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11 As an individual and on behalf of all others similarly situated

Electronically FILED by
Superior Court of California,
County of Los Angeles
4/05/2023 4:56 PM
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

FRANK BRAZIL, as an individual on
behalf of himself and on behalf of all others
similarly situated,

Plaintiff,

v.

DEPENDABLE HIGHWAY EXPRESS,
INC., a California Corporation; and DOES
1-100, inclusive,

Defendants.

Case No.: 23STCV07501

CLASS ACTION COMPLAINT FOR:

1. Recovery of Unpaid Wages and Liquidated Damages
2. Failure to Furnish Accurate Itemized Wage Statements
3. Failure to Timely Pay All Wages Due Upon Separation of Employment
4. Failure to Reimburse Business Expenses *and*
5. Unfair Competition

DEMAND FOR JURY TRIAL

1 Plaintiff, FRANK BRAZIL (“PLAINTIFF”), an individual on behalf of himself and all other
2 similarly situated Class Members (as defined below), hereby files this Complaint against Defendants
3 DEPENDABLE HIGHWAY EXPRESS, INC., a California Corporation; and DOES 1-100,
4 inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and
5 believes and thereon alleges as follows:

6 **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, and DEFENDANTS’
10 principal place of business is in this judicial district, and some of the acts, omissions, and conduct
11 alleged by 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. PLAINTIFF was employed by DEFENDANTS
15 in the State of California as a non-exempt employee during the Class Period (defined below).

16 3. PLAINTIFF worked for DEFENDANTS as a professional driver, truck driver and/or
17 similar title(s) from in or around July 2022 through on or around March 15, 2023. PLAINTIFF
18 reported to DEFENDANTS’ offices, warehouse, yard and/or locations in Fresno, California, and
19 completed routes in cities throughout California, including but not limited to, Bakersfield,
20 Sacramento, Victorville, and Fresno, California.

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, or otherwise manage a trucking, warehouse, and
25 transportation and/or logistics business. DEFENDANTS provide trucking, warehousing,
26 distribution, air freight forwarding, ocean freight forwarding, and/or freight transportation, to
27 commercial customers in including but not limited to, California. DEFENDANTS maintain its
28 corporate headquarters in Los Angeles, California, and DEFENDANTS own, operate or manage

1 additional warehouses, yards, locations, and/or facilities in California including but not limited to,
2 DEFENDANTS' offices, yards, locations and/or facilities located in Fresno, California, at which
3 DEFENDANTS regularly assigned PLAINTIFF to work during the Class Period. Based on
4 information and belief, at times, DEFENDANTS operated under the name and/or are operating
5 under the name "Dependable Supply Chain Services" and/or "Dependable Highway Express"
6 and/or "DHE."¹

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

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

23 **JOINT LIABILITY**

24 8. Under California law, the definition of the terms "to employ" are broadly construed
25 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
26 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)
27 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49

28 ¹ See <https://www.godependable.com/Company-Overview> (Last visited on April 3, 2023).

1 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
2 was to reach situations in which multiple entities control different aspects of the employment
3 relationship. Supervision of the work, in the specific sense of exercising control over how services
4 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
5 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
6 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
7 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
8 California, applying a less stringent standard to what constitutes sufficient control by a business
9 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
10 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative
11 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
12 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
13 employment,” *Id.* at 875 [emphasis added].

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

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

1 schedules, issue employee policies, and determine rates of compensation across its locations in
2 California; (3) DEFENDANTS utilize the same policies and procedures for all California
3 employees, including issuing the same employee handbooks and other form agreements; (4)
4 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee
5 employment matters; and, (6) DEFENDANTS share employees.

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

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

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

1 employment, including the instrumentality that resulted in the illegal conduct for which PLAINTIFF
2 seeks relief in this Complaint.

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

6 **CLASS ALLEGATIONS**

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

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

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

1 reimburse PLAINTIFF and the Class Members for all business expenses; and
2 (5) whether DEFENDANTS violated California Business and Professions Code
3 sections 17200, *et seq.*

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

7 d. Typicality. PLAINTIFF's claims are typical of the claims of the Class Members.
8 PLAINTIFF suffered a similar injury as members of the Class as a result of
9 DEFENDANTS' common practices regarding, *inter-alia*, failure to calculate
10 and pay all owed wages, failure to provide accurate wage statements, failure to
11 reimburse business expenses, and failure to timely pay all wages due upon
12 separation of employment.

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

19 f. Superiority. A class action is superior to other available means for the fair and
20 efficient adjudication of this controversy since individual joinder of all members
21 of the class is impractical. Class action treatment will permit a large number of
22 similarly situated persons to prosecute their common claims in a single forum
23 simultaneously, efficiently, and without the unnecessary duplication of effort
24 and expense that numerous individual actions would engender. Furthermore, as
25 the damages suffered by each individual member of the Class may be relatively
26 small, the expenses and burden of individual litigation would make it difficult
27 or impossible for individual members of the Class to redress the wrongs done to
28 them, while an important public interest will be served by addressing the matter

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

8 **FACTUAL AND LEGAL ALLEGATIONS**

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

12 17. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
13 PLAINTIFF worked for DEFENDANTS as a professional driver, truck driver and/or similar title(s)
14 from in or around July 2022 through on or around March 15, 2023. PLAINTIFF hauled primarily
15 dog food and/or furniture. PLAINTIFF reported to DEFENDANTS' offices, warehouse, yard and/or
16 locations in Fresno, California, and completed routes in cities throughout California, including but
17 not limited to, Bakersfield, Sacramento, Victorville, and Fresno, California.

18 18. PLAINTIFF regularly worked at least eight (8) to twelve (12) hours per day, at
19 least five (5) days per week.

20 19. At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an
21 hourly basis for time counted by DEFENDANTS as hours.

22 20. **Unpaid Minimum and Straight Time Wages.** DEFENDANTS failed to
23 compensate PLAINTIFF and Class Members for all hours worked, resulting in the underpayment
24 of minimum and straight time wages. DEFENDANTS failed to compensate PLAINTIFF and Class
25 Members for all hours worked by virtue of, DEFENDANTS' automatic deduction policies, payment
26 according to scheduled hours rather than actual hours worked, and/or time rounding policies, and
27 failure to relieve employees of all duties/employer control and/or suffering, permitting and/or
28 requiring Class Members to perform work during unpaid meal periods, as explained below.

1 21. Based on information and belief, DEFENDANTS implemented a policy and/or
2 practice of rounding meal period start and end times and/or automatically deducting at least thirty
3 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
4 PLAINTIFF and other Class Members were subject to DEFENDANTS' control during purported
5 meal periods and/or were otherwise required to work through unpaid meal periods, depriving
6 PLAINTIFF and Class Members of all wages owed. For example, PLAINTIFF was rarely if ever
7 afforded a full thirty-minute off-duty meal period during his employment. PLAINTIFF was usually
8 if not always forced to continue driving and/or completing other work tasks during unpaid meal
9 periods as PLAINTIFF's assigned routes and/or delivery schedule as designated by DEFENDANTS
10 usually if not always prohibited the taking of a full thirty-minute uninterrupted off-duty meal period.
11 Based on information and belief, Class Members were required to remain inside and/or in immediate
12 physical proximity to their assigned vehicles and/or tethered to their workstations during unpaid
13 meal periods and/or were required to monitor work communication devices during unpaid meal
14 periods and therefore were not relieved of all duties and DEFENDANTS' control during unpaid
15 meal periods, resulting in unpaid minimum wages and straight time wages to Class Members. Based
16 on information and belief, DEFENDANTS performed an automatic meal period deduction of at
17 least thirty minutes per shift per Class Member even though DEFENDANTS had actual and/or
18 constructive knowledge that Class Members were consistently required to return to work during
19 unpaid meal periods, work through unpaid meal periods completely, and/or were not relieved of all
20 duties and employer control during unpaid meal periods, resulting in consistent off-the-clock work
21 and the underpayment of minimum wages and straight time wages owed to Class Members. For
22 example, PLAINTIFF did not clock out for meal periods during his employment because he was
23 unable to take meal periods due to his assigned routes and/or delivery schedule and/or the need to
24 complete other work tasks. Nevertheless, DEFENDANTS deducted thirty minutes from
25 PLAINTIFF's total hours worked for a purportedly off-duty thirty-minute meal period for most if
26 not all shifts PLAINTIFF worked.

27 22. Based on information and belief, Class Members were not paid for all hours worked
28 due to DEFENDANTS' policy and/or practice of rounding time entries or paying according to

1 scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies
2 and/or practices. For example, based on information and belief, DEEFENDANTS have a policy
3 and practice of rounding Class Members' total hours worked to at least the nearest tenth, quarter,
4 half and/or whole hour, resulting in the underpayment of minimum wages and straight time wages
5 owed to Class Members. For example, DEFENDANTS' wage statement for PLAINTIFF for pay
6 period beginning on October 9, 2022 and ending on October 15, 2022 shows precisely 56.60 hours
7 worked. Likewise, DEFENDANTS' wage statement for PLAINTIFF for pay period beginning on
8 November 13, 2022 and ending on November 19, 2022 shows precisely 48.00 regular hours worked.
9 Based on information and belief, DEFENDANTS rounded PLAINTIFF's total hours worked to at
10 least the nearest tenth, quarter, half and/or whole hour during most if not all pay periods, resulting
11 in the consistent underpayment of minimum wages and straight time wages owed to PLAINTIFF.
12 Based on information and belief, DEFENDANTS also rounded the total hours worked of other Class
13 Members to at least the nearest tenth, quarter, half and/or whole hour resulting in the consistent
14 underpayment of minimum wages and straight time wages owed to Class Members.

15 23. Based on information and belief, Class Members were required to perform off-the-
16 clock work due to work-related phone calls and/or messages Class Members received to their
17 phones/work-communication devices and were required to respond to outside of scheduled shift
18 times and/or during unpaid meal periods, including but not limited to, communications from
19 supervisors and/or other Class Members regarding scheduling, shift assignments and/or other work
20 tasks, resulting in the underpayment of wages owed to Class Members.

21 24. Moreover, based on information and belief, at times, DEFENDANTS' electronic
22 employee time-keeping system / app malfunctioned such that Class Members were required to either
23 reinitiate and/or otherwise troubleshoot the system / app prior to being able to clock in and/or were
24 unable to clock in at all for the start of their shifts, resulting in off-the-clock work and the
25 underpayment of wages owed to Class Members. Based on information and belief, Class Members
26 experienced the same issues when clocking out for shifts. This time spent under DEFENDANTS'
27 control was not recorded and not compensated and resulted in unpaid minimum wages owed to
28 Class Members.

1 25. Based on information and belief, PLAINTIFF and other Class Members were
2 required to complete other off-the-clock work tasks before clocking in for the beginning of their
3 shifts and/or after clocking out for the end of their shifts and/or during uncompensated meal periods,
4 resulting in the underpayment of minimum and straight time wages owed to PLAINTIFF and other
5 Class Members.

6 26. 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. For example, based on information and belief,
11 DEFENDANTS required Class Members to review and sign various types of policies and
12 documents, including but not limited to, safety guidelines/safety awareness certifications, employee
13 time-keeping policies, among other documents, but they were not paid for all time spent reviewing
14 and/or completing certification as directed by DEFENDANTS.

15 27. Based on further information and belief, DEFENDANTS implemented a time-
16 rounding system that as applied systematically deprived PLAINTIFF and other Class Members of
17 compensable time because the time-rounding system implemented by DEFENDANTS would
18 almost always, if not always, result in understating actual compensable work time. For example, as
19 explained above, based on information and belief, DEFENDANTS rounded to at least the nearest
20 tenth, quarter, half and/or whole hour, PLAINTIFF's and other Class Members' total hours worked
21 during most if not all pay periods, resulting in the consistent underpayment of minimum wages and
22 straight time wages owed to PLAINTIFF and other Class Members.

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

27 29. Based on information and belief, DEFENDANTS had actual and/or constructive
28 knowledge that its time rounding policies/practices, auto-deduction policies and practices and/or

1 other off-the-clock work resulted in the underpayment of minimum and straight time wages owed
2 to PLAINTIFF and other Class Members, in violation of, including but not limited to, California's
3 minimum wage laws.

4 30. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
5 provide PLAINTIFF and other Class Members with accurate wage statements that complied with
6 Labor Code section 226.

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

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

17 33. Moreover, based on information and belief, DEFENDANTS issued wage statements
18 to PLAINTIFF and Class Members that further violate Labor Code section 226(a), by among other
19 things, failing to list the correct name and/or address of the legal entity that is the employer.

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

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

28 36. Upon separation of employment, Class Members' final paychecks were not timely

1 provided and/or were not timely provided with all owed vacation pay and/or paid time off.
2 Moreover, PLAINTIFF's and Class Members' final paychecks, once provided, did not include all
3 wages owed as they were devoid of, including but not limited to, all owed minimum wages, straight
4 time wages, reporting time pay wages, vacation pay, and all owed sick leave and/or paid time off
5 wages at the properly accrued rates.

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

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

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

22 40. Based on information and belief, DEFENDANTS shifted the costs of doing business
23 onto Class Members by requiring them to pay for business expenses, including but not limited to,
24 uniforms and/or protective/safety equipment, and/or the use of Class Members' personal mobile
25 phone and data usage for work-related purposes, including but not limited to, to receive and respond
26 to work related messages and/or phone calls. For example, based on information and belief, Class
27 Members were required to use their personal cell phones for work but did not receive any and/or
28 full reimbursement from DEFENDANTS for these business expenses. For example,

1 DEFENDANTS required PLAINTIFF to download and use an employee time-keeping application
2 on his personal cell phone/mobile device as well as use his personal cell phone/mobile device for
3 navigational purposes to perform his assigned job duties / complete his assigned routes.
4 DEFENDANTS did not reimburse PLAINTIFF at all for these business expenses, including but not
5 limited to, data plan charges, PLAINTIFF incurred in connection with DEFENDANTS' business
6 use of PLAINTIFF's personal cell phone/ mobile device. Based on information and belief,
7 DEFENDANTS required Class Members to use their personal cell phone/mobile devices to
8 download applications for work, make and/or receive work-related messages/calls, and/or for
9 navigation purposes to complete their assigned job duties but did not provide any / legally mandated
10 reimbursement for the business expenses Class Members incurred as a result of being required to
11 use their personal cell phones/mobile devices for work.

12 41. Based on information and belief, Class Members were not reimbursed for the cost of
13 using their personal phone for work-related purposes and/or the cost of purchasing and/or
14 maintaining work uniforms and/or protective/safety equipment.

15 42. Based on information and belief, Class Members were improperly required to pay
16 for additional business expenses that are supposed to be the responsibility of DEFENDANTS. For
17 example, based on information and belief, Class Members were improperly required to pay for
18 business expenses that are the responsibility of DEFENDANTS, including but not limited to,
19 purchase and/or maintenance of hand tools/equipment and/or cost of fuel, tolls/fines and/or other
20 work-related fees/fines, incurred as a direct consequence of the discharge of their assigned job duties
21 without receiving any and/or full reimbursement from DEFENDANTS for these expenses.

22 43. On information and belief, at times, Class Members were required to use their
23 personal vehicles for DEFENDANTS' business purposes, including but not limited to, for driving
24 between and/or around DEFENDANTS' job sites/locations and/or for other work purposes without
25 receiving any and/or full reimbursement from DEFENDANTS for the business use of their personal
26 vehicles.

27 44. DEFENDANTS' failure to provide Class Members with full reimbursement for all
28 reasonable expenses associated with carrying out their duties required that Class Members

1 subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

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

5 **FIRST CAUSE OF ACTION**

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

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

9 47. It is fundamental that an employer must pay its employees for all time worked.
10 California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages.
11 Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 223
12 prohibits the pay of less than a statutory or contractual wage scale. Pursuant to California Labor
13 Code sections 1194 and 1197, and the Industrial Wage Commission (“IWC”) Wage Orders, an
14 employer must pay its employees for all hours worked, up to 40 hours per week or 8 hours per day,
15 at a regular rate no less than the mandated minimum wage. Payment to an employee of less than
16 the applicable minimum wage for all hours worked in a payroll period is unlawful. Labor Code
17 section 224 only permits deductions from wages when the employer is required or empowered to
18 do so by state or federal law or when the deduction is expressly authorized in writing by the
19 employee for specified purposes that do not have the effect of reducing the agreed upon wage.

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

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

50. Based on information and belief, DEFENDANTS had actual or constructive

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

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

9 **SECOND CAUSE OF ACTION**

10 **Failure to Furnish Accurate Itemized Wage Statements
(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

11 52. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

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

24 54. Due to violations detailed above, including but not limited to, DEFENDANTS'
25 failure to pay straight time wages and minimum wages for all hours worked, and failure to pay all
26 sick leave wages at the proper rates, DEFENDANTS have violated California Labor Code § 226 by
27 willfully failing to furnish PLAINTIFF and other Class Members with accurate, itemized wage
28 statements that listed the gross and net wages earned and the correct applicable rates of pay for all

1 hours worked.

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

10 56. Separately, and independent from the above allegations, as explained above,
11 DEFENDANTS issued wage statements to PLAINTIFF and Class Members that violate Labor Code
12 section 226(a)(8), by failing to list the correct name and/or address of the legal entity that is the
13 employer.

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

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

20 59. Moreover, as a result of DEFENDANTS’ failure to list the correct name and/or
21 address of the legal entity that is the employer, PLAINTIFF and Class Members have suffered injury
22 as they could not contact their employer regarding any question(s) they had about wages paid.

23 60. DEFENDANTS’ knowingly and intentionally failed to provide PLAINTIFF and
24 Class Members with accurate, itemized wage statements.

25 61. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and Class Members
26 have suffered injury. The absence of accurate information on their wage statements has prevented
27 earlier challenges to DEFENDANTS’ unlawful pay practices, will require discovery and
28 mathematical computations to determine the amount of wages owed, and will cause difficulty and

1 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
2 submission of inaccurate information about wages and amounts deducted from wages to state and
3 federal government agencies. As a result, PLAINTIFF and Class Members are required to
4 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
5 and pay records than if DEFENDANT had complied with its legal obligations.

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

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

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

21 **THIRD CAUSE OF ACTION**

22 **Failure to Timely Pay All Wages Due Upon Separation of Employment** 23 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

24 65. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

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

28 67. California Labor Code section 202(a) provides, in relevant part, that "[i]f an
employee not having a written contract for a definite period quits his or her employment, his or her

1 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
2 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
3 to his or her wages at the time of quitting.”

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

10 69. Moreover, DEFENDANTS failed to timely provide all owed wages immediately
11 upon discharge of employment. For example, based on information and belief, at times, Class
12 Members experienced breaks in their employment caused by DEFENDANTS whereby Class
13 Members would not be called in for work for longer than a single pay period due to including but
14 not limited to DEFENDANTS’ lack of work or lack of assignments. Such instances qualify as a
15 discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at the end of
16 such periods of employment, in violation of including but not limited to Labor Code section 201-
17 202.

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

21 **FOURTH CAUSE OF ACTION**
22 **Failure to Reimburse Business Expenses**
23 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

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

25 72. California law requires employers to indemnify their employees for all necessary
26 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
27 their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable
28 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

1 incurred by the employee enforcing the rights granted by this section.”

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

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

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

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

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

22 **FIFTH CAUSE OF ACTION**

Unfair Competition

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

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

25 79. DEFENDANTS’ unlawful conduct alleged herein constitutes unfair competition
26 within the meaning of California Business and Professions Code section 17200 *et seq.* This unfair
27 conduct includes all unlawful conduct alleged herein, including but not limited to: DEFENDANTS’
28 failure to pay minimum and straight time wages by virtue of its illegal policies and practices;

1 DEFENDANTS' failure to furnish complete and accurate itemized wage statements;
2 DEFENDANTS' failure to reimburse business expenses; DEFENDANTS' failure to timely pay all
3 wages owed upon separation of employment; and DEFENDANTS' failure to provide paid sick leave
4 (or paid time off in lieu thereof) at the properly accrued rates (due to, including but not limited to,
5 DEFENDANTS' failure to incorporate all non-discretionary compensation into the sick pay
6 calculation and failure to base the accrued sick leave on the correct number of hours worked as a
7 result of DEFENDANTS' time-rounding/auto deduction policies and practices, payment according
8 to scheduled hours worked and/or other off-the-clock work policies and practices).

9 80. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
10 California Labor Code, DEFENDANTS have gained a competitive advantage over other
11 comparable companies doing business in the State of California that properly accrue and pay sick
12 time benefits, to provide complete and accurate itemized wage statements, to reimburse employees
13 for all business expenses, to pay all owed wages and during employment and due upon separation
14 of employment of their employees.

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

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

24 83. PLAINTIFF also seeks an award of attorney's fees pursuant to Code Civ. Proc
25 Section 1021.5 and as permitted by law, and an award for costs reasonably incurred, as permitted
26 by law.

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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: April 5, 2023

CROSNER LEGAL, PC

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21 By: 

22 Zachary M. Crosner, Esq.
23 Jamie Serb, Esq.
24 Attorneys for Plaintiff
25 FRANK BRAZIL
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