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10 Attorneys for Plaintiff LUZ DE ARIAS
11 As an individual and on behalf of all others similarly situated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

1 LUZ DE ARIAS, as an individual and on
2 behalf of all others similarly situated,

3 Plaintiff,

4 v.

5 TULAPHORN, INC., a California
6 Corporation; and DOES 1-100, inclusive,

7 Defendants.

Case No.: 23STCV15445

CLASS ACTION COMPLAINT FOR:

1. Recovery of Unpaid Minimum Wages and Liquidated Damages
2. Recovery of Unpaid Overtime Wages
3. Failure to Provide Meal Periods or Compensation in Lieu Thereof
4. Failure to Provide Rest Periods or Compensation in Lieu Thereof
5. Violations of Labor Code Section 226
6. Failure to Timely Pay All Wages Due Upon Separation of Employment
7. Failure to Reimburse Business Expenses and
8. Unfair Competition

DEMAND FOR JURY TRIAL

1 Plaintiff, LUZ DE ARIAS, (“PLAINTIFF”), as an individual and on behalf of all other
2 similarly situated Class Members (as defined below), hereby files this Complaint against
3 Defendants TULAPHORN, INC., a California Corporation; and DOES 1-100, inclusive,
4 (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and
5 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 Los Angeles 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.

12 **THE PARTIES**

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

15 3. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
16 DEFENDANTS as a non-exempt employee with a job title of janitor and/or a similar title(s) and/or
17 position(s) from in or around 2018 through in or around April 2023. PLAINTIFF worked for
18 DEFENDANTS at DEFENDANTS’ Bellflower, California location(s), which operates under the
19 name “McDonald’s.” PLAINTIFF regularly worked at least eight (8) hours per day, at least four
20 (4) to five (5) days per week.

21 4. DEFENDANTS are a California Corporation that, at all relevant times, were
22 authorized to do business within the State of California and are doing business in the State of
23 California.

24 5. DEFENDANTS own, operate, manage and/or staff its employees to work at the
25 restaurants, offices, facilities and/or other location(s) in California, including but not limited to the
26 restaurants, offices, facilities and/or other locations in Bellflower California, operating under the
27 name “McDonald’s”. DEFENDANTS, through its various restaurants, offices, facilities/other
28 locations serve the restaurant, restaurant management and/or food services industry.

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

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

JOINT LIABILITY

8. Under California law, the definition of the terms “to employ” are broadly construed under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3) to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control was to reach situations in which multiple entities control different aspects of the employment relationship. Supervision of the work, in the specific sense of exercising control over how services are properly performed, is properly viewed as one of the “working conditions” mentioned in the wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a temporary employment agency) hires and pays a worker, and the other entity supervises the work. *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in

1 California, applying a less stringent standard to what constitutes sufficient control by a business
2 over its vendor's employees' wages and working conditions to render that business liable as a joint
3 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); "[i]f the putative
4 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
5 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
6 employment," *Id.* at 875 [emphasis added].

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

14 10. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
15 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
16 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
17 across all of their locations/facilities and subjected all of the Class Members to these same policies
18 and practices regardless of the location(s) where they worked. Among other things, PLAINTIFF is
19 informed and believes that: (1) there is common ownership in, and financial control, in
20 DEFENDANTS' companies, (2) DEFENDANTS utilize common management, who have control
21 over the day-to-day operations and employment matters, including the power to hire and fire, set
22 schedules, issue employee policies, and determine rates of compensation across its locations in
23 California; (3) DEFENDANTS utilize the same policies and procedures for all California
24 employees, including issuing the same employee handbooks and other form agreements; (4)
25 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee
26 employment matters; and, (6) DEFENDANTS share employees.

27 11. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
28 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Class Members

1 upon whose behalf PLAINTIFF brings these allegations and causes of action, in that
2 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Class Members' wages,
3 hours and working conditions, and/or suffered or permitted PLAINTIFF and the Class Members to
4 work so as to be considered the joint employers of PLAINTIFF and the Class Members.

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

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

24 14. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
25 control over, applied the same policies and practices, and engaged in the same acts and omissions
26 with regard to the other Class Members.

27 **CLASS ALLEGATIONS**

28 15. PLAINTIFF brings this action on behalf of PLAINTIFF, and all others similarly

1 situated as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF
2 seeks to represent are defined as follows and referred to as the “Class” or “Class Members”:

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

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

11 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
12 because common questions of law and fact predominate over individual issues.
13 Common questions include, but are not limited to, the following: (1) whether
14 DEFENDANTS understated hours worked and failed to pay all amounts due to
15 PLAINTIFF and the Class Members for wages earned, including minimum and
16 overtime wages, under California law; (2) whether DEFENDANTS provided
17 PLAINTIFF and the Class Members with all meal periods or premium payments
18 in lieu thereof in compliance with California law; (3) whether DEFENDANTS
19 provided PLAINTIFF and the Class Members with all rest periods or premium
20 payments in lieu thereof, in compliance with California law; (4) whether
21 DEFENDANTS provided PLAINTIFF and Class Members with accurate,
22 itemized wage statements in compliance with California law, displaying,
23 including but not limited to, the total hours worked during the pay period; (5)
24 whether DEFENDANTS timely paid PLAINTIFF and the Class Members all
25 wages due upon separation of employment; (6) whether DEFENDANTS failed
26 to reimburse PLAINTIFF and the Class Members for all business expenses; and
27 (7) whether DEFENDANTS violated California Business and Professions Code
28 sections 17200, *et seq.*

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

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

6 **FACTUAL AND LEGAL ALLEGATIONS**

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

10 17. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
11 DEFENDANTS as a non-exempt employee with a job title of janitor and/or a similar title(s) and/or
12 position(s) from in or around 2018 through in or around April 2023. PLAINTIFF worked for
13 DEFENDANTS at DEFENDANTS' Bellflower, California location(s). PLAINTIFF regularly
14 worked at least eight (8) hours per day, at least four (4) to five (5) days per week days per week.
15 DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours
16 worked. At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an hourly
17 basis for time counted by DEFENDANTS as hours worked.

18 18. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
19 PLAINTIFF and Class Members for all hours worked, resulting in the underpayment of minimum
20 and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Class Members for all
21 hours worked by virtue of, DEFENDANTS' automatic deduction and time rounding policies, and
22 failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise
23 unlawful practices for missed or improper meal periods, as explained below.

24 19. Based on information and belief, DEFENDANTS implemented a policy and/or
25 practice of rounding meal period start and end times and/or automatically deducting at least thirty
26 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
27 PLAINTIFF and other Class Members were subject to DEFENDANTS' control during purported
28 meal periods and/or were otherwise not afforded lawful meal periods, depriving PLAINTIFF and

1 Class Members of all wages owed.

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

5 21. For example, based on information and belief, DEFENDANTS would unlawfully
6 edit the clock in and out times for PLAINTIFF's and other Class Members' meal periods in order to
7 display at least a thirty minute off-duty meal period during most if not all shifts worked,
8 notwithstanding the fact that DEFENDANTS had actual and/or constructive knowledge that
9 DEFENDANTS had required PLAINTIFF and other Class Members' to perform work-related tasks
10 during their meal periods.

11 22. Based on information and belief, DEFENDANTS required Class Members to be at
12 their assigned workstations at the start of a scheduled shift, thereby forcing Class Members to gather
13 work-related equipment and/or safety gear, compile tools/equipment, set up and/or clean their
14 workstations, and/or complete other work tasks prior to their scheduled shift and/or prior to clocking
15 in/signing in, thereby resulting in pre-shift off-the-clock work.

16 23. Based on information and belief, at times, Class Members were required to assist
17 customers and/or perform other off-the-work tasks during unpaid meal periods, before clocking in
18 for the start of their shifts and/or after clocking out for the end of their shifts, resulting in
19 DEFENDANTS' failure to compensate Class Members for all hours worked and the underpayment
20 of minimum wages and overtime wages owed to Class Members.

21 24. Based on information and belief, at times, Class Members were at times required to
22 complete off-the-clock work outside of scheduled shifts due to work-related phone calls and/or
23 messages they received to their phones/mobile devices and were required to respond to, including
24 but not limited to, communications from supervisors regarding scheduling and/or other work tasks,
25 resulting in the underpayment of wages owed to Class Members.

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

1 scheduled shift, and/or after completing a scheduled shift, resulting in the underpayment of wages
2 owed to Class Members.

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

6 27. Additionally, PLAINTIFF and other Class Members were required to perform other
7 off-the-clock work for which they were not compensated.

8 28. For example, based on information and belief, at times, DEFENDANTS' electronic
9 employee time-keeping system/app malfunctioned such that Class Members were required to either
10 reinitiate and/or otherwise troubleshoot the system prior to being able to clock in and/or were unable
11 to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting in off-
12 the-clock work and the underpayment of wages owed to Class Members. Based on information and
13 belief, Class Members experienced the same issues when clocking out for shifts and/or back in for
14 meal periods. This time spent under DEFENDANTS' control was not recorded and not
15 compensated and resulted in unpaid minimum wages owed to Class Members.

16 29. Based on information and belief, DEFENDANTS failed to compensate PLAINTIFF
17 and other Class Members for all rest periods, resulting in off-the-clock work and unpaid minimum
18 wages and overtime wages owed to PLAINTIFF and other Class Members.

19 30. Moreover, based on information and belief, Class Members who opened their work
20 locations were required to first unlock the doors, turn on all the lights in the restaurant/facility and/or
21 deactivate the alarm before clocking in for work, resulting in pre-shift off-the-clock work and the
22 underpayment of wages owed to Class Members.

23 31. Based on further information and belief, Class Members in charge of closing their
24 location(s) were required to first clock out for their shifts before enabling the alarm, turning off all
25 the lights in the facility and/or locking the doors. This resulted in additional off-the-clock post-shift
26 work that was not compensated and the underpayment of wages owed to Class Members.

27 32. Based on information and belief, Class Members were required to complete other
28 off-the-clock work tasks after clocking out for the end of their shifts and/or during uncompensated

1 meal periods, resulting in off-the-clock work and the underpayment of minimum and overtime
2 wages owed to Class Members. For example, based on information and belief, DEFENDANTS
3 required Class Members to clock out for the end of their shifts but to continue working due to the
4 need to assist customers, clean and/or organize their work stations/areas, provide shift status updates
5 and/or debriefings and/or participate in work meetings, respond to work-related communications
6 and/or perform other work tasks off-the-clock, resulting in the underpayment of minimum wages
7 and overtime wages owed to Class Members.

8 33. Based on information and belief, at times, DEFENDANTS require/required Class
9 Members to travel between DEFENDANTS' restaurants, facilities and/or locations without
10 compensating Class Members for the travel time. For example, based on information and belief,
11 due to scheduling issues and/or understaffing, Class Members were at times required after working
12 at their scheduled facility location to cover a shift at another of DEFENDANTS'
13 restaurants/facilities/locations but were not compensated for the time spent driving to the second
14 restaurant/facility, resulting in the underpayment of minimum and overtime wages owed to Class
15 Members.

16 34. Moreover, based on information and belief, DEFENDANTS failed to pay Class
17 Members split shift premium wages when they worked split shifts during the relevant period. For
18 example, based on information and belief, at times, DEFENDANTS required Class Members to
19 work two separate shifts in the same day. Based on information and belief, DEFENDANTS failed
20 to pay Class Members split shift compensation whenever Class Members' work schedules were
21 interrupted by non-paid non-working periods established by DEFENDANTS, which resulted in a
22 violation of the applicable Wage Order (See section 4 of all applicable Wage orders, "When an
23 employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to
24 the minimum wage for that workday...). See, also, Cal. Code Regs. Tit. 8, § 11050 (when an
25 employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to
26 the minimum wage for that workday, except when the employee resides at the place of employment).

27 35. DEFENDANTS also failed to separately itemize these split shift premium wages on
28 Class Members' wage statements, in violation of Labor Code sections 510, 1194 and all applicable

1 IWC Wage Orders. See, https://www.dir.ca.gov/dlse/split_shift.htm. (The employer must itemize
2 the premium payment on the pay stub provided to the employee, and it should be shown as a separate
3 category such as “Split Shift Premium” and should not be lumped into another category such as
4 wages, bonus, etc. DEFENDANTS failed to separately account for the split shift premiums earned
5 by Class Members on their wage statements.

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

11 37. Based on further information and belief, DEFENDANTS implemented a time-
12 rounding system that as applied systematically deprived PLAINTIFF and other Class Members of
13 compensable time because the time-rounding system implemented by DEFENDANTS would
14 almost always, if not always, result in understating actual compensable work time.

15 38. DEFENDANTS’ failure to pay for all time worked by virtue of its time rounding,
16 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
17 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
18 minimum wages owed to PLAINTIFF and Class Members as well as unpaid overtime wages for
19 those Class Members who worked more than eight (8) hours in a day and/or more than forty (40)
20 hours in a week.

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

26 40. Based on information and belief, DEFENDANTS failed and continue to fail to pay
27 Class Members two times their regular rate of pay for time worked beyond twelve (12) hours per
28 workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a

1 work week, in violation of California's overtime laws.

2 41. Based on information and belief, DEFENDANTS failed to incorporate all non-
3 discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or
4 other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s),
5 resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other
6 Class Members.

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

15 43. For example, based on information and belief, Class Members were forced to take
16 late meal periods in order to complete assigned job duties. Based on information and belief, Class
17 Members were at times, interrupted during purported meal periods and/or had meal periods cut short
18 and/or restricted to DEFENDANTS' premises due to the need to continue assigned job duties.

19 44. Based on information and belief, other Class Members were consistently suffered
20 and permitted to take meal periods past the fifth hour of work and/or had their meal periods
21 interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise on duty due to
22 commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or
23 the need to meet DEFENDANTS' goals and expectations.

24 45. Based on information and belief, DEFENDANTS implemented policies and/or
25 practices that failed to relieve Class Members of all duties and DEFENDANTS' control during
26 unpaid meal periods.

27 46. Based on information and belief, DEFENDANTS required Class Members to
28 complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take

1 into account when scheduling meal periods for Class Members. Based on information and belief,
2 meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

3 47. Based on information and belief, despite DEFENDANTS' failure to provide lawful
4 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
5 times of PLAINTIFF's and other Class Members' meal periods and/or automatically deducting at
6 least thirty minutes per shift for missed and/or otherwise unlawful meal periods despite having
7 actual and/or constructive knowledge that PLAINTIFF and other Class Members did not receive
8 lawful meal periods.

9 48. Moreover, per DEFENDANTS' uniform policy and practice, Class Members who
10 worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute
11 second meal period.

12 49. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
13 other Class Members as to the timing and duty-free nature of meal periods. Based on further
14 information and belief, DEFENDANTS did not have a written meal period policy, nor did
15 DEFENDANTS have any sort of compliant policy in practice.

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

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

26 52. DEFENDANTS failed to pay PLAINTIFF and other Class Members, an additional
27 hour of wages at their respective regular rates of compensation for each workday a lawful meal
28 period was not provided. DEFENDANTS either failed to pay a meal period premium at all for each

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

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

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

13 **55.** Based on information and belief, DEFENDANTS did not have a have a compliant
14 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
15 practice.

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

20 **57.** Based on further information and belief, DEFENDANTS did not have a lawful
21 policy, instruction, or practice as to the taking, timing, or duty-free nature of rest periods.

22 **58.** For example, based on information and belief, DEFENDANTS failed to authorize
23 and permit rest periods that were a "net" ten minutes in a suitable rest area, and instead, to the extent
24 rest periods were provided, DEFENDANTS limited PLAINTIFF and other Class Members to only
25 ten-minute rest periods, requiring them to be back at their workstations within ten minutes of
26 leaving, in violation of California rest period law.

27 **59.** Based on information and belief, DEFENDANTS failed to compensate PLAINTIFF
28 and other Class Members for all rest periods, resulting in rest period law violations as well as unpaid

1 wages owed to Class Members.

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

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

8 62. Based on information and belief, DEFENDANTS implemented policies and/or
9 practices that failed to relieve PLAINTIFF and other Class Members of all duties and
10 DEFENDANTS' control during rest periods.

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

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

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

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

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

12 68. Based on information and belief, wage statements issued by DEFENDANTS failed
13 to list the inclusive dates of the pay period for which the Class Member is being paid. For example,
14 based on information and belief, DEFENDANTS issued wage statements to Class Members that list
15 a category for “retro” and/or retroactive pay without including the inclusive dates of the accurate
16 pay period for that retroactive pay, further failing to list the total hours worked for the pay period,
17 including but not limited to, the total hours worked for the pay period the retroactive pay corresponds
18 with. As a result, the wage statements provided to Class Members were not accurate and do not
19 include all of the statutorily required information, such as, but not limited to, the inclusive dates of
20 the period for which the employee is paid.

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

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

28 71. **Failure to Produce Employment Records.** Based on information and belief,

1 DEFENDANTS have a uniform policy and practice of failing to timely produce or make available
2 a current or former employee's time, pay, and/or personnel records when requested pursuant to
3 Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example,
4 PLAINTIFF, through counsel, sent a written request for time, pay and personnel records to
5 DEFENDANTS on including but not limited to the following dates: May 18, 2023, and June 23,
6 2023. Yet, DEFENDANTS failed to timely produce complete records within the time periods
7 delineated by California labor law. Based on information and belief, DEFENDANTS failed and
8 continue to fail to timely produce complete time, pay, and personnel records when requested by
9 other Class Members.

10 72. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
11 information and belief, DEFENDANTS failed to timely pay Class Members all wages that were due
12 and owing upon termination or resignation. Based on information and belief, DEFENDANTS
13 untimely provide final wages to Class Members without regard to the timing requirements of Labor
14 Code sections 201-202.

15 73. Upon separation of employment, Class Members' final paychecks were not timely
16 provided and/or were not timely provided with all owed vacation pay and/or paid time off.
17 Moreover, PLAINTIFF's and Class Members' final paychecks, once provided, did not include all
18 wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime
19 wages, premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the
20 properly accrued rates.

21 74. Based on further information and belief, DEFENDANTS failed to timely provide all
22 owed wages immediately upon discharge of employment. Based in information and belief, at times,
23 Class Members experienced breaks in employment caused by DEFENDANTS whereby Class
24 Members would not be called in for work for longer than a single pay period due to including but
25 not limited to DEFENDANTS' lack of work or lack of assignments. Such instances qualify as a
26 discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at the end of
27 such periods of employment, in violation of including but not limited to Labor Code section 201-
28 202.

1 75. These violations subject DEFENDANTS to civil penalties under Labor Code section
2 203, 210, and/or 256.

3 76. **Unreimbursed Business Expenses.** Based on information and belief,
4 DEFENDANTS required PLAINTIFF and Class Members to incur business expenses as a direct
5 consequence of the performance of their job duties without providing reimbursement, in violation
6 of Labor Code section 2802. Based on information and belief, PLAINTIFF and Class Members
7 were improperly required to provide and maintain work tools that are supposed to be the
8 responsibility of the employer.

9 77. Based on information and belief, DEFENDANTS shifted the costs of doing business
10 onto PLAINTIFF and other Class Members requiring them to pay for business expenses, including
11 but not limited to, uniforms/work clothing/work shoes, personal protective/safety gear and/or the
12 use of Class Members' personal mobile phone and data usage for work related purposes including
13 but not limited to receiving and responding to work related messages and/or phone calls.

14 78. For example, based on information and belief, Class Members received
15 calls/messages to their personal cell phones/mobile devices from supervisors and/or other Class
16 Members regarding scheduling and/or other work tasks but were not provided any and/or full
17 reimbursement from DEFENDANTS for this personal cell phone use.

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

21 80. For example, based on information and belief, Class Members were not reimbursed
22 for the costs of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal
23 protective/safety gear, such as, but not limited to, face masks, gloves, hairnets and/or work shoes.

24 81. Based on information and belief, at times, DEFENDANTS required Class Members
25 to use their personal vehicles for work without reimbursing them for the personal vehicle expenses
26 they incurred in connection therewith. For example, based on information and belief, at times,
27 DEFENDANTS required Class Members to travel from one of DEFENDANTS'
28 facilities/restaurants to a second of DEFENDANTS' facilities/restaurants for work and/or otherwise

1 required Class Members to use their personal vehicles to carry out their assigned job duties without
2 reimbursing Class Members for the expenses incurred in connection with DEFENDANTS' business
3 use of their personal vehicles.

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

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

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

15 **FIRST CAUSE OF ACTION**

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

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

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

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

1 period is unlawful.

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

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

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

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

20 **SECOND CAUSE OF ACTION**

21 **Recovery of Unpaid Overtime Wages**

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

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

24 93. Employees in California must be paid overtime, equal to one and one-half times the
25 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
26 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
27 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
28 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
consecutive day of work in a workweek, unless they are exempt.

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

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

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

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

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

24 **THIRD CAUSE OF ACTION**

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

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

28 100. 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

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

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

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

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

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

27 105. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
28 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and

1 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in
2 violation of California's meal period laws.

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

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

12 **FOURTH CAUSE OF ACTION**
13 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
14 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

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

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

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

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

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

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

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

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

1 regular rate of compensation for purposes of determining the owed rest period premium.

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

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

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

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

14 (1) gross wages earned, (2) total hours worked by the employee,
15 except for any employee whose compensation is solely based on a
16 salary and who is exempt from payment of overtime under
17 subdivision (a) of Section 515 or any applicable order of the Industrial
18 Welfare Commission, (3) the number of piece-rate units earned and
19 any applicable piece rate if the employee is paid on a piece-rate basis,
20 (4) all deductions, provided that all deductions made on written orders
21 of the employee may be aggregated and shown as one item, (5) net
22 wages earned, (6) the inclusive dates of the period for which the
23 employee is paid, (7) the name of the employee and his or her social
24 security number, except that by January 1, 2008, only the last four
25 digits of his or her social security number or an employee
26 identification number other than a social security number may be
27 shown on the itemized statement, (8) the name and address of the
28 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.

22 119. As DEFENDANTS failed to provide PLAINTIFF and other Class Members with
23 meal and rest periods that complied with Labor Code section 226.7, the wage statements
24 DEFENDANTS issued to PLAINTIFF and other Class Members failed and continue to fail to
25 correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the
26 total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages
27 earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect
28 during the pay period and the corresponding number of hours worked at each hourly rate by the

1 employee, in violation of Labor Code section 226(a)(9).

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

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

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

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

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

28 125. As a result, PLAINTIFF and other Class Members have suffered injury as they could

1 not easily determine whether they received all wages owed to them and whether they were paid for
2 all hours worked.

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

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

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

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

21 130. Pursuant to California Labor Code § 226(h), PLAINTIFF and Class Members are
22 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
23 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
24 provide currently employed Class Members with inaccurate wage statements in violation of
25 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
26 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
27 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
28 with California Labor Code § 226(a).

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

4 **Failure to Produce Employment Records**

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

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

20 134. *Personnel Records.* In addition to their right to time and pay records, employees, and
21 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
22 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code
23 section 432 further specifies that employers must furnish copies of all employment records bearing
24 the employee's signature.

25 135. Labor Code section 1198.5 also requires that the file be made available for inspection
26 or receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date
27 the employer receives a written request." An employer's failure to comply within this timeframe
28 likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty

1 from the employer. Lab. Code section 1198.5(k).

2 136. Based on information and belief, DEFENDANTS have a uniform policy and practice
3 of failing to produce or make available a current or former employee's personnel records and/or
4 payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the
5 applicable Wage Order.

6 137. DEFENDANTS' conduct explained above is in violation of Labor Code Sections
7 226(b) & (c). Accordingly, PLAINTIFF and Class Members are therefore each entitled to recover
8 a \$750.00 penalty from DEFENDANTS, along with costs and reasonable attorneys' fees, pursuant
9 to Labor Code Section 226(f).

10 138. DEFENDANTS' conduct is also in violation of Labor Code section 1198.5. Pursuant
11 to Labor Code Sections Labor Code section 1198.5(k), PLAINTIFF and the Class Members are
12 entitled to recover an additional \$750.00 penalty from DEFENDANTS, along with injunctive relief,
13 costs and reasonable attorney's fees pursuant to Labor Code section 1198.5(l).

14 **SIXTH CAUSE OF ACTION**

15 **Failure to Timely Pay All Wages Due Upon Separation of Employment** 16 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

17 139. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

18 140. California Labor Code section 201(a) provides, in relevant part, that “[i]f an
19 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
20 payable immediately.”

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

26 142. Based in information and belief, DEFENDANTS failed and continue to fail to timely
27 pay final wages to PLAINTIFF and Class Members upon separation of employment in violation of
28 Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF and Class
Members do not include all wages owed as they are devoid of, including but not limited to, all owed

1 minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or
2 paid time off wages at the properly accrued rates.

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

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

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

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

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

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

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

149. 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.

150. 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.

EIGHTH CAUSE OF ACTION

Unfair Competition

(By PLAINTIFF and the Class Members Against all DEFENDANTS)

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

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

153. Due to DEFENDANTS' unfair and unlawful business practices in violation of the California Labor Code, DEFENDANTS have gained a competitive advantage over other comparable companies doing business in the State of California that comply with their obligations to authorize or permit rest periods and meal periods or pay proper meal and rest period premiums in lieu thereof, to properly accrue and pay sick time benefits, to provide complete and accurate

1 itemized wage statements, to reimburse employees for all business expenses, to pay all owed
2 minimum and overtime wages and to pay all wages due upon separation of employment of their
3 employees.

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

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

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1 **PRAYER FOR RELIEF**

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

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

18
19 Dated: July 3, 2023

CROSNER LEGAL, PC

20
21 By: 

22 Zachary M. Crosner, Esq.
23 Jamie Serb, Esq.
24 Attorneys for Plaintiff,
25 LUZ DE ARIAS
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Dated: July 3, 2023

By:

Zachary M. Crosner, Esq.
 Jamie Serb, Esq.
 Attorneys for Plaintiff,
 LUZ DE ARIAS