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Assigned for All Purposes

Judge Lon F. Hurwitz

Dept. CX103

Attorneys for Plaintiff and the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

PATRICK LANGSTON, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

ZIPFIZZ CORPORATION, a Washington
Corporation; and DOES 1-50, inclusive.

Defendants.

CASE NO.: 30-2023-01333366-CU-OE-CXC

**FIRST AMENDED CLASS AND PAGA
ACTION COMPLAINT:**

- (1) FAILURE TO TIMELY PAY WAGES;
- (2) FAILURE TO PAY MINIMUM WAGES;
- (3) FAILURE TO PAY OVERTIME WAGES;
- (4) FAILURE TO PAY SICK PAY WAGES;
- (5) MEAL PERIOD VIOLATIONS;
- (6) REST PERIOD VIOLATIONS;
- (7) FAILURE TO REIMBURSE
NECESSARY BUSINESS EXPENSES;
- (8) WAGE STATEMENT VIOLATIONS;
- (9) WAITING TIME PENALTIES;
- (10) UNFAIR COMPETITION; and
- (11) PAGA PENALTIES

DEMAND FOR JURY TRIAL

1 Plaintiff Patrick Langston (“Plaintiff”) on behalf of himself, and all other similarly situated
2 non-exempt employees, alleges, and complains of defendant Zipfizz Corporation (“Defendant”), and
3 DOES 1 to 50 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant is a manufacturer of healthy sports drinks such as drink mix, immune health
6 powder, and energy shots.

7 2. Plaintiff brings this class and PAGA representative action against Defendants for
8 alleged violations of the California Labor Code and Business and Professions Code.

9 3. As further set forth below, Plaintiff alleges that Defendants failed and continue to fail
10 to timely pay wages within seven (7) calendar days of the weekly pay period in violation of Labor
11 Code §§ 204 and 210.

12 4. Plaintiff further alleges that Defendants failed and continue to fail to pay for all hours
13 worked due to an implantation of a uniform time rounding policy/practice. Plaintiff also alleged that
14 Defendants failed to properly calculate non-exempt employees’ overtime rate by failing to include
15 all forms of non-discretionary compensation in calculating the “regular rate of pay.” Likewise,
16 Plaintiff alleges that Defendants uniformly failed to pay all sick time at “regular rate of pay.”

17 5. Furthermore, Plaintiff alleges that Defendants’ meal and rest period policies and
18 practices failed to provide him and all other similarly situated non-exempt employees with compliant
19 meal and rest periods and failed to pay meal and rest premium pay at the “regular rate of pay” in lieu
20 thereof. Plaintiff further alleges that Defendants failed to reimburse for all necessary business
21 expenses. As a result, Plaintiff alleges that Defendants failed to provide non-exempt employees with
22 accurate written itemized wage statements and failed to timely pay all final wages upon separation of
23 employment.

24 6. Based on these alleged Labor Code violations, Plaintiff now brings this class and
25 PAGA representative action to recover unpaid wages, restitution, penalties, and other related relief
26 on behalf of himself and all others similarly situated.

27 **JURISDICTION AND VENUE**

28 7. This class action is brought pursuant to California Code of Civil Procedure § 382.

8. Plaintiff, on behalf of himself and all others similarly situated employees hereby brings this class action for recovery of unpaid wages and penalties under California Labor Code §§ 200, 201-203, 204, 210, 218.5, 226(a), 226(e), 226.3, 226.7, 246, 510, 512, 1174, 1174.4, 1194, 1197.1, 1199, 2802-2804, among others, and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in addition to seeking declaratory relief and restitution pursuant to California Business and Professions Code § 17200, *et. seq.*

9. This Court has jurisdiction over Defendants' violations of the California Labor Code and applicable Wage Orders because the amount in controversy exceeds this Court's jurisdictional minimum.

10. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, as Defendants own, maintain offices, transact business, have an agent or agents within the County of Orange, and/or otherwise are found within the County of Orange, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

11. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is a California resident residing in the State of California. Defendants employed Plaintiff as a non-exempt employee with the title “Demo Event Specialist” in the County of Orange.

12. Plaintiff is informed and believes and thereon alleges that Defendant Zipfizz Corporation is a corporation authorized and doing business in Orange County, California; and is and/or was the legal employer of Plaintiff and the Class Members during the applicable statutory periods.

13. Defendants' policies and/or practices outlined herein have deprived Plaintiff and other similarly situated non-exempt employees of the rights afforded to them by California Labor Code §§ 201-203, 204, 210, 218.5, 226, 226(a), 226(e), 226.3, 226.7, 246, 510, 512, 1194, 1197.1, 1199, 2802, 2698 *et seq.*, among others, and California Business and Professions Code § 17200 *et seq.*, and applicable Wage Order(s).

14. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to

1 do) business in the State of California, County of Orange.

2 15. Plaintiff does not know the true names or capacities, whether individual, partner, or
3 corporate, of the Defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
4 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
5 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
6 believes, and thereon alleges, that each of said fictitious Defendants, whether individual, partners, or
7 corporate, were responsible in some manner for the acts and omissions alleged herein, and
8 proximately caused the Classes to be subject to the unlawful employment practices alleged herein.

9 16. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
10 herein, Defendants were and are the employers of Plaintiff and all members of the Classes. At all
11 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
12 alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of
13 them, were the agents, servants, and employees of each and every one of the other Defendants, as
14 well as the agents of all Defendants, and at all times herein mentioned were acting within the course
15 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
16 and/or otherwise ratified each and every one of the acts or omissions complained of herein.

17 17. At all times, Defendants, and each of them, were members of and engaged in a joint
18 venture, partnership, and common enterprise, and acting within the course and scope of and in
19 pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all
20 Defendants were joint employers for all purposes of Plaintiff and all members of the Classes.

21 **COMMON FACTUAL ALLEGATIONS**

22 18. Defendant is a manufacturer of healthy sports drinks such as drink mix, immune health
23 powder, and energy shots. Plaintiff was employed by Defendants as a non-exempt employee with
24 the title of “Demo Event Specialist” in Huntington Beach, California.

25 19. Plaintiff and other non-exempt employees (including, Demo Specialist, Sales
26 Associate, Demonstration Promoter, Brand Promoter, and all other non-exempt positions) were
27 responsible for all of Defendants’ business in the State of California. At all relevant times, Plaintiff
28 and the other non-exempt employees were subjected to the same policies, procedures, and practices,

1 working conditions, and corresponding wage and hour violations.

2 20. First, at all relevant times, Defendants paid Plaintiff and other non-exempt
3 employees on a “weekly, biweekly, or semimonthly” basis. Under Labor Code § 204(d), for the
4 payment of wages for “weekly, biweekly, or semimonthly payroll” California employers are
5 required to pay non-exempt employees not more than seven (7) calendar days following the close
6 of the payroll period.

7 21. Defendants’ uniform payroll policies/practices failed and continues to fail to timely
8 pay Plaintiff and other non-exempt employees in violation of Labor Code § 204. Plaintiff and other
9 non-exempt employees were routinely paid on a “weekly, biweekly, or semimonthly” payroll, but
10 Defendants regularly failed to pay all wages within 7 calendar days of the close of the payroll period.
11 For instance, for the pay period 03/06/2023 to 03/12/2023 Defendants paid Plaintiff on 03/21/2023,
12 nine (9) calendar days after the close of the payroll period.

13 22. Labor Code § 204 “pertains to the timing of wage payments” and serves a very
14 important public policy objective. “It has long been recognized that wages are not ordinary debts, . .
15 . and that, because of the economic position of the average worker and, in particular, his dependence
16 on wages for the necessities of life for himself and his family, it is essential to the public welfare that
17 he receive his pay when it is due.” (*See also In re Trombley* (1948) 31 Cal. 2d.801, 810-11 (citing *In*
18 *re Moffett* (1937) 19 Cal.App.2d 7, 19). The penalties for violating Labor Code § 204 are set forth in
19 Labor Code section 210(a) as follows: [E]very person who fails to pay the wages of each employee
20 as provided in Sections . . . 204 . . . shall be subject to a civil penalty as follows: (1) For any initial
21 violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent
22 violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay
23 each employee, plus 25 percent of the amount unlawfully withheld.

24 23. Due to Defendants’ uniform late payment of wages to Plaintiff and the other non-
25 exempt employees, Defendants violated the provisions of Labor Code § 204 and the applicable Wage
26 Orders. Accordingly, Plaintiff and other non-exempt employees are entitled to recover civil penalties
27 in the amount of \$100 for the first violation and \$200 for each subsequent violation, plus 25% of the
28 amount unlawfully withheld pursuant to Labor Code § 210(a).

1 24. Next, at all relevant times, Defendants had a consistent policy of rounding Plaintiff
2 and other non-exempt employees' time entries to the nearest quarter hour. As a result of this practice,
3 Plaintiff and other non-exempt employees are not compensated for all the hours that they work and
4 all of the overtime hours they work, in violation of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199,
5 and applicable Wage Orders.

6 25. California courts have held that rounding time policies can be lawful if and when the
7 rounding policy is fair and neutral on its face and 'it is used in such a manner that it will not result,
8 over a period of time, in failure to compensate the employees properly for all the time they have
9 actually worked,' (29 C.F.R. § 785.48; see DLSE Manual, *supra*, §§ 47.1, 47.2.)."

10 26. Here, Defendants' rounding time policy/practice is not neutral on its face or in its
11 application as Plaintiff and other non-exempt employees are subject to discipline, including
12 termination for being tardy in reporting to work, or returning from a meal period. Moreover, because
13 Defendants is easily capable of tracking the time worked by non-exempt employees to the minute,
14 the policy itself exists not for the convenience or benefit of the employees who are trying to report
15 their time on timecards or otherwise, but for Defendants' benefit. As a result, the policy is not neutral
16 on its face, and over a period of time, Plaintiff and other non-exempt employees were not properly
17 paid for all hours worked in violation of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and
18 applicable Wage Orders.

19 27. Furthermore, at all relevant times, non-exempt employees were not properly paid at
20 the correct overtime rate for all hours worked in excess of eight (8) hours per workday and/or forty
21 (40) hours per workweek due to Defendants' uniform failure to include all forms of
22 compensation/renumeration, including, but not limited to, non-discretionary bonuses, incentive,
23 commissions, and other eligible renumeration, when calculating the "regular rate of pay" used in
24 overtime calculations.

25 28. Under the California Labor Code (as well as the FLSA), courts have held that regularly
26 paid non-discretionary pay/bonuses must be included in determining an employee's "regular rate of
27 pay" for purposes of calculating overtime. (See *Haber v. The Americana Corp.* 378 F. 2d 854, 855-
28 856 (9th Cir. 1967) [holding that regularly paid efficiency bonuses must be included in calculating

1 the “regular rate”]; *Wang v. Chinese Daily News, Inc.* 435 F. Supp. 2d 1042, 1055-1057 (C.D. Cal.
2 2006) [granting summary judgement to Plaintiffs under California and federal law on the grounds,
3 tat defendant improperly calculated overtime by excluding annual bonuses paid to employees from
4 the “regular rate of compensation”]; see *Walling v. Youngerman-Reynolds Hardwood Co.* (1945) 65
5 S.Ct. 1242, 1245. (“The regular rate by its very nature must reflect all payments which the parties
6 have agreed shall be received regularly during the workweek, exclusive of overtime payments. It is
7 not an arbitrary label chosen by the parties; it is an actual fact. Once the parties have decided upon
8 the amount of wages and the mode of payment the determination of the regular rate becomes a matter
9 of mathematical computation, the result of which is unaffected by any designation of a contrary
10 ‘regular rate’ in the contracts.”); see also 29 CFR §§ 778.110 (“production bonus”) and 778.111
11 (“piece-rate”).)

12 29. Here, although Defendants consistently paid non-exempt employees various non-
13 discretionary bonuses, commissions, incentives, and other remuneration, Defendants omitted these
14 payments when calculating the “regular rate of pay” used in overtime calculations and when paying
15 overtime to Plaintiff and other non-exempt employees.

16 30. Labor Code § 510 requires an employer to compensate an employee who works more
17 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
18 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of
19 pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
20 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or
21 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
22 applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in
23 any workday or more than 40 hours in any workweek unless the employee receives one and one-half
24 (1 1/2) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek.

25 31. By their policy of requiring non-exempt employees to work in excess of eight (8)
26 hours in a workday and/or forty (40) hours in a workweek without compensating them at the rate of
27 one-half (1 1/2) their “regular rate of pay,” Defendants willfully violated the provisions of Labor Code
28 § 510 and the applicable Wage Orders.

1 32. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed
2 by an applicable state or local law, or by an order of the commission a civil penalty, restitution of
3 wages, and liquidated damages as follows: (1) for any initial violation that is intentionally committed,
4 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
5 is underpaid. . . [and] (2) [f]or each subsequent violation for the same specific offense, two hundred
6 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
7 underpaid regardless of whether the initial violation is intentionally committed.

8 33. As set forth above, Defendants failed to compensate Plaintiff and other non-exempt
9 employees for all overtime wages at the proper overtime rates and also by failing to include all forms
10 of compensation/renumeration, when calculating the “regular rate of pay” used in overtime
11 calculations. As a result of this practice, non-exempt employees are not compensated at the
12 appropriate premium overtime rate for all overtime hours that they work in violation of Labor Code
13 §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

14 34. Accordingly, to the extent permitted by law, non-exempt employees are entitled to
15 recover liquidated damages for violations of Labor Code § 1197.1.

16 35. Based upon these factual allegations, non-exempt employees are entitled to unpaid
17 wages and penalties under Labor Code § 1199.

18 36. Next, at all relevant times, Defendants failed in their obligation to pay Plaintiff and
19 other non-exempt employees the legally required paid sick days at the legal “regular rate of pay”
20 pursuant to Labor Code § 246(a), (b).

21 37. Pursuant to Labor Code § § 246(a),(b), “[a]n employee who, on or after July 1, 2015,
22 works in California for the same employer for 30 or more days within a year from the commencement
23 of employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours
24 worked, beginning at the commencement of employment.” Furthermore, Labor Code § 246(l)(1)
25 provides that paid sick time for non-exempt employees must be “calculated in the same manner as
26 the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not
27 the employee actually works overtime in that workweek.” Additionally, Labor Code § 246(l)(2)
28 states that the paid sick time must be “calculated by dividing the employee’s total wages, not

1 including overtime premium pay, by the employee's total hours worked in the full pay periods of the
2 prior 90 days of employment." Finally, Labor Code § 246(i) requires employers to "provide an
3 employee with written notice that sets forth the amount of paid sick leave available, or paid time off
4 leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage
5 statement described in Labor Code § 226 or in a separate writing provided on the designated pay date
6 with the employee's payment of wages."

7 38. At all relevant times, Defendants failed in the obligation to pay Plaintiff and other non-
8 exempt employees the legally required paid sick days at the "regular rate of pay" pursuant to Labor
9 Code § 246(a), (b). Instead, Defendants paid sick time at the base rate of pay, rather than the "regular
10 rate of pay" as required by Labor Code §§ 246(l)(1-2).

11 39. Furthermore, at all relevant times, Plaintiff and other non-exempt employees were
12 often denied timely and compliant 30-minute off-duty meal periods as mandated by California law.
13 As a result of Defendants' uniform meal period policies/practices, operational requirements and work
14 demands, Plaintiff and other non-exempt employees were often unable to take uninterrupted first
15 meal periods before the end of the fifth hour of work. Further, when Plaintiff and other non-exempt
16 employees worked in excess of 10.0 hours in a shift, which was a regular occurrence, they were not
17 always allowed and permitted to take a mandated and timely second meal period before the end of
18 the tenth hour of work in violation of the Labor Code and applicable Wage Orders.

19 40. In addition, Plaintiff and other non-exempt employees were not provided meal period
20 premiums for missed or missed or non-compliant meal periods at the "regular rate of pay" pursuant
21 to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858 and Labor Code § 226.7.

22 41. Accordingly, due to Defendants' uniform meal period policies/practices, Plaintiff and
23 other non-exempt employees were also regularly denied legally compliant meal periods in violation
24 of Labor Code §§ 226.7, 510, 516, and applicable IWC Wage Orders.

25 42. Next, at all relevant times, Plaintiff and other non-exempt employees were also not
26 provided with all legally mandated 10-minute rest periods for every 4 hours worked or major fraction
27 thereof as mandated by California law. As a result, Plaintiff and other non-exempt employees were
28 and are routinely unable to take (10) minute duty free rest periods for every major fraction of four

1 hours worked due to the workload and demands of the job. This includes a second rest period for
2 shifts in excess of six hours, and a third rest period for shifts in excess of 10 hours in a workday. To
3 the extent non-exempt were permitted allowed and permitted to take rest periods, the rest periods
4 were often cut short or interrupted for work reasons. Finally, Defendants also required non-exempt
5 employees to remain on premises during rest periods.

6 43. By not relieving all non-exempt employees of all duties during rest periods,
7 Defendants failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services,*
8 *Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that “during rest periods employers must relieve
9 employees of all duties and relinquish control over how employees spend their time.”]. In *Augustus*,
10 the California Supreme Court expressly rejected the employers’ assertion that it could provide an on-
11 duty rest period to employees who worked as security guards and further explained “that employers
12 [must] relinquish any control over how employees spend their break time and relieve their employees
13 of all duties.” *Id.* at 273.

14 44. Further, since Defendants did not offer employees the opportunity to receive
15 compliant and appropriately separately compensated rest periods, “the court may not conclude
16 employees voluntarily chose to skip ... breaks.” *Alberts v. Aurora Behavioral Health Care* (2015)
17 241 Cal. App. 4th 388, 410 (“[i]f an employer fails to provide legally compliant meal or rest breaks,
18 the court may not conclude employees voluntarily chose to skip those breaks.)

19 45. Each time Plaintiff and other non-exempt employees were unable to take a compliant
20 rest period, Defendants failed and continue to fail to adequately pay rest period premium payments
21 at the “regular rate of pay” as required by Labor Code § 226.7.

22 46. Accordingly, due to Defendants’ uniform rest period policies/practices, Plaintiff and
23 other non-exempt employees were also regularly denied legally compliant rest breaks in violation of
24 Labor Code §§ 226.7, 512, and applicable Wage Orders.

25 47. Moreover, at all relevant times, Defendants required Plaintiff and other non-exempt
26 employees to incur necessary business expenses associated with using their personal cell phones for
27 work related purposes and other business expenses but did not reimburse non-exempt employees for
28 these necessary expenditures. See *Cochran v. Schwan’s Home Service, Inc.*, (2014) 228 Cal.App.4th

1 1137, 1144 “[i]f an employee is required to make work-related calls on a personal cell phone, then
2 he or she is incurring an expense for the purposes of section 2802. It does not matter whether the
3 phone bill is paid for by a third person, or at all...it is irrelevant whether the employee changed plans
4 to accommodate work-related cell phone usage...To show liability under section 2802, an employee
5 need only show that he or she was required to use a personal cell phone to make work-related calls,
6 and he or she was not reimbursed”].)

7 48. Since Defendants failed to and continue to fail to reimburse Plaintiff and other non-
8 exempt employees for necessary business expenses, including, but not limited to, the costs of cell
9 phone usage for work purposes, they are in violation of Labor Code § 2802.

10 49. As a result of Defendants failure to pay Plaintiff and other non-exempt employees for
11 all overtime and sick time wages, and meal and rest period premiums at the “regular rate of pay,”
12 Defendants issued wage statements which failed to accurately identify the gross wages earned, the
13 total hours worked, the net wages earned, and the correct corresponding number of hours worked at
14 each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

15 50. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
16 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
17 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
18 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
19 deduction statement or fails to keep the required in subdivision (a) of Section 226.”

20 51. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other
21 non-exempt employees may also recover Labor Code § 226.3 penalties for Defendants’ violations of
22 Labor Code § 226(a). As such, the wage statements Defendants issued to Plaintiff and other non-
23 exempt employees are in violation of Labor Code § 226 (a). Thus, Defendants have violated Labor
24 Code § 226(a) with respect to Plaintiff and other non-exempt employees. Consequently, because
25 Defendants failed to comply with Labor Code § 226(a) and applicable Wage Orders, Plaintiff and
26 other non-exempt employees would be entitled to recover penalties under Labor Code § 226(e).

27 52. Finally, because of, Defendants’ failure to pay all overtime and sick pay wages, and
28 meal and rest period premiums at the “regular rate of pay,” Defendants also failed and continue to

1 fail to pay Plaintiff and other non-exempt employees all wages owed at their time of separation from
2 employment in violation of Labor Code §§ 201-203 and applicable Wage Orders. Thus, non-exempt
3 employees would be entitled to recover penalties under Labor Code §§ 201-203.

4 CLASS ACTION ALLEGATIONS

5 53. Plaintiff brings this action on behalf of himself and the following Classes pursuant to
6 § 382 of the Code of Civil Procedure:

7 All non-exempt employees who work or worked for Defendants in
8 California, during the four years immediately preceding the filing of the
Complaint through the date of trial. (“Class”);

9 All non-exempt employees who worked for Defendants in California and
10 who worked overtime hours during at least one shift and earned any non-
11 discretionary bonus or other remuneration, during the four years immediately
preceding the filing of the Complaint through the date of trial. (“Overtime
Subclass”);

12 All non-exempt employees who work or worked for Defendants in
13 California, and during the one year immediately preceding the filing of the
14 Complaint through the date of trial. (“Wage Statement Subclass”);

15 All employees who work or worked for Defendants in California, and who
16 left their employ during the three years immediately preceding the filing of
the Complaint through the date of trial. (“Waiting Time Penalty Subclass”)
17 (collectively “the Classes”)

18 54. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
19 joinder of all members would be unfeasible and not practicable. The membership of the Classes is
20 unknown to Plaintiff at this time; however, it is estimated that the Classes consist of at least one
21 hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of
22 Defendants’ employment and payroll records.

23 55. **Common Questions of Law and Fact Predominate/Well Defined Community of**
24 **Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated
25 employees, which predominate over questions affecting only individual members including, without
26 limitation to:

27 1. Whether Defendants failed to timely pay Plaintiff and members of the Class in
28 violation of Labor Code §§ 204 and 210;

2. Whether Defendants' uniform time rounding policy failed to pay all minimum wages for all hours worked to members of the Classes;

3. Whether Defendants failed to pay overtime and sick pay at the appropriate legal rate to members of the Classes;

2. Whether Defendants provided legally compliant meal and rest and recovery periods or proper compensation at the "regular rate of pay" in lieu thereof to members of the Classes;

3. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Subclass pursuant to Labor Code § 226(a);

4. Whether the timing and amount of payment of final wages to members of the Waiting Time Penalty Subclass at the time of separation from employment were unlawful; and

5. Whether Defendants properly reimbursed members of the Classes for all necessary business expenditures.

56. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' policy/practice of failing to timely pay all wages, failing to pay all minimum wages, failure to pay overtime at the appropriate premium rate, Defendants' uniform policy of failing to provide compliant meal and rest or compensation at the "regular rate of pay" in lieu thereof, Defendants' uniform policy of failing to compensate non-exempt employees for their cell phone expenses incurred at the behest of Defendants, and Defendants' resulting failure to provide accurate itemized wage statements, and to pay for all wages due upon separation of employment. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

57. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein, Plaintiff, like the members of the Classes was paid wages in an untimely manner, was paid late in

1 violation of Labor Code 204, was deprived of minimum, overtime and sick pay wages, was deprived
2 of meal and rest period premium wages, was subject to Defendants' uniform meal and rest and
3 recovery period policies/practices, was not reimbursed for required work related expenses, was not
4 provided accurate itemized wage statements, and was not paid all wages owed at the time of his
5 separation of employment.

6 58. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
7 represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's
8 attorneys are ready, willing and able to fully and adequately represent the members of the Classes.
9 Plaintiff's attorneys have prosecuted and are actively litigating several wage-and-hour class actions
10 in state and federal courts and are committed to vigorously prosecuting this action on behalf of the
11 members of the Classes.

12 59. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
13 important public interest in establishing minimum working conditions and standards in California.
14 These laws and labor standards protect the average working employee from exploitation by
15 employers who have the responsibility to follow the laws and who may seek to take advantage of
16 superior economic and bargaining power in setting onerous terms and conditions of employment. The
17 nature of this action and the format of laws available to Plaintiff and members of the Classes make
18 the class action format a particularly efficient and appropriate procedure to redress the violations
19 alleged herein. If each employee were required to file an individual lawsuit, Defendants would
20 necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the
21 limited resources of each individual plaintiff with their vastly superior financial and legal resources.

22 60. Moreover, requiring each member of the Classes to pursue an individual remedy
23 would also discourage the assertion of lawful claims by employees who would be disinclined to file
24 an action against their former and/or current employer for real and justifiable fear of retaliation and
25 permanent damages to their careers at subsequent employment. Further, the prosecution of separate
26 actions by the individual class members, even if possible, would create a substantial risk of
27 inconsistent or varying verdicts or adjudications with respect to the individual class members against
28 Defendants herein; and which would establish potentially incompatible standards of conduct for

1 Defendants; and/or legal determinations with respect to individual class members which would, as a
2 practical matter, be dispositive of the interest of the other class members not parties to adjudications
3 or which would substantially impair or impede the ability of the class members to protect their
4 interests. Further, the claims of the individual members of the class are not sufficiently large to
5 warrant vigorous individual prosecution considering all of the concomitant costs and expenses
6 attending thereto. As such, the Classes identified in Paragraph 50 are maintainable as Classes under
7 § 382 of the Code of Civil Procedure.

8 **FIRST CAUSE OF ACTION**

9 **FAILURE TO TIMELY PAY WAGES**

10 **(AGAINST ALL DEFENDANTS)**

11 61. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

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

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

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

21 63. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and
22 entirely independent and apart from, any other penalty provided in this article” (Lab. Code, §
23 210, subd. (a).)

24 64. As described above, Defendants failed to timely pay the Class Members within
25 seven calendar days following the close of the weekly payroll in accordance with Labor Code § 204
26 on a regular and consistent basis, and therefore, Plaintiff and members of the Class are entitled to
27 penalties pursuant to Labor Code §210(a).

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY ALL MINIMUM WAGES**

3 **(AGAINST ALL DEFENDANTS)**

4 65. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 66. Section 4 of the applicable Wage Orders and California Labor Code §§ 1197 and
6 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in
7 amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has
8 not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid
9 balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount
10 equal to the unpaid wages and interest accrued thereon.

11 67. At all relevant times herein, Defendants failed to conform their pay practices to the
12 requirements of the law. This unlawful conduct includes but is not limited to Defendants' uniform
13 and unlawful practice of rounding time entries resulting in a failure to pay for all hours worked.
14 Accordingly, Plaintiff and members of the Classes were not compensated for all hours worked,
15 including, but not limited to, all hours they were subject to the control of Defendants and/or suffered
16 or permitted to work under the California Labor Code and applicable Wage Orders.

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

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

27 70. Defendants' practices/policies and uniform administration of corporate policy
28 regarding illegal employee compensation is unlawful and creates an entitlement to recovery by

1 Plaintiff and members of the Classes in a civil action for the unpaid amount of minimum wages,
2 liquidated damages, including interest thereon, statutory penalties, attorney's fees, and costs of suit
3 according to Labor Code §§ 204, 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure §
4 1021.5.

5 **THIRD CAUSE OF ACTION**

6 **FAILURE TO PAY ALL OVERTIME WAGES**

7 **(AGAINST ALL DEFENDANTS)**

8 71. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

9 72. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and
10 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours
11 worked and provide a private right of action for the failure to pay all overtime compensation for
12 overtime work performed.

13 73. At all times relevant herein, Defendants were required to properly pay Plaintiff and
14 members of Class for all overtime hours worked pursuant to California Labor Code § 1194 and the
15 applicable Wage Orders.

16 74. Section 3 of the applicable Wage Order requires an employer to pay an employee
17 "one and one-half (1 1/2) times the employee's regular rate of pay" for work in excess of 8 hours per
18 workday and/or in excess of 40 hours of work in the workweek. The same section also requires an
19 employer to pay an employee double the employee's regular rate of pay for work in excess of twelve
20 hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in
21 the workweek.

22 75. Defendants failed to conform their pay practices to the requirements of the law. This
23 unlawful conduct includes but is not limited to Defendants' uniform and unlawful policy/practice of
24 (1) rounding non-exempt employee's time entries, and (2) failing to include all forms of compensation
25 including, but not limited to, bonuses and other non-discretionary non-hourly pay in calculating the
26 "regular rate of pay" for purposes of paying overtime, which resulted in the Overtime Subclass not
27 being paid all overtime wages owed.

76. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the members of Overtime Subclass in a civil action for the unpaid amount of overtime wages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code §§ 204, 210, 510, 1194, and 1198, the applicable Wage Orders, and Code of Civil Procedure § 1021.5.

FOURTH CAUSE OF ACTION

FAILURE TO PAY ALL SICK PAY WAGES

(AGAINST ALL DEFENDANTS)

77. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

78. This cause of action is brought pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1, 1198, and 1199 which provide that non-exempt employees are entitled to have their sick time paid at the regular rate, including all forms of compensation/remuneration.

79. At all times relevant herein, Defendants were required to properly pay Plaintiff and members of the Class for all accrued sick leave taken, pursuant to California Labor Code § 246.

80. Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes but is not limited to Defendants' uniform and unlawful policy/practice of failing to include all forms of compensation, including but not limited to shift differentials, non-discretionary bonuses, and other forms of remuneration into the calculation of the "regular rate of pay," which resulted in Plaintiff and the Class not being paid all sick time wages owed.

81. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the members of the Class in a civil action for the unpaid amount of sick time wages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code §§ 246, 558, 1194.2, 1197.1, 1198, the applicable Wage Orders, and Code of Civil Procedure § 1021.5.

FIFTH CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

82. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

1 83. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in
2 their affirmative obligation to provide all of their hourly non-exempt employees, including Plaintiff
3 and members of the Class, with all required meal periods in accordance with the mandates of the
4 California Labor Code and applicable Wage Orders, for the reasons set forth in the Common
5 Allegations section of this Complaint. Despite Defendants' violations, Defendants have not paid an
6 additional hour of pay at the "regular rate of pay" to Plaintiff and members of the Class at their
7 respective regular rates of pay for each violation, in accordance with California Labor Code § 226.7.

8 84. As a result, Defendants are responsible for paying premium compensation for meal
9 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the
10 applicable Wage Orders, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b) and 3289.

11 **SIXTH CAUSE OF ACTION**

12 **REST PERIOD VIOLATIONS**

13 **(AGAINST ALL DEFENDANTS)**

14 85. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

15 86. Section 12 of the applicable Wage Orders and Labor Code §§ 226.7 and 516
16 establish the right of non-exempt employees to be provided with a rest period of at least ten (10)
17 minutes for each four (4) hour period worked, or major fraction thereof for the reasons set forth in
18 the Common Allegations section of this Complaint.

19 87. Due to their unlawful rest period policy and practices, Defendants did not authorize
20 and permit Plaintiff and members of the Class to take code-compliant rest periods to which they were
21 legally entitled to. Despite Defendants' violations, Defendants have not paid an additional hour of
22 pay at the "regular rate of pay" to Plaintiff and members of the Class at their respective regular rates
23 of pay for each violation, in accordance with California Labor Code § 226.7.

24 88. The foregoing violations create an entitlement to recovery by Plaintiff and members
25 of the Class in a civil action for the unpaid amount of rest period premiums owing, including interest
26 thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§
27 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**

3 **(AGAINST ALL DEFENDANTS)**

4 89. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 90. Labor Code 2802(a) states in pertinent part the following:

6 “(a) An employer shall indemnify his or her employee for all necessary expenditures
7 or losses incurred by the employee in direct consequence of the discharge of his or her
8 duties, or of his or her obedience to the directions of the employer, even though
unlawful, unless the employee, at the time of obeying the directions, believed them to
be unlawful.”

9 91. As set forth above, Plaintiff and members of the Class must be compensated for all
10 necessary business expenditures, including, but not limited to, a reasonable portion of their monthly
11 personal cell phone bills incurred in their discharge of their duties. (See *Cochran v. Schwan’s Home*
12 *Service, Inc.* (2014) 228 Cal.App.4th 1137 (“We hold that when employees must use their personal
13 cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them.
14 Whether the employees have cell phone plans with unlimited minutes or limited minutes, the
15 reimbursement owed is a reasonable percentage of their cell phone bills.”); *Aguilar v. Zep, Inc.*, 2014
16 WL 4245988 *17 (N.D. Cal. 2014) (granting Plaintiff’s motion for partial summary judgment on
17 Plaintiff’s cell phone reimbursement claim); *Ritchie v. Blue Shield of California*, 2014 WL 6982943,
18 at *21 (N.D. Cal. 2014) (certifying class of cell phone reimbursement claim and adopting the logic
19 of *Cochran*).

20 92. At all relevant times, by failing to reimburse Plaintiff and the Class for all necessary
21 business expenditures, Defendants have failed to comply with Labor Code Section 2802 and the
22 applicable Wage Orders.

23 **EIGHTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

25 **(AGAINST ALL DEFENDANTS)**

26 93. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

27 94. Labor Code 226(a) states in pertinent part the following:

28 “(a) An employer, semimonthly or at the time of each payment of wages, shall

1 furnish to his or her employee, either as a detachable part of the check, draft, or
2 voucher paying the employee's wages, or separately if wages are paid by personal
3 check or cash, an accurate itemized statement in writing showing (1) gross wages
4 earned, (2) total hours worked by the employee, except as provided in subdivision
5 (j), (3) the number of piece-rate units earned and any applicable piece rate if the
6 employee is paid on a piece-rate basis, (4) all deductions, provided that all
7 deductions made on written orders of the employee may be aggregated and shown
8 as one item, (5) net wages earned, (6) the inclusive dates of the period for which
9 the employee is paid, (7) the name of the employee and only the last four digits of
10 his or her social security number or an employee identification number other than
11 a social security number, (8) the name and address of the legal entity that is the
12 employer, and (9) all applicable hourly rates in effect during the pay period and the
13 corresponding number of hours worked at each hourly rate by the employee."

95. As set forth above, during the Class Period, Defendants issued and continue to issue
10 wage statements to its employees including Plaintiff and members of the Wage Statement Subclass,
11 which are inadequate under Labor Code Section 226(a).

96. As a result of Defendants failure to pay for all overtime and sick pay wages at the
12 appropriate legal rate, and missed meal and rest period premiums, Defendants failed to include
13 required information on Plaintiff and the Wage Statement Subclass' wage statements, including, but
14 not limited to, the gross wages earned, the net wages earned in violation of Labor Code section 226(a).

97. Defendants' failure to comply with section 226(a) of the Labor Code was knowing
15 and intentional.

98. As a result of Defendants' issuance of inaccurate itemized wage statements to
16 Plaintiff and members of the Wage Statement Subclass in violation of section 226(a) of the California
17 Labor Code, Plaintiff and members of the Wage Statement Subclass are each entitled to recover an
18 initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate
19 penalty of \$4,000 per Plaintiff and per every member of the Wage Statement Subclass from
20 Defendants pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys' fees.

23 **NINTH CAUSE OF ACTION**

24 **WAITING TIME PENALTIES**

25 **(AGAINST ALL DEFENDANTS)**

26 99. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

27 100. The actionable period for this cause of action is three years prior to the filing of this
28

1 Complaint through the present, and on-going until the violations are corrected, or the class is certified.

2 101. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and owing
3 to Plaintiff and the Waiting Time Penalty Subclass during the actionable period for this cause of
4 action at or around the time that their employment is or was terminated or ended.

5 102. Labor Code § 203 provides that if an employer willfully fails to pay compensation
6 promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, then the
7 employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

8 103. Defendants willfully failed to pay Plaintiff and the members of the Waiting Time
9 Penalty Subclass for all hours worked, including all overtime and sick pay wages, and their meal and
10 rest period premiums at the “regular rate of pay”, prior to or upon termination or separation from
11 employment with Defendants as required by Labor Code §§ 201 and 202.

12 104. As a result, Defendants are liable to Plaintiff and the Waiting Time Penalty Subclass
13 for waiting time penalties amounting to thirty (30) days wages for Plaintiff and the Classes pursuant
14 to Labor Code § 203. *See, e.g.,* DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon
15 termination entitles an employee to recover waiting time penalties).

16 **TENTH CAUSE OF ACTION**

17 **UNFAIR COMPETITION**

18 **(AGAINST ALL DEFENDANTS)**

19 105. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

20 106. Defendants have engaged and continue to engage in unfair and/or unlawful business
21 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by
22 failing to pay all wages in a timely manner, failure to pay all minimum, overtime and sick pay wages
23 at the appropriate legal rate, by failing to provide all legally required meal and rest periods or pay
24 premium payments at the “regular rate of pay” in lieu thereof, by failing to provide accurate itemized
25 wage statements, by failing to reimburse employees for all necessary business expenses, and by
26 failing to pay all earned wages at the time of separation from employment.

27 107. Defendants’ utilization of these unfair and/or unlawful business practices deprived
28 Plaintiff and continue to deprive members of the Classes of compensation to which they are legally

1 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over
2 Defendants' competitors who have been and/or are currently employing workers and attempting to
3 do so in honest compliance with applicable wage and hour laws.

4 108. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
5 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
6 monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or
7 converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

8 109. The acts complained of herein occurred within the last four years immediately
9 preceding the filing of the Complaint in this action.

10 110. Plaintiff was compelled to retain the services of counsel to file this court action to
11 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of
12 Defendants' current hourly non-exempt employees and to enforce important rights affecting the
13 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which
14 he is entitled to recover under Code of Civil Procedure § 1021.5.

15 **ELEVENTH CAUSE OF ACTION**

16 **PRIVATE ATTORNEYS GENERAL ACT PENALTIES**

17 **(AGAINST ALL DEFENDANTS)**

18 111. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 112. Defendants have committed several Labor Code violations against Plaintiff and other
20 non-exempt employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698
21 *et seq.*, acting on behalf of himself and other non-exempt employees, bring this representative action
22 against Defendants to recover the civil penalties due to Plaintiff, other similarly non-exempt
23 employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f)
24 including, but not limited to (1) \$100 for each initial violation and (2) \$200 for each subsequent
25 violation per employee per pay period for those violations of the Labor Code for which no civil
26 penalty is specifically provided based on the following Labor Code violations:

27 a. Failing to provide Plaintiff and other non-exempt employees all minimum, overtime
28 and sick pay compensation at the appropriate amount and premium rate in violation of Labor Code §

1 204, 210, 510, 1194 and 1198;

2 b. Failing to provide Plaintiff and other non-exempt employees with all of their
3 statutorily mandated meal or rest periods or compensation at the “regular rate of pay” in lieu thereof
4 in violation of Labor Code §§ 204, 510, 558, 1194 and 1198;

5 c. Failing to reimburse Plaintiff and other non-exempt employees for all necessary
6 business expenditures in violation of Labor Code §§ 2800 and 2802;

7 d. Failing to timely pay wages within seven (7) calendar days of the weekly pay period
8 in violation of Labor Code §§ 204 and 210

9 e. Failing to timely compensate Plaintiff and other non-exempt employees with all
10 earnings at their separation of employment in violation of Labor Code §§ 201-203; and

11 f. Failing to furnish Plaintiff and other non-exempt employees with complete,
12 accurate, itemized wage statements in violations of Labor Code § 226(a).

13 113. On or about June 16, 2022, Plaintiff notified Defendant ZipFizz Corporation via
14 certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its
15 website of Defendant’s violations of the California Labor Code § 2698 et seq., with respect to
16 violations of the California Labor Code identified in Paragraph 112(a)-(e). Now that sixty-five days
17 have passed from Plaintiff notifying Defendant and the LWDA of these violations, Plaintiff will have
18 exhausted his administrative requirements for bringing a claim under the Private Attorneys General
19 Act with respect to these violations.

20 114. Plaintiff was compelled to retain the services of counsel to file this court action to
21 protect their interests and the interests of other non-exempt employees, and to assess and collect the
22 civil penalties owed by Defendants. Plaintiff has hereby incurred attorneys’ fees and costs, which he
23 is entitled to receive under California Labor Code § 2698 et seq.

24 **PRAYER FOR RELIEF**

25 **WHEREFORE**, Plaintiff prays for judgment for himself and for all others on whose behalf
26 this suit is brought against Defendants, as follows:

- 27 1. For an order certifying the proposed Classes;
28 2. For an order appointing Plaintiff as representative of the Classes;

- 1 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 2 4. Upon the First Cause of Action, for compensatory, consequential, general and special
- 3 damages according to proof pursuant to Labor Code §§ 204 and 210;
- 4 5. Upon the Second Cause of Action, for compensatory, consequential, general and
- 5 special damages according to proof pursuant to Labor Code §§ 204, 210, 1194, 1197, and 1198;
- 6 6. Upon the Third Cause of Action, for compensatory, consequential, general and
- 7 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;
- 8 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
- 9 special damages according to proof pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1, 1198, 1199;
- 10 8. Upon the Fifth Cause of Action, for compensatory, consequential, general and special
- 11 damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 12 9. Upon the Sixth Cause of Action, for compensatory, consequential, general and
- 13 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
- 14 10. Upon the Seventh Cause of Action, penalties pursuant to Labor Code § 2802, and
- 15 reasonable costs and attorneys' fees;
- 16 11. Upon the Eighth Cause of Action, penalties pursuant to Labor Code § 226(a), and
- 17 reasonable costs and attorneys' fees;
- 18 12. Upon the Ninth Cause of Action, for statutory waiting time penalties pursuant to
- 19 Labor Code §§ 201-203.
- 20 13. Upon the Tenth Cause of Action, for restitution to Plaintiff and members of the
- 21 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
- 22 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
- 23 14. Upon the Eleventh Cause of Action, for civil penalties due to Plaintiff, other non-
- 24 exempt aggrieved employees, and the State of California according to proof pursuant to Labor Code
- 25 § 2699 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each
- 26 subsequent violation per employee per pay period for those violations of the Labor Code for which
- 27 no civil penalty is specifically provided under the Labor Code;
- 28 15. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code

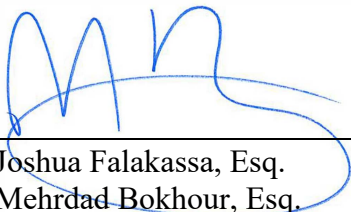
1 § 218.6 and Civil Code §§ 3287 and 3289;

2 16. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
3 218.5, 226, 2802, and Code of Civil Procedure § 1021.5; and

4 17. For such other relief that the Court may deem just and proper.
5

6 Dated: September 11, 2023

FALAKASSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

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9 By: 

Joshua Falakassa, Esq.

Mehrdad Bokhour, Esq.

Attorneys for Plaintiff and the Putative Class
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1901 Avenue of the Stars, Suite 450, Los Angeles, California 90067.

On September 14, 2023, I served the following document(s) described as **FIRST AMENDED CLASS AND PAGA ACTION COMPLAINT** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Christin A. Lawler, Esq.
calawler@foxrothschild.com
FOX ROTHSCHILD, LLP
345 California Street, Suite 2200
San Francisco, California 94104

Counsel for defendant Zipfizz Corporation

BY ELECTRONIC MAIL: Based on a Court order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused such the document(s) described above to be sent from my email address to the persons listed above. I did not receive, within a reasonable time after the transmission, any electronic message or indication that the transmission was unsuccessful.

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

Executed on September 14, 2023, at Los Angeles, California.

/s/ Carlos Garcia
Carlos Garcia