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6 Attorneys for Plaintiff WAYNE RIGGAN

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF ORANGE**

10 WAYNE RIGGAN, as an individual on
behalf of himself and on behalf of all others
11 similarly situated,

12 Plaintiff,

14 v.

15 FALCK MOBILE HEALTH CORP., a
California Corporation; and DOES 1-100,
16 inclusive,

17 Defendants.

Case No.: 30-2023-01334611-CU-OE-CXC

**FIRST AMENDED CLASS AND
REPRESENTATIVE 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. Violations of Labor Code Section 226
6. Failure to Timely Pay All Wages Due
Upon Separation of Employment
7. Failure to Reimburse Business Expenses
8. Unfair Competition *and*
9. Violation of the Private Attorneys
General Act of 2004

DEMAND FOR JURY TRIAL

Complaint filed: June 30, 2023
Trial date: None set

1 Plaintiff, WAYNE RIGGAN, (“PLAINTIFF”), an individual on behalf of PLAINTIFF, and
2 all other similarly situated Class Members (as defined below), and Aggrieved Employees (as defined
3 below) hereby files this Complaint against Defendants FALCK MOBILE HEALTH CORP., a
4 California Corporation; and DOES 1-100, inclusive, (collectively referred to herein as
5 “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

6 **JURISDICTION AND VENUE**

7 1. This court possesses original subject matter jurisdiction over this matter. Venue is
8 proper in the County of Orange pursuant to California Code of Civil Procedure section 395.5
9 because DEFENDANTS transact business within this judicial district, DEFENDANTS employed
10 PLAINTIFF to work in this judicial district and some of the acts, omissions, and conduct alleged by
11 PLAINTIFF herein occurred in this this judicial district. California Labor Code sections 2698, *et*
12 *seq.*, the Private Attorneys Generals Act of 2004 (“PAGA”), authorize aggrieved employees to sue
13 as private attorneys general their current or former employers for various civil penalties for violating
14 the California Labor Code. *See also Crestwood Behavioral Health, Inc. v. Superior Court* (2021)
15 60 Cal.App.5th 1069 (venue in a PAGA action is proper in any county where the defendants
16 committed Labor Code violations against some of its employees).

17 **THE PARTIES**

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

20 3. PLAINTIFF worked for DEFENDANTS at DEFENDANTS’ stations, offices and/or
21 facilities and/or completed routes and/or serviced DEFENDANTS’ customers in various cities
22 located throughout Orange County, California.

23 4. Defendant FALCK MOBILE HEALTH CORP. is a California Corporation that, at
24 all relevant times, was authorized to do business within the State of California and is doing business
25 in the State of California.

26 5. DEFENDANTS own, operate, manage and/or staff its employees to work at the
27 stations, offices, and/or facilit(ies) and/or other location(s) in California, including but not limited
28 to, stations, offices and/or facilities located in California operating under the following names: Falck

1 Mobile Health - Southern California; Falck Mobile Health – San Diego; and Falck Northern
2 California. DEFENDANTS, through its various stations, offices, and/or facilit(ies) and/or other
3 locations serve the health care and/or medical transportation industry.

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 are properly performed, is properly viewed as one of the “working conditions” mentioned in the

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

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

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

1 and attorneys to oversee employment matters; and, (6) DEFENDANTS share employees.

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

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 Aggrieved Employees, and further that DEFENDANTS uniformly compensated and controlled
14 the wages of PLAINTIFF and the Class Members and Aggrieved Employees in a uniform manner.
15 DEFENDANTS collectively represented to PLAINTIFF and the Class Members and Aggrieved
16 Employees that each was an "at-will" employee of DEFENDANTS, and that DEFENDANTS
17 collectively retained the right to terminate PLAINTIFF's and Class Members and Aggrieved
18 Employees' employment with or without cause. Upon information and belief, DEFENDANTS
19 further collectively represented to PLAINTIFF and Class Members and Aggrieved Employees in
20 writing the details of their compensation, and the manner in which they were to take meal and rest
21 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
22 and the policies applicable to PLAINTIFF and Class Members and Aggrieved Employees by which
23 DEFENDANTS collectively would evaluate the wage rates of PLAINTIFF and Class Members and
24 Aggrieved Employees.

25 13. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
26 and working conditions of PLAINTIFF and Class Members and Aggrieved Employees. As such,
27 DEFENDANTS collectively held the right to control virtually every aspect of PLAINTIFF's and
28 the Class Members and Aggrieved Employees' employment, including the instrumentality that

1 resulted in the illegal conduct for which PLAINTIFF seeks relief in this Complaint.

2 14. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
3 control over, applied the same policies and practices, and engaged in the same acts and omissions
4 with regard to the other Class Members and Aggrieved Employees.

5 **CLASS ALLEGATIONS**

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

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

13 a. Numerosity. While the exact number of Class Members is unknown to
14 PLAINTIFF at this time, the Class is so numerous that the individual joinder of
15 all members is impractical under the circumstances of this case. PLAINTIFF is
16 informed and believes the Class consists of at least 100 individuals.

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

1 including but not limited to, the total hours worked during the pay period; (5)
2 whether DEFENDANTS timely paid PLAINTIFF and the Class Members all
3 wages due upon separation of employment; (6) whether DEFENDANTS failed
4 to reimburse PLAINTIFF and the Class Members for all business expenses; and
5 (7) whether DEFENDANTS violated California Business and Professions Code
6 sections 17200, *et seq.*

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

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

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

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

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

12 **FACTUAL AND LEGAL ALLEGATIONS**

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

17 17. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job title
18 of Emergency Medical Technician, EMT or a similar title from in or around 2013 through in or
19 around July 2022. PLAINTIFF worked for DEFENDANTS throughout Orange County, California.
20 PLAINTIFF regularly worked twenty-four (24) hours, at least three (3) to four (4) days per week.
21 DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours
22 worked. At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an hourly
23 basis for time counted by DEFENDANTS as hours worked.

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

1 duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or
2 improper meal periods, as explained below.

3 19. 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 and Aggrieved Employees were subject to DEFENDANTS'
7 control during purported meal periods and/or were otherwise not afforded lawful meal periods,
8 depriving PLAINTIFF and Class Members and Aggrieved Employees of all wages owed.

9 20. Based on information and belief, Class Members and Aggrieved Employees were
10 not paid for all hours worked due to DEFENDANTS' policy and/or practice of paying according to
11 scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies
12 and/or practices. For example, DEFENDANTS' wage statements for PLAINTIFF show
13 DEFENDANTS rounded PLAINTIFF's total hours worked to at least the nearest quarter, half,
14 and/or whole hour during many if not all pay periods. For example, DEFENDANTS' wage
15 statement for PLAINTIFF for pay period beginning on February 13, 2022, and ending on February
16 26, 2022, shows precisely 80.00 regular hours worked and precisely 88.50 overtime hours worked.
17 Similarly, DEFENDANTS' wage statement for PLAINTIFF for pay period beginning on March 27,
18 2022, and ending on April 9, 2022, shows precisely 80.00 regular hours worked and precisely 79.25
19 hours worked. Based on information and belief, DEFENDANTS also rounded PLAINTIFF's total
20 hours worked to at least the nearest quarter, half and/or whole hour during most if not all pay periods
21 during the relevant period, resulting in DEFENDANTS' failure to pay PLAINTIFF for all work
22 time and the underpayment of wages owed to PLAINTIFF.

23 21. Based on information and belief, DEFENDANTS also rounded the total hours
24 worked of other Class Members and Aggrieved Employees to at least the nearest quarter, half and
25 /or whole hour, resulting in the failure to pay Class Members and Aggrieved Employees for all work
26 time and the underpayment of wages owed to Class Members and Aggrieved Employees.

27 22. Based on information and belief, DEFENDANTS required PLAINTIFF and other
28 Class Members and Aggrieved Employees to complete licensing requirements, testing, and/or

1 obtain certifications and/or re-certifications outside of scheduled shift times without compensating
2 PLAINTIFF and other Class Members and Aggrieved Employees for time spent completing
3 DEFENDANTS' certification, testing recertification and/or licensing and/or other requirements,
4 resulting in off-the-clock work and the underpayment of wages owed to PLAINTIFF and other Class
5 Members and Aggrieved Employees. For example, PLAINTIFF was regularly required to recertify
6 his EMT license, and/or complete other off-the-clock certification and/or administrative tasks, yet
7 DEFENDANTS did not compensate PLAINTIFF for the time spent completing DEFENDANTS'
8 recertification and/or licensing requirements, resulting in the underpayment of wages owed to
9 PLAINTIFF.

10 23. Based on information and belief, Class Members and Aggrieved Employees were
11 required to be at their respective workstations and/or at their assigned vehicles at their scheduled
12 shift start time or face discipline. As such, Class Members and Aggrieved Employees typically
13 arrived at work prior to their scheduled shift start times so that they could perform any required pre-
14 shift work, including but not limited to, bestow personal items in employee lockers/storage area,
15 retrieve and/or compile work tools/equipment, make any necessary adjustments to tools/equipment
16 and/or perform any required maintenance tasks, don work clothing/uniforms and/or protective
17 equipment, and/or complete other work tasks so as to be ready to be at their respective work stations
18 at the their scheduled shift start time as mandated by DEFENDANTS. This pre-shift off-the-clock
19 work was neither recorded nor compensated resulting in the substantial underpayment of wages
20 owed to Class Members and Aggrieved Employees.

21 24. Based on information and belief, Class Members and Aggrieved Employees were
22 also required to perform post-shift off-the-clock work that was neither recorded nor compensated.
23 For example, based on information and belief, Class Members and Aggrieved Employees were
24 required to put away their work tools/equipment, change out of their work clothing/uniforms and/or
25 protective gear after clocking out for the end of their shifts.

26 25. Based on information and belief, DEFENDANTS required PLAINTIFF and other
27 Class Members and Aggrieved Employees to obtain Covid-related testing outside of their scheduled
28 shift times without compensating them for the time spent completing DEFENDANTS' testing

1 requirements.

2 26. Based on information and belief, DEFENDANTS performed a deduction for meal
3 periods that were worked through, interrupted, cut short, and/or during which Class Members and
4 Aggrieved Employees were not relieved of all duties and DEFENDANTS' control. For example,
5 based on information and belief, Class Members and Aggrieved Employees were required to
6 monitor their company radio and/or cellphone at all times during their shifts and respond to any
7 work-related communications at all times during their shifts, including but not limited to, during
8 unpaid meal periods and any purported "sleep time" resulting in DEFENDANTS' failure to pay
9 Class Members and Aggrieved Employees for all work time and the underpayment of wages owed
10 to Class Members and Aggrieved Employees. As such, Class Members and Aggrieved Employees
11 were rarely, if ever, afforded during their twenty-four-hour shifts, the legally mandated
12 uninterrupted off-duty and/or "sleep time", yet DEFENDANTS failed to compensate those Class
13 Members and Aggrieved Employees for all hours worked, in violation of California law, including
14 without limitation, 29 C.F.R. 785.21 and California's minimum wage laws.

15 27. Based on information and belief, Class Members and Aggrieved Employees that
16 worked twenty-four-hour shifts were consistently called to return to duty during any purported
17 sleeping periods, yet DEFENDANTS failed to compensate Class Members and Aggrieved
18 Employees for all hours worked, in violation of California law, including without limitation,
19 California's minimum wage laws.

20 28. Based on information and belief, at times, DEFENDANTS' electronic time-keeping
21 system/app and/or call-in system malfunctioned such that Class Members and Aggrieved
22 Employees were required to either reinitiate and/or otherwise troubleshoot the system prior to being
23 able to clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in
24 from meal periods, resulting in off-the-clock work and the underpayment of wages owed to Class
25 Members and Aggrieved Employees.

26 29. Based on information and belief, Class Members and Aggrieved Employees
27 experienced the same issues when clocking out for shifts and/or back in for meal periods. This time
28 spent under DEFENDANTS' control was not recorded and not compensated and resulted in unpaid

1 minimum wages owed to Class Members and Aggrieved Employees.

2 30. Based on information and belief, at times, DEFENDANTS provided no mechanism
3 for Class Members and Aggrieved Employees to record their shift start and end times, and
4 DEFENDANTS did not record Class Members and Aggrieved Employees' true shift start and end
5 times. Instead, Class Members and Aggrieved Employees' supervisors would report to payroll Class
6 Members and Aggrieved Employees' total hours worked based on scheduled shift start and end
7 times rather than actual time worked resulting in DEFENDANTS' failure to pay Class Members
8 and Aggrieved Employees for all hours worked and the underpayment of wages owed to Class
9 Members and Aggrieved Employees.

10 31. Based on information and belief, Class Members and Aggrieved Employees were
11 not paid for pre-shift and/or post-shift off-the-clock work including but not limited to donning and
12 doffing uniforms, work clothing personal protective / safety gear and/or gathering and/or returning
13 equipment for work-related purposes.

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

19 33. Based on further information and belief, DEFENDANTS implemented a time-
20 rounding system that as applied systematically deprived PLAINTIFF and other Class Members and
21 Aggrieved Employees of compensable time because the time-rounding system implemented by
22 DEFENDANTS would almost always, if not always, result in understating actual compensable work
23 time. For example, as explained above, DEFENDANTS' wage statements for PLAINTIFF show
24 DEFENDANTS rounded PLAINTIFF's total hours worked to at least the nearest quarter, half,
25 and/or whole hour during many if not all pay periods. Based on information and belief,
26 DEFENDANTS also rounded the total hours worked of other Class Members and Aggrieved
27 Employees to at least the nearest quarter, half and /or whole hour, resulting in the failure to pay
28 Class Members and Aggrieved Employees for all₁₂ work time and the underpayment of wages owed

1 to Class Members and Aggrieved Employees.

2 34. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
3 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
4 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
5 minimum wages owed to PLAINTIFF and Class Members and Aggrieved Employees as well as
6 unpaid overtime wages for those Class Members and Aggrieved Employees who worked more than
7 eight (8) hours in a day and/or more than forty (40) hours in a week.

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

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

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

22 38. Pursuant to the applicable IWC Wage Order, Section 3(K), and all applicable IWC
23 Wage Orders, the daily overtime provision of Section 3(A) does not apply to ambulance drivers and
24 attendants scheduled for 24-hour shifts of duty but only if those employees have agreed in writing
25 to exclude from daily time worked not more than three (3) meal periods of not more than one (1)
26 hour each and a regularly scheduled uninterrupted sleeping period of not more than eight (8) hours.

27 39. PLAINTIFF worked overtime hours for which he was not compensated by
28 DEFENDANTS by virtue of DEFENDANTS' ₁₃ auto-deduction and time-rounding/time-shaving

1 policies and other mandated off-the-clock work policies and practices described above.

2 40. DEFENDANTS further violated California overtime laws by failing to pay proper
3 overtime rates for overtime hours worked even for time counted by DEFENDANTS as compensable
4 work time. For example, based on information and belief, when Class Members and Aggrieved
5 Employees worked shifts lasting at least twenty-four hours, DEFENDANTS only paid overtime
6 premiums if at all on a weekly basis after forty hours and not on a daily basis of after eight (8) hours
7 in a shift, nor on a daily basis at all.

8 41. Based on information and belief, Class Members and Aggrieved Employees that
9 worked twenty-four-hour shifts, were consistently unable to return to DEFENDANTS' station to
10 avail themselves of any onsite sleep bunkers and were required during purported sleep time to
11 remain on duty due to the nature and constraints of their job duties, lack of relief workers available
12 and or pressure from DEFENDANTS to continue working such that Class Members and Aggrieved
13 Employees did not regularly receive scheduled uninterrupted sleeping periods during these twenty-
14 four-hour shifts. DEFENDANTS also required Class Members and Aggrieved Employees to work
15 through in part or in full their uncompensated meal periods.

16 42. Based on information and belief, PLAINTIFF and other Class Members and
17 Aggrieved Employees never agreed in writing to exclude from daily time worked not more than
18 three (3) meal periods of not more than one (1) hour each and a regularly scheduled uninterrupted
19 sleeping period of not more than eight (8) hours and rarely, if ever, received uninterrupted sleeping
20 periods and/or off-duty, uninterrupted meal periods of proper length. At all relevant times,
21 PLAINTIFF and other Class Members and Aggrieved Employees were not subject to any daily
22 overtime exemption under the California IWC Wage Orders, including but not limited to, the daily
23 overtime exemption set forth in Section 3(K), and were underpaid overtime wages owed due to
24 including but not limited to DEFENDANTS' failure to pay daily overtime when PLAINTIFF and
25 other Class Members and Aggrieved Employees worked twenty-four-hour shifts.

26 43. PLAINTIFF and other Class Members and Aggrieved Employees were at all relevant
27 times entitled to overtime for time worked beyond eight (8) hours in a day. Based on information
28 and belief, PLAINTIFF never agreed in writing to exclude from daily time worked not more than

1 three (3) meal periods of not more than one (1) hour each and a regularly scheduled uninterrupted
2 sleeping period of not more than eight (8) hours. Moreover, as described herein, PLAINTIFF did
3 not receive off-duty meal periods nor regularly scheduled uninterrupted sleeping periods for those
4 twenty-four-hour shifts. Accordingly, PLAINTIFF was not subject to any daily overtime exemption
5 set forth in the applicable wage order, including but not limited to, IWC Wage Order 9, Section
6 3(K).

7 44. DEFENDANTS also violated California's overtime laws as to those Aggrieved
8 Employees who were subject to an Alternative Workweek Schedule ("AWS").

9 45. On information and belief, DEFENDANTS adopted an AWS during the relevant
10 period that was unlawful, as it was not properly elected and/or implemented in accordance with
11 California law and/or DEFENDANTS failed to comply with the AWS. As such, DEFENDANTS
12 violated California's overtime laws, including Labor Code sections 510, 511, and 1198 and the
13 applicable Wage Order(s). On information and belief, DEFENDANTS properly failed to adopt an
14 AWS in accordance with Labor Code sections 511 and 1199 and the applicable Wage Order(s).

15 46. For example, Section 3(C) of Wage Order 5 states in pertinent part that the election
16 procedures for the adoption of an AWS require the following:

17 (1) Each proposal for an [AWS] shall be in the form of a written agreement proposed by the
18 employer. The proposed agreement must designate a regularly scheduled alternative
19 workweek in which the specified number of workdays and work hours are regularly
20 recurring.... (2) In order to be valid, the proposed [AWS] must be adopted in a secret ballot
21 election, before the performance of work, by at least a two-thirds (2/3) vote of the affected
22 employees in the work unit.... (3) Prior to the secret ballot vote, any employer who proposed
23 to institute an [AWS] shall have made a disclosure in writing to the affected employees,
24 including the effects of the proposed arrangement on the employees' wages, hours, and
25 benefits. Such a disclosure shall include meeting(s), duly noticed, held at least 14 days prior
26 to voting, for the specific purpose of discussing the effects of the [AWS].... Failure to
27 comply with this paragraph shall make the election null and void. (4) Any election to
28 establish or repeal an [AWS] shall be held at the work site of the affected employees.... (5)

1 Any type of [AWS] that is authorized by the Labor Code may be repealed by the affected
2 employees... (6) Only secret ballots may be cast by affected employees in the work unit at
3 any election held pursuant to this section. The results of any election conducted pursuant to
4 this section shall be reported by the employer to the Office of Policy, Research and
5 Legislation within 30 days after the results are final, and the report of election results shall
6 be a public document... (8) Employers shall not intimidate or coerce employees to vote
7 either in support of or in opposition to a proposed alternative workweek...No employees
8 shall be discharged or discriminated against for expressing opinions concerning the
9 alternative workweek election or for opposing or supporting its adoption or repeal. ...A
10 violation of this subsection shall be subject to Labor Code § 98 et seq.

11 47. On information and belief, PLAINTIFF alleges that DEFENDANTS failed to
12 comply with the above procedures and thus failed properly to institute an AWS for the purpose of
13 obtaining a lawful exemption from the relevant overtime premiums. On information and belief,
14 DEFENDANTS also failed to report the results to the Office of Policy, Research, and Legislation,
15 or the DLSE, within thirty (30) days after the purported election results and thus violated Labor
16 Code §§ 511 and 1199 and the applicable Wage Order(s). This conduct results in violations of Labor
17 Code §§ 510, 511, 1198, and 1199 and the applicable Wage Order(s). These violations subject
18 DEFENDANTS to civil penalties under Labor Code §§ 558 and 2699 and all applicable Wage
19 Orders. Each violation of each Labor Code section and Wage Order provision results in a separate
20 civil penalty for each Aggrieved Employee for each pay period during which the referenced statutes
21 and Wage Order provisions were violated.

22 48. Moreover, to the extent there was a properly adopted AWS in effect during the
23 relevant period, DEFENDANTS violated California's overtime laws as to Aggrieved Employees
24 who were subject to the AWS but were required to work shifts shorter than agreed upon. Under
25 Section 3(B)(2) of the relevant Wage Orders, "If an employer... requires an [AWS] employee to
26 work fewer hours than those that are regularly scheduled by the agreement, the employer shall pay
27 the employee overtime compensation at a rate of one and one-half (1 ½) times the employee's
28 regular rate of pay for all hours worked in excess of eight (8) hours... for the day the employee is

1 required to work the reduced hours.”

2 49. On information and belief, during the relevant period, Aggrieved Employees worked
3 subject to an AWS for ten (10) hours per shift, four (4) shifts per week, and/or twelve (12) hours
4 per shift, three (3) to four (4) days per week. On information and belief, Aggrieved Employees
5 subject to an AWS were sent home early and/or worked fewer hours than those that were scheduled.
6 On such shortened shifts, Aggrieved Employees were entitled to overtime pay at 1.5 times the
7 regular rate of pay after the first eight (8) hours of work. Instead, DEFENDANTS paid Aggrieved
8 Employees their base rate for all hours worked on the shortened shift(s) in violation of the AWS and
9 in violation of Labor Code §§ 510 and 1198 and the applicable Wage Order(s). As such, Aggrieved
10 Employees who worked shortened shifts subject to an AWS were deprived of all owed overtime
11 wages.

12 50. **Meal Period Violations.** PLAINTIFF and other Class Members and Aggrieved
13 Employees consistently worked shifts of at least five and one-half hours or more, entitling them to
14 at least one meal period. However, PLAINTIFF and other Class Members and Aggrieved
15 Employees would not receive legally compliant thirty (30) minute first and second meal periods.
16 Based on information and belief, Class Members and Aggrieved Employees were consistently
17 unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take
18 late meal periods, interrupted meal periods, and/or work through part or all their meal periods due
19 to understaffing, the nature and constraints of their job duties and/or commentary from supervisors
20 pressuring them to take non-compliant meal periods or skip meal periods completely. For example,
21 based on information and belief, PLAINTIFF and other Class Members and Aggrieved Employees
22 were consistently if not always required to work through their owed meal periods and/or were
23 interrupted during purported meal periods and/or had meal periods cut short and/or restricted to
24 DEFENDANTS' premises and/or their assigned vehicles due to the need to continue assigned job
25 duties.

26 51. Based on information and belief, DEFENDANTS did not provide any mechanism
27 for PLAINTIFF and other Class Members and Aggrieved Employees to record the start and end
28 times of any meal periods, and DEFENDANTS₁₇ did not record the true start and end times of any

1 meal periods. Based on further information and belief, DEFENDANTS did not pay meal period
2 premiums to PLAINTIFF and other Class Members and Aggrieved Employees for these missed
3 and/or otherwise legally noncompliant meal periods.

4 52. Based on information and belief, DEFENDANTS performed an automatic deduction
5 for meal periods that were worked through, interrupted, cut short, and/or during which Class
6 Members and Aggrieved Employees were not relieved of all duties and DEFENDANTS' control.
7 For example, PLAINTIFF was required to monitor his company radio and/or cellphone for work
8 communications at all times during his shifts and respond to any work-related communications at
9 all times during his shifts, including but not limited to, during any purported meal periods and any
10 purported "sleep time" resulting in DEFENDANTS' failure to pay PLAINTIFF for all work time
11 and denied meal periods.

12 53. Based on information and belief, other Class Members and Aggrieved Employees
13 were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had
14 their meal periods interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise
15 on duty due to commentary from supervisors, understaffing, the nature and constraints of their job
16 duties, and/or the need to meet DEFENDANTS' goals and expectations.

17 54. Based on information and belief, DEFENDANTS implemented policies and/or
18 practices that failed to relieve Class Members and Aggrieved Employees of all duties and
19 DEFENDANTS' control during unpaid meal periods.

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

25 56. Based on information and belief, despite DEFENDANTS' failure to provide lawful
26 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
27 times of PLAINTIFF's and other Class Members and Aggrieved Employees' meal periods and/or
28 automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal

1 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Class
2 Members and Aggrieved Employees did not receive lawful meal periods.

3 57. Moreover, per DEFENDANTS' uniform policy and practice, Class Members and
4 Aggrieved Employees who worked shifts of more than ten hours did not receive a second legally
5 compliant thirty (30) minute second meal period. For example, when PLAINTIFF worked shifts
6 lasting longer than ten (10) and/or twelve (12) and/or shifts lasting twenty-four (24) hours,
7 PLAINTIFF was not provided with any version of a second meal period.

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

12 59. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
13 records of the true start and end times of PLAINTIFF's and Class Members and Aggrieved
14 Employees' meal periods. Based on information and belief, to the extent meal period were recorded,
15 DEFENDANTS illegally rounded the start and end times of purported meal periods resulting in
16 PLAINTIFF and other Class Members and Aggrieved Employees not being paid for all time worked
17 as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th
18 58.

19 60. Based on information and belief, DEFENDANTS had actual and/or constructive
20 knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which
21 were free of DEFENDANTS' control owed to PLAINTIFF and other Class Members and Aggrieved
22 Employees, in violation of California's meal period laws.

23 61. DEFENDANTS failed to pay PLAINTIFF and other Class Members and Aggrieved
24 Employees an additional hour of wages at their respective regular rates of compensation for each
25 workday a lawful meal period was not provided. DEFENDANTS either failed to pay a meal period
26 premium at all for each workday a lawful meal period was not provided and/or failed to pay the
27 proper meal period premium for failure to incorporate all non-discretionary remuneration, including
28 but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into

1 the regular rate or compensation for purposes of calculating the owed meal period premium.

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

6 **63.** PLAINTIFF and other Class Members and Aggrieved Employees were not
7 adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest
8 periods per California law. Based on information and belief, DEFENDANTS had no policy in place
9 nor instruction as to the taking of duty-free rest periods.

10 **64.** Based on information and belief, DEFENDANTS did not have a have a compliant
11 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
12 practice. For example, based on information and belief, PLAINTIFF and other Class Members and
13 Aggrieved Employees were consistently unable to take compliant rest periods due to their need to
14 complete assigned job duties and/or were unable to take a net ten-minute rest period in a suitable
15 rest area and/or had purported rest periods restricted to DEFENDANTS' premises and/or were
16 required to remain inside and/or in immediate physical proximity to their assigned vehicles. For
17 example, PLAINTIFF rarely, if ever, took a compliant rest period during the relevant period due to
18 the need to monitor his work phone/radio and respond to work communications and/or complete
19 other assigned job duties. Also, based on information and belief, PLAINTIFF and other Class
20 Members and Aggrieved Employees were restricted to the worksite and/or required to remain inside
21 and/or in immediate physical proximity to their assigned vehicles at all times during their shifts,
22 including but not limited to, during any purported rest periods, and as such, were not relieved of all
23 duties and DEFENDANTS' control during any purported rest periods, in violation of California rest
24 period law.

25 **65.** Based on information and belief, Class Members and Aggrieved Employees' rest
26 periods were interrupted, cut short, on duty, restricted to premises and/or late due to understaffing,
27 the nature and constraints of their job duties, and/or due to commentary from supervisors/managers
28 pressuring them to skip rest periods completely or otherwise take non-compliant rest periods.

1 66. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
2 lasting longer than ten hours. For example, when PLAINTIFF worked shifts lasting longer than ten
3 (10) hours, PLAINTIFF was not provided with any version of a third rest period.

4 67. Based on information and belief, DEFENDANTS implemented policies and/or
5 practices that failed to relieve PLAINTIFF and other Class Members and Aggrieved Employees of
6 all duties and DEFENDANTS' control during rest periods.

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

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

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

26 71. DEFENDANTS issued wage statements to PLAINTIFF and Class Members and
27 Aggrieved Employees that also failed to indicate the earned gross and net wages earned during the
28 pay period, the correct applicable rates of pay for all hours worked, and the total hours worked by

1 PLAINTIFF and Class Members and Aggrieved Employees (by virtue of rounded time entries,
2 automatic deduction for meal periods/failure to relieve Class Members and Aggrieved Employees
3 of all duties and employer control during unpaid meal periods, payment according to scheduled
4 hours worked rather than actual hours worked, and/or other off-the-clock work policies and
5 practices) which results in a violation of Labor Code section 226(a).

6 72. As described herein, based on information and belief, DEFENDANTS also failed to
7 incorporate all forms of non-discretionary compensation earned during the pay period into the
8 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
9 of overtime worked by PLAINTIFF and other Class Members and Aggrieved Employees.

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

12 74. Based on information and belief, wage statements issued by DEFENDANTS failed
13 to list all applicable hourly rates in effect during the pay period and the corresponding number of
14 hours worked at each hourly rate by the employee, in violation of including but not limited to, Labor
15 Code section 226(a)(9). For example, based on information and belief, DEFENDANTS' wage
16 statements issued to Class Members and Aggrieved Employees do not provide an accurate overtime
17 rate(s) because they do not list overtime rate(s) of pay at 1.5 times the regular rate(s) of pay and
18 instead list two separate overtime rates of pay and/or list an overtime rate of pay that does not take
19 into account all non-discretionary compensation earned during the pay period, thereby failing to list
20 all applicable hourly rates in effect during the pay period and the corresponding number of hours
21 worked at each hourly rate, in violation of, including but not limited to Labor Code section (a)(9).

22 75. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Class
23 Members and Aggrieved Employees that were not accurate and did not include all of the statutorily
24 required information. As such, DEFENDANTS violated Labor Code section 226.

25 76. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
26 information and belief, DEFENDANTS failed to timely pay Class Members and Aggrieved
27 Employees all wages that were due and owing upon termination or resignation. Based on
28 information and belief, DEFENDANTS untimely provide final wages to Class Members and

1 Aggrieved Employees without regard to the timing requirements of Labor Code sections 201-202.

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

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

16 79. These violations subject DEFENDANTS to civil penalties under Labor Code section
17 203, 210, and/or 256.

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

24 81. Based on information and belief, DEFENDANTS shifted the costs of doing business
25 onto PLAINTIFF and other Class Members and Aggrieved Employees requiring them to pay for
26 business expenses. For example, based on information and belief DEFENDANTS required Class
27 Members and Aggrieved Employees to pay for business expenses including but not limited
28 uniforms/work clothing/work shoes/personal protective/safety gear and the use of Class Members

1 and Aggrieved Employees' personal mobile phones/devices, internet and/or data usage for work-
2 related purposes, including but not limited to, to receive and respond to work related messages
3 and/or phone calls. For example, based on information and belief, Class Members and Aggrieved
4 Employees were required to receive and respond to work-related calls and/or messages from
5 supervisors and/or other Class Members and Aggrieved Employees regarding scheduling and/or
6 other work tasks but were not reimbursed by DEFENDANTS at all and/or in full for these business
7 expenses. For example, DEFENDANTS consistently contacted PLAINTIFF on his personal cell
8 phone throughout his shifts as well as outside of scheduled shift times, and PLAINTIFF was
9 required to use his personal cell phone/mobile device to obtain GPS coordinates and/or for
10 navigation purposes in performing his assigned job duties. Based on information and belief,
11 DEFENDANTS failed to reimburse Class Members and Aggrieved Employees for expenses
12 associated with having to purchase and/or maintain their own hand tools and/or equipment required
13 to perform their assigned job duties. Based on information and belief, DEFENDANTS required
14 Class Members and Aggrieved Employees to pay for the purchase and/or maintenance of
15 uniforms/work clothing and/or pay for the purchase of continued education trainings/certification
16 courses. For example, DEFENDANTS required PLAINTIFF and other Class Members and
17 Aggrieved Employees to obtain re-certifications of their EMT licenses without reimbursing
18 PLAINTIFF and other Class Members and Aggrieved Employees for time spent completing
19 DEFENDANTS' certification, recertification and/or licensing and/or other requirements. Based on
20 information and belief, Class Members and Aggrieved Employees were not reimbursed for the cost
21 of purchasing and/or maintaining work uniforms/clothing/shoes and/or protective gear (e.g., gloves
22 and/or face masks). For example, DEFENDANTS required PLAINTIFF to purchase and maintain
23 specific work boots, pullovers in a specific color and/or brand and/or other work
24 clothing/uniforms/personal protective/safety gear, however, DEFENDANTS did not provide
25 PLAINTIFF with any and/or full reimbursement for these business expenses. Based on information
26 and belief, at times, Class Members and Aggrieved Employees were not reimbursed for the business
27 use of their personal vehicles, including mileage, wear and tear, and cost of fuel when they were
28 required to drive around and/or between job sites and/or DEFENDANTS' various facilities and/or

1 locations, and/or otherwise use their personal vehicles in carrying out the duties assigned by
2 DEFENDANTS. As such, DEFENDANTS failed to compensate Class Members and Aggrieved
3 Employees at the legally mandated Internal Revenue Service (IRS) per mile compensation rates in
4 effect during the relevant period. As explained above, based on information and belief, Class
5 Members and Aggrieved Employees were not reimbursed for the cost of using their personal phones
6 for work-related purposes and/or the cost of purchasing and/or maintaining work uniforms/work
7 clothing/work shoes, and/or personal protective/safety gear.

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

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

17 84. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
18 engaged in these same herein described unlawful practices and that DEFENDANTS applied these
19 same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

20 **FIRST CAUSE OF ACTION**

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

23 85. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

1 prohibits the pay of less than a statutory or contractual wage scale.

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

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

14 89. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
15 Class Members for all hours worked.

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

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

25 **SECOND CAUSE OF ACTION**

26 **Recovery of Unpaid Overtime Wages**

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

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

93. Employees in California must be paid overtime, equal to one and one-half times the

1 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
2 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
3 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
4 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
5 consecutive day of work in a workweek, unless they are exempt.

6 94. PLAINTIFF and the Class Members worked overtime hours for which they were not
7 compensated by DEFENDANTS by virtue of, among other things, DEFENDANTS' time rounding,
8 automatic deduction for meal periods, off-the-clock/unpaid work completed during meal periods,
9 other pre-shift, post-shift and/or otherwise off-the-clock work, and/or payment according to
10 scheduled hours worked rather than actual hours worked (described above), and/or other unlawful
11 policies and/or practices described above which resulted in unpaid minimum and overtime wages
12 which resulted in the failure to account for all hours worked and thus the denial of all owed overtime
13 wages.

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

18 96. Based on information and belief, DEFENDANTS further violated California's
19 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
20 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
21 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
22 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
23 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
24 other Class Members.

25 97. DEFENDANTS' conduct described above is in violation of California Labor Code
26 sections 510 and 1194 and all applicable Wage Orders.

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

THIRD CAUSE OF ACTION

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

99. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

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

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

103. Based on information and belief, DEFENDANTS had and continue to have a policy of rounding the start and end times of employees' meal periods and/or automatically deducting thirty minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and Class

1 Members did not receive compliant meal periods.

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

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

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

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

17 **FOURTH CAUSE OF ACTION**

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

19 108. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

1 how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257.

2 110. If the employer fails to provide any required rest period, the employer must pay the
3 employee one hour of pay at the employee's regular rate of compensation for each workday the
4 employer did not provide at least one legally required rest period, pursuant to Labor Code section
5 226.7.

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

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

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

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

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

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

FIFTH CAUSE OF ACTION
Violations of Labor Code Section 226
(By PLAINTIFF and the Class Members Against all DEFENDANTS)

117. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

118. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFF and the Class Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized wage statement accurately stating the following:

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

119. As DEFENDANTS failed to provide PLAINTIFF and other Class Members with meal and rest periods that complied with Labor Code section 226.7, the wage statements

1 DEFENDANTS issued to PLAINTIFF and other Class Members failed and continue to fail to
2 correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the
3 total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages
4 earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect
5 during the pay period and the corresponding number of hours worked at each hourly rate by the
6 employee, in violation of Labor Code section 226(a)(9).

7 120. Moreover, due to violations detailed above, including but not limited to,
8 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide
9 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
10 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
11 PLAINTIFF and other Class Members with accurate, itemized wage statements that listed the gross
12 and net wages earned and the correct applicable rates of pay for all hours worked. Based on
13 information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
14 compensation earned during the pay period into the regular rate of pay for purposes of calculating
15 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
16 overtime worked by PLAINTIFF and other Class Members.

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

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

28 123. Based on information and belief, wage statements issued by DEFENDANTS failed

1 to list the inclusive dates of the pay period for which the Class Member is being paid.

2 124. DEFENDANTS' failure to accurately list all hours worked on all wage statements
3 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Class
4 Members over whether they received all wages owed to them.

5 125. As a result, PLAINTIFF and other Class Members have suffered injury as they could
6 not easily determine whether they received all wages owed to them and whether they were paid for
7 all hours worked.

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

11 127. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
12 Class Members with accurate, itemized wage statements.

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

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

26 130. Pursuant to California Labor Code § 226(h), PLAINTIFF and Class Members are
27 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
28 California Labor Code § 226(a). Injunctive relief³³ is warranted because DEFENDANTS continue to

1 provide currently employed Class Members with inaccurate wage statements in violation of
2 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
3 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
4 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
5 with California Labor Code § 226(a).

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

9 **SIXTH CAUSE OF ACTION**
10 **Failure to Timely Pay All Wages Due Upon Separation of Employment**
(By PLAINTIFF and the Class Members Against all DEFENDANTS)

11 132. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

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

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

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

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

SEVENTH CAUSE OF ACTION
Failure to Reimburse Business Expenses
(By PLAINTIFF and the Class Members Against all DEFENDANTS)

137. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

139. Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145.

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

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

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

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

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1 **EIGHTH CAUSE OF ACTION**

2 **Unfair Competition**

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

4 144. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

19 146. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
20 California Labor Code, DEFENDANTS have gained a competitive advantage over other
21 comparable companies doing business in the State of California that comply with their obligations
22 to authorize or permit rest periods and meal periods or pay proper meal and rest period premiums
23 in lieu thereof, to properly accrue and pay sick time benefits, to provide complete and accurate
24 itemized wage statements, to reimburse employees for all business expenses, to pay all owed
25 minimum and overtime wages and to pay all wages due upon separation of employment of their
26 employees.

27 147. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFF
28 and Class Members have suffered injury in fact and lost money or property, as described in more
detail above. Pursuant to California Business and Professions Code section 17200, *et seq.*,

1 PLAINTIFF and Class Members are entitled to restitution of all wages and other monies rightfully
2 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of their
3 unlawful and unfair business practices.

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

7 **NINTH CAUSE OF ACTION**

8 **Violation of PAGA**

9 **(By PLAINTIFF and Aggrieved Employees Against All DEFENDANTS)**

10 149. PLAINTIFF incorporates all preceding paragraphs as if full alleged herein.

11 150. PLAINTIFF brings this action under PAGA, Labor Code §2698, *et seq.*, as a
12 representative action on behalf of PLAINTIFF, the State of California, and all Aggrieved Employees
13 for violations of the California Labor Code as set forth herein. Said "Aggrieved Employees" include:

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

18 151. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
19 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
20 period and suffered one or more of the Labor Code violations set forth herein. Accordingly,
21 PLAINTIFF seeks to recover, on behalf of the State of California and all Aggrieved Employees, the
22 civil penalties provided by PAGA, plus reasonable attorneys' fees and costs. PLAINTIFF has
23 standing to bring a PAGA cause of action on behalf of PLAINTIFF, the State of California, and all
24 Aggrieved Employees, as PLAINTIFF was jointly employed by DEFENDANTS and is thereby
25 affected by one or more of the alleged violations. See *Huff v. Securitas Security Services USA, Inc.*
26 (2018) 23 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known
27 violations committed by the employer - regardless of whether the plaintiff experienced all violations
28 personally. *Id.* at 760-761.

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153. The LWDA did not provide notice of its intention to investigate DEFENDANTS' alleged violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA. Accordingly, PLAINTIFF has exhausted the administrative remedies as required by Labor Code section 2699.3. Consequently, PLAINTIFF's right to file the instant lawsuit against DEFENDANTS has duly accrued.

155. Class certification of PAGA claims is not required. *Arias v. Superior Court* (2009) 46 Cal.4th 969.

156. From one year prior to PLAINTIFF's PAGA Notice to the LWDA through the present, as alleged herein, DEFENDANTS violated California Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194,

1 1197, 1197.1, 1198, 1198.5, 1199, 2802, and 2810.5 and all applicable Wage Orders.

2 157. As set forth above, DEFENDANTS have committed numerous violations of the
3 California Labor Code, including their failure to pay all owed minimum wages and all owed
4 overtime wages, failure to provide lawful meal and rest periods or compensation in lieu thereof,
5 failure to provide accurate wage statements, failure to reimburse business expenses, and failure to
6 pay all wages owed upon separation of employment. PAGA penalties are in addition to any other
7 relief available under the Labor Code.

8 158. DEFENDANTS have violated the following Labor Code sections and provisions of
9 the applicable Wage Order(s) as to PLAINTIFF and other Aggrieved Employees.

10 **Failure to Keep Accurate Records**

11 159. California Labor Code § 1174 requires employers to keep “accurate and complete”
12 payroll records showing, among other things, the hours worked daily by all non-exempt employees.
13 Section 7 of all applicable Wage Orders similarly requires employers to keep time records reflecting
14 the times during which all owed meal periods were provided each day.

15 160. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate
16 and complete records as required by law, including the following records: total daily hours worked,
17 applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved Employees
18 began and ended each work period, time records of meal periods, and accurate itemized wage
19 statements.

20 161. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
21 PLAINTIFF and other Aggrieved Employees thus violates Labor Code §§ 1174, 1198, and 1199
22 and section 7 of all applicable Wage Orders, which subjects DEFENDANTS to civil penalties under
23 Labor Code §§ 558.1, 226.6, 1174.5, and 2699. Each violation of each Labor Code section and
24 Wage Order provision results in a *separate* civil penalty for each Aggrieved Employee for each pay
25 period during which the referenced statutes and Wage Order provisions were violated.¹

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28 ¹ Labor Code § 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Labor Code § 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable wage orders, § 30 (establishing that “*i/n addition to any other civil*

1 **Failure to Provide Suitable Resting Facilities**

2 162. Section 13(B) of all applicable Wage Orders provides: “Suitable resting facilities
3 shall be provided in an area separate from the toilet rooms and shall be available to employees during
4 work hours.”

5 163. On information and belief, DEFENDANTS’ business locations are generally similar
6 in layout and design, and there was, and continues to be, space that allows for a resting facility that
7 employees may use to cease work and recover during meal or rest periods. DEFENDANTS could
8 have provided PLAINTIFF and Aggrieved Employees with a resting facility during work hours with
9 reasonable or no modification but instead denied, and continue to deny, employees suitable areas to
10 rest (e.g. a breakroom). As a result, PLAINTIFF and other Aggrieved Employees were forced to use
11 areas not conducive to resting, including their personal vehicles.

12 164. DEFENDANTS’ failure to provide suitable resting facilities for PLAINTIFF and
13 Aggrieved Employees violated and continues to violate section 13(B) of the applicable Wage Orders
14 and Labor Code § 1198, among others.

15 **Statutory Wage Violations**

16 165. California Labor Code section 223 makes it unlawful for an employer secretly to pay
17 wages lower than required by statute while purporting to pay legal wages. As described above,
18 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
19 earned minimum and overtime compensation for all hours worked, which resulted in the
20 underpayment of statutorily required wages. DEFENDANTS acted with the intent to deprive
21 PLAINTIFF and Aggrieved Employees of statutory wages, including minimum and overtime
22 wages, to which they were entitled under California law. Thus, DEFENDANTS paid PLAINTIFF
23 and other Aggrieved Employees wages lower than those to which they were entitled while
24 purporting that PLAINTIFF and other Aggrieved Employees were properly paid. As a result,
25 PLAINTIFF and other Aggrieved Employees are entitled to recover civil penalties, attorneys’ fees,

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27 *penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes*
28 *to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each*
pay period during which the employee was underpaid”) (emphasis added).

1 costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

2 **Refusal to Make Payment**

3 166. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
4 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
5 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
6 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each missed
7 or otherwise unlawful meal/rest period. *Gould v. Maryland Sound Industries, Inc.* (1995) 31
8 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil penalties under
9 Labor Code section 225.5, which states in pertinent part that "[i]n addition to, and entirely
10 independent and apart from, any other penalty provided in this article, every person who unlawfully
11 withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be
12 subject to a civil penalty [for each failure to pay each employee]." Each violation thus results in a
13 *separate* civil penalty for each Aggrieved Employee for each pay period during which the statute
14 provisions were violated.

15 **Standard Conditions of Labor Violations**

16 167. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
17 any employee under conditions of labor prohibited by the Wage Orders and any violation, refusal,
18 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
19 sections 1174, 1197, and 1198 or order or ruling of the commission. Therefore, DEFENDANTS'
20 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
21 minimum/overtime wages, and other violations described herein result in separate violations of
22 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
23 1197.1 and 2699.

24 **Unlawful Deductions**

25 168. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from
26 an employee any part of wages theretofore paid by said employer to said employee." On information
27 and belief, DEFENDANTS made unlawful deductions from Aggrieved Employees' paychecks
28 during the relevant period, including costs of uniforms, wages for purported overpayments from

1 previous pay periods, wages for negligently damaged property, and/or costs advanced by
2 DEFENDANTS from Aggrieved Employees' final paychecks. Such a practice is in violation of
3 Labor Code Sections 221 and 222, *inter alia*, which subjects DEFENDANTS to civil penalties under
4 Labor Code Section 2699.

5 169. Under Labor Code § 225.5, each violation results in a separate civil penalty for each
6 Aggrieved Employee for each pay period during which the statute provisions were violated.

7 **Reporting Time Pay Violations**

8 170. Section 5 of all applicable IWC Wage Orders provides as follows:

9 (A) Each workday an employee is required to report for work and does report, but is not put
10 to work or is furnished less than half said employee's usual or scheduled day's work, the
11 employee shall be paid for half the usual or scheduled day's work, but in no event for less
12 than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which
13 shall not be less than the minimum wage. (B) If an employee is required to report for work
14 a second time in any one workday and is furnished less than two (2) hours of work on the
15 second reporting said employee shall be paid for two hours at the employee's regular rate of
16 pay, which shall not be less than the minimum wage.

17 171. Aggrieved Employees were not paid reporting time wages in accordance with
18 California law, including the applicable Wage Order(s). For example, on information and belief,
19 Aggrieved Employees reported to work for a scheduled shift but were sent home or were not put to
20 work and were not paid for two hours at the employee's regular rate of pay.

21 172. DEFENDANTS' failure to pay all reporting time wages to Aggrieved Employees
22 violated and continues to violate the applicable Wage Order(s) and the California Labor Code,
23 including section 1198.

24 **Violation of California Day of Rest Law**

25 173. Labor Code Sections 551 and 552 provide that every employee in California is
26 "entitled to one day's rest [from labor] in seven," and no employer may "cause his employees to
27 work more than six days in seven."

28 174. On information and belief, DEFENDANTS had, and continue to have, a uniform

1 policy and practice of suffering, permitting, or requiring Aggrieved Employees to work at least
2 seven (7) consecutive days in a workweek in violation of Labor Code §§ 551 and 552. Labor Code
3 section 553 provides such violation is a misdemeanor.

4 **Sick Leave Violations**

5 175. DEFENDANTS violated California's paid sick leave laws, including Labor Code
6 sections 245-248.5, 233, and 234. DEFENDANTS either failed to provide sick leave pay to
7 PLAINTIFF and other Aggrieved Employees or failed properly to accrue paid sick leave as a result
8 of DEFENDANTS' failure to account for actual hours worked, as alleged above, and/or failure to
9 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration, including non-
10 discretionary bonuses and shift differential pay, into the sick leave pay rate calculation.

11 176. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
12 lawful notice of their paid sick leave rights. In addition, DEFENDANTS failed to maintain accurate
13 records of used sick leave and/or the balance of paid sick leave left to Aggrieved Employees, which
14 affected PLAINTIFF and Aggrieved Employees' intelligent exercise of their paid sick leave.

15 177. But for this failure, PLAINTIFF and other Aggrieved Employees would have used
16 their paid sick leave prior to their respective separations.

17 178. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
18 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
19 Aggrieved Employees, which prevented PLAINTIFF and all Aggrieved Employees from
20 ascertaining the maximum number of accruable hours to which they were entitled.

21 179. On information and belief, in violation of Labor Code section 246, DEFENDANTS
22 failed, and continue to fail, to provide PLAINTIFF and all Aggrieved Employees with accurate,
23 itemized wage statements or a separate writing containing the amount of paid sick leave available,
24 or paid time off leave an employer provides in lieu of sick leave, at the time DEFENDANTS pay
25 wages.

26 180. These practices violate California's sick leave laws, Labor Code § 245, *et seq.*

27 181. On information and belief, Aggrieved Employees experienced, and continue to
28 experience, all such practices.

1 182. Accordingly, Aggrieved Employees seek all appropriate relief available under
2 PAGA, including pursuant to Labor Code sections 233 and 234, and seek injunctive relief, attorneys'
3 fees, declaratory relief, and civil penalties as permitted by law.

4 **Failure To Provide Supplemental Paid Sick Leave**

5 183. Labor Code § 248.2 provides that all employers with 26 or more employees are
6 required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental
7 Paid Sick Leave to care for themselves or to care for a family member, including if such leave is
8 vaccine-related. DEFENDANTS violated Labor Code § 248.2 by not providing PLAINTIFF and
9 other Aggrieved Employees with required 2021 COVID-19 Supplemental Paid Sick Leave.

10 184. On information and belief, DEFENDANTS similarly failed to provide Supplemental
11 Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

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

13 185. California Labor Code section 227.3 provides that when an employer's policy
14 provides for paid vacations and/or paid time off and an employee is terminated without having taken
15 off vested vacation time, all such vested time shall be paid to the employee as wages at the
16 employee's final rate in accordance with the relevant contract of employment or employer policy
17 and that there shall be no forfeiture of vested vacation time or paid time off upon termination.

18 186. On information and belief, DEFENDANTS had, and continue to have, a uniform
19 policy and practice of failing to allow Aggrieved Employees to use their earned vacation/paid time
20 off during their employment and failing to pay all vested, accrued paid time off, including all owed
21 vacation pay/paid time off paid at the final rate, to Aggrieved Employees upon separation of
22 employment in violation of California law, including Labor Code section 227.3.

23 **Unlawful Agreements/ Unlawful Background Checks**

24 187. Labor Code section 432.5 provides that "no employer...shall require any employee
25 or applicant for employment to agree, in writing, to any term or condition which is known by such
26 employer...to be prohibited by law." In violation of Labor Code section 432.5, DEFENDANTS
27 required, and continue to require, PLAINTIFF and Aggrieved Employees to agree in writing to
28 unlawful conditions of employment, including non-solicitation/non-compete agreements,

1 confidentiality and/or nondisclosure agreements, releases and/or waivers, forum selection clauses
2 and/or choice of law provisions/agreements, and/or criminal and/or financial checks as a condition
3 of obtaining and/or continuing employment.

4 188. The California Labor Code places certain procedural and substantive limits on an
5 employers' ability to conduct employee background checks and use the information they obtain.
6 Labor Code section 1024.5 states that employers, except for financial institutions, may order a credit
7 check only if the individual works or is applying to work in certain positions (e.g., managerial
8 positions, financially-related positions, and certain government positions). Additionally, the
9 Investigative Consumer Reporting Agencies Act ("ICRAA"), Civil Code § 1786, *et seq.*, and the
10 Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681, *et seq.*, mandate several requirements prior
11 to and following an employee background check, including identifying an appropriate reason for
12 the background check, a separate consent form, a summary of rights, a way by which to request a
13 copy of the report, and proper notice of adverse actions taken.

14 189. On information and belief, DEFENDANTS ordered unlawful financial credit checks
15 on Aggrieved Employees, in violation of Labor Code section 1024.5, and required such Aggrieved
16 Employees to provide ongoing written consent to the unlawful credit checks as a condition of
17 employment, in violation of Labor Code section 432.5.

18 190. On information and belief, DEFENDANTS also required Aggrieved Employees to
19 submit and/or agree to submit in writing to unlawful criminal background checks as a condition of
20 obtaining and/or holding employment in violation of ICRAA and FCRA as alleged above.

21 191. On further information and belief, DEFENDANTS required Aggrieved Employees
22 to agree in writing, as a condition of employment, to provide DEFENDANTS with ongoing consent
23 to conduct background checks throughout the duration of employment, in violation of Labor Code
24 section 432.5.

25 192. DEFENDANTS knew or should have known that requiring Aggrieved Employees to
26 agree to unlawful criminal and/or financial background checks as a condition of obtaining and/or
27 holding employment was unlawful.

28 ///

1 **Unlawful Criminal History Inquiries**

2 193. Labor Code section 432.7 prohibits an employer from asking applicants about any
3 past arrest unless such arrest resulted in a conviction and, even then, certain limitations apply. On
4 information and belief, DEFENDANTS unlawfully asked Aggrieved Employees about arrests not
5 resulting in convictions on employment applications.

6 194. On information and belief and in violation of California law, including the Fair
7 Chance Act/the California Fair Employment and Housing Act (“FEHA”), DEFENDANTS’
8 employment application asked Aggrieved Employees about convictions prior to extending an offer
9 of employment and/or otherwise impermissibly inquired into criminal history.

10 195. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
11 Code section 432.7. By asking about convictions at the application phase or prior to extending an
12 employment offer and unlawfully requiring Aggrieved Employees to agree in writing to disclose
13 arrests and/or convictions as a condition of employment, DEFENDANTS violated Labor Code
14 section 432.5.

15 **Unlawful PAGA Waiver**

16 196. DEFENDANTS violated Labor Code section 432.5 by requiring Aggrieved
17 Employees to agree in writing to other unlawful agreements, including an unlawful waiver of PAGA
18 and/or representative actions as a condition of employment.

19 197. An action pursuant to PAGA “...is a representative action on behalf of the state”
20 *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements
21 purporting to waive an employee’s right to a trial of PAGA claims is contrary to California law and
22 unenforceable. *See Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384
23 (“We conclude that where, as here, an employment agreement compels the waiver of representative
24 claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”)

25 198. On information and belief, DEFENDANTS required Aggrieved Employees to agree
26 in writing to waive their right to a trial of representative PAGA claims as a condition of employment
27 in violation of Labor Code section 432.5.

28 199. Under PAGA and the above-mentioned Labor Code sections, including Labor Code

sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7, 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, and 2810.5 and all applicable Wage Orders, DEFENDANTS are liable for the following:

- a. All civil penalties recoverable under PAGA pursuant to Labor Code section 2699(a);
- b. All civil penalties recoverable under PAGA pursuant to Labor Code section 2699(f);
- c. All civil penalties, costs, and attorneys' fees recoverable pursuant to Labor Code section 2699(g); and
- d. All civil penalties, costs, and attorneys' fees recoverable pursuant to Labor Code section 2699.5, and all other applicable laws.

PRAYER FOR RELIEF

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

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

1 13. For such other and further relief that the Court deems just and proper.
2

3 Dated: August 7, 2023

CROSNER LEGAL, PC

4
5 By: 
6 Zachary M. Crosner, Esq.
7 Jamie K. Serb, Esq.
8 Attorneys for Plaintiff,
9 WAYNE RIGGAN
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DEMAND FOR JURY TRIAL

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

Dated: August 7, 2023

CROSNER LEGAL, PC

By: 
Zachary M. Crosner, Esq.
Jamie K. Serb, Esq.
Attorneys for Plaintiff,
WAYNE RIGGAN

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PROOF OF SERVICE
WAYNE RIGGAN V. FALCK MOBILE HEALTH CORP
Orange Court Case No. 23STCV06924

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 9440 Santa Monica Blvd., Ste. 301, Beverly Hills, CA 90210.

On August 7, 2023, I served true copies of the following document(s) described as

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION

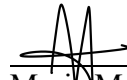
on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

☒ BY ELECTRONIC TRANSMISSION. I transmitted copies of the above-referenced document(s) from the email address maria@crosnerlegal.com to the interested parties in this action by electronic transmission. Said electronic transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on August 7, 2023, at Los Angeles, California.



Maria Monterrey

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SERVICE LIST
WAYNE RIGGAN V. FALCK MOBILE HEALTH CORP
Orange Court Case No. 23STCV06924

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