and/or "Retro-Overtime" without including the
12 inclusive dates of the accurate pay period for that "Retro Pay" and/or "Retro-Regular" and/or "Retro-
13 Overtime" further failing to list the total hours worked for the pay period, including but not limited
14 to, the total hours worked for the pay period the retroactive pay corresponds with. As a result,
15 DEFENDANTS' wage statements provided to Class Members and Aggrieved Employees were not
16 accurate and do not include all of the statutorily required information, such as, but not limited to,
17 the inclusive dates of the period for which the employee is paid.

18 47. As a result, DEFENDANTS issued wage statements to PLAINTIFFS and Class
19 Members and Aggrieved Employees that were not accurate and did not include all of the statutorily
20 required information. As such, DEFENDANTS violated Labor Code section 226.

21 48. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
22 information and belief, DEFENDANTS failed to timely pay Class Members and Aggrieved
23 Employees all wages that were due and owing upon termination or resignation. Based on
24 information and belief, DEFENDANTS untimely provide final wages to Class Members and
25 Aggrieved Employees without regard to the timing requirements of Labor Code sections 201-202.
26 Specifically, Plaintiff Goodwin was terminated on April 15, 2022, but did not receive her final check
27 until April 20, 2022 and was required to make a 50-mile round trip drive to a FedEx facility to pick
28 up the check.

1 49. Upon separation of employment, Class Members and Aggrieved Employees' final
2 paychecks were not timely provided and/or were not timely provided with all owed vacation pay
3 and/or paid time off. Moreover, PLAINTIFFS' and Class Members and Aggrieved Employees' final
4 paychecks, once provided, did not include all wages owed as they were devoid of, including but not
5 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed
6 sick leave and/or paid time off wages at the properly accrued rates.

7 50. Moreover, DEFENDANTS failed to timely provide all owed wages immediately
8 upon discharge of employment. For example, based on information and belief, at times, PLAINTIFF
9 and other Class Members and Aggrieved Employees experienced breaks in their employment caused
10 by DEFENDANTS whereby PLAINTIFFS and other Class Members and Aggrieved Employees
11 would not be called in for work for longer than a single pay period due to including but not limited
12 to DEFENDANTS' lack of work or lack of assignments. Such instances qualify as a discharge of
13 employment. Yet, DEFENDANTS failed to timely pay all owed wages at the end of such periods
14 of employment, in violation of including but not limited to Labor Code section 201-202.

15 51. These violations subject DEFENDANTS to civil penalties under Labor Code section
16 203, 210, and/or 256.

17 52. **Unreimbursed Business Expenses.** Based on information and belief,
18 DEFENDANTS required PLAINTIFFS and Class Members and Aggrieved Employees to incur
19 business expenses as a direct consequence of the performance of their job duties without providing
20 reimbursement, in violation of Labor Code section 2802. Based on information and belief,
21 PLAINTIFFS and Class Members and Aggrieved Employees were improperly required to provide
22 and maintain work tools that are supposed to be the responsibility of the employer.

23 53. DEFENDANTS failed to pay Reporting Time Pay as required by law. For instance,
24 Plaintiff McGehee and Class Members would be sent home early within the first 2
25 hours into their regularly scheduled shifts. DEFENDANTS failed to pay Plaintiff
26 McGehee and Class Members for half of their scheduled shifts as required by law.
27 Plaintiff McGehee was especially sent home early when he was put on light duty
28 by his physician. Instead of accommodating Plaintiff McGehee and providing him
light duty work, he was sent home within the first 2 hours into his regularly
scheduled shift.

54.

55. Based on information and belief, DEFENDANTS shifted the costs of doing business onto Class Members and Aggrieved Employees by requiring them to pay for business expenses, including but not limited to, the cost of purchasing and maintaining uniforms. Based on information and belief, Class Members and Aggrieved Employees were not reimbursed for the cost of using their personal phone for work related purposes and/or the cost of purchasing and/or maintaining work uniforms.

56. Based on information and belief, Class Members and Aggrieved Employees were/are at times required to use their personal vehicles for work purposes without receiving any reimbursement from DEFENDANTS and/or full reimbursement from DEFENDANTS, including but not limited to, reimbursement at the applicable legally mandated Internal Revenue Service (IRS) per mile compensation rate. For example, based on information and belief, at times Class Members and Aggrieved Employees were required to drive between DEFENDANTS' various stores, facilities and/or offices and/or use their personal vehicles for other work purposes without receiving any and/or full reimbursement from DEFENDANTS for the vehicle-related expenses incurred in connection therewith.

57. Based on information and belief, DEFENDANTS regularly failed to reimburse and indemnify Class Members and Aggrieved Employees for business expenses. Pursuant to California Labor Code section 2802, PLAINTIFFS and Class Members and Aggrieved Employees were entitled to be reimbursed for all reasonable expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties assigned by DEFENDANTS.

58. DEFENDANTS' failure to provide Class Members and Aggrieved Employees with full reimbursement for all reasonable expenses associated with carrying out their duties required that Class Members and Aggrieved Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

59. PLAINTIFFS are informed and believe and allege thereon that DEFENDANTS engaged in these same herein described unlawful practices and that DEFENDANTS applied these same herein described unlawful practices to all of its employees that it applied to PLAINTIFFS.

FIRST CAUSE OF ACTION

Recovery of Unpaid Minimum Wages and Liquidated Damages
(By PLAINTIFFS and the Class Members Against all DEFENDANTS)

60. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

61. It is fundamental that an employer must pay its employees for all time worked. California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages. Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not have the effect of reducing the agreed upon wage. Labor Code section 223 prohibits the pay of less than a statutory or contractual wage scale.

62. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage Commission (“IWC”) Wage Orders, an employer must pay its employees for all hours worked, up to 40 hours per week or 8 hours per day, at a regular rate no less than the mandated minimum wage. Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

63. DEFENDANTS violated California’s minimum wage laws by failing to compensate PLAINTIFF and the Class Members for all hours worked by virtue of, among other things, DEFENDANTS’ off-the-clock/unpaid work completed during meal periods, other pre-shift, post-shift and/or otherwise off-the-clock work, which resulted in the failure to account for all hours worked and thus the denial of minimum wages.

64. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFFS and Class Members for all hours worked.

65. Based on information and belief, DEFENDANTS had actual or constructive knowledge that its policies and practices for meal periods, failure to relieve employees of all duties and employer control during unpaid meal periods, and/or other mandated off-the-clock work resulted in the underpayment of minimum wages owed to PLAINTIFFS and other Class Members.

66. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFFS and the Class Members are entitled to recover all unpaid minimum wages and liquidated damages thereon, plus

1 attorney's fees and costs, in an amount to be proved at trial.

2 **SECOND CAUSE OF ACTION**

3 **Recovery of Unpaid Overtime Wages**

4 **(By PLAINTIFFS and the Class Members Against all DEFENDANTS)**

5 67. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

6 68. Employees in California must be paid overtime, equal to one and one-half times the
7 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
8 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
9 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
10 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
11 consecutive day of work in a workweek, unless they are exempt.

12 69. PLAINTIFFS and the Class Members worked overtime hours for which they were
13 not compensated by DEFENDANTS by virtue of, among other things, off-the-clock/unpaid work
14 completed during meal periods, other pre-shift, post-shift and/or otherwise off-the-clock work
15 (described above), which resulted in the failure to account for all hours worked and thus the denial
16 of all owed overtime wages.

17 70. Based on information and belief, DEFENDANTS failed to pay twice Class
18 Members' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for
19 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in
20 violation of California's overtime laws.

21 71. DEFENDANTS' conduct described above is in violation of California Labor Code
22 sections 510 and 1194 and all applicable Wage Orders.

23 72. PLAINTIFFS and the Class Members are entitled to recover all unpaid overtime
24 wages, plus attorney's fees and costs, in an amount to be proved.

25 **THIRD CAUSE OF ACTION**

26 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**

27 **(By PLAINTIFFS and the Class Members Against all DEFENDANTS)**

28 73. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

1 74. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
2 DEFENDANTS were required to provide PLAINTIFFS and the Class Members with one 30-minute
3 meal break free from all duties and employer control for all shifts longer than 5 hours, and a second
4 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be
5 waived, but only under the following circumstances: (1) if an employee's total work period in a day
6 is over five (5) hours but no more than six (6) hours, the required meal period may be waived by
7 mutual consent of the employer and employee, and (2) if an employee's total work period in a day
8 is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be
9 waived by mutual consent of the employer and employee, but only if the first meal period was not
10 waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their
11 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
12 done so.

13 75. Employers must pay employees an additional hour of wages at the employees'
14 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
15 meal period, first meal period provided after five (5) hours, second meal period provided after 10
16 hours). Lab. Code § 226.7.

17 76. As explained above, PLAINTIFFS and other Class Members were consistently
18 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
19 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of
20 their meal periods due to understaffing, the nature and constraints of their job duties, and/or
21 commentary from supervisors pressuring them to take non-compliant meal periods or skip meal
22 periods completely.

23 77. Moreover, based on information and belief, Class Members did not receive a timely,
24 uninterrupted second meal period when working shifts over ten (10) hours in a workday.

25 78. PLAINTIFFS are informed and believe and thereon allege that DEFENDANTS had
26 actual and/or constructive knowledge that its unlawful policies and practices resulted in the denial
27 of compliant meal periods in violation of California's meal period laws.

28 79. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal

1 periods in violation of California law and/or failed to pay the proper meal period premium for failure
2 to incorporate all non-discretionary remuneration including but not limited to, bonuses, shift
3 differential pay and/or other non-discretionary compensation into the regular rate or compensation
4 for purposes of calculating the owed meal period premium.

5 80. As a result, under Labor Code section 226.7, PLAINTIFFS and the Class Members
6 are entitled to one additional hour's pay at the employee's regular rate of compensation for each day
7 a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and costs,
8 all in an amount to be proved at trial.

9
10 **FOURTH CAUSE OF ACTION**

11 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**

12 **(By PLAINTIFFS and the Class Members Against all DEFENDANTS)**

13 81. PLAINTIFFS incorporates all preceding paragraphs as if fully alleged herein.

14 82. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
15 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
16 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
17 "insofar as practicable." In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the
18 California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts
19 from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10
20 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029).
21 The rest period requirement obligates employers to permit and authorize employees to take off-duty
22 rest periods, meaning employers must relieve employees of all duties and relinquish control over
23 how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257.

24 83. If the employer fails to provide any required rest period, the employer must pay the
25 employee one hour of pay at the employee's regular rate of compensation for each workday the
26 employer did not provide at least one legally required rest period, pursuant to Labor Code section
27 226.7.

28 84. PLAINTIFFS and the Class Members did not receive legally compliant, timely 10-

1 minute rest periods for every four (4) hours worked or major fraction thereof. As explained above,
2 any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject to
3 DEFENDANTS' control due to the nature and constraints of Class Members' job duties,
4 understaffing, and/or commentary from supervisors pressuring PLAINTIFFS and Class Members
5 to skip rest periods completely or otherwise take non-compliant rest periods.

6 85. Based on information and belief, DEFENDANTS implemented policies and/or
7 practices that failed to relieve PLAINTIFFS and other Class Members of all duties and employer
8 control during rest periods. Based on further information and belief, Class Members were pressured
9 to complete their work duties according to a designated schedule such that rest periods were only
10 taken once tasks were completed, and/or as time permitted.

11 86. As a result, PLAINTIFFS and Class Members did not receive legally compliant first,
12 second, or third rest periods as required by California law.

13 87. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
14 period premium to PLAINTIFFS and other Class Members for each workday in which there was a
15 missed or otherwise unlawful rest period. Based on further information and belief, when a rest
16 premium was paid, DEFENDANTS failed to include non-discretionary compensation including but
17 not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
18 regular rate of compensation for purposes of determining the owed rest period premium.

19 88. DEFENDANTS are therefore liable to PLAINTIFFS and the Class Members for one
20 hour of additional pay at the regular rate of compensation for each workday that a required rest
21 period was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage
22 Order, plus pre-judgment interest, plus attorneys' fees and costs, all in an amount to be proved at
23 trial.

24 **FIFTH CAUSE OF ACTION**

25 **Failure to Furnish Accurate Itemized Wage Statements**

26 **(By PLAINTIFFS and the Class Members Against all DEFENDANTS)**

27 89. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

28 90. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFFS and the

1 Class

2 Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized
3 wage statement accurately stating the following:

4 (1) gross wages earned, (2) total hours worked by the employee,
5 except for any employee whose compensation is solely based on a
6 salary and who is exempt from payment of overtime under
7 subdivision (a) of Section 515 or any applicable order of the Industrial
8 Welfare Commission, (3) the number of piece-rate units earned and
9 any applicable piece rate if the employee is paid on a piece-rate basis,
10 (4) all deductions, provided that all deductions made on written orders
11 of the employee may be aggregated and shown as one item, (5) net
12 wages earned, (6) the inclusive dates of the period for which the
employee is paid, (7) the name of the employee and his or her social
security number, except that by January 1, 2008, only the last four
digits of his or her social security number or an employee
identification number other than a social security number may be
shown on the itemized statement, (8) the name and address of the
legal entity that is the employer, and (9) all applicable hourly rates in
effect during the pay period and the corresponding number of hours
worked at each hourly rate by the employee.

13 91. As DEFENDANTS failed to provide PLAINTIFFS and other Class Members with
14 meal and rest periods that complied with Labor Code section 226.7, the wage statements
15 DEFENDANTS issued to PLAINTIFFS and other Class Members failed and continue to fail to
16 correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the
17 total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages
18 earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect
19 during the pay period and the corresponding number of hours worked at each hourly rate by the
20 employee, in violation of Labor Code section 226(a)(9).

21 92. Moreover, due to violations detailed above, including but not limited to,
22 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide
23 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
24 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
25 PLAINTIFF and other Class Members with accurate, itemized wage statements that listed the gross
26 and net wages earned and the correct applicable rates of pay for all hours worked. Based on
27 information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
28 compensation earned during the pay period into the regular rate of pay for purposes of calculating

1 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
2 overtime worked by PLAINTIFFS and other Class Members.

3 93. As explained above, wage statements issued by DEFENDANTS failed to list the
4 “total hours worked” by PLAINTIFFS and Class Members (by virtue of an inaccurate accounting
5 of overtime hours worked and failure to relieve Class Members of all duties and employer control
6 during unpaid meal periods, and/or other off-the-clock work policies and practices all described in
7 greater detail *supra*), which results in a violation of Labor Code section 226(a). Failure to list all
8 hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section
9 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

10 94.

11 95. Based on information and belief, wage statements issued by DEFENDANTS failed
12 to list the inclusive dates of the pay period for which the Class Member is being paid.

13 96. DEFENDANTS’ failure to accurately list all hours worked on all wage statements
14 caused confusion to PLAINTIFFS and caused and continues to cause confusion to other Class
15 Members over whether they received all wages owed to them.

16 97. As a result, PLAINTIFFS and other Class Members have suffered injury as they
17 could not easily determine whether they received all wages owed to them and whether they were
18 paid for all hours worked.

19 98. DEFENDANTS’ knowingly and intentionally failed to provide PLAINTIFFS and
20 Class Members with accurate, itemized wage statements.

21 99. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFFS and Class Members
22 have suffered injury. The absence of accurate information on their wage statements has prevented
23 earlier challenges to DEFENDANTS’ unlawful pay practices, will require discovery and
24 mathematical computations to determine the amount of wages owed, and will cause difficulty and
25 expense in attempting to reconstruct time and pay records. DEFENDANTS’ conduct led to the
26 submission of inaccurate information about wages and amounts deducted from wages to state and
27 federal government agencies. As a result, PLAINTIFFS and Class Members are required to
28 participate in this lawsuit and create more difficulty and expense from having to reconstruct time

1 and pay records than if DEFENDANT had complied with its legal obligations.

2 100. Pursuant to California Labor Code section 226(e), PLAINTIFFS and Class Members
3 are entitled to recover fifty dollars per employee for the initial pay period in which a Section 226
4 violation occurred and one hundred dollars per employee per violation for each subsequent pay
5 period, not to exceed an aggregate penalty of four thousand dollars per employee.

6 101. Pursuant to California Labor Code § 226(h), PLAINTIFFS and Class Members are
7 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
8 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
9 provide currently employed Class Members with inaccurate wage statements in violation of
10 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
11 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
12 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
13 with California Labor Code § 226(a).

14 102. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFFS and Class
15 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable
16 attorneys' fees, and costs of suit.

17 **SIXTH CAUSE OF ACTION**

18 **Failure to Timely Pay All Wages Due Upon Separation of Employment**

19 **(By PLAINTIFFS and the Class Members Against all DEFENDANTS)**

20 103. PLAINTIFFS incorporate all preceding paragraphs as if fully set forth herein.

21 104. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
22 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
23 payable immediately."

24 105. California Labor Code section 202(a) provides, in relevant part, that "[i]f an
25 employee not having a written contract for a definite period quits his or her employment, his or her
26 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
27 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
28 to his or her wages at the time of quitting."

106. Based on information and belief, DEFENDANTS failed and continue to fail to timely pay final wages to PLAINTIFFS and Class Members upon separation of employment in violation of Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF and Class Members do not include all wages owed as they are devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly accrued rates.

107. Under Labor Code section 203, PLAINTIFFS and the Class Members who are no longer employed by DEFENDANTS are entitled to recover waiting time penalties of up to 30 days' pay, plus attorney's fees and costs, in an amount to be proved at trial.

SEVENTH CAUSE OF ACTION
FAILURE TO PAY REPORTING TIME WAGES
(Against All Defendants)

1. PLAINTIFFS incorporate by reference and re-alleges each and every allegation contained above, as though fully set forth herein.

2. Labor Code section 1197 makes it unlawful to pay an employee less than the minimum wage as established by the Industrial Welfare Commission.

3. Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

4. The applicable reporting time wages are fixed by the IWC in Wage Order 5-2001.

5. In relevant part, Section 5 of the applicable wage order provides:

(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

6. DEFENDANTS failed to pay reporting time wages. In particular, PLAINTIFFS and the Class Members were forced to report to work and were furnished with less than half the employee's usual or scheduled day's work.

7. In fact, on numerous occasions, PLAINTIFFS and Class Members reported to work at DEFENDANTS' direction, and then were sent home – without the legal compensation. By failure to pay hourly wages for reporting time, DEFENDANTS willfully violated Labor Code sections 1194, 1197, 1198, and IWC Wage Orders 5-2001.

EIGHTH CAUSE OF ACTION

Failure to Reimburse Business Expenses

(By PLAINTIFFS and the Class Members Against all DEFENDANTS)

108. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

109. California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable Wage Orders section 9(b). Furthermore, “for purposes of [section 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

110. Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. See *Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. See *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

111. As described above, PLAINTIFFS and the Class Members were improperly required to pay for business expenses that are legally the responsibility of the employer.

112. DEFENDANTS' failure to provide PLAINTIFFS and the Class Members with full

1 reimbursement for all reasonable expenses associated with carrying out their duties required that
2 PLAINTIFFS and the Class Members subsidize and/or carry the burden of business expenses in
3 violation of Labor Code section 2802.

4 113. As a result of DEFENDANTS' unlawful conduct, PLAINTIFFS and the Class
5 Members have suffered injury in that they were not completely reimbursed as mandated by
6 California law.

7 114. Pursuant to California Labor Code section 2802, PLAINTIFFS and the Class
8 Members are entitled to recover the full amount of reimbursable expenses due, in addition to
9 reasonable attorneys' fees, and costs of suit.

10 **NINTH CAUSE OF ACTION**

11 **Unfair Competition**

12 **(By PLAINTIFFS and the Class Members Against all DEFENDANTS)**

13 115. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

14 116. DEFENDANTS' unlawful conduct alleged herein constitutes unfair competition
15 within the meaning of California Business and Professions Code section 17200 *et seq.* This unfair
16 conduct includes all unlawful conduct alleged herein, including but not limited to: DEFENDANTS'
17 failure to pay minimum and overtime wages by virtue of its illegal policies and practices;
18 DEFENDANTS' failure to authorize or permit, or provide, all required meal and rest periods or pay
19 proper premiums in lieu thereof; DEFENDANTS' failure to furnish complete and accurate itemized
20 wage statements; DEFENDANTS' failure to reimburse business expenses; DEFENDANTS' failure
21 to timely pay all wages owed upon separation of employment; and DEFENDANTS' failure to
22 provide paid sick leave (or paid time off in lieu thereof) at the properly accrued rates (due to,
23 including but not limited to, DEFENDANTS' failure to incorporate all non-discretionary
24 compensation into the sick pay calculation and failure to base the accrued sick leave on the correct
25 number of hours worked as a result of DEFENDANTS' off-the-clock work policies and practices).

26 117. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
27 California Labor Code, DEFENDANTS have gained a competitive advantage over other
28 comparable companies doing business in the State of California that comply with their obligations

1 to authorize or permit rest periods and meal periods or pay proper meal and rest period premiums
2 in lieu thereof, to properly accrue and pay sick time benefits, to provide complete and accurate
3 itemized wage statements, to reimburse employees for all business expenses, to pay all owed
4 minimum and overtime wages and to pay all wages due upon separation of employment of their
5 employees.

6 118. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFFS
7 and Class Members have suffered injury in fact and lost money or property, as described in more
8 detail above. Pursuant to California Business and Professions Code section 17200, *et seq.*,
9 PLAINTIFFS and Class Members are entitled to restitution of all wages and other monies rightfully
10 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of their
11 unlawful and unfair business practices.

12 119. PLAINTIFFS also seek an injunction against DEFENDANTS on behalf of the Class
13 Members, enjoining DEFENDANTS and any and all persons acting in concert with them from
14 engaging in each of the unlawful practices and policies set forth herein.

15 120. PLAINTIFFS also seek an award of attorney's fees pursuant to Code Civ. Proc
16 Section 1021.5 and as permitted by law, and an award for costs reasonably incurred, as permitted
17 by law.

18 **TENTH CAUSE OF ACTION**

19 **Violation of the Private Attorneys General Act of 2004**

20 **(By PLAINTIFFS and the Aggrieved Employees Against All DEFENDANTS)**

21 121. PLAINTIFFS incorporate all preceding paragraphs as if full alleged herein.

22 122. PLAINTIFFS bring this action under the Private Attorneys General Act of 2004,
23 Labor Code sections 2698, *et seq.*, ("PAGA"), as a representative action on behalf of PLAINTIFFS,
24 the State of California and Aggrieved Employees, regarding violations of the California Labor Code
25 as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

26 All current and former non-exempt employees that worked either
27 directly or via a staffing agency for any of the DEFENDANTS at any
28 location in California at any time from one year plus 65 days from the
filing of the initial Complaint through the present ("PAGA Period").

123. PLAINTIFFS are "aggrieved employees," as that term is defined under Labor Code

1 section 2699(c), as PLAINTIFFS were employed by DEFENDANTS during the applicable statutory
2 limitations period and suffered one or more of the Labor Code violations set forth herein.
3 Accordingly, PLAINTIFFS seeks to recover on behalf of the State of California and all Aggrieved
4 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
5 PLAINTIFFS have standing to bring a PAGA cause of action on behalf of PLAINTIFFS, the State
6 of California, and all Aggrieved Employees, as PLAINTIFFS were jointly employed by
7 DEFENDANTS and is thereby affected by one or more of the alleged violations. See *Huff v.*
8 *Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757. A PAGA plaintiff has
9 authority to seek penalties for all known violations committed by the employer - regardless of
10 whether Plaintiff experienced all violations personally. *Id.* at 760-761.

11 **COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS**

12 124. Plaintiff Goodwin, on March 3, 2023, through counsel, gave written notice by online
13 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
14 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
15 in this Complaint (“PAGA Notice”).

16 125. The PAGA Notice outlined Plaintiff Goodwin’s claims for violations of the
17 California Labor Code and the applicable wage orders on behalf of the State of California and all
18 Aggrieved Employees.

19 126. Plaintiff McGehee, on May 22, 2023, through counsel, gave written notice by online
20 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
21 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
22 in this Complaint.

23 127. The PAGA Notice outlined Plaintiff McGehee’s claims for violations of the
24 California Labor Code and the applicable wage orders on behalf of the State of California and all
25 Aggrieved Employees.

26 128. PLAINTIFFS seek to recover the PAGA civil penalties through a representative
27 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
28 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

1 129. From one year prior to PLAINTIFFS' filing of the required PAGA notice with the
2 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated California
3 Labor Code sections, 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 432, 432.5, 432.7, 510,
4 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all
5 applicable Wage Orders.

6 130. As set forth above, DEFENDANTS have committed numerous violations of the
7 California Labor Code due to including but not limited to their failure to pay all owed minimum
8 wages and all owed overtime wages, failure to provide lawful meal and rest periods or compensation
9 in lieu thereof, failure to provide accurate wage statements, failure to reimburse business expenses,
10 and failure to pay all wages owed upon separation of employment as alleged above. PAGA penalties
11 are in addition to any other relief available under the Labor Code.

12 131. Additionally, DEFENDANTS have violated the following Labor Code sections and
13 provisions of the applicable Wage Order as to the PLAINTIFFS and other Aggrieved Employees.
14

15 **Failure to Keep Accurate Records**

16 132. California Labor Code § 1174 requires employers to keep "accurate and complete"
17 payroll records showing, among other things, the hours worked daily by all non-exempt employees.
18 All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the
19 times during which all owed meal periods were provided each day.

20 133. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate
21 and complete records as required by law, including but not limited to the following records: total
22 daily hours worked, applicable rates of pay, time records showing when PLAINTIFFS and other
23 Aggrieved Employees began and ended each work period, time records of meal periods, and
24 accurate itemized wage statements.

25 134. DEFENDANTS' failure to keep "accurate and complete" payroll records for
26 PLAINTIFFS and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
27 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
28 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and

1 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
2 period during which the referenced statutes and Wage Order provisions were violated.¹

3 **Failure to Produce Records in Violation of Labor Code §§ 226(b)-(c), 1198.5, and 432**

4 135. Time and Pay Records: Labor Code section 226 and all applicable IWC Wage
5 Orders, section 7 require that employers keep the following information on file for each employee
6 for a minimum of three years: The employee's dates of employment; the employee's hourly rates
7 and the corresponding number of hours worked by the employee at each hourly rate, when the
8 employee begins and ends each work period (including meal periods) and split intervals; total hours
9 worked by the employee; all deductions; gross wages earned; and net wages earned.

10 136. Section (b) of Labor Code section 226 further requires employers to "afford current
11 and former employees the right to inspect or receive a copy of records pertaining to their
12 employment upon reasonable request to the employer." Section (c) of Labor Code section 226
13 provides that, "an employer who receives a written or oral request to inspect or receive a copy of
14 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
15 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
16 violation of this subdivision is an infraction." An employer's failure to comply within this timeframe
17 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
18 the employer. Lab. Code section 226(f).

19 137. Personnel Records. In addition to their right to time and pay records, employees, and
20 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
21 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code
22 section 432 further specifies that employers must furnish copies of all employment records bearing
23 the employee's signature. Labor Code section 1198.5 also requires that the file be made available
24 for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days

25 ¹ Labor Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Labor
26 Code § 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the
27 employee was underpaid"); All applicable wage orders, § 20 (establishing that "[i]n addition to any other civil
28 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid") (emphasis added).

1 from the date the employer receives a written request.” An employer’s failure to comply within this
2 timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar
3 (\$750) penalty from the employer. Lab. Code section 1198.5(k).

4 138. Based on information and belief, DEFENDANTS fail to timely produce or make
5 available Aggrieved Employees’ personnel records and/or payroll records when requested pursuant
6 to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations subject
7 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

8 **Statutory Wage Violations**

9 139. California Labor Code section 223 makes it unlawful for an employer to secretly pay
10 wages lower than required by statute while purporting to pay legal wages. As described above,
11 DEFENDANTS willfully and systematically denied PLAINTIFFS and Aggrieved Employees of all
12 earned minimum and overtime compensation for all hours worked which resulted in the payment of
13 less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
14 statutory wages, including, but not limited to, minimum and overtime wages, to which they were
15 entitled to under California law. Thus, DEFENDANTS paid PLAINTIFFS and other Aggrieved
16 Employees lower wages than those they were entitled to while purporting that PLAINTIFFS and
17 other Aggrieved Employees were properly paid. As a result, PLAINTIFFS and other Aggrieved
18 Employees are entitled to recover penalties, attorney’s fees, costs, and interest thereon, pursuant to
19 Labor Code § 2699(f)-(g).

20 **Refusal to Make Payment**

21 140. Labor Code section 216 declares unlawful an employer’s refusal to pay wages due
22 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
23 and continue to violate this section by failing to pay PLAINTIFFS and Aggrieved Employees for
24 all hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
25 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
26 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
27 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
28

1 each Aggrieved Employee, for each pay period during which the statute provisions were violated.²

2 **Standard Conditions of Labor Violations**

3 141. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
4 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
5 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
6 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS’
7 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
8 minimum/overtime wages and other violations described herein result in separate violations of
9 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
10 1197.1 and 2699.

11 **Unlawful Deductions**

12 142. Labor Code section 221 prohibits an employer from “collect[ing] or receiv[ing] from
13 an employee any part of wages theretofore paid by said employer to said employee.” Based on
14 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees
15 paychecks during the relevant period, including but not limited to deducting costs of uniforms and/or
16 other business costs and/or deducting wages for purported overpayments from previous pay periods
17 and/or unlawfully deducting wages for negligently damaged property and/or deducting costs
18 advanced by DEFENDANTS from Aggrieved Employees’ final paychecks. Such a practice is in
19 violation of including but not limited to, Labor Code Sections 221-222 which subjects
20 DEFENDANTS to civil penalties under Labor Code Section 2699.

21 143. Each violation results in a separate civil penalty, for each Aggrieved Employee, for
22 each pay period during which the statute provisions were violated. *See* Lab. Code §225.5
23 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
24 provided in this article, every person who unlawfully withholds wages due any employee in
25 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure

26 _____
27 ² Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

1 to pay each employee”).

2 **Sick Leave Violations**

3 144. DEFENDANTS violated California’s paid sick leave laws including, Labor Code
4 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
5 PLAINTIFFS and other Aggrieved Employees or failed to properly accrue paid sick leave due to
6 DEFENDANTS’ failure to account for actual hours worked (as explained above), and/or failure to
7 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but
8 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
9 compensation into the sick leave pay rate calculation.

10 145. DEFENDANTS further failed to give PLAINTIFFS and other Aggrieved Employees
11 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
12 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
13 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFFS
14 and Aggrieved Employees’ intelligent exercise of their paid sick leave.

15 146. But for this failure, PLAINTIFFS and other Aggrieved Employees would have used
16 their paid sick leave at least prior to their respective separations, for as on several occasions
17 thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate
18 compensation.

19 147. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
20 documenting the hours worked and paid sick days accrued and used by PLAINTIFFS and all
21 Aggrieved Employees, permitting the presumption that PLAINTIFFS and all Aggrieved Employees
22 were entitled to the maximum number of hours accruable.

23 148. Upon information and belief, DEFENDANTS failed and continue to fail to comply
24 with Labor Code section 246, by failing to provide PLAINTIFFS and all Aggrieved Employees with
25 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
26 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
27 wages.

28 149. These practices violated California’s sick leave laws, Labor Code section 245, *et seq.*

1 150. On information and belief, PLAINTIFFS alleges that all of these practices were
2 experienced and continue to be experienced by other Aggrieved Employees.

3 151. Accordingly, PLAINTIFFS seeks all appropriate relief under the PAGA, the
4 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
5 seeks injunctive relief, attorney's fees, declaratory relief, and penalties as permitted by law.

6 **Failure to Pay Vested Vacation/Paid Time Off**

7 152. California Labor Code section 227.3 provides that when an employer policy provides
8 for paid vacations and/or paid time off, and an employee is terminated without having taken off his,
9 her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the
10 employee's final rate in accordance with such contract of employment or employer policy respecting
11 eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time
12 off upon termination.

13 153. Based on information and belief, DEFENDANTS had and continue to have a
14 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
15 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
16 to Aggrieved Employees upon separation of employment, in violation of California law, including
17 but not limited to, Labor Code section 227.3.

18 **Failure to Pay Reporting Time Pay**

19 148. DEFENDANTS failed to pay reporting time wages. In particular, PLAINTIFFS and
20 the Class Members were forced to report to work and were furnished with less than half the
21 employee's usual or scheduled day's work.

22 149. In fact, on numerous occasions, PLAINTIFFS and Class Members reported to work
23 at DEFENDANT'S direction, and then were sent home – without the legal compensation.
24 By failure to pay hourly wages for reporting time, DEFENDANTS willfully violated Labor
25 Code sections 1194, 1197, 1198, and IWC Wage Orders 5-2001.

26 150. Under the provisions of PAGA and the above mentioned Labor Code sections,
27 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226,
28 226.7, 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197,

1 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as
2 well as all interpretations of these laws by California Courts and administrative bodies, as
3 well as any other law that is enforceable through PAGA, DEFENDANTS are liable for the
4 following penalties:

- 5 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
6 relevant California Labor Code provisions listed herein only if permitted by the
7 PAGA statute, pursuant to Labor Code section 2699(a); and
8 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
9 violations without a civil penalty recoverable under the PAGA, all in the default
10 amounts provided by Labor Code section 2699(f).
11 c. The proper measure of penalties under PAGA is the number of violations,
12 whether those violations were committed as against PLAINTIFFS or any
13 Aggrieved Employee, whether a party to this action or not.

14 151. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
15 PLAINTIFFS are entitled to recover civil penalties, costs, and attorney's fees.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, PLAINTIFFS pray for relief and judgment, on behalf of PLAINTIFFS and
18 Class Members and Aggrieved Employees as follows:

- 19 1. For an order that the action be certified as a class action;
20 2. For an order that PLAINTIFFS be appointed as class representatives;
21 3. For an order that counsel for PLAINTIFFS be appointed as class counsel;
22 4. For compensatory damages according to proof;
23 5. For liquidated damages according to proof;
24 6. For penalties according to proof;
25 7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully
26 withheld from PLAINTIFFS and the Class Members;
27 8. For an order finding DEFENDANTS have engaged in unfair competition in violation of
28 section 17200, *et seq.*, of the California Business and Professions Code;

- 1 9. For an order enjoining DEFENDANTS from further acts of unfair competition;
2 10. For pre-judgment interest as permitted by law;
3 11. For attorney's fees and costs reasonably incurred;
4 12. For civil penalties under Labor Code Section 2699 (75% payable to the LWDA and 25%
5 payable to Aggrieved Employees); and
6 13. For such other and further relief that the Court deems just and proper.

7
8 **DEMAND FOR JURY TRIAL**

9 PLAINTIFFS demand a trial by jury on all claims so triable.

10 Dated: January 16, 2025

CROSNER LEGAL, PC

11
12
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