

1 ZACHARY M. CROSNER, ESQ. (SBN 272295)
zach@crosnerlegal.com
2 JAMIE K. SERB, ESQ. (SBN 289601)
jamie@crosnerlegal.com
3 **CROSNER LEGAL, PC**
4 9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
5 Tel: (310) 496-5818
Fax: (310) 510-6429

6 Attorneys for Plaintiff WYATT BRADLEY
7 As an individual and on behalf of all others similarly situated

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO**

11 WYATT BRADLEY, as an individual and
12 on behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 A.J.M. PACKAGING CORPORATION, a
16 Michigan Corporation; and DOES 1-100,
17 inclusive,

18 Defendants.
19
20
21
22
23
24
25
26
27
28

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

06/30/2023 at 07:26:16 PM

Clerk of the Superior Court
By Nora Lopez, Deputy Clerk

Case No.: 37-2023-00027913-CU-OE-CTL

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 Reimburse Business Expenses and**
7. **Unfair Competition**

DEMAND FOR JURY TRIAL

1 Plaintiff, WYATT BRADLEY, (“PLAINTIFF”), as an individual and on behalf of all other
2 similarly situated Class Members (as defined below), hereby files this Complaint against
3 Defendants A.J.M. PACKAGING CORPORATION, a Michigan Corporation; and DOES 1-100,
4 inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and
5 believes and thereon alleges as follows:

6
7 **JURISDICTION AND VENUE**

8 1. This court possesses original subject matter jurisdiction over this matter. Venue is
9 proper in the County of San Diego pursuant to California Code of Civil Procedure section 395.5
10 because DEFENDANTS transact business within this judicial district, DEFENDANTS employed
11 PLAINTIFF to work in this judicial district and some of the acts, omissions, and conduct alleged by
12 PLAINTIFF herein occurred in this this judicial district.

13 **THE PARTIES**

14 2. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
15 California and a citizen of the State of California.

16 3. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee during
17 the Class Period (defined below). PLAINTIFF has worked for DEFENDANTS as a non-exempt
18 employee with a job title of machine technician and/or a similar title(s) and/or position(s) since in
19 or around April 2022 and has continued to work through the Class Period (defined below).
20 PLAINTIFF worked for DEFENDANTS at DEFENDANTS’ El Cajon, California location(s).
21 PLAINTIFF regularly worked at least seven (7) to twelve (12) hours per day, at least five (5) days
22 per week.

23 4. DEFENDANTS are a Michigan Corporation that, at all relevant times, was
24 authorized to do business within the State of California and are doing business in the State of
25 California.

26 5. DEFENDANTS own, operate, manage and/or staff its employees to work at the
27 facilities, offices, manufacturing plant(s)/facilities, production plant(s)/facilities, and/or other
28 location(s) in California, including but not limited to the facilities, offices, manufacturing

1 plant(s)/facilities, production plant(s)/facilities, in El Cajon California. DEFENDANTS, through its
2 various facilities, offices, manufacturing plant(s)/facilities, production plant(s)/facilities, and/or
3 other locations serve the manufacturing industry.¹

4 6. The true names and capacities of the DOE Defendants sued herein as DOES 1
5 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
6 Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally
7 responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this
8 Complaint to reflect the true names and capacities of the Doe Defendants when such identities
9 become known.

10 7. PLAINTIFF is further informed and believes that, at all relevant times, each
11 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
12 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
13 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
14 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
15 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
16 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
17 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
18 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
19 controlled, aided and abetted the conduct of all other Defendants.

20 **JOINT LIABILITY**

21 8. Under California law, the definition of the terms “to employ” are broadly construed
22 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
23 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)
24 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49
25 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
26 was to reach situations in which multiple entities control different aspects of the employment
27 relationship. Supervision of the work, in the specific sense of exercising control over how services

28 ¹ See <https://www.ajmpack.com/>. Last visited on June 29, 2023.

1 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
2 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
3 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
4 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
5 California, applying a less stringent standard to what constitutes sufficient control by a business
6 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
7 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative
8 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
9 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
10 employment,” *Id.* at 875 [emphasis added].

11 9. During PLAINTIFF’s employment by DEFENDANTS, PLAINTIFF and the Class
12 Members (defined below) were jointly employed by DEFENDANTS for purposes of the Wage
13 Orders, under the alternative definitions of “to employ” adopted by the California Supreme Court
14 in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control over wages,
15 hours and working conditions of PLAINTIFF and the Class Members; (2) suffered or permitted
16 PLAINTIFF and Class Members to work for them; and (3) engaged PLAINTIFF and Class
17 Members to work for them.

18 10. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
19 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
20 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
21 across all of their locations/facilities and subjected all of the Class Members to these same policies
22 and practices regardless of the location(s) where they worked. Among other things, PLAINTIFF is
23 informed and believes that: (1) there is common ownership in, and financial control, in
24 DEFENDANTS’ companies, (2) DEFENDANTS utilize common management, who have control
25 over the day-to-day operations and employment matters, including the power to hire and fire, set
26 schedules, issue employee policies, and determine rates of compensation across its locations in
27 California; (3) DEFENDANTS utilize the same policies and procedures for all California
28 employees, including issuing the same employee handbooks and other form agreements; (4)

1 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee
2 employment matters; and, (6) DEFENDANTS share employees.

3 11. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
4 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Class Members
5 upon whose behalf PLAINTIFF brings these allegations and causes of action, in that
6 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Class Members' wages,
7 hours and working conditions, and/or suffered or permitted PLAINTIFF and the Class Members to
8 work so as to be considered the joint employers of PLAINTIFF and the Class Members.

9 12. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
10 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
11 time-keeping practices, meal and rest periods, reimbursement of business expenses and other
12 working conditions that were distributed to, and/or applied to PLAINTIFF and the Class Members,
13 and further that DEFENDANTS uniformly compensated and controlled the wages of PLAINTIFF
14 and the Class Members in a uniform manner. DEFENDANTS collectively represented to
15 PLAINTIFF and the Class Members that each was an "at-will" employee of DEFENDANTS, and
16 that DEFENDANTS collectively retained the right to terminate PLAINTIFF's and Class Members'
17 employment with or without cause. Upon information and belief, DEFENDANTS further
18 collectively represented to PLAINTIFF and Class Members in writing the details of their
19 compensation, and the manner in which they were to take meal and rest periods, the procedures
20 required by DEFENDANTS collectively for recordation of hours worked and the policies applicable
21 to PLAINTIFF and Class Members by which DEFENDANTS collectively would evaluate the wage
22 rates of PLAINTIFF and Class Members.

23 13. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
24 and working conditions of PLAINTIFF and Class Members. As such, DEFENDANTS collectively
25 held the right to control virtually every aspect of PLAINTIFF's and the Class Members'
26 employment, including the instrumentality that resulted in the illegal conduct for which PLAINTIFF
27 seeks relief in this Complaint.

28 14. PLAINTIFF is informed and believes that DEFENDANTS exercised the same

1 control over, applied the same policies and practices, and engaged in the same acts and omissions
2 with regard to the other Class Members.

3 **CLASS ALLEGATIONS**

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

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

- 11 a. Numerosity. While the exact number of Class Members is unknown to
12 PLAINTIFF at this time, the Class is so numerous that the individual joinder of
13 all members is impractical under the circumstances of this case. PLAINTIFF is
14 informed and believes the Class consists of at least 100 individuals.
- 15 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
16 because common questions of law and fact predominate over individual issues.
17 Common questions include, but are not limited to, the following: (1) whether
18 DEFENDANTS understated hours worked and failed to pay all amounts due to
19 PLAINTIFF and the Class Members for wages earned, including minimum and
20 overtime wages, under California law; (2) whether DEFENDANTS provided
21 PLAINTIFF and the Class Members with all meal periods or premium payments
22 in lieu thereof in compliance with California law; (3) whether DEFENDANTS
23 provided PLAINTIFF and the Class Members with all rest periods or premium
24 payments in lieu thereof, in compliance with California law; (4) whether
25 DEFENDANTS provided PLAINTIFF and Class Members with accurate,
26 itemized wage statements in compliance with California law, displaying,
27 including but not limited to, the total hours worked during the pay period; (5)
28 whether DEFENDANTS failed to reimburse PLAINTIFF and the Class

1 Members for all business expenses; and (6) whether DEFENDANTS violated
2 California Business and Professions Code sections 17200, *et seq.*

- 3 c. Ascertainable Class. The proposed Class is ascertainable as members can be
4 identified and located using information in DEFENDANTS' business, payroll
5 and personnel records.
- 6 d. Typicality. PLAINTIFF's claims are typical of the claims of the Class Members.
7 PLAINTIFF suffered a similar injury as members of the Class as a result of
8 DEFENDANTS' common practices regarding, *inter-alia*, failure to calculate
9 and pay all owed minimum and overtime wages, failure to provide proper meal
10 periods and rest periods or premium compensation in lieu thereof, failure to
11 provide accurate wage statements, and failure to reimburse business expenses.
- 12 e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the
13 Class Members. PLAINTIFF has no interests adverse to the interests of the other
14 Class Members. Counsel who represent PLAINTIFF are competent and
15 experienced in litigating similar class action cases and are California lawyers in
16 good standing. Counsel for PLAINTIFF have the experience and resources to
17 vigorously prosecute this case.
- 18 f. Superiority. A class action is superior to other available means for the fair and
19 efficient adjudication of this controversy since individual joinder of all members
20 of the class is impractical. Class action treatment will permit a large number of
21 similarly situated persons to prosecute their common claims in a single forum
22 simultaneously, efficiently, and without the unnecessary duplication of effort
23 and expense that numerous individual actions would engender. Furthermore, as
24 the damages suffered by each individual member of the Class may be relatively
25 small, the expenses and burden of individual litigation would make it difficult
26 or impossible for individual members of the Class to redress the wrongs done to
27 them, while an important public interest will be served by addressing the matter
28 as a class action. The cost to the court system of adjudication of such

1 individualized litigation would be substantial. Individualized litigation would
2 also present the potential for inconsistent or contradictory judgments. Finally,
3 the alternative of filing a claim with the California Labor Commissioner is not
4 superior, given the lack of discovery in such proceedings, the fact that there are
5 fewer available remedies, and the losing party has the right to a trial de novo in
6 the Superior Court.

7 **FACTUAL AND LEGAL ALLEGATIONS**

8 16. During the relevant period, PLAINTIFF, and each of the Class Members, worked for
9 DEFENDANTS in the State of California. At all times referenced herein, DEFENDANTS exercised
10 control over PLAINTIFF and Class Members, and suffered and/or permitted them to work.

11 17. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee during
12 the Class Period. PLAINTIFF has worked for DEFENDANTS as a non-exempt employee with a
13 job title of machine technician and/or a similar title(s) and/or position(s) since in or around April
14 2022 and has continued to work through the Class Period. PLAINTIFF worked for DEFENDANTS
15 at DEFENDANTS' El Cajon, California location(s). PLAINTIFF regularly worked at least seven
16 (7) to twelve (12) hours per day, at least five (5) days per week.

17 18. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by
18 DEFENDANTS as hours worked. At all relevant times, PLAINTIFF was a non-exempt employee
19 that was paid on an hourly basis for time counted by DEFENDANTS as hours worked. Based on
20 information and belief, PLAINTIFF worked the graveyard and was paid a shift differential and/or
21 additional compensation for working the night shift. At times, the shift differential amount varied
22 and/or DEFENDANTS paid a fixed amount per graveyard shift and failed to incorporate this non-
23 discretionary compensation into the regular rate of pay for purposes of calculating any meal period
24 and/or rest period premiums and/or overtime rate(s) of pay.

25 19. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
26 PLAINTIFF and Class Members for all hours worked, resulting in the underpayment of minimum
27 and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Class Members for all
28 hours worked by virtue of, DEFENDANTS' automatic deduction and time rounding policies, and

1 failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise
2 unlawful practices for missed or improper meal periods, as explained below.

3 20. Based on information and belief, DEFENDANTS implemented a policy and/or
4 practice of rounding meal period start and end times and/or automatically deducting at least thirty
5 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
6 PLAINTIFF and other Class Members were subject to DEFENDANTS' control during purported
7 meal periods and/or were otherwise not afforded lawful meal periods, depriving PLAINTIFF and
8 Class Members of all wages owed.

9 21. Based on information and belief, Class Members were not paid for all hours worked
10 due to DEFENDANTS' policy and/or practice of paying according to scheduled hours worked
11 instead of actual time worked, and/or mandated off-the clock work policies and/or practices.

12 22. For example, based on information and belief, DEFENDANTS had and have a
13 uniform policy and practice of requiring Class Members to perform uncompensated pre-shift and/or
14 post-shift off-the-clock work.

15 23. For example, upon arriving at work but prior to clocking in for the start of their shifts,
16 PLAINTIFF and other Class Members were required to form a line and wait behind other employees
17 in order to access DEFENDANTS' electronic timekeeping system and/or terminal(s) so that
18 PLAINTIFF and other Class Members could then clock in for the start of their shifts. This time
19 spent under DEFENDANTS' control, including but not limited to, time spent waiting in line behind
20 other employees and/or time spent booting up and/or reinitiating DEFENDANTS' electronic
21 timekeeping system was not recorded and not compensated resulting in approximately at least three
22 (3) to five (5) minutes of pre-shift off-the-clock work per shift and denied minimum wages and
23 overtime wages owed to PLAINTIFF and other Class Members.

24 24. Based on information and belief, Class Members were required to be at their
25 machines/respective workstations on the production line at their scheduled shift start time or face
26 discipline. As such, Class Members typically arrived at work prior to their scheduled shift start
27 times so that they could perform any required pre-shift work, including but not limited to, bestow
28 personal items in employee lockers/storage area, retrieve and/or compile work tools/equipment,

1 make any necessary adjustments to tools/equipment and/or perform any required maintenance tasks,
2 don work clothing/uniforms and/or protective equipment, and/or complete other work tasks so as to
3 be ready to be at their respective work stations at the their scheduled shift start time as mandated by
4 DEFENDANTS. This pre-shift off-the-clock work was neither recorded nor compensated resulting
5 in the substantial underpayment of wages owed to Class Members.

6 25. Based on information and belief, DEFENDANTS required Class Members to
7 undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their
8 scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock work.

9 26. Based on information and belief, Class Members were required to complete other
10 off-the-clock work tasks after clocking out for the end of their shifts and/or during uncompensated
11 meal periods, resulting in off-the-clock work and the underpayment of minimum and overtime
12 wages owed to Class Members.

13 27. For example, based on information and belief, DEFENDANTS required Class
14 Members to clock out for the end of their shifts but to continue working due to the need to continue
15 completing assigned job duties, including but not limited to, return/maintain tools, clean and/or
16 organize their work stations/areas, provide shift status updates and/or debriefings to relief workers
17 and/or participate in work meetings, respond to work-related communications and/or perform other
18 work tasks off-the-clock, resulting in the underpayment of minimum wages and overtime wages
19 owed to Class Members.

20 28. Based on information and belief, DEFENDANTS did not compensate Class
21 Members for time spent donning and doffing personal protective equipment, safety equipment
22 and/or uniforms (e.g., bump caps, welding helmets, safety glasses/goggles, hair nets, gloves, and/or
23 face masks) during meal periods, before the start of a scheduled shift, and after completing a
24 scheduled shift, resulting in off-the-clock work and the underpayment of wages owed to Class
25 Members.

26 29. Based on information and belief, at times, DEFENDANTS' electronic employee
27 time-keeping system/app malfunctioned such that Class Members were required to either reinitiate
28 and/or otherwise troubleshoot the system prior to being able to clock in and/or were unable to clock

1 in at all for the start of their shifts and/or clock back in from meal periods, resulting in off-the-clock
2 work and the underpayment of wages owed to Class Members. Based on information and belief,
3 Class Members experienced the same issues when clocking out for shifts and/or back in for meal
4 periods. This time spent under DEFENDANTS' control was not recorded and not compensated and
5 resulted in unpaid minimum wages owed to Class Members.

6 30. Based on information and belief, DEFENDANTS engaged in systemic time record
7 manipulation to shave time worked off PLAINTIFF and other Class Members' workdays, by, for
8 example, editing electronic time records to delete portions of total hours worked or otherwise
9 understate actual hours worked by PLAINTIFF and other Class Members.

10 31. Based on further information and belief, DEFENDANTS' Kronos timekeeping
11 software was hacked in 2021 and EMPLOYER failed to maintain accurate records of hours worked
12 during pay periods following the hack and/or during the hack and instead paid PLAINTIFF and
13 other Class Members based on scheduled hours worked rather than actual hours worked and/or
14 otherwise failed to pay for all hours worked due to a failure to maintain accurate records of the total
15 hours worked, leading to unpaid minimum and overtime wages.

16 32. Based on information and belief, DEFENDANTS failed to pay Class Members for
17 time they were required to spend completing orientation, policy questionnaires, and/or time spent
18 completing the onboarding process including but not limited to reviewing various documents and
19 policies provided by DEFEDANTS. Based on information and belief, this work time was completed
20 off-the-clock and was not compensated.

21 33. Based on further information and belief, DEFENDANTS implemented a time-
22 rounding system that as applied systematically deprived PLAINTIFF and other Class Members of
23 compensable time because the time-rounding system implemented by DEFENDANTS would
24 almost always, if not always, result in understating actual compensable work time.

25 34. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
26 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
27 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
28 minimum wages owed to PLAINTIFF and Class Members as well as unpaid overtime wages for

1 those Class Members who worked more than eight (8) hours in a day and/or more than forty (40)
2 hours in a week.

3 35. Based on information and belief, DEFENDANTS had actual and/or constructive
4 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to
5 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
6 underpayment of minimum wages owed to PLAINTIFF and other Class Members, in violation of
7 California's minimum and overtime wage laws.

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

12 37. Based on information and belief, DEFENDANTS failed to incorporate all non-
13 discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or
14 other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s),
15 resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other
16 Class Members.

17 38. For example, as explained above, PLAINTIFF worked the graveyard and was paid a
18 shift differential and/or additional compensation for working the night shift. At times, the shift
19 differential amount varied and/or DEFENDANTS paid a fixed amount per graveyard shift and failed
20 to incorporate this non-discretionary compensation into the regular rate of pay for purposes of
21 calculating overtime rate(s) of pay, resulting in the miscalculation of the owed overtime rate and the
22 underpayment of overtime wages owed to PLAINTIFF.

23 39. **Meal Period Violations.** PLAINTIFF and other Class Members consistently worked
24 shifts of at least five and one-half hours or more, entitling them to at least one meal period. However,
25 PLAINTIFF and other Class Members would not receive legally compliant thirty (30) minute first
26 and second meal periods. Based on information and belief, Class Members were consistently unable
27 to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late
28 meal periods, interrupted meal periods, and/or work through part or all their meal periods due to

1 understaffing, the nature and constraints of their job duties and/or commentary from supervisors
2 pressuring them to take non-compliant meal periods or skip meal periods completely.

3 40. For example, based on information and belief, Class Members were forced to take
4 late meal periods in order to complete assigned job duties. Based on information and belief, Class
5 Members were at times, interrupted during purported meal periods and/or had meal periods cut short
6 and/or restricted to DEFENDANTS' premises due to the need to continue assigned job duties. For
7 example, at times, PLAINTIFF was required to take an interrupted meal period, cut his meal period
8 short and/or take his meal period late (i.e. after the fifth hour of work) due to the need to complete
9 assigned job duties.

10 41. For example, DEFENDANTS' time records for PLAINTIFF show PLAINTIFF took
11 a late meal period/ show clock outs after the fifth hour of work on including but not limited to the
12 following dates: June 1, 2022, June 14, 2022, July 1, 2022, October 25, 2022, October 28, 2022,
13 November 17, 2022, and December 12, 2022. However, DEFENDANTS' wage statements for
14 PLAINTIFF, including but not limited to, wage statements for pay periods inclusive of those
15 workdays during which DEFENDANTS' time records reflect late meal periods, do not show the
16 payment of a single meal period premium.

17 42. Based on information and belief, DEFENDANTS failed to pay Class Members any
18 meal period premiums for late, interrupted, shortened, missed and/or otherwise legally non-
19 compliant meal periods and/or failed to pay proper meal period premiums due to failure to
20 incorporate all non-discretionary compensation into the regular rate(s) used to calculate the owed
21 meal period premiums.

22 43. For example, PLAINTIFF and/or other Class Members worked the graveyard and
23 were paid a shift differential and/or additional compensation for working the night shift. At times,
24 the shift differential amount varied and/or DEFENDANTS paid a fixed amount per graveyard shift
25 and failed to incorporate this non-discretionary compensation into the regular rate of pay for
26 purposes of calculating any paid meal period premium, resulting in the miscalculation and
27 underpayment of owed meal period premiums, in violation of California law.

28 44. Based on information and belief, other Class Members were consistently suffered

1 and permitted to take meal periods past the fifth hour of work and/or had their meal periods
2 interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise on duty due to
3 commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or
4 the need to meet DEFENDANTS' goals and expectations.

5 45. For example, as explained above, PLAINTIFF and other Class Members were
6 consistently suffered, permitted and/or required to wait in line after arriving at work for at least
7 approximately three (3) to five (5) minutes before being able to clock in for the start of their shifts
8 each day. As such, any meal periods with a clock out time within, including but not limited to, three
9 (3) to five (5) minutes shy of the end of the fifth hour of work were late. For example, as a result of
10 pre-shift off-the-clock waiting time described herein, PLAINTIFF's meal periods were late on
11 including but not limited to the following dates: June 6, 2022, July 22, 2022, August 4, 2022, and
12 November 16, 2022 as DEFENDANTS' own time records for PLAINTIFF for including but not
13 limited to those dates reflect a clock out for a meal period within three (3) to five (5) minutes prior
14 to the fifth hour of work.

15 46. Based on information and belief, DEFENDANTS implemented policies and/or
16 practices that failed to relieve Class Members of all duties and DEFENDANTS' control during
17 unpaid meal periods.

18 47. Based on information and belief, DEFENDANTS required Class Members to
19 complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take
20 into account when scheduling meal periods for Class Members. Based on information and belief,
21 meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

22 48. Based on information and belief, despite DEFENDANTS' failure to provide lawful
23 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
24 times of PLAINTIFF's and other Class Members' meal periods and/or automatically deducting at
25 least thirty minutes per shift for missed and/or otherwise unlawful meal periods despite having
26 actual and/or constructive knowledge that PLAINTIFF and other Class Members did not receive
27 lawful meal periods.

28 49. Moreover, per DEFENDANTS' uniform policy and practice, Class Members who

1 worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute
2 second meal period.

3 50. For example, when PLAINTIFF worked shifts lasting longer than ten (10) and/or
4 twelve (12) hours, PLAINTIFF was not afforded any version of a second meal period.

5 51. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
6 other Class Members as to the timing and duty-free nature of meal periods. Based on further
7 information and belief, DEFENDANTS did not have a written meal period policy, nor did
8 DEFENDANTS have any sort of compliant policy in practice.

9 52. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
10 records of the true start and end times of PLAINTIFF's and Class Members' meal periods. Based
11 on information and belief, to the extent meal period were recorded, DEFENDANTS illegally
12 rounded the start and end times of purported meal periods resulting in PLAINTIFF and other Class
13 Members not being paid for all time worked as well as late and/or shortened meal periods. *See*
14 *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

15 53. Based on information and belief, DEFENDANTS had actual and/or constructive
16 knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which
17 were free of DEFENDANTS' control owed to PLAINTIFF and other Class Members, in violation
18 of California's meal period laws.

19 54. DEFENDANTS failed to pay PLAINTIFF and other Class Members, an additional
20 hour of wages at their respective regular rates of compensation for each workday a lawful meal
21 period was not provided. DEFENDANTS either failed to pay a meal period premium at all for each
22 workday a lawful meal period was not provided and/or failed to pay the proper meal period premium
23 for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses,
24 shift differential pay and/or other non-discretionary compensation into the regular rate or
25 compensation for purposes of calculating the owed meal period premium.

26 55. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide
27 PLAINTIFF and other Class Members with legally compliant rest periods at a rate of every four (4)
28 hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the

1 work period, as required by law.

2 56. PLAINTIFF and other Class Members were not adequately informed, authorized,
3 instructed about, nor permitted an opportunity to take proper rest periods per California law. Based
4 on information and belief, DEFENDANTS had no policy in place nor instruction as to the taking of
5 duty-free rest periods.

6 57. Based on information and belief, DEFENDANTS did not have a have a compliant
7 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
8 practice.

9 58. For example, based on information and belief, Class Members were at times, unable
10 to take compliant rest periods due to their need to complete assigned job duties and/or were unable
11 to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods restricted
12 to DEFENDANTS' premises.

13 59. Based on information and belief, Class Members' rest periods were interrupted, cut
14 short, on duty, restricted to premises and/or late due to understaffing, the nature and constraints of
15 their job duties, and/or due to commentary from supervisors/managers pressuring them to skip rest
16 periods completely or otherwise take non-compliant rest periods.

17 60. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
18 lasting longer than ten hours.

19 61. Based on information and belief, DEFENDANTS implemented policies and/or
20 practices that failed to relieve PLAINTIFF and other Class Members of all duties and
21 DEFENDANTS' control during rest periods.

22 62. Based on information and belief, Class Members were pressured to complete their
23 work duties according to a designated schedule such that rest periods were only taken once tasks
24 were completed, and/or as time permitted.

25 63. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
26 which PLAINTIFF and Class Members experienced a missed/unlawful rest period in violation of
27 California law. DEFENDANTS either failed to pay a rest period premium at all for each workday a
28 proper rest period was not provided and/or failed to pay the proper rest period premium for failure

1 to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift
2 differential pay, and/or other non-discretionary compensation into the regular rate of compensation
3 for purposes of calculating the owed rest period premium.

4 **64. Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
5 provide PLAINTIFF and other Class Members with accurate wage statements that complied with
6 Labor Code section 226. As DEFENDANTS failed to provide PLAINTIFF and Class Members with
7 meal and rest periods that complied with Labor section 226.7, the wage statements DEFENDANTS
8 issued to PLAINTIFF and Class Members failed and continue to fail to correctly set forth the gross
9 wages earned, the total hours worked, the net wages earned, and all applicable hourly rates in effect
10 during the pay period and the corresponding number of hours worked at each hourly rate by the
11 employee.

12 **65.** DEFENDANTS issued wage statements to PLAINTIFF and Class Members that also
13 failed to indicate the earned gross and net wages earned during the pay period, the correct applicable
14 rates of pay for all hours worked, and the total hours worked by PLAINTIFF and Class Members
15 (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve Class
16 Members of all duties and employer control during unpaid meal periods, payment according to
17 scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies
18 and practices) which results in a violation of Labor Code section 226(a).

19 **66.** As described herein, based on information and belief, DEFENDANTS also failed to
20 incorporate all forms of non-discretionary compensation earned during the pay period into the
21 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
22 of overtime worked by PLAINTIFF and other Class Members.

23 **67.** Based on information and belief, wage statements issued by DEFENDANTS failed
24 to list all applicable hourly rates in effect during the pay period and the corresponding number of
25 hours worked at hear hourly rate by the employee, in violation of including but not limited to, Labor
26 Code section 226(a)(9).

27 **68.** Based on information and belief, wage statements issued by DEFENDANTS failed
28 to list the inclusive dates of the pay period for which the Class Member is being paid, in violation

1 of Labor Code section 226(a)(6).

2 69. For example, based on information and belief, at times, DEFENDANTS issued wage
3 statements to Class Members containing payment for hours worked during previous pay periods,
4 yet DEFENDANTS' wage statements do not include the inclusive dates of the accurate pay period
5 for that retroactive pay, further failing to list the total hours worked for the pay period, including but
6 not limited to, the total hours worked for the pay period the retroactive pay corresponds with. For
7 example, DEFENDANTS' wage statements provided to PLAINTIFF, including but not limited to,
8 for pay date of July 1, 2022, list a category for "Retro" pay without including the inclusive dates of
9 the accurate pay period for that "Retro" pay, further failing to list the total hours worked for the pay
10 period, including but not limited to, the total hours worked for the pay period the retroactive pay
11 corresponds with, in violation of, including but not limited to, Labor Code sections 226(a)(2) and
12 226(a)(6).

13 70. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Class
14 Members that were not accurate and did not include all of the statutorily required information. As
15 such, DEFENDANTS violated Labor Code section 226.

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

22 72. Based on information and belief, DEFENDANTS shifted the costs of doing business
23 onto PLAINTIFF and other Class Members requiring them to pay for business expenses, including
24 but not limited to, uniforms/work clothing/work shoes/personal protective/safety gear and the use
25 of Class Members' personal cell phones/mobile devices, internet and/or data usage for work related
26 purposes, including but not limited to, to receive and respond to work related messages and/or phone
27 calls.

28 73. For example, based on information and belief, Class Members were required to

1 receive and respond to work-related calls and/or messages from supervisors and/or other Class
2 Members regarding scheduling and/or other work tasks but were not reimbursed by DEFENDANTS
3 at all and/or in full for these business expenses.

4 74. Based on information and belief, DEFENDANTS failed to reimburse Class Members
5 for expenses associated with having to purchase and/or maintain their own hand tools and/or
6 equipment (e.g., wrenches, screwdrivers and/or utility knives) required to perform their assigned
7 job duties.

8 75. Based on information and belief, Class Members were not reimbursed for the cost
9 of purchasing and/or maintaining work uniforms/clothing/shoes and/or protective gear (e.g.,
10 protective shoes, gloves and/or face masks).

11 76. Based on information and belief, at times, Class Members were not reimbursed for
12 the business use of their personal vehicles, including mileage, wear and tear and/or cost of fuel when
13 they were required to drive around and/or between job sites, and/or otherwise use their personal
14 vehicles in carrying out the duties assigned by DEFENDANTS. As such, DEFENDANTS failed to
15 compensate Class Members at the legally mandated Internal Revenue Service (IRS) per mile
16 compensation rates in effect during the relevant period.

17 77. As explained above, based on information and belief, Class Members were not
18 reimbursed for the cost of using their personal phone for work related purposes and/or the cost of
19 purchasing and/or maintaining work uniforms/work clothing/work shoes, personal protective/safety
20 gear.

21 78. Based on information and belief, DEFENDANTS regularly failed to reimburse and
22 indemnify Class Members for business expenses. Pursuant to California Labor Code section 2802,
23 PLAINTIFF and Class Members were entitled to be reimbursed for all reasonable expenses
24 associated with carrying out DEFENDANTS' orders and/or carrying out the duties assigned by
25 DEFENDANTS.

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

1 80. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
2 engaged in these same herein described unlawful practices and that DEFENDANTS applied these
3 same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

4
5 **FIRST CAUSE OF ACTION**

6 **Recovery of Unpaid Minimum Wages and Liquidated Damages**
7 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

8 81. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

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

21 84. DEFENDANTS violated California’s minimum wage laws by failing to compensate
22 PLAINTIFF and the Class Members for all hours worked by virtue of, among other things,
23 DEFENDANTS’ time rounding, automatic deduction for meal periods, off-the-clock/unpaid work
24 completed during meal periods, other pre-shift, post-shift and/or otherwise off-the-clock work,
25 and/or payment according to scheduled hours worked rather than actual hours worked (described
26 above), which resulted in the failure to account for all hours worked and thus the denial of minimum
27 wages.

28 85. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
Class Members for all hours worked.

1 86. Based on information and belief, DEFENDANTS had actual or constructive
2 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
3 meal periods, failure to relieve employees of all duties and employer control during unpaid meal
4 periods, policy and practice of payment according to scheduled work time rather than actual work
5 time, and/or other mandated off-the-clock work resulted in the underpayment of minimum wages
6 owed to PLAINTIFF and other Class Members.

7 87. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFF and the Class
8 Members are entitled to recover all unpaid minimum wages and liquidated damages thereon, plus
9 attorney's fees and costs, in an amount to be proved at trial.

10 **SECOND CAUSE OF ACTION**
11 **Recovery of Unpaid Overtime Wages**
12 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

13 88. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

14 89. Employees in California must be paid overtime, equal to one and one-half times the
15 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
16 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
17 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
18 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
19 consecutive day of work in a workweek, unless they are exempt.

20 90. PLAINTIFF and the Class Members worked overtime hours for which they were not
21 compensated by DEFENDANTS by virtue of, among other things, DEFENDANTS' time rounding,
22 automatic deduction for meal periods, off-the-clock/unpaid work completed during meal periods,
23 other pre-shift, post-shift and/or otherwise off-the-clock work, and/or payment according to
24 scheduled hours worked rather than actual hours worked (described above), and/or other unlawful
25 policies and/or practices described above which resulted in unpaid minimum and overtime wages
26 which resulted in the failure to account for all hours worked and thus the denial of all owed overtime
27 wages.

28 91. Based on information and belief, DEFENDANTS failed to pay twice Class
Members' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for

1 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in
2 violation of California's overtime laws.

3 92. Based on information and belief, DEFENDANTS further violated California's
4 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
5 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
6 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
7 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
8 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
9 other Class Members.

10 93. DEFENDANTS' conduct described above is in violation of California Labor Code
11 sections 510 and 1194 and all applicable Wage Orders.

12 94. PLAINTIFF and the Class Members are entitled to recover all unpaid overtime
13 wages, plus attorney's fees and costs, in an amount to be proved.

14 **THIRD CAUSE OF ACTION**

15 **Failure to Provide Meal Periods or Compensation in Lieu Thereof (By PLAINTIFF and the Class Members Against all DEFENDANTS)**

16 95. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

17 96. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
18 DEFENDANTS were required to provide PLAINTIFF and the Class Members with one 30-minute
19 meal break free from all duties and employer control for all shifts longer than 5 hours, and a second
20 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be
21 waived, but only under the following circumstances: (1) if an employee's total work period in a day
22 is over five (5) hours but no more than six (6) hours, the required meal period may be waived by
23 mutual consent of the employer and employee, and (2) if an employee's total work period in a day
24 is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be
25 waived by mutual consent of the employer and employee, but only if the first meal period was not
26 waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their
27 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
28 done so.

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

5 98. As explained above, PLAINTIFF and other Class Members were consistently unable
6 to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being
7 forced to take late meal periods, interrupted meal periods, and/or work through part or all of their
8 meal periods due to understaffing, the nature and constraints of their job duties, and/or commentary
9 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
10 completely.

11 99. Based on information and belief, DEFENDANTS had and continue to have a policy
12 of rounding the start and end times of employees' meal periods and/or automatically deducting thirty
13 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and Class
14 Members did not receive compliant meal periods.

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

17 101. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
18 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
19 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in
20 violation of California's meal period laws.

21 102. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
22 periods in violation of California law and/or failed to pay the proper meal period premium for failure
23 to incorporate all non-discretionary remuneration including but not limited to, bonuses, shift
24 differential pay and/or other non-discretionary compensation into the regular rate or compensation
25 for purposes of calculating the owed meal period premium.

26 103. As a result, under Labor Code section 226.7, PLAINTIFF and the Class Members
27 are entitled to one additional hour's pay at the employee's regular rate of compensation for each day
28 a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and costs,

1 all in an amount to be proved at trial.

2 **FOURTH CAUSE OF ACTION**

3 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
4 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

5 104. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

16 106. If the employer fails to provide any required rest period, the employer must pay the
17 employee one hour of pay at the employee’s regular rate of compensation for each workday the
18 employer did not provide at least one legally required rest period, pursuant to Labor Code section
19 226.7.

20 107. Moreover, under California law rest periods must be a “net” ten minutes in a suitable
21 rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 Division of Labor Standards
22 Enforcement (DLSE) Letters wherein the DLSE ruled that the net ten-minute language for rest
23 periods means ten minutes of time in a rest area and cannot include time it takes to get to and from
24 the rest area). The employer must show that it clearly articulates the right to a net ten minutes,
25 which means it must clearly communicate what “net” ten minutes means (i.e., regardless of what
26 happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in
27 the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the
28 “onus is on the employer to clearly communicate the authorization and permission [to take rest
periods] to its employees.”).

1 108. PLAINTIFF and the Class Members did not receive legally compliant, timely 10-
2 minute rest periods for every four (4) hours worked or major fraction thereof. As explained above,
3 any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject to
4 DEFENDANTS' control due to the nature and constraints of Class Members' job duties,
5 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Class Members to
6 skip rest periods completely or otherwise take non-compliant rest periods.

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

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

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

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

25 **FIFTH CAUSE OF ACTION**
26 **Failure to Furnish Accurate Itemized Wage Statements**
27 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

28 113. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

 114. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFF and the Class

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

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

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

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

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

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

11 118. 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, in violation
13 of Labor Code section 226(a)(6).

14 119. Separately, and independent from the above allegations, DEFENDANTS issued
15 wage statements to PLAINTIFF and Class Members that violate Labor Code section 226(a)(8), by
16 failing to list the correct name and/or address of the legal entity that is the employer.

17 120. DEFENDANTS’ failure to accurately list all hours worked on all wage statements
18 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Class
19 Members over whether they received all wages owed to them.

20 121. As a result, PLAINTIFF and other Class Members have suffered injury as they could
21 not easily determine whether they received all wages owed to them and whether they were paid for
22 all hours worked.

23 122. Based on information and belief, wage statements issued by DEFENDANTS failed
24 to list all applicable hourly rates in effect during the pay period and the corresponding number of
25 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

26 123. DEFENDANTS’ knowingly and intentionally failed to provide PLAINTIFF and
27 Class Members with accurate, itemized wage statements.

28 124. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and Class Members

1 have suffered injury. The absence of accurate information on their wage statements has prevented
2 earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
3 mathematical computations to determine the amount of wages owed, and will cause difficulty and
4 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
5 submission of inaccurate information about wages and amounts deducted from wages to state and
6 federal government agencies. As a result, PLAINTIFF and Class Members are required to
7 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
8 and pay records than if DEFENDANT had complied with its legal obligations.

9 125. Pursuant to California Labor Code section 226(e), PLAINTIFF and Class Members
10 are entitled to recover fifty dollars per employee for the initial pay period in which a Section 226
11 violation occurred and one hundred dollars per employee per violation for each subsequent pay
12 period, not to exceed an aggregate penalty of four thousand dollars per employee.

13 126. Pursuant to California Labor Code § 226(h), PLAINTIFF and Class Members are
14 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
15 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
16 provide currently employed Class Members with inaccurate wage statements in violation of
17 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
18 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
19 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
20 with California Labor Code § 226(a).

21 127. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFF and Class
22 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable
23 attorneys' fees, and costs of suit.

SIXTH CAUSE OF ACTION

Failure to Reimburse Business Expenses

(By PLAINTIFF and the Class Members Against all DEFENDANTS)

24 128. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

25 129. California law requires employers to indemnify their employees for all necessary
26 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
27
28

1 their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable
2 Wage Orders section 9(b). Furthermore, “for purposes of [section 2802], the term ‘necessary
3 expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees
4 incurred by the employee enforcing the rights granted by this section.”

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

13 131. As described above, PLAINTIFF and the Class Members were improperly required
14 to pay for business expenses that are legally the responsibility of the employer.

15 132. DEFENDANTS’ failure to provide PLAINTIFF and the Class Members with full
16 reimbursement for all reasonable expenses associated with carrying out their duties required that
17 PLAINTIFF and the Class Members subsidize and/or carry the burden of business expenses in
18 violation of Labor Code section 2802.

19 133. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and the Class
20 Members have suffered injury in that they were not completely reimbursed as mandated by
21 California law.

22 134. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members
23 are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable
24 attorneys’ fees, and costs of suit.

25 **SEVENTH CAUSE OF ACTION**

26 **Unfair Competition**

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

28 135. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

136. DEFENDANTS’ unlawful conduct alleged herein constitutes unfair competition

1 within the meaning of California Business and Professions Code section 17200 *et seq.* This unfair
2 conduct includes all unlawful conduct alleged herein, including but not limited to: DEFENDANTS'
3 failure to pay minimum and overtime wages by virtue of its illegal policies and practices;
4 DEFENDANTS' failure to authorize or permit, or provide, all required meal and rest periods or pay
5 proper premiums in lieu thereof; DEFENDANTS' failure to furnish complete and accurate itemized
6 wage statements; DEFENDANTS' failure to reimburse business expenses; and DEFENDANTS'
7 failure to provide paid sick leave (or paid time off in lieu thereof) at the properly accrued rates (due
8 to, including but not limited to, DEFENDANTS' failure to incorporate all non-discretionary
9 compensation into the sick pay calculation and failure to base the accrued sick leave on the correct
10 number of hours worked as a result of DEFENDANTS' time-rounding/auto deduction policies and
11 practices, payment according to scheduled hours worked and/or other off-the-clock work policies
12 and practices).

13 137. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
14 California Labor Code, DEFENDANTS have gained a competitive advantage over other
15 comparable companies doing business in the State of California that comply with their obligations
16 to authorize or permit rest periods and meal periods or pay proper meal and rest period premiums
17 in lieu thereof, to properly accrue and pay sick time benefits, to provide complete and accurate
18 itemized wage statements, to reimburse employees for all business expenses, and to pay all owed
19 minimum and overtime wages.

20 138. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFF
21 and Class Members have suffered injury in fact and lost money or property, as described in more
22 detail above. Pursuant to California Business and Professions Code section 17200, *et seq.*,
23 PLAINTIFF and Class Members are entitled to restitution of all wages and other monies rightfully
24 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of their
25 unlawful and unfair business practices.

26 139. PLAINTIFF also seeks an injunction against DEFENDANTS on behalf of the Class
27 Members, enjoining DEFENDANTS and any and all persons acting in concert with them from
28 engaging in each of the unlawful practices and policies set forth herein.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for relief and judgment, on behalf of PLAINTIFF and
3 Class Members as follows:

- 4 1. For an order that the action be certified as a class action;
5 2. For an order that PLAINTIFF be appointed as class representative;
6 3. For an order that counsel for PLAINTIFF be appointed as class counsel;
7 4. For compensatory damages according to proof;
8 5. For liquidated damages according to proof;
9 6. For penalties according to proof;
10 7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully
11 withheld from PLAINTIFF and the Class Members;
12 8. For an order finding DEFENDANTS have engaged in unfair competition in violation of
13 section 17200, *et seq.*, of the California Business and Professions Code;
14 9. For an order enjoining DEFENDANTS from further acts of unfair competition;
15 10. For pre-judgment interest as permitted by law;
16 11. For attorney's fees and costs reasonably incurred; and
17 12. For such other and further relief that the Court deems just and proper.

18
19 Dated: June 30, 2023

CROSNER LEGAL, PC

20
21 By: 

22 Zachary M. Crosner, Esq.
23 Jamie Serb, Esq.
24 Attorneys for Plaintiff,
25 WYATT BRADLEY
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

PLAINTIFF demands a trial by jury on all claims so triable.

Dated: June 30, 2023

CROSNER LEGAL, PC

By: 
Zachary M. Crosner, Esq.
Jamie Serb, Esq.
Attorneys for Plaintiff,
WYATT BRADLEY