

ZACK I. DOMB, SBN 265185
 E-Mail zack@dombrauchwerger.com
 DEVIN RAUCHWERGER, SBN 274234
 E-Mail devin@dombrauchwerger.com
 JEFFREY P. JACKSON, SBN 290364
 E-Mail jeff@dombrauchwerger.com
DOMB & RAUCHWERGER LLP
 1055 East Colorado Blvd., Fifth Floor
 Pasadena, California 91106
 Telephone: (213) 537-9225

Attorneys for Plaintiff
 Daniel Franco Barreto

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES**

DANIEL FRANCO BARRETO individually
 and on behalf of others similarly situated,
 and on behalf of other aggrieved employees
 pursuant to the Private Attorneys General
 Act,

Plaintiff,

vs.

URBAN WORLDWIDE LA, a California
 corporation; URBAN WORLDWIDE, a
 California corporation; URBAN
 WORLDWIDE COACHES, a California
 corporation; URBAN WORLDWIDE LAC,
 a California corporation; DAVID AYAL
 UZIEL, an individual; and DOES 1 through
 50, inclusive,

Defendants.

FILED
 Superior Court of California
 County of Los Angeles
12/29/2023

David W. Slayton, Executive Officer / Clerk of Court
 By: R. Lozano Deputy

Case No.: 23STCV18019

**FIRST AMENDED CLASS ACTION AND
 REPRESENTATIVE COMPLAINT**

DEMAND FOR TRIAL BY JURY

- (1) Violation of Cal. Labor Code §§ 226.2, 510, 558, 558.1, 1194, and 1198 (Unpaid Overtime)
- (2) Violation of Cal. Labor Code §§ 226.7, 512(a), 558, and 558.1 (Unpaid Meal Period Premiums)
- (3) Violation of Cal. Labor Code §§ 226.7, 558, and 558.1 (Unpaid Rest Period Premiums)
- (4) Violation of Cal. Labor Code §§ 226.2, 558, 558.1, 1194, 1197 and 1197.1 (Unpaid Minimum Wages)
- (5) Violation of Cal. Labor Code §§ 201, 202, 203, 558, and 558.1 (Final Wages Not Timely Paid)
- (6) Violation of Cal. Labor Code §§ 204, 210, 558, 558.1 (Wages Not Timely Paid During Employment)
- (7) Violation of Cal. Labor Code §§ 226(a), 558, and 558.1 (Failure to Provide Accurate Wage Statements)
- (8) Violation of Cal. Labor Code §§ 558, 558.1, 2800 and 2802 (Failure to Reimburse Necessary Business Expenses)

- 1
2
3
4
- (9) Conversion (Tips Unlawfully Withheld)
(10) Violation of Cal. Business & Professions Code § 17200, et seq.
(11) Violation Of Cal. Labor Code § 2699, (Private Attorneys General Act)

5 Plaintiff Daniel Franco Barreto (“Plaintiff”), individually and on behalf of other members
6 of the general public similarly situated, and on behalf of other aggrieved employees pursuant to
7 the Private Attorneys General Act, based upon facts that either have evidentiary support or are
8 likely to have evidentiary support after a reasonable opportunity for further investigation and
9 discovery, alleges as follows:

10 **JURISDICTION AND VENUE**

11 1. Plaintiff brings this action against Defendants (defined below) and DOES 1
12 THROUGH 50 (hereinafter also collectively referred to as “Defendants”) for California Labor
13 Code violations, unfair business practices, and civil penalties stemming from Defendants’ failure
14 to pay overtime compensation, failure to provide meal periods, failure to authorize and permit
15 rest periods, failure to pay minimum wage, failure to timely pay wages, failure to provide accurate
16 wage statements, failure to maintain accurate time and payroll records, failure to reimburse
17 necessary business-related expenses, failure to remit tips/gratuities, and failure to pay reporting
18 wages.

19 2. Plaintiff’s First through Tenth Causes of Action are brought as a class action on
20 behalf of himself and similarly situated current and former employees of Defendants (hereinafter
21 collectively referred to as the “Class” or “Class Members,” as defined more fully in paragraph
22 12, below) pursuant to California Code of Civil Procedure section 382. The monetary damages
23 and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court
24 and will be established according to proof at trial.

25 3. Plaintiff’s Eleventh Cause of Action is brought as a representative action on behalf
26 of himself and certain other current and former employees of Defendants against whom one or
27 more of the alleged violations was committed (hereinafter collective referred to as the “Aggrieved
28 Employees”) pursuant to California Labor Code sections 2698, et seq. Plaintiff is an aggrieved

1 employee against whom one or more of the alleged violations occurred. The civil penalties sought
2 by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established
3 according to proof at trial.

4 4. The Court has jurisdiction over this action pursuant to the California Constitution,
5 Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes”
6 except those given by statute to other courts. The statutes under which this action is brought do
7 not specify any other basis for jurisdiction.

8 5. This Court has jurisdiction over Defendants because, upon information and belief,
9 Defendants are citizens of California, have sufficient minimum contacts in California, or
10 otherwise intentionally avail themselves of the California market so as to render the exercise of
11 jurisdiction over them by the California courts consistent with traditional notions of fair play and
12 substantial justice.

13 6. Venue is proper in this Court because, upon information and belief, Defendants
14 maintain offices, have agents, and/or transact business in the State of California, County of Los
15 Angeles.

16 **PARTIES**

17 7. Plaintiff Daniel Barreto is an individual residing in the State of California.

18 8. Defendant Urban Worldwide LA is and at all times herein mentioned was, a
19 corporation organized and existing under the laws of the State of California and registered to do
20 business in the state of California.

21 9. Defendant Urban Worldwide is and at all times herein mentioned was, a
22 corporation organized and existing under the laws of the State of California and registered to do
23 business in the state of California.

24 10. Defendant Urban Worldwide Coaches is and at all times herein mentioned was, a
25 corporation organized and existing under the laws of the State of California and registered to do
26 business in the state of California.

27 11. Defendant Urban Worldwide LAC is and at all times herein mentioned was, a
28 corporation organized and existing under the laws of the State of California and registered to do

1 business in the state of California.

2 12. Defendant Urban Worldwide LA, Defendant Urban Worldwide, Defendant Urban
3 Worldwide Coaches, and Urban Worldwide LAC are all hereinafter referred to as “Entity
4 Defendants.” The Entity Defendants have common owners (David Ayal Uziel), common officers,
5 common principal place of business, and common business operations, and therefore are jointly
6 liable under either the joint employer or single enterprise theories of liability.

7 13. Defendant David Ayal Uziel (“Individual Defendant” or “Mr. Uziel”) is an
8 individual who resides and works within the State of California and is an owner of the Entity
9 Defendants.

10 14. Plaintiff is ignorant of the identities of defendants Does 1 through 50, inclusive,
11 and therefore sues these defendants by such fictitious names. The Doe defendants may be
12 individuals, partnerships, or corporations. Plaintiff is informed and believes, and thereon alleges,
13 that, at all times mentioned herein, each of the Doe defendants was the parent, subsidiary, agent,
14 servant, employee, co-venturer, and/or co-conspirator of each of the other defendants and was at
15 all times mentioned acting within the scope, purpose, consent, knowledge, ratification and
16 authorization of such agency, employment, joint venture and conspiracy. Plaintiff will amend this
17 Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and
18 believes and thereon alleges that each of the fictitiously named Doe defendants is responsible in
19 some manner for the occurrences herein alleged, and that Plaintiff’s damages as herein alleged
20 were proximately caused by its conduct. Defendants and Doe Defendants 1 through 50 are
21 collectively referred to herein as “Defendants.”

22 15. Defendants are and at all times herein mentioned were, (a) conducting business in
23 the County of Los Angeles, State of California, and (b) the employer of Plaintiff consistent with
24 the California Labor Code and Industrial Welfare Commission Wage Orders (“Wage Orders”).

25 16. Plaintiff further alleges that Defendants, directly or indirectly controlled or
26 affected the working conditions, wages, working hours, and conditions of employment of
27 Plaintiff, the Class, and the Aggrieved Employees so as to make each of said Defendant employers
28 and employers jointly liable under the statutory provisions set forth herein.

1 **CLASS ACTION ALLEGATIONS**

2 17. Plaintiff brings the First through Tenth Causes of Action as a class action on his
3 own behalf and on behalf of all other members of the general public similarly situated, and, thus,
4 seeks class certification under Code of Civil Procedure section 382.

5 18. The proposed class is defined as follows: All current and former non-exempt
6 employees working for Defendants within the State of California as drivers at any time
7 commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that
8 notice of the certified class action is provided to the class (hereinafter referred to as the "Class"
9 or "Class Members.").

10 19. Plaintiff reserves the right to establish other subclasses as appropriate.

11 20. The Class is ascertainable and there is a well-defined community of interest in the
12 litigation:

- 13 a. Numerosity: The Class Members are so numerous that joinder of all Class
14 Members is impracticable. The membership of the entire Class is unknown to
15 Plaintiff at this time; however, the Class is estimated to be over thirty (30)
16 individuals and the identity of such membership is readily ascertainable by
17 inspection of Defendants' employment records.
- 18 b. Typicality: Plaintiff's claims are typical of all other Class Members demonstrated
19 herein. Plaintiff will fairly and adequately protect the interests of the other Class
20 Members with whom he has a well-defined community of interest.
- 21 c. Adequacy: Plaintiff will fairly and adequately protect the interests of each Class
22 Member, with whom he has a well-defined community of interest and typicality
23 of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to
24 the other Class Members. Plaintiff's attorneys, the proposed class counsel, are
25 versed in the rules governing class action discovery, certification, and settlement.
26 Plaintiff has incurred, and during the pendency of this action will continue to
27 incur, costs and attorneys' fees, that have been, are, and will be necessarily
28 expended for the prosecution of this action for the substantial benefit of each Class

1 Member.

- 2 d. Superiority: A class action is superior to other available methods for the fair and
3 efficient adjudication of this litigation because individual joinder of all Class
4 Members is impractical.
- 5 e. Public Policy Considerations: Certification of this lawsuit as a class action will
6 advance public policy objectives. Employers of this great state violate
7 employment and labor laws every day. Current employees are often afraid to
8 assert their rights out of fear of direct or indirect retaliation. However, class
9 actions provide the Class Members who are not named in the complaint
10 anonymity that allows for the vindication of their rights.

11 21. There are common questions of law and fact as to the Class that predominate over
12 questions affecting only individual members. The following common questions of law or fact,
13 among others, exist as to the members of the Class:

- 14 a. Whether Defendants' failure to pay wages, without abatement, or reduction, in
15 accordance with the California Labor Code was willful;
- 16 b. Whether Defendants had a corporate policy and practice of failing to pay Plaintiff
17 and the other Class Members for all hours worked, and missed, short, late or
18 interrupted meal periods and rest breaks in violation of California law;
- 19 c. Whether Defendants required Plaintiff and the other Class Members to work more
20 than eight (8) hours per day and/or more than forty (40) hours per week and failed
21 to pay the legally required overtime compensation to Plaintiff and the other Class
22 Members;
- 23 d. Whether Defendants deprived Plaintiff and the other Class Members of meal
24 and/or rest periods or required Plaintiff and the other Class Members to work
25 during meal and/or rest periods without compensation;
- 26 e. Whether Defendants failed to pay meal period premium wages to Class Members
27 when they were not provided with a legally compliant meal period;
- 28 f. Whether Defendants failed to pay rest period premium wages to Class Members

1 when they were not authorized and permitted to take legally compliant rest
2 periods;

3 g. Whether Defendants failed to pay minimum wages to Plaintiff and the other Class
4 Members for all hours worked;

5 h. Whether Defendants failed to pay Plaintiff and the other Class Members the
6 required minimum wage pursuant to California law;

7 i. Whether Defendants failed to pay Plaintiff and the other Class Members proper
8 overtime compensation pursuant to California law;

9 j. Whether Defendants failed to pay all wages due to Plaintiff and the other Class
10 Members within the time required upon their discharge or resignation from
11 employment;

12 k. Whether Defendants failed to reimburse Plaintiff and the other Class Members
13 for all necessary business-related expenses and costs in violation of California
14 Labor Code section 2802;

15 l. Whether Defendants failed to pay reporting time wages in violation of the
16 applicable IWC Wage Order;

17 m. Whether Defendants failed to timely pay all wages due to Plaintiff and the other
18 Class Members during their employment;

19 n. Whether Defendants complied with wage reporting as required by the California
20 Labor Code, including section 226;

21 o. Whether Defendants failed to remit to Plaintiff and the other Class Members the
22 gratuities left for them by patrons;

23 p. Whether Defendants' conduct was with malice, fraud or oppression;

24 q. Whether Defendants' conduct was willful or reckless;

25 r. Whether Defendants engaged in unfair business practices in violation of
26 California Business & Professions Code section 17200, *et seq.* based on their
27 improper withholding of compensation and deduction of wages;

28 s. Whether Defendants misclassified its hourly, non-exempt employees as

1 independent contractors;

2 t. The appropriate amount of damages, restitution, and/or monetary penalties
3 resulting from Defendants' violation of California law; and

4 u. Whether Plaintiff and the other Class Members are entitled to compensatory
5 damages pursuant to the California Labor Code.

6 **GENERAL ALLEGATIONS**

7 22. Defendants provide a luxury chauffeur & private car service in California,
8 including the Los Angeles area.

9 23. Defendants employed Plaintiff to work as a limousine driver from approximately
10 October 2022 to May 2023.

11 24. During the relevant times set forth herein, Defendants employed Plaintiff, the
12 Class Members, and the Aggrieved Employees as non-exempt workers who were misclassified
13 as and treated as independent contractors.

14 25. Towards the end of 2022, Defendants communicated with Plaintiff, the Class
15 Members, and the Aggrieved Employees that Defendants' prior classification of Class Members
16 and Aggrieved Employees as independent contractors "was okay until recently." This was either
17 an intentional or reckless misstatement of law, which was meant to mislead the Class Members
18 and Aggrieved Employees into believing that they had previously been properly classified in an
19 effort to avoid liability for Defendants' past misclassifications. Defendants then said: "To protect
20 the company," Class Members and Aggrieved Employees can either "[b]ecome a w2 employee
21 which means your taxes will be filed per pay check," or "[b]ecome an independent operator by
22 obtaining a PUC permit which is \$1000 for 3 years. The renewal after 3 years is \$150 per 3 years.
23 I know that it's a lot of money, so we would be happy to cover the cost up front and deduct
24 monthly from your paycheck." In order "to protect the company" and make sure Class Members
25 and Aggrieved Employees do not become fully aware of their rights, Defendants directed the
26 Class Members and Aggrieved Employees to ask questions privately and not in a group setting.
27 Defendants then added "[t]he goal is to ensure...our company is protected from the
28 govt...Nothing changes in the sense of your pay. Either way you get the same. PS – if there are

multiple of you wanting to do it together, I can help you guys create an LLC then it will be cheaper.” The conversation continued: “Just remember with your own TCP you can write off a bunch of stuff and pay less taxes.”

26. Throughout the time period involved in this case, Defendants had the authority to hire and terminate Plaintiff, the Class Members, and the Aggrieved Employees; to directly or indirectly control work rules, working conditions, wages, working hours, and conditions of employment of Plaintiff, the Class Members, and the Aggrieved Employees; and to hire and terminate the employment of Plaintiff, the Class Members, and the Aggrieved Employees.

27. At all times herein mentioned, Defendants were subject to the Labor Code of the State of California and the applicable Industrial Welfare Commission Orders.

28. Plaintiff is informed and believes, and thereon alleges that Defendants engaged in an ongoing and systematic scheme of wage abuse against their piece-rate non-exempt employees. As set forth in more detail below, this scheme involved, *inter alia*, misclassifying its workers as independent contractors despite the fact that they performed duties within the usual course of Defendants’ business and otherwise did not qualify as independent contractors; regularly requiring Plaintiff, the Class Members, and the Aggrieved Employees to work off the clock without compensation (including during mandatory training periods), thereby failing to pay them for all hours worked including minimum and overtime wages; failing to compensate employees for “non-productive” time, including rest and recovery periods; and, collecting tips that were left for the drivers by patrons which were the sole property of the workers for whom they were left. Defendants also implemented policies that prohibited Plaintiff, the Class Members, and the Aggrieved Employees from accurately recording the actual time worked, resulting in a failure to pay Plaintiff, the Class Members, and the Aggrieved Employees all wages owed. In addition, Defendants routinely failed to permit Plaintiff, the Class Members, and the Aggrieved Employees to take timely and duty-free meal periods and rest periods in violation of California law. Defendants also failed to reimburse Plaintiff, the Class Members, and the Aggrieved Employees for all necessary business-related expenses, including cell phones.

29. Throughout the time period involved, Defendants failed to include the proper legal

1 name of the company on the wage statements provided to the Plaintiff, the Class Members, and
2 the Aggrieved Employees.

3 30. Throughout the time period involved in this case, Defendants implemented
4 policies and/or practices which failed to provide Plaintiff, the Class Members, and the Aggrieved
5 Employees with timely and duty-free meal periods. Defendants routinely failed to relieve
6 Plaintiff, the Class Members, and the Aggrieved Employees of all duties during their meal
7 periods, regularly failed to relinquish control over Plaintiff, the Class Members, and the
8 Aggrieved Employees during their meal periods, regularly failed to permit Plaintiff, the Class
9 Members, and the Aggrieved Employees a reasonable opportunity to take their meal periods, and
10 regularly impeded or discouraged Plaintiff, the Class Members, and the Aggrieved Employees
11 from taking thirty (30) minute uninterrupted meal breaks no later than the end of their fifth hour
12 of work and/or from taking a second thirty (30) minute uninterrupted meal break no later than
13 their tenth hour of work for shifts lasting more than ten (10) hours. Defendants also failed to
14 maintain accurate records of meal periods taken by Plaintiff, the Class Members, and the
15 Aggrieved Employees.

16 31. Throughout the time period involved in this case, Defendants did not adequately
17 inform Plaintiff, the Class Members, and the Aggrieved Employees of their right to take meal
18 periods under California law. Instead, Defendants' actual policy and practice was to schedule
19 Plaintiff, the Class Members, and the Aggrieved Employees in a way that prohibited them from
20 taking timely and duty-free meal periods, and to require Plaintiff, the Class Members, and the
21 Aggrieved Employees to work through their meal periods, for which they were not compensated.

22 32. Throughout the time period involved in this case, Defendants failed to pay
23 Plaintiff, the Class Members, and the Aggrieved Employees premium wages for meal periods that
24 were missed, late, interrupted, or shortened in violation of California law. Defendants knew or
25 should have known that Plaintiff, the Class Members, and the Aggrieved Employees were entitled
26 to receive all meal periods or payment of one additional hour of pay at their regular rate of pay
27 when a meal period was missed, short, late, and/or interrupted. Notwithstanding this knowledge,
28 Defendants routinely failed to provide legally compliant meal periods to Plaintiff, the Class

Members, and the Aggrieved Employees, and routinely failed to pay one additional hour of pay to Plaintiff, the Class Members, and the Aggrieved Employees at their regular rate of pay when a meal period was missed, short, late, and/or interrupted.

33. Throughout the time period involved in this case, Defendants implemented policies and practices which prohibited Plaintiff, the Class Members, and the Aggrieved Employees from taking timely and duty-free rest periods. Defendants regularly failed to provide, authorize, and permit Plaintiff, the Class Members, and the Aggrieved Employees to take full, uninterrupted, off-duty rest periods for every shift lasting three and one-half (3.5) to six (6) hours and/or two full, uninterrupted, off-duty rest periods for every shift lasting six (6) to ten (10) hours, and failed to make a good faith effort to authorize, permit, and provide such rest breaks in the middle of each work period.

34. Throughout the time period involved in this case, Defendants did not adequately inform Plaintiff, the Class Members, and the Aggrieved Employees of their right to take rest periods under California law. Moreover, Defendants systematically disregarded their own written policies regarding the provision and timing of rest periods for Plaintiff, the Class Members, and the Aggrieved Employees. Instead, Defendants' actual policy and practice was to schedule Plaintiff, the Class Members, and the Aggrieved Employees in a way that regularly prohibited them from taking timely and duty-free rest periods, and to regularly require Plaintiff, the Class Members, and the Aggrieved Employees to work through their rest periods.

35. Throughout the time period involved in this case, Defendants failed to pay Plaintiff, the Class Members, and the Aggrieved Employees premium wages for rest periods that were missed, late, interrupted, or shortened in violation of California law. Defendants knew or should have known that Plaintiff, the Class Members, and the Aggrieved Employees were entitled to receive all rest periods or payment of one additional hour of pay at their regular rate of pay when a rest period was missed, short, late, and/or interrupted. Notwithstanding this knowledge, Defendants routinely failed to authorize and permit Plaintiff, the Class Members, and the Aggrieved Employees to take duty-free rest periods, and failed to pay one additional hour of pay to Plaintiff, the Class Members, and the Aggrieved Employees at their regular rate of pay when a

1 rest period was missed, short, late and/or interrupted.

2 36. Throughout the time period involved in this case, Defendants regularly required
3 Plaintiff, the Class Members, and the Aggrieved Employees to perform work off the clock.
4 Defendants regularly required that Plaintiff, the Class Members, and the Aggrieved Employees
5 complete all of their assigned duties regardless of how much time those tasks took. To do so,
6 Plaintiff, the Class Members, and the Aggrieved Employees were regularly required to perform
7 work off the clock for which they were not compensated.

8 37. Throughout the time period involved in this case, Defendants implemented
9 policies that prohibited Plaintiff, the Class Members, and the Aggrieved Employees from
10 accurately recording the actual time worked, resulting in a failure to pay Plaintiff, the Class
11 Members, and the Aggrieved Employees all wages owed. In fact, Defendants did not record
12 Plaintiff, the Class Members, and the Aggrieved Employees' time spent working at all, in
13 violation of the applicable Industrial Wage Orders and other relevant California law.

14 38. Throughout the time period involved in this case, Plaintiff, the Class Members,
15 and the Aggrieved Employees routinely worked more than eight (8) hours in a day, and/or forty
16 (40) hours in a week.

17 39. Throughout the time period involved in this case, Defendants regularly failed to
18 pay all overtime compensation owed to Plaintiff, the Class Members, and the Aggrieved
19 Employees when they worked in excess of eight (8) hours in a single workday and/or forty (40)
20 hours in a single work week, or in excess of twelve (12) hours in a single workday and/or eighty
21 (80) hours in a single work week. Defendants knew or should have known that Plaintiff, the Class
22 Members, and the Aggrieved Employees were entitled to receive certain wages for overtime
23 compensation and that they were not receiving wages for overtime compensation.

24 40. Throughout the time period involved in this case, Defendants failed to pay
25 overtime to Plaintiff, the Class Members, and the Aggrieved Employees for all overtime hours
26 worked based on regular rates of pay correctly calculated to include all applicable remuneration.

27 41. Throughout the time period involved in this case, Defendants regularly failed to
28 pay Plaintiff, the Class Members, and the Aggrieved Employees at least minimum wages for all

1 hours worked. Defendants knew or should have known that Plaintiff, the Class Members, and the
2 Aggrieved Employees were entitled to receive at least minimum wages for all hours worked and
3 that they were not receiving at least minimum wages for all hours worked. Defendants' failure to
4 pay minimum wages included, *inter alia*, failing to pay Plaintiff, the Class Members, and the
5 Aggrieved Employees at the required minimum wage pursuant to California law, requiring
6 Plaintiff, the Class Members, and the Aggrieved Employees to perform work off the clock,
7 requiring Plaintiff, the Class Members, and the Aggrieved Employees to perform automobile
8 maintenance without being paid, and did not pay Plaintiff, the Class Members, and the Aggrieved
9 Employees at all for any periods of unproductive time, including, but not limited to, rest and
10 recovery periods.

11 42. Throughout the time period involved in this case, Defendants regularly failed to
12 pay Plaintiff, the Class Members, and the Aggrieved Employees all wages owed to them upon
13 discharge or resignation. Defendants knew or should have known that Plaintiff, the Class
14 Members, and the Aggrieved Employees were entitled to receive all wages owed to them upon
15 termination within the time permissible under California Labor Code section 202. Plaintiff, the
16 Class Members, and the Aggrieved Employees did not receive payment of all final wages owed
17 to them upon discharge or resignation, including overtime compensation and minimum wages
18 within any time permissible under California Labor Code section 202.

19 43. Throughout the time period involved in this case, Defendants regularly failed to
20 pay Plaintiff, the Class Members, and the Aggrieved Employees all wages within any time
21 permissible under California law, including, *inter alia*, California Labor Code section 204.
22 Defendants knew or should have known that Plaintiff, the Class Members, and the Aggrieved
23 Employees were entitled to receive all wages owed to them during their employment. Plaintiff,
24 the Class Members, and the Aggrieved Employees did not receive payment of all wages, including
25 overtime compensation, minimum wages, and meal and rest period premiums.

26 44. Throughout the time period involved in this case, Defendants regularly failed to
27 provide complete or accurate wage statements to Plaintiff, the Class Members, and the Aggrieved
28 Employees. Defendants knew or should have known that Plaintiff, the Class Members, and the

1 Aggrieved Employees were entitled to receive complete and accurate wage statements in
2 accordance with California law, but, in fact, they did not receive complete and accurate wage
3 statements from Defendant. The deficiencies included, *inter alia*, the failure to include the total
4 number of hours worked, the actual gross wages earned, the correct rates of pay, the correct
5 number of piece-units performed, and the identity of the legal entity of the employer.

6 45. Throughout the time period involved in this case, Defendants regularly failed to
7 keep complete or accurate payroll records for Plaintiff, the Class Members, and the Aggrieved
8 Employees. Defendants knew or should have known that Defendants were required to keep
9 complete and accurate payroll records for Plaintiff, the Class Members, and the Aggrieved
10 Employees in accordance with California law, but, in fact, did not keep complete and accurate
11 payroll records.

12 46. Throughout the time period involved in this case, Defendants regularly failed to
13 maintain accurate records relating to Plaintiff's, the Class Members, and the Aggrieved
14 Employees' work periods, meal periods, total daily hours, hours per pay period, and applicable
15 pay rates.

16 47. Throughout the time period involved in this case, Defendants failed to reimburse
17 Plaintiff, the Class Members, and the Aggrieved Employees for all necessary business-related
18 expenses, including but not limited to cellular telephone costs. Defendants knew or should have
19 known that Defendants were required to reimburse Plaintiff, the Class Members, and the
20 Aggrieved Employees for all necessary business-related expenses and costs, but, in fact, failed to
21 do so in violation of California law.

22 48. Throughout the time period involved in this case, Defendants collected and
23 converted the tips and/or gratuities which were left for Plaintiff, the Class Members, and the
24 Aggrieved Employees members for itself, even though California law provides that such
25 gratuities are the sole property of the employees whom it was paid, given or left for. To the extent
26 that Defendants authorized tips to be left by credit card, Defendants failed to provide those funds
27 to the persons who owned them by the next regular payday.

28 49. Throughout the time period involved in this case, Defendants knew or should have

1 known that they had a duty to compensate Plaintiff, the Class Members, and the Aggrieved
2 Employees pursuant to California law. Defendants had the financial ability to pay such
3 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented
4 to Plaintiff, the Class Members, and the Aggrieved Employees that they paid all wages owed to
5 them, all in order to increase Defendants' profits.

6 50. California Labor Code section 218 states that nothing in Article 1 of the Labor
7 Code shall limit the right of any wage claimant to "sue directly ... for any wages or penalty due
8 to him [or her] under this article."

9 **FIRST CAUSE OF ACTION**

10 **Violation of California Labor Code §§ 226.2, 510, 558, 558.1, 1194, and 1198**

11 **(Unpaid Overtime)**

12 **(Against All Defendants)**

13 51. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
14 every allegation set forth above.

15 52. California Labor Code section 1198 and the applicable Industrial Welfare
16 Commission ("IWC") Wage Order provide that it is unlawful to employ persons without
17 compensating them at a rate of pay either time-and-one-half or two-times that person's regular
18 rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

19 53. Specifically, the applicable IWC Wage Order provides that Defendants are and
20 were required to pay Plaintiff and the other Class Members employed by Defendant, and working
21 more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of
22 time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty
23 (40) hours in a workweek.

24 54. The applicable IWC Wage Order further provides that Defendants are and were
25 required to pay Plaintiff and the Class Members overtime compensation at a rate of two times
26 their regular rate of pay for all hours worked in excess of twelve (12) hours in a day and for all
27 hours worked in excess of eight (8) hours on the seventh day of work in a workweek.

28 55. California Labor Code section 510 codifies the right to overtime compensation at

one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and no overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

56. During the relevant time period, Plaintiff and the other Class Members regularly worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

57. During the relevant time period, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff and the other Class Members.

58. Defendants' failure to pay Plaintiff and the other Class Members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

59. Pursuant to California Labor Code section 1194, Plaintiff and the other Class Members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

Violation of California Labor Code §§ 226.7, 512(a), 558, and 558.1

(Unpaid Meal Period Premiums)

(Against All Defendants)

60. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

61. The relevant IWC Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiff and the other Class Members' employment by Defendant.

62. California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the California IWC.

63. The applicable IWC Wage Order and California Labor Code section 512(a) provide that an employer may not require, cause or permit an employee to work for a work period of more than five (5) hours per day without providing the employee with a meal period of not less

1 than thirty (30) minutes, except that if the total work period per day of the employee is no more
2 than six (6) hours, the meal period may be waived by mutual consent of both the employer and
3 employee.

4 64. California Labor Code section 512(a) further provides that an employer may not
5 require, cause or permit an employee to work for a work period of more than ten (10) hours per
6 day without providing the employee with a second uninterrupted meal period of not less than
7 thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the
8 second meal period may be waived by mutual consent of the employer and the employee only if
9 the first meal period was not waived.

10 65. Plaintiff and the other Class Members who were scheduled to work for a period of
11 time longer than six (6) hours, and who did not waive their legally-mandated meal periods by
12 mutual consent, were required to work for periods longer than five (5) hours without an
13 uninterrupted meal period of not less than thirty (30) minutes.

14 66. During the relevant time period, Plaintiff and the other Class Members who were
15 scheduled to work for a period of time in excess of ten (10) hours were required to work for
16 periods longer than ten (10) hours without a second uninterrupted meal period of not less than
17 thirty (30) minutes.

18 67. During the relevant time period, Defendants intentionally and willfully required
19 Plaintiff and the other Class Members to miss their meal periods and to take meal periods that
20 were late, shortened, or interrupted, and failed to compensate Plaintiff and the other Class
21 Members the full meal period premium for missed, shortened, late, or interrupted meal periods.

22 68. During the relevant time period, Defendants failed to pay Plaintiff and the other
23 Class Members the full meal period premiums due pursuant to California Labor Code section
24 226.7.

25 69. Defendants' conduct violates the applicable IWC Wage Order and California
26 Labor Code sections 226.7 and 512(a).

27 70. Pursuant to the applicable IWC Wage Order and California Labor Code section
28 226.7(b), Plaintiff and the other Class Members are entitled to recover from Defendants one

1 additional hour of pay at the employee's regular rate of compensation for each workday that the
2 meal period was not provided.

3 **THIRD CAUSE OF ACTION**

4 **Violation of California Labor Code §§ 226.7, 558, and 558.1**

5 **(Unpaid Rest Period Premiums)**

6 **(Against All Defendants)**

7 71. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
8 every allegation set forth above.

9 72. At all times herein set forth, the applicable IWC Wage Order and California Labor
10 Code section 226.7 were applicable to Plaintiff and the other Class Members' employment by
11 Defendant.

12 73. California Labor Code section 226.7 provides that no employer shall require an
13 employee to work during any rest period mandated by an applicable order of the California IWC.

14 74. The applicable IWC Wage Order provides that "[e]very employer shall authorize
15 and permit all employees to take rest periods, which insofar as practicable shall be in the middle
16 of each work period" and that the "rest period time shall be based on the total hours worked daily
17 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof unless the
18 total daily work time is less than three and one-half (3.5) hours."

19 75. Defendants required Plaintiff and other Class Members to work four (4) or more
20 hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period
21 worked.

22 76. Defendants willfully required Plaintiff and the other Class Members to work
23 during rest periods, failed to allow Plaintiff and the other Class Member to take any rest period
24 and/or failed to authorize and permit Plaintiff and the other Class Members to take uninterrupted,
25 duty-free rest breaks.

26 77. Defendants failed to pay Plaintiff and the other Class Members the full rest period
27 premium due pursuant to California Labor Code section 226.7 for work performed during rest
28 periods, and/or for failure to authorize and permit Plaintiff and other Class Members from taking

1 uninterrupted rest periods.

2 78. Defendants' conduct violates applicable IWC Wage Orders and California Labor
3 Code section 226.7.

4 79. Pursuant to the applicable IWC Wage Orders and California Labor Code section
5 226.7(b), Plaintiff and the other Class Members are entitled to recover from Defendants one
6 additional hour of pay at the employees' regular hourly rate of compensation for each work day
7 that the rest period was not provided.

8 **FOURTH CAUSE OF ACTION**

9 **Violation of California Labor Code §§ 226.2, 558, 558.1, 1194, 1197 and 1197.1**

10 **(Unpaid Minimum Wages)**

11 **(Against All Defendants)**

12 80. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
13 every allegation set forth above.

14 81. California Labor Code sections 1194, 1197, and 1197.1 provide that the minimum
15 wage to be paid to employees and the payment of a lesser wage than the minimum so fixed is
16 unlawful.

17 82. Defendants regularly failed to pay minimum wage to Plaintiff and the other Class
18 Members as required pursuant to California Labor Code sections 1194, 1197, and 1197.1.

19 83. Defendants' failure to pay Plaintiff and the other Class Members the minimum
20 wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to
21 those sections, Plaintiff and the other Class Members are entitled to recover the unpaid balance
22 of their minimum wage compensation as well as interest, costs, and attorneys' fees, and liquidated
23 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

24 84. Pursuant to California Labor Code section 1194.2, Plaintiff and the other Class
25 Members are entitled to recover liquidated damages in an amount equal to the wages unlawfully
26 unpaid and interest thereon.

27 //

28 //

1 **FIFTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 201, 202, 203, 558, and 558.1**

3 **(Final Wages Not Timely Paid)**

4 **(Against All Defendants)**

5 85. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
6 every allegation set forth above.

7 86. At all relevant times herein set forth, California Labor Code sections 201 and 202
8 provide that if an employer discharges an employee, the wages earned and unpaid at the time of
9 discharge are due and payable immediately, and if an employee quits his or her employment, his
10 or her wages shall become due and payable not later seventy-two (72) hours thereafter, unless the
11 employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case
12 the employee is entitled to his or her wages at the time of quitting.

13 87. The employment of Plaintiff and many other Class Members with Defendants
14 ended, *i.e.* was terminated by quitting or discharge. Defendants intentionally and willfully failed
15 to pay Plaintiff and other Class Members who are no longer employed by Defendants all of their
16 wages, earned and unpaid, including but not limited to minimum wages, straight time wages, and
17 overtime wages, within seventy-two (72) hours of their leaving Defendants' employ.

18 88. Defendants' failure to pay Plaintiff and other Class Members who are no longer
19 employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their
20 leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

21 89. California Labor Code section 203 provides that if an employer willfully fails to
22 pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall
23 continue as a penalty from the due date thereof at the same rate until paid or until an action is
24 commenced; but the wages shall not continue for more than thirty (30) days.

25 90. Plaintiff and other Class Members who are no longer employed by Defendants are
26 entitled to recover from Defendants the statutory penalty wages for each day they were not paid,
27 up to a thirty (30) day maximum pursuant to California Labor Code section 203.

28 //

1 **SIXTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 204, 210, 558, 558.1**

3 **(Wages Not Timely Paid During Employment)**

4 **(Against All Defendants)**

5 91. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
6 every allegation set forth above.

7 92. At all times herein set forth, California Labor Code section 204 provides that all
8 wages earned by any person in any employment between the 1st and 15th days, inclusive, of any
9 calendar month, other than those wages due upon termination of an employee, are due and payable
10 between the 16th and 26th day of the month during which the labor was performed.

11 93. California Labor Code section 204 provides that all wages earned by any person
12 in any employment between the 16th and the last day, inclusive, of any calendar month, other
13 than those wages due upon termination of an employee, are due and payable between the 1st and
14 the 10th day of the following month.

15 94. California Labor Code section 204 provides that all wages earned for labor in
16 excess of the normal work period shall be paid no later than the payday for the next regular payroll
17 period.

18 95. Defendants intentionally and willfully failed to pay Plaintiff and other Class
19 Members all wages due to them, within any time period permissible under California Labor Code
20 section 204.

21 96. Plaintiff and other Class Members are entitled to recover all available remedies for
22 Defendants' violations of California Labor Code section 204, including statutory penalties
23 pursuant to Labor Code section 210(b).

24 **SEVENTH CAUSE OF ACTION**

25 **Violation of California Labor Code §§ 226(a), 558, and 558.1**

26 **(Failure to Provide Accurate Wage Statements)**

27 **(Against All Defendants)**

28 97. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and

1 every allegation set forth above.

2 98. California Labor Code section 226(a) provides that every employer shall furnish
3 each of his or her employees an accurate itemized statement in writing showing (1) gross wages
4 earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any
5 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided
6 that all deductions made on written orders of the employee may be aggregated and shown as one
7 item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid,
8 (7) the name of the employee and his or her social security number, (8) the name and address of
9 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
10 period and the corresponding number of hours worked at each hourly rate by the employee. The
11 deductions made from payments of wages shall be recorded in ink or other indelible form,
12 properly dated, showing the month, day, and year, and a copy of the statement or a record of the
13 deductions shall be kept on file by the employer for at least three years at the place of employment
14 or at a central location within the State of California.

15 99. Defendants has intentionally and willfully failed to provide Plaintiff and the Class
16 Members with complete and accurate wage statements. The deficiencies include but are not
17 limited to the failure to list the total number of hours worked, the actual gross wages earned, the
18 correct rates of pay, and the address of the legal entity of the employer.

19 100. Because of Defendants' violation of California Labor Code section 226(a),
20 Plaintiff and the Class Members have suffered injury and damage to their statutorily protected
21 rights.

22 101. More specifically, Plaintiff and the Class Members have been injured by
23 Defendants' intentional and willful violation of California Labor Code section 226(a) because
24 they were denied both their legal right to receive, and their protected interest in receiving, accurate
25 and itemized wage statements pursuant to California Labor Code section 226(a).

26 102. Plaintiff and the Class Members are entitled to recover from Defendants the
27 greater of their actual damages caused by Defendants' failure to comply with California Labor
28 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

103. Plaintiff and the Class Members are also entitled to injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(g).

EIGHTH CAUSE OF ACTION

Violation of California Labor Code §§ 558, 558.1, 2800 and 2802

(Failure to Reimburse Necessary Business Expenses)

(Against All Defendants)

104. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

105. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

106. Plaintiff and the Class Members incurred necessary business-related expenses and costs that were not fully reimbursed by Defendant, including, but not limited to, personal telephone service that was required for Plaintiff and the Class Members to perform their duties and receive their assignments. Defendants' failure to reimburse for all necessary business-related expenses and costs included their failure to reimburse Plaintiff and the Class Members for costs incurred as a result of, including but not limited to, simple negligence.

107. Defendants have intentionally and willfully failed to reimburse Plaintiff and the Class Members for all necessary business-related expenses and costs. Plaintiff and the Class Members are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

//

//

//

//

1 **NINTH CAUSE OF ACTION**

2 **Conversion**

3 **(Tips Unlawfully Withheld)**

4 **(Against All Defendants)**

5 108. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
6 every allegation set forth above.

7 109. Pursuant to Labor Code section 351 *et seq.*, “No employer or agent shall collect,
8 take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a
9 patron ... Every gratuity is hereby declared to be the sole property of the employee or employees
10 to whom it was paid, given, or left for. An employer that permits patrons to pay gratuities by
11 credit card shall pay the employees the full amount of the gratuity that the patron indicated on the
12 credit card slip, without any deductions for any credit card payment processing fees or costs that
13 may be charged to the employer by the credit card company. Payment of gratuities made by
14 patrons using credit cards shall be made to the employees not later than the next regular payday
15 following the date the patron authorized the credit card payment.”

16 110. Plaintiff and the Class Members were left gratuities by patrons which they never
17 received due to the fact that Defendants collected said gratuities for itself and never made payment
18 of those gratuities.

19 111. As a proximate result of the aforementioned conversion of plaintiffs' gratuities by
20 Defendant, Plaintiff and the Class Members have suffered substantial losses in their earnings,
21 gratuities and/or other employment-related benefits to which Plaintiff and the Class Members
22 were entitled, all to Plaintiff and the Class Members' damage in an amount unknown at this time
23 but which will be shown according to proof at the time of trial.

24 **TENTH CAUSE OF ACTION**

25 **Violation of Cal. Business & Professions Code §§ 17200, et seq.**

26 **(Against All Defendants)**

27 112. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
28 every allegation set forth above.

1 113. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
2 unlawful and harmful to Plaintiff and the Class Members, to the general public, and Defendants'
3 competitors. Accordingly, Plaintiff seeks to enforce important rights affecting the public interest
4 within the meaning of Code of Civil Procedure section 1021.5.

5 114. Defendants' activities as alleged herein are violations of California law, and
6 constitute unlawful business acts and practices in violation of California Business & Professions
7 Code section 17200, *et seq.*

8 115. A violation of California Business & Professions Code section 17200, *et seq.* may
9 be predicated on the violation of any state or federal law. In this instant case, Defendants' policies
10 and practices of requiring employees, including Plaintiff and the Class, to work overtime without
11 paying them proper compensation violate California Labor Code sections 510 and 1198.
12 Additionally, Defendants' policies and practices of requiring employees, including Plaintiff and
13 the Class Members, to work through their meal and rest periods without paying them proper
14 compensation violate California Labor Code sections 226.7 and 512(a). Moreover, Defendants'
15 policies and practices of failing to timely pay wages to Plaintiff and the Class Members violates
16 California Labor Code sections 201, 202, 203 and 204.

17 116. Defendants also violated California Labor Code sections 221, 226(a), 351, 1194,
18 1197, 1197.1, 510, 1174(d), 2800, and 2802.

19 117. As a result of the herein described violations of California law, Defendants
20 unlawfully gained an unfair advantage over other businesses.

21 118. Plaintiff and the Class Members have been personally injured by Defendants'
22 unlawful business acts and practices as alleged herein, including but not necessarily limited to the
23 loss of money and/or property.

24 119. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
25 Plaintiff and the Class Members are entitled to restitution of the wages withheld and retained by
26 Defendants during a period that commences four years prior to the filing of this Complaint; an
27 award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other
28 applicable laws; and an award of costs.

1 **ELEVENETH CAUSE OF ACTION**

2 **Violation of California Labor Code § 2699, Et Seq.**

3 **(Against All Defendants)**

4 120. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
5 every allegation set forth above.

6 121. PAGA expressly establishes that any provision of the California Labor Code
7 which provides for a civil penalty to be assessed and collected by the LWDA, or any of its
8 departments, divisions, commissions, boards, agencies or employees for a violation of the
9 California Labor Code, may be recovered through a civil action brought by an aggrieved
10 employee on behalf of himself or herself, and other current or former employees.

11 122. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
12 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is
13 authorized to exercise the same discretion, subject to the same limitations and conditions, to assess
14 a civil penalty.

15 123. Plaintiff and the other hourly-paid or non-exempt employees are “aggrieved
16 employees” as defined by California Labor Code section 2699(c) in that they are all current or
17 former employees of Defendants, and one or more of the alleged violations was committed against
18 them. As set forth in detail above, during all times relevant to this Action, Defendants have
19 routinely subjected Plaintiff and the Aggrieved Employees to violations of California Labor
20 Codes by:

21 **Failure to Pay Overtime**

22 124. Defendants’ failure to pay legally required overtime wages to Plaintiff and the
23 other Aggrieved Employees is in violation of the Wage Orders and constitutes unlawful or unfair
24 activity prohibited by California Labor Code sections 204, 510, 1194 and 1198.

25 **Failure to Provide Meal Periods**

26 125. Defendants’ failure to provide legally required meal periods to Plaintiff and the
27 other Aggrieved Employees is in violation of the Wage Orders and constitutes unlawful or unfair
28 activity prohibited by California Labor Code sections 226.7 and 512(a).

1 **Failure to Provide Rest Periods**

2 126. Defendants' failure to provide legally required rest periods to Plaintiff and the
3 other Aggrieved Employees is in violation of the Wage Orders and constitutes unlawful or unfair
4 activity prohibited by California Labor Code section 226.7 and 512.

5 **Failure to Pay Minimum Wages**

6 127. Defendants' failure to pay legally required minimum wages to Plaintiff and the
7 other Aggrieved Employees is in violation of the Wage Orders and constitutes unlawful or unfair
8 activity prohibited by California Labor Code sections 1194, 1197, 1197.1 and 1198.

9 **Failure to Timely Pay Wages Upon Termination**

10 128. Defendants' failure to timely pay wages to Plaintiff and the other Aggrieved
11 Employees upon termination in accordance with Labor Code sections 201 and 202 constitutes
12 unlawful and/or unfair activity prohibited by California Labor Code sections 201 and 202.

13 **Failure to Timely Pay Wages During Employment**

14 129. Defendants' failure to timely pay wages to Plaintiff and the other Aggrieved
15 Employees during employment in accordance with Labor Code section 204 constitutes unlawful
16 and/or unfair activity prohibited by California Labor Code section 204.

17 **Failure to Provide Complete and Accurate Wage Statements**

18 130. Defendants' failure to provide complete and accurate wage statements to Plaintiff
19 and the other Aggrieved Employees in accordance with Labor Code section 226(a) constitutes
20 unlawful and/or unfair activity prohibited by California Labor Code section 226(a).

21 **Failure to Keep Complete and Accurate Payroll Records**

22 131. Defendants' failure to keep complete and accurate payroll records relating to
23 Plaintiff and the other Aggrieved Employees in accordance with California Labor Code section
24 1174(d) constitutes unlawful and/or unfair activity prohibited by California Labor Code section
25 1174(d).

26 **Failure to Reimburse Necessary Business-Related Expenses and Costs**

27 132. Defendants' failure to reimburse Plaintiff and the other Aggrieved Employees for
28 necessary business-related expenses and costs in accordance with California Labor Code sections

1 2800 and 2802 constitutes unlawful and/or unfair activity prohibited by California Labor Code
2 sections 2800 and 2802.

3 **Willful Misclassification of Employees as Independent Contractors**

4 133. Defendants' willful misclassification of Plaintiff and the other Aggrieved
5 Employees as independent contractors rather than as employees despite the fact that Plaintiff and
6 the other Aggrieved Employees were not free from Defendants' control and direction regarding
7 the performance of their work, did not perform work outside Defendants' usual course of
8 business, and were not customarily engaged in an independently established business that
9 provides work of the same nature as what is being performed. These acts constituted unlawful
10 and/or unfair activity prohibited by the applicable IWC Wage Order and California Labor Code
11 section 226.8 *et. seq.*

12 **Collection of Tips and Gratuities**

13 134. Defendants' failure to remit to Plaintiff and the other Aggrieved Employees the
14 gratuities which were left for them by business patrons constitutes unlawful and/or unfair activity
15 prohibited by California Labor Code section 351 *et. seq.*

16 135. Pursuant to California Labor Code sections 2699 and 2699.5, Plaintiff,
17 individually and on behalf of the Aggrieved Employees and the State of California, requests and
18 is entitled to recover penalties against Defendants for the Labor Code violations described above,
19 including but not limited to penalties under California Code of Regulations Title 8 section 11010,
20 penalties under California Labor Code sections 2699, 558, 210, 351, 1197.1, 226, 226.3, 226.8,
21 1174.5, and 1197.1, and any and all additional penalties and sums as provided by the California
22 Labor Code and/or other statutes. The exact amount of the applicable penalties, in all, is in an
23 amount to be shown according to proof at trial

24 136. Pursuant to California Labor Code section 2699(i), civil penalties recovered by
25 aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and
26 Workforce Development Agency for the enforcement of labor laws and education of employers
27 and employees about their rights and responsibilities and twenty-five percent (25%) to the
28 aggrieved employees.

137. Plaintiff has exhausted his administrative remedies pursuant to Labor Code section 2699.3. On August 28, 2023, Plaintiff, through his counsel of record, by online filing with the Labor and Workforce Development Agency (“LWDA”) and by certified mail to the Defendants, notified Defendants and the LWDA of the specific provisions of the Labor Code and IWC Wage Orders that Defendants have violated, including the facts and theories to support the violations, and of Plaintiff’s intent to bring a claim for civil penalties under PAGA. Plaintiff also paid the filing fee required under Labor Code section 2699.3. As of the filing of this Complaint, more than sixty-five (65) days have elapsed since the mailing of Plaintiff’s August 28, 2023 notice, and the Labor and Workforce Development Agency has not indicated that it intends to investigate the violations discussed in the notice. Accordingly, Plaintiff may commence a civil action to recover penalties for himself and other Aggrieved Employees pursuant to Labor Code section 2699.3.

138. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other members of the general public similarly situated, prays for relief and judgment against Defendant, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiff be appointed as the representative of the Class;
3. That counsel for Plaintiff be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the names and most current/last known contact information (address, e-mail and telephone numbers) of all class members.

As to the First Cause of Action

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay

1 all overtime wages due to Plaintiff and other Class Members;

2 6. For general unpaid wages at overtime wage rates and such general and special
3 damages as may be appropriate;

4 7. For pre-judgment interest on any unpaid overtime compensation commencing
5 from the date such amounts were due;

6 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
7 California Labor Code section 1194; and

8 9. For such other and further relief as the Court may deem just and proper.

9 **As to the Second Cause of Action**

10 10. That the Court declare, adjudge and decree that Defendants violated California
11 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to
12 provide all meal periods (including second meal periods) to Plaintiff and the Class Members;

13 11. That the Court make an award to Plaintiff and the Class of one (1) hour of pay at
14 each employee's regular rate of compensation for each workday that a meal period was not
15 provided;

16 12. For all actual, consequential, and incidental losses and damages, according to
17 proof;

18 13. For premium wages pursuant to California Labor Code section 226.7;

19 14. For pre-judgment interest on any unpaid wages from the date such amounts were
20 due;

21 15. For reasonable attorneys' fees and costs of suit incurred herein; and

22 16. For such other and further relief as the Court may deem just and proper.

23 **As to the Third Cause of Action**

24 17. That the Court declare, adjudge and decree that Defendants violated California
25 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest
26 periods to Plaintiff and the Class Members;

27 18. That the Court make an award to Plaintiff and the Class of one (1) hour of pay at
28 each employee's regular rate of compensation for each workday that a rest period was not

provided;

19. For all actual, consequential, and incidental losses and damages, according to proof;

20. For premium wages pursuant to California Labor Code section 226.7;

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

22. For such other and further relief as the Court may deem just and proper.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the Class Members;

24. For general unpaid wages and such general and special damages as may be appropriate;

25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiff and the Class Members in the amount as may be established according to proof at trial;

26. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

27. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194(a);

28. For liquidated damages pursuant to California Labor Code section 1194.2; and

29. For such other and further relief as the Court may deem just and proper.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and other Class Members no longer employed by Defendant;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff and other Class Members who have left Defendants' employ;

33. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

34. For such other and further relief as the Court may deem just and proper.

As to the Sixth Cause of Action

35. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to pay all compensation owed at the time required by California Labor Code section 204 to Plaintiff and the Class;

36. For statutory penalties pursuant to California Labor Code section 210;

37. For such other and further relief as the Court deems just and proper.

As to the Seventh Cause of Action

38. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and the Class Members, and willfully failed to provide accurate itemized wage statements thereto;

39. For actual, consequential and incidental losses and damages, according to proof;

40. For statutory penalties pursuant to California Labor Code section 226(e); and

41. For such other and further relief as the Court may deem just and proper.

As to the Eighth Cause of Action

42. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the Class Members for all necessary business-related expenses as required by California Labor Code sections 2800 and 2802;

43. For actual, consequential and incidental losses and damages, according to proof;

44. For the imposition of civil penalties and/or statutory penalties;

45. For reasonable attorneys' fees and costs of suit incurred herein; and

46. For such other and further relief as the Court may deem just and proper.

As to the Ninth Cause of Action

47. That the Court declare, adjudge and decree that Defendants converted the financial property of the Plaintiff and the Class Members for its own purposes by failing to remit to Plaintiff and the Class Members all tip-based compensation to which they were owed and due;

48. For actual, consequential and incidental losses and damages, according to proof;

49. For the imposition of civil penalties and/or statutory penalties;

50. For reasonable attorneys' fees and costs of suit incurred herein; and

51. For such other and further relief as the Court may deem just and proper.

As to the Tenth Cause of Action

52. That the Court declare, adjudge and decree that Defendants violated California Business and Professions Code sections 17200, *et seq.* by failing to provide Plaintiff and the Class Members all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiff and the Class Members, failing to pay at least minimum wages to Plaintiff and the Class Members, failing to pay Plaintiff's and other Class Members' wages timely as required by California Labor Code section 201, 202 and 204 and by violating California Labor Code sections 226(a), 1174(d), 2800, and 2802;

53. For restitution of unpaid wages to Plaintiff and the Class Members and all pre-judgment interest from the day such amounts were due and payable;

54. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violation of California Business and Professions Code sections 17200, *et seq.*;

55. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

56. For injunctive relief to ensure compliance with this section, pursuant to California Business and Professions Code sections 17200, *et seq.*; and

57. For such other and further relief as the Court may deem just and proper.

//

As to the Eleventh Cause of Action

58. For civil penalties and wages pursuant to California Labor Code sections 2699(a), (f) and (g) and 558 plus costs and attorneys' fees for violation of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 226.8, 351, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802; and

59. For such other and further relief as the Court may deem equitable and appropriate.

Dated: December 29, 2023

DOMB & RAUCHWERGER, LLP

By: 

ZACK I. DOMB
DEVIN RAUCHWERGER
JEFFREY P. JACKSON
Attorneys for Plaintiff
Daniel Franco Barreto

DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury as to all causes of action triable by a jury.

Dated: December 29, 2023

DOMB & RAUCHWERGER, LLP

By:



ZACK I. DOMB
DEVIN RAUCHWERGER
JEFFREY P. JACKSON
Attorneys for Plaintiff
Daniel Franco Barreto

**PROOF OF SERVICE
(CCP § 1013(a) and 2015.5)**

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; am employed with Domb & Rauchwerger LLP and my business address is 1055 E. Colorado Blvd., Fifth Floor, Pasadena, California 91106. My email address is jessica@dombrauchwerger.com.

On December 29, 2023, I served the foregoing document entitled **FIRST AMENDED CLASS ACTION AND REPRESENTATIVE COMPLAINT** on all the appearing and/or interested parties in this action by placing ☐ *the original* ☒ *a true copy* thereof enclosed in sealed envelope(s) addressed as follows:

Cary Kletter, Esq.
Daniel Bronstein, Esq.
KLETTER LAW
1528 S. El Camino Real, Ste 306
San Mateo, CA 94402

Email: ckletter@kletterlaw.com
Email: dbronstein@kletterlaw.com
Email: erika@kletterlaw.com

Attorneys for Defendants Urban
Worldwide LA, Urban Worldwide,
Urban Worldwide Coaches, Urban
Worldwide LAC, David Ayal Uziel

☒ **[by MAIL]** - I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Pasadena, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.

☐ **[by ELECTRONIC SERVICE]** - Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification address listed above.

☐ **[by PERSONAL SERVICE]** - I caused to be delivered by messenger such envelope(s) by hand to the office of the addressee(s). Such messenger is over the age of eighteen years and not a party to the within action and employed with Express Network, whose business address is 1605 W. Olympic Boulevard, Suite 800, Los Angeles, CA 90015.

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

Executed December 29, 2023, at Rio Linda, California.

Jessica Delgado

Print Name

By:


Signature