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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

GUADALUPE VARGAS, an individual, IRMA
JIMENEZ, an individual, and MARISA CLINE,
an individual, on behalf of themselves and all
other similarly situated individuals,

Plaintiffs,

v.

NOW RX, INC., a Delaware corporation, CARY
BREESE, an individual, SUMEET SHEOKAND,
an individual, and DOES 1-20, inclusive,

Defendants.

Case No.: **23CV042827**

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Wages, in Violation of Labor Code §§ 204, 210, 223, 1194, 1197.1, and Wage Orders;
2. Failure to Pay Overtime Wages, in violation of Labor Code § 204, 210, 223, 510, and Wage Orders;
3. Failure to Provide Meal Periods or Wages in Lieu Thereof, Violation of Wage Orders and Labor Code §§ 226.7, 512;
4. Failure to Provide Rest Breaks or Wages in Lieu Thereof, Violation of Wage Orders and Labor Code § 226.7;
5. Failure to Indemnify for Necessary Business Expenses, Cal. Labor Code § 2802
6. Waiting Time Penalties, Labor Code § 203;
7. Failure to Provide Accurate Wage Statements, Violation of Wage Orders and Labor Code § 226;
8. Violation of the Unfair Competition Law, Bus. & Prof. Code §§ 17200, *et seq.*;
9. Violation of the California WARN Act. Violation of Labor Code §§ 1400, *et seq.*

I. INTRODUCTION

1. Plaintiffs Guadalupe Vargas, Irma Jimenez, and Marisa Cline (hereinafter “Plaintiffs”) bring this action for wages, penalties, declaratory and injunctive relief against Defendants NowRx, Inc., Cary Breese, Sumeet Sheokand, and Does 1 through 20 (collectively, “Defendants”). The allegations in this complaint are based on Plaintiffs’ personal knowledge and on information and belief. The allegations made on information and belief are supported by evidence or are likely to be supported by evidence obtained through discovery.

2. Plaintiffs bring this action as a class action on behalf of themselves and other similarly situated individuals, pursuant to California Code of Civil Procedure section 382.

3. At all times relevant to this action, Defendants have maintained policies and practices that violate the rights of Plaintiffs and class members. Defendants have failed to compensate workers for all hours worked, in violation of the state’s minimum wage and overtime laws; failed to provide lawful meal periods, or otherwise pay premium wages in lieu thereof; failed to authorize and permit lawful rest periods, or otherwise pay premium wages in lieu thereof; failed to pay all wages owed upon termination of the employment relationship; failed to reimburse workers for necessary business expenditures, failed to furnish accurate itemized wage statements; and failed to comply with record keeping requirements of California law. Defendants also engaged in a mass layoff of Plaintiffs and other putative class members without observing the requirements of Cal-WARN for providing timely and adequate notice to workers and the State of California of such a layoff.

4. Defendants’ acts and omissions, which violate the Labor Code and applicable Wage Orders, constitute predicate unlawful and unfair business practices in violation of California’s Unfair Competition Law (“UCL”), Business & Professions Code sections 17200, *et seq.* Defendants’ violations of the California Labor Code are unlawful acts which have afforded Defendants an unfair competitive advantage. Plaintiffs and the Class they seek to represent are therefore entitled to all remedies provided under the UCL, including restitutionary, injunctive, declaratory and/or other equitable relief.

5. Pursuant to Labor Code section 2699.3, Plaintiffs have given written notice to the employer and the Labor and Workforce Development Agency (LWDA) of the alleged Labor Code and

1 Wage Order violations, and the facts and theories supporting those violations. Upon the expiration of
2 the 65-day waiting period, if the Agency has yet to provide notice of its intent to investigate this
3 matter, Plaintiffs will have fulfilled the administrative prerequisites of Labor Code § 2699.3, and will
4 be statutorily authorized to act on behalf of the State of California to enforce the state's labor and
5 employment laws and collect civil penalties on behalf of the state and current or former employees,
6 including themselves. Plaintiffs will seek to hold Defendants and other persons who violated or caused
7 violations of the Labor Code and Wage Orders liable for civil penalties owed to the State of California
8 and current and former aggrieved employees.

9 6. At all times relevant to this action, Defendants' conduct has been willful and in reckless
10 disregard of the rights of their workers. Defendants have been on notice of the alleged illegalities but
11 have deliberately continued to exploit workers by enforcing and maintaining the illegal practices
12 described herein. This action is brought not only to recover rightfully earned wages but also to enforce
13 the state's laws, restore ill-gotten gains and deter Defendants from their illegal conduct. Plaintiffs
14 therefore seeks all remedies available to themselves and to the Class.

15 7. Plaintiffs seek reasonable attorneys' fees and costs pursuant to, *inter alia*, Labor Code
16 sections 226(e) & (h), 1194(a), 2699, 2802, and Code of Civil Procedure section 1021.5.

17 II. THE PARTIES

18 PLAINTIFFS

19 8. **Plaintiff Guadalupe Vargas** ("Plaintiff Vargas") is a California resident who was
20 employed by Defendants within the class period. The employment relationship between Plaintiffs and
21 Defendants ended within the class period, when Plaintiff was laid off as part of a mass layoff or plant
22 closing. Plaintiff Vargas was employed as a non-exempt, hourly employee at Defendant Now Rx's
23 branches, located in Hayward, Pleasanton, and San Jose. Plaintiff Vargas performed work for
24 Defendants as a driver and administrative assistant. Defendants failed to pay Plaintiff Vargas for all
25 hours worked and for all overtime wages earned; failed to provide Plaintiff Vargas proper rest and
26 meal periods or pay premium wages in lieu thereof; failed to reimburse Plaintiff Vargas for necessary
27 business expenditures and failed to issue her accurate, itemized wage statements; and failed to pay all
28 wages owed timely upon the termination of the employment relationship, entitling Plaintiff Vargas to

1 waiting time penalties under Labor Code section 203. Plaintiff was laid off as part of a mass layoff or
2 plant closing and was not given the requisite notice under California law. Defendants' conduct violates
3 numerous provisions of the Labor Code and applicable Wage Orders. Plaintiff is an aggrieved
4 employee within the meaning of Labor Code section 2699 who have suffered injury in fact and lost
5 money or property.

6 9. **Plaintiff Irma Jimenez** ("Plaintiff Jimenez") is a California resident who was
7 employed by Defendants within the class period. The employment relationship between Plaintiffs and
8 Defendants ended within the class period when Plaintiff was laid off as part of a mass layoff or plant
9 closing. Plaintiff Jimenez was employed as a non-exempt, hourly employee at the San Jose branch of
10 NowRx, and performed driver work for Defendants. Defendants failed to pay Plaintiff Jimenez for all
11 hours worked and for all overtime wages earned; failed to provide Plaintiff Jimenez proper rest and
12 meal periods or pay premium wages in lieu of proper rest and meal periods; failed to reimburse
13 Plaintiff Jimenez for necessary business expenditures and issue her accurate itemized wage statements;
14 and failed to pay all wages owed timely upon the termination of the employment relationship, entitling
15 Plaintiff Jimenez to waiting tie penalties under Labor Code section 203. Plaintiff was laid off as part of
16 a mass layoff or plant closing and was not given the requisite notice under California law. Defendants'
17 conduct violates numerous provisions of the Labor Code and applicable Wage Orders. Plaintiff is an
18 aggrieved employee within the meaning of Labor Code section 2699 who have suffered injury in fact
19 and lost money or property.

20 10. **Plaintiff Marisa Cline** ("Plaintiff Cline") is a California resident who was employed by
21 Defendants within the class period. The employment relationship between Plaintiffs and Defendants
22 ended within the class period when Plaintiff was laid off as part of a mass layoff or plant
23 closing. Plaintiff Cline was employed as a non-exempt, hourly employee working as a driver at the
24 Mountain View branch of NowRx. Defendants failed to pay Plaintiff Cline for all hours worked and
25 for all overtime wages earned; failed to provide Plaintiff Jimenez proper rest and meal periods or pay
26 premium wages in lieu of proper rest and meal periods; failed to reimburse Plaintiff Cline for all
27 necessary business expenditures and issue her accurate itemized wage statements; and failed to pay all
28 wages owed timely upon the termination of the employment relationship, entitling Plaintiff Cline to

1 waiting tie penalties under Labor Code section 203. Plaintiff was laid off as part of a mass layoff or
2 plant closing and was not given the requisite notice under California law. Defendants' conduct violates
3 numerous provisions of the Labor Code and applicable Wage Orders. Plaintiff is an aggrieved
4 employee within the meaning of Labor Code section 2699 who has suffered injury in fact and lost
5 money or property.

6 **DEFENDANTS**

7 11. On information and belief, **NowRx, Inc.** was in the business of delivering prescriptions
8 to California residents. As stated on its website, Defendant NowRx has six branches in California:
9 Mountain View, Irvine, Burlingame, San Jose, Pleasanton, Hayward and Van Nuys, and one located in
10 Mesa, Arizona. NowRx is sued as an employer or joint employer of Plaintiffs and the Class, and as a
11 "person" that violated or caused the violations of the Labor Code and Wage Order provisions
12 described in the complaint pursuant to Labor Code §§ 558 and 1197.1.

13 12. On information and belief, Defendant Cary Breese is an individual who resides in
14 California and served as a Co-Founder and Chief Executive Officer of NowRx through December
15 2022. Defendant Breese is sued as an employer or joint employer of Plaintiffs and the Class, and as a
16 "person" that violated or caused the violations of the Labor Code and Wage Order provisions
17 described in the complaint pursuant to Labor Code §§ 558.1 and 1197.1.

18 13. On information and belief, Defendant Sumeet Sheokand is an individual who resides in
19 California and served as the Chief Technology Officer and Co-Founder of NowRx through December
20 2022. Defendant Sheokand is sued as an employer or joint employer of Plaintiffs and the Class, and as
21 a "person" that violated or caused the violations of the Labor Code and Wage Order provisions
22 described in the complaint pursuant to Labor Code §§ 558 and 1197.1.

23 14. Pursuant to Labor Code section 558.1, any employer or other person (owner, officer,
24 director, or managing agent) acting on behalf of an employer who violates or causes a violation of
25 Labor Code sections 203, 226, 226.7, 1193.6, 1194, or 2802, or of any provision regulating minimum
26 wages or hours and days of work in any order of the Industrial Welfare Commission (IWC), may be
27 held liable as the employer. Defendants including Doe Defendants are liable under Labor Code section
28 558.1.

1 15. At all times relevant to this action, the offending conduct has been willful and in
2 reckless disregard of the rights of workers. Defendants knew or were on notice of the alleged
3 illegalities but deliberately chose to ignore them. The true names and capacities, whether individual,
4 corporate, associates, or otherwise of Defendants sued as Does 1-50, inclusive, are currently unknown
5 to Plaintiff, who therefore sue such Defendants by fictitious names as permitted by law. Plaintiffs are
6 informed and believe that each Doe defendant is legally responsible in some manner for the unlawful
7 acts referred to herein as a joint venture, alter ego, predecessor, successor, sister, parent, subsidiary, or
8 related or affiliated entity. Plaintiffs will seek leave of court to amend this complaint to reflect the true
9 names and capacities of the Defendants designated as Does when such identities become known.

10 **III. JURISDICTION & VENUE**

11 16. This Court has jurisdiction over Plaintiffs' claims under the California Labor Code and
12 the Unfair Competition Law, California Business & Professions Code sections 17200, *et seq.*

13 17. Venue is proper in the Superior Court of the County of Alameda pursuant to California
14 Code of Civil Procedure sections 395 and 395.5, because Defendants or some of the Defendants
15 maintained company operations out of its Hayward and Pleasanton branch, Defendants employed class
16 members in Alameda County, and as such, is a county where the obligation or liability arises, and
17 Plaintiffs and members of the Class have been harmed by Defendants' conduct in Alameda County.

18 **IV. FACTUAL ALLEGATIONS**

19 18. At all times relevant to this action, Defendants maintained unlawful employment, labor
20 and compensation policies and practices that affected Plaintiffs and, on information and belief, other
21 workers who are members of the putative Class and other aggrieved employees.

22 19. Defendants failed to pay Plaintiffs and, on information and belief, the Class for all hours
23 worked in violation of the minimum wage.

24 20. Defendants failed to pay Plaintiffs and, on information and belief, the Class for all
25 overtime wages earned.

26 21. As a result of Defendants' timekeeping and payroll practices, Plaintiffs and, on
27 information and belief, the Class were denied compensation for all hours worked and suffered
28 violations of the minimum wage and overtime laws.

1 22. Plaintiffs and, on information and belief, the Class were denied off-duty, timely and
2 complete meal periods of at least 30 minutes. Despite the failure to relieve Plaintiffs and Class
3 Members properly for meal periods, Defendants failed to pay an additional hour of wages at the
4 regular rate of pay. Plaintiffs allege that Defendants maintained a policy or practice of denying meal
5 premiums for unprovided, short, or untimely meal periods.

6 23. Plaintiffs and, on information and belief, the Class were denied rest breaks of at least
7 net 10 minutes off duty at the rate of one rest period for shifts greater than three and one-half (3½)
8 hours, two rest periods for shifts greater than six hours and up to 10 hours, three rest breaks for shifts
9 greater than 10 hours and up to 14 hours, and so on. Plaintiffs allege that Defendants maintained a
10 policy or practice of denying rest premiums for denied and non-compliant rest periods.

11 24. Plaintiffs, and, on information and belief, the Class were not reimbursed for necessary
12 business expenditures, within the meaning of Cal. Labor Code §2802, in that Defendant Now Rx failed
13 to provide reimbursement for its workers use of their personal cell phones and vehicles.

14 25. Plaintiffs and, on information and belief, the Class were not provided accurate, itemized
15 wage statements within the meaning of the Wage Orders and Labor Code section 226, in that they
16 failed to state the correct number of total hours worked, gross and net wages earned, and all applicable
17 hourly rates of pay and corresponding hours at each rate.

18 26. Plaintiffs and other employees were laid off by Defendants as part of a mas layoff or
19 plant closing on or about October of 2022, which Plaintiffs are informed and believe affected 50 or
20 more employees in California. Neither the State of California, nor Plaintiffs and other NowRx
21 employees, were given proper notice of the mass layoff or plant closing, pursuant to Cal-WARN.

22 27. Plaintiffs are informed and believe that members of the Class whose employment with
23 Defendants has ended were not paid all wages owed timely upon separation from employment,
24 including minimum, overtime, and premium rest and meal period wages owed to them, in violation of
25 Labor Code sections 201 and 202. Plaintiffs and Class Members not paid timely upon separation from
26 employment, including through layoff, termination of seasonal work, resignation, and discharge, are
27 entitled to waiting time penalties pursuant to Labor Code section 203.

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V. CLASS ALLEGATIONS

28. Plaintiffs brings this action as a class action under Code of Civil Procedure section 382 on behalf of the following class:

All non-exempt, hourly employees who work or have worked for Defendants within the State of California during the period starting within four years from the filing of the original complaint, through final disposition of this action.

29. **Reservations of Rights:** Pursuant to California Rules of Court, rule 3.765(b), Plaintiffs reserve the right to amend or modify the class definitions with greater specificity, by further division into subclasses, and/or by limitation to particular issues.

30. **Numerosity:** The Proposed Class is so numerous that joinder of all members is impracticable. Plaintiffs are informed and believe, and on that basis alleges, that during the relevant time period, Defendants have employed hundreds of workers in California who are potential Class Members. These workers have been employed at various facilities owned and/or operated by Defendants in California, and potential Class Members are believed to be geographically dispersed throughout the state. The Class Members are so numerous that joinder of all of them is impracticable. The individuals and the identity of such membership is readily ascertainable by inspection of Defendants' records.

31. **Typicality:** Plaintiffs' claims are typical of all other Class Members as demonstrated herein. Plaintiffs will fairly and adequately protect the interests of the other Class Members with whom Plaintiffs have a well-defined community of interest.

32. **Adequacy:** Plaintiffs will fairly and adequately protect the interests of each class member, with whom they have a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiffs have no interest that is antagonistic to the other Class Members. Plaintiffs' attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiffs have incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member. Plaintiffs have retained competent counsel experienced in wage and hour class action litigation.

1 33. **Predominant Common Questions:** Common questions of law and fact exist as to all
2 members of the Proposed Class and predominate over any questions solely affecting individual
3 members of the Proposed Class.

4 34. Common questions of fact and law predominate, including the following:

5 a. Whether Defendants failed to compensate Plaintiffs and the Class for all hours worked,
6 in violation of the Labor Code and the Wage Orders;

7 b. Whether Defendants violated the minimum wage by failing to compensate Plaintiffs
8 and Class Members for all hours worked, in violation of the Wage Orders and Labor Code
9 section 1194;

10 c. Whether Defendants violated the overtime laws by failing to compensate Plaintiffs and
11 the Class hours worked in excess of eight (8) hours in a workday and/or over forty (40) hours in
12 a workweek, in violation of the Labor Code and the Wage Orders;

13 d. Whether Defendants failed to relieve Plaintiffs and the Class of all duty for 30-minute
14 meal periods within the first five hours of work, and second meal periods for shifts in excess of
15 10 hours, in violation of the Labor Code and Wage Orders;

16 e. Whether Defendants failed to authorize and permit Plaintiffs and the Class to take net-
17 10 minute rest breaks for each work period of four hours, or major portion thereof, in violation
18 of the Labor Code and Wage Orders;

19 f. Whether Defendants failed to pay Plaintiffs and the Class premium wages for each non-
20 compliant meal period and rest break, in violation of the Labor Code and Wage Orders;

21 g. Whether Defendants failed to reimburse workers for all necessary expenditures or
22 losses incurred by Plaintiffs and the class, in direct consequence of the discharge of their work
23 duties;

24 h. Whether Defendants knowingly and intentionally failed to provide Plaintiffs and the
25 Class wage statements that accurately reflect all gross and net wages earned, total hours
26 worked, applicable hourly rates and corresponding hours at each rate, in violation of the Labor
27 Code and Wage Orders;
28

- i. Whether Defendants are liable for failing to pay all wages owed periodically under Labor Code sections 204 and 204b;
- j. Whether Defendants violated Labor Code section 223 by failing to pay the agreed upon rates and all overtime wages for all hours worked;
- k. Whether Plaintiffs and members of the class whose employment terminated are entitled to waiting time penalties under Labor Code section 203 for Defendants' failure to pay all wages owed timely upon the separation from employment;
- l. Whether Defendants engaged in unlawful and/or unfair business practices in violation of Business & Professions Code sections 17200 *et seq.* ("UCL"); and
- m. Whether Defendants are liable to Plaintiffs and the Class pursuant to the UCL for restitution of unpaid or underpaid statutory and/or agreed upon regular, minimum, overtime, double-time, and premium rest and meal period wages; and
- n. Whether Defendants are liable to Plaintiffs and the Class for violation of the California WARN Act.

35. **Superiority:** A class action is superior to other available methods for the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation where an individual Plaintiff lacks the financial resources to vigorously prosecute separate lawsuits against corporate defendants. A class action is superior to other available means for fair and efficient adjudication of class members' claims and offers significant benefits to the parties and the court. A class action will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. The individual monetary amounts due to many class members may not be large enough on their own for individual class members to obtain legal representation and relief. Moreover, a class action will serve important public interests by enabling the non-waivable statutory rights of class members to be effectively asserted, and fundamental public policies to be vindicated, in one proceeding. A class action will also provide a means for vindicating the rights of workers who are less likely to come forward to assert their rights based on fears of reprisal. Finally, a class action will prevent the potential for inconsistent or contradictory judgments

1 inherent in individual litigation and address the problems inherent in random and fragmentary
2 enforcement.

3 36. Plaintiffs intend to send notice to all members of the Class to the extent required by
4 Labor Code section 382. The names and addresses of the Class are available from Defendants.

5 **VI. CAUSES OF ACTION**

6 **FIRST CAUSE OF ACTION**

7 **Failure to Pay Minimum Wage**

8 (Violation of the Wage Orders and Labor Code sections 204, 223, 1194, 1194.2 and 1197)
9 Plaintiffs, on Behalf of Themselves and the Class, Against All Defendants

10 37. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

11 38. At all relevant times, Defendants have been subject to Labor Code and Wage Order
12 provisions requiring compensation at no less than the legal minimum wage.

13 39. At all times relevant to this action, Plaintiffs and the Class were entitled to
14 compensation at rates that were not less than the legal minimum wage, pursuant to the Wage Orders,
15 Labor Code sections 1182.12, 1194 and 1197. Defendants violated the Wage Orders and Labor Code
16 sections 200, *et seq.*, 1194 and 1197 by failing to compensate Plaintiffs and, on information and belief,
17 members of the Class for all “hours worked,” which includes the time during which an employee is
18 subject to employer control, and all the time the employee is suffered or permitted to work, whether or
19 not required to do so. Defendants failed to compensate Plaintiffs and the Class for all hours worked, in
20 violation of the minimum wage and other provisions set forth herein.

21 40. Defendants violated Labor Code section 204 by failing to pay all wages owed biweekly,
22 or semi-monthly, entitling Plaintiffs and the Class to penalties and damages pursuant to Labor Code
23 section 210.

24 41. Defendants’ conduct similarly violates Labor Code section 223, by failing to pay not
25 less than the legal and agreed upon rates for all hours worked.

26 42. Due to Defendants’ violation of the minimum wage, Plaintiffs and the Class are entitled
27 to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon,
28 pursuant to Labor Code section 1194.2.

43. Wherefore, Plaintiffs seek unpaid wages, interest, costs and attorneys' fees in amounts to be proven at trial on behalf of themselves and the Class.

SECOND CAUSE OF ACTION

Failure to Pay Overtime Wages

(Violation of Wage Orders and Labor Code sections 204, 223, 510, 1194, 1198)

Plaintiffs, on Behalf of Themselves and the Class, Against All Defendants

44. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

45. At all relevant times, Defendants have been subject to Labor Code and Wage Order provisions requiring overtime compensation, including the applicable Wage Orders and Labor Code sections 510, 1194, 1198. California law requires overtime compensation at the rate of one and one-half (1.5) times the regular rate of pay for hours in excess of eight (8) in a workday and 40 in a workweek. Similarly, these overtime provisions require overtime pay at the rate of twice the regular rate of pay for hours in excess of 12 in a workday and eight (8) on any seventh day of a workweek (i.e., double-time pay).

46. At all times relevant to this action, Plaintiffs and, on information and belief, the Class have worked in excess of eight (8) hours in a workday and 40 hours in a workweek without compensation for all hours worked at the required overtime rates of pay.

47. Defendants violated these provisions by failing to compensate for all hours worked in excess of the overtime thresholds at the required premium wage rates. As a result, Defendants' conduct violates provisions of the Wage Orders and Labor Code.

48. Wherefore, Plaintiffs seek unpaid wages, interest, costs and attorneys' fees pursuant to Labor Code section 1194 in amounts to be proven at trial on behalf of themselves and the Class.

THIRD CAUSE OF ACTION

Failure to Provide Meal Periods, or Premium Wages in Lieu Thereof

(Violation of Wage Orders, and Labor Code sections 226.7 and 512)

Plaintiffs, on Behalf of Themselves and the Class, Against All Defendants

49. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

50. California Labor Code section 512 and the Wage Orders prohibit employers from employing workers for a work period of more than five hours per day without providing the employee

1 with a meal period of at least thirty (30) minutes, or for a work period of more than ten (10) hours
2 without a second meal period of at least thirty (30) minutes. California law requires the meal periods
3 to be off duty, without interruption, and the first meal period of the day must occur within five (5)
4 hours from the start of the shift.

5 51. California Labor Code section 226.7 prohibits any employer from requiring any
6 employee to work during any meal period mandated by the applicable Wage Orders, and states that an
7 employer that fails to provide an employee with a required meal period in compliance with Section 512
8 and the Wage Orders shall pay that employee one additional hour of pay at the employee's regular rate
9 of compensation (*i.e.*, a meal period premium) for each work day that the employer does not provide a
10 compliant meal period.

11 52. The applicable Wage Orders echo the provisions of Sections 226.7 and 512 of the Labor
12 Code governing meal periods. For example, Wage Order 1(11), provides as follows:

13 (A) No employer shall employ any person for a work period of more than five
14 (5) hours without a meal period of not less than 30 minutes, except that when a
15 work period of not more than six (6) hours will complete the day's work the
16 meal period may be waived by mutual consent of the employer and employee.
17 In the case of employees covered by a valid collective bargaining agreement,
the parties to the collective bargaining agreement may agree to a meal period
that commences after no more than six (6) hours of work.

18 (B) An employer may not employ an employee for a work period of more than
19 ten (10) hours per day without providing the employee with a second meal
20 period of not less than 30 minutes, except that if the total hours worked is no
more than 12 hours, the second meal period may be waived by mutual consent
of the employer and the employee only if the first meal period was not waived.

21 (C) Unless the employee is relieved of all duty during a 30 minute meal period,
22 the meal period shall be considered an "on duty" meal period and counted as
23 time worked. An "on duty" meal period shall be permitted only when the nature
24 of the work prevents an employee from being relieved of all duty and when by
written agreement between the parties an on-the-job paid meal period is agreed
to. The written agreement shall state that the employee may, in writing, revoke
the agreement at any time.

26 (D) If an employer fails to provide an employee a meal period in accordance
27 with the applicable provisions of this order, the employer shall pay the
28 employee one (1) hour of pay at the employee's regular rate of compensation
for each workday that the meal period is not provided.

(E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

53. At all times relevant to this action, Defendants violated the provisions of the Labor Code and Wage Orders regulating meal periods by failing to comply with the requirement of providing to Plaintiffs and, on information and belief, the Class with a timely thirty (30) minute meal period within the first five (5) hours of work that was completely off duty, or a second thirty (30) minute meal period when workers worked more than ten (10) hours per day.

54. Plaintiffs and, on information and belief, the Class did not waive meal periods, and Plaintiffs are informed and believe and thereon allege, that valid meal period waivers were not in place or were not voluntarily consented to.

55. Defendants are therefore liable for meal period premium wages, pursuant to Labor Code section 226.7.

56. Wherefore, Plaintiffs seek unpaid wages, interest, and costs in amounts to be proven at trial on behalf of themselves and the Class.

FOURTH CAUSE OF ACTION

Failure to Provide Rest Breaks, or Premium Wages in Lieu Thereof

(Violation of Wage Orders and Labor Code sections 226.7)

Plaintiffs, on Behalf of Themselves and the Class, Against All Defendants

57. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

58. California Labor Code section 226.7 prohibits any employer from requiring an employee to work during any rest period mandated by the applicable Wage Orders. For example, Wage Order 1(12) provides as follows:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one

(1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

59. At all times relevant to this action, Defendants failed to authorize and permit rest periods to Plaintiffs and, on information and belief, the Class with of at least 10 minutes of time completely off duty at a rate of one rest period for shifts greater than three and one-half (3½) hours up to six (6) hours, two rest breaks for shifts greater than six (6) hours up to ten (10) hours, and three rest breaks for shifts greater than ten (10) hours up to fourteen (14) hours, and so on.

60. Defendants are therefore liable for rest break premium wages, pursuant to Labor Code section 226.7.

61. Wherefore, Plaintiffs seek unpaid wages, interest, and costs in amounts to be proven at trial on behalf of themselves and the Class.

FIFTH CAUSE OF ACTION

Failure to Indemnify for Necessary Business Expenses

(Wage Order 17 and Labor Code section 2802)

(Plaintiffs, Individually and on Behalf of the Class, Against Defendants)

62. Plaintiffs re-allege and incorporate the above allegations as if fully stated herein.

63. Labor Code section 2802 requires an employer to indemnify an employee "for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties."

64. Defendants required Plaintiffs and on information and belief, Class Members to download, install and use their personal cell phones to communicate throughout the workday on applications or "apps" required to be installed on workers' personal cellular phones, such as the "Now Rx," "Samsara," "WhatsApp," and "JustWorks" applications. These applications provided directions, delivery notifications, changes to schedules, payroll and fleet data.

65. Defendants willfully failed to reimburse Plaintiffs and the Class for all work expenses, including reimbursement for the use and maintenance of their personal cell phones and vehicles. Plaintiffs and Class Members were required or found it necessary to incur the expense of purchasing and maintaining their cell phones and personal vehicles ordinarily used in the normal course of

1 Defendants' business.

2 66. Plaintiffs and the Class were not reimbursed for their necessary work expenditures, and
3 Defendants are liable for reimbursement pursuant to Section 2802 of the Labor Code.

4 67. The violations described herein, including but not limited to the violations of Labor
5 Code sections 2802 serve as predicate violations under PAGA. Plaintiffs have complied with Labor
6 Code section 2699.3 by giving written notice to the employer and the Labor and Workforce
7 Development Agency (LWDA) of the alleged Labor Code and Wage Order violations, and the facts
8 and theories supporting those violations. Plaintiffs have complied with the administrative procedures
9 set forth in California Labor Code § 2699.3 to bring a claim for civil penalties under PAGA and as
10 such seeks civil penalties on behalf of himself, the State of California and the PAGA Workforce.
11 PAGA penalties are sought against all Defendants pursuant to Labor Code §§ 2802, 2699(f) and 2698,
12 *et seq.*

13 68. Pursuant to Labor Code section 558.1, any employer or other person (*i.e.*, owner,
14 officer, director or managing agent) acting on behalf of an employer who violates or causes a violation
15 of Labor Code section 2802 may be held liable as the employer. Defendants Breese and Sheokand are
16 therefore liable as the employer for violating and causing the violations described herein.

17 69. Plaintiffs seek reimbursement of expenses under Labor Code section 2802 on behalf of
18 himself and the Class, as well as attorney's fees, costs, and interest thereon.

19 **SIXTH CAUSE OF ACTION**

20 **Willful Failure to Pay All Wages Owed Timely Upon Discharge or Resignation**

(Violation of Labor Code sections 201 and 202)

21 Plaintiffs, on Behalf of Themselves and the Class, Against All Defendants

22 70. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

23 71. California Labor Code sections 201 and 202 require immediate payment of all unpaid
24 wages at the time an employee is discharged or resigns from employment.

25 72. Defendants have willfully failed to pay all wages owed to Plaintiffs and, on information
26 and belief, members of the Class timely upon the termination of their employment relationship with
27 Defendants, including wages for all hours worked, minimum and overtime wages, and meal and rest
28

1 period premium wages. Due to Defendants' willful failure to pay all wages timely, wages continue as
2 a penalty from the due date for up to 30 days at each employee's daily rate, pursuant to Section 203.

3 73. Wherefore, Plaintiffs seek waiting time penalties and costs in amounts to be proven at
4 trial on behalf of themselves and the Class.

5 **SEVENTH CAUSE OF ACTION**

6 **Failure to Provide Accurate Itemized Wage Statements**

7 (Violation of Labor Code section 226 and the Wage Orders)

8 Plaintiffs, on Behalf of Themselves and the Class, Against All Defendants

9 74. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

10 75. California Labor Code section 226(a) provides, in relevant part, that every employer
11 must furnish each employee with an itemized wage statement that accurately shows the following:

12 (1) gross wages earned, (2) total hours worked by the employee, except as
13 provided in subdivision (j), (3) the number of piece-rate units earned and any
14 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
15 deductions, provided that all deductions made on written orders of the employee
16 may be aggregated and shown as one item, (5) net wages earned, (6) the
17 inclusive dates of the period for which the employee is paid, (7) the name of the
18 employee and only the last four digits of his or her social security number or an
19 employee identification number other than a social security number, (8) the
20 name and address of the legal entity that is the employer and, if the employer is
21 a farm labor contractor, as defined in subdivision (b) of Section 1682, the name
22 and address of the legal entity that secured the services of the employer, and (9)
23 all applicable hourly rates in effect during the pay period and the corresponding
24 number of hours worked at each hourly rate by the employee....

25 76. At all times relevant to this action, Defendants have failed to provide accurate itemized
26 wage statements, in violation of Labor Code section 226. Plaintiffs and, on information and belief,
27 other members of the class were given wage statements that failed to state accurately the gross and net
28 wages earned, total hours worked, all applicable rates of pay and corresponding number of hours at
each rate of pay.

77. Defendants' failure to comply with the requirements of Labor Code section 226 and
provide accurate wage statements was knowing and intentional within the meaning of Labor Code
section 226. Plaintiffs and members of the putative Class are deemed to have suffered injury pursuant
to Labor Code section 226(e).

78. Pursuant to Labor Code section 226(e), Plaintiffs and Class Members are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000).

79. Wherefore, Plaintiffs seek damages, penalties, injunctive relief, attorney's fees and cost of suit in amounts to be proven at trial on behalf of themselves and the Class.

EIGHTH CAUSE OF ACTION
California Unfair Competition Law

(Violation of Business & Professions Code sections 17200, *et seq.*)
Plaintiffs, on Behalf of Themselves and the Class, Against All Defendants

80. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

81. Business and Professions Code section 17200 defines “unfair competition” to include any unlawful business practice.

82. California Business and Professions Code § 17203 allows a person who has lost money or property as a result of unfair competition to bring an action to recover money or property that may have been acquired from similarly situated persons by means of unfair competition.

83. Defendants unlawful and unfair business practices resulted in the following violations of California Labor Code and Wage Order provisions:

- a. Failure to compensate for all hours worked;
- b. Failure to pay all wages owed;
- c. Violation of the minimum wage;
- d. Failure to pay overtime;
- e. Failure to pay rest period premiums;
- f. Failure to pay meal period premiums;

84. On information and belief, at all times relevant to this action, Plaintiffs and the Class have lost, and Defendants have either acquired, or may have acquired, money or property in the form of earned unpaid wages for all hours worked, unpaid overtime and double-time wages, unpaid meal

1 period and rest break premium wages, and reimbursement of expenses from Plaintiffs and the Class by
2 means of unfair competition as a result of Defendants' unlawful failure to pay those wages, and related
3 failures to maintain accurate records, in violation of the requirements of the Labor Code and the Wage
4 Orders.

5 85. Pursuant to Business and Professions Code section 17203, Plaintiffs seek restitution of
6 all these moneys and property, that Defendants either acquired, and/or may have acquired, from
7 Plaintiffs and the Class by means of unfair competition in amounts subject to proof at trial. Plaintiffs
8 also seek to prevent Defendants from continuing to engage in the unlawful and/or unfair business
9 practices alleged herein.

10 86. Defendants, by the acts or omissions alleged of herein, have injured and are injuring the
11 interests of the general public in that other employers who exercise honest compliance with applicable
12 wage and hour laws, including the laws violated by Defendants, are at an unfair competitive
13 disadvantage as a result of Defendants' conduct.

14 87. Wherefore, Plaintiffs seek restitution of wages and the economic value of benefits
15 unlawfully denied to Plaintiffs and the Class by Defendants in amounts subject to proof.

16
17 **NINTH CAUSE OF ACTION**

18 **California WARN Act**

19 (Violation of Labor Code section 1400, *et seq.*)

20 Plaintiffs, on Behalf of Themselves and the Class, Against All Defendants

21 88. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

22 89. Labor Code section 1401(a) provides in pertinent part:

23 An employer may not order a mass layoff, relocation, or termination at a
24 covered establishment unless, 60 days before the order takes effect, the
25 employer gives written notice of the order to the following:

26 (1) The employees of the covered establishment affected by the order.

27 (2) The Employment Development Department, the local workforce
28 investment board, and the chief elected official of each city and county
government within which the termination, relocation, or mass layoff occurs

90. An employer who fails to give notice as required by paragraph (1) of subdivision (a) of
Section 1401 before ordering a mass layoff, relocation, or termination is liable to each employee

1 entitled to notice who lost his or her employment for: (1) Back pay at the average regular rate of
2 compensation received by the employee during the last three years of his or her employment, or the
3 employee's final rate of compensation, whichever is higher; (2) The value of the cost of any benefits
4 to which the employee would have been entitled had his or her employment not been lost, including
5 the cost of any medical expenses incurred by the employee that would have been covered under an
6 employee benefit plan.

7 91. Defendants are a covered establishment within the meaning of the California WARN
8 Act, Labor Code section 1401, *et seq.* who conducted a mass layoff or plant closing and failed to
9 provide notice as required under the Cal-WARN Act.

10 92. Plaintiffs and members of the class are entitled to all relief available under the Cal-
11 WARN Act, including damages, penalties, attorney's fees and costs according to proof at trial.

12 13 **VII. PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs pray for relief as follows:

15 1. For an order awarding compensatory damages for all wages earned but not paid, and all
16 overtime wages earned and not paid, in the amount to be proven at trial, pursuant to Labor Code
17 sections 200, *et seq.*, 510, 1194, 1197, 1198;

18 2. For an order awarding reimbursement of all necessary expenditures or loss incurred by
19 workers, in the amount to be proven at trial, pursuant to Cal. Labor Code section 2802;

20 3. For an order awarding pre-judgment interest of 10 percent on the unpaid wages and
21 overtime compensation owed under Labor Code section 218.6;

22 4. For an order awarding unpaid overtime, minimum wage and a minimum wage
23 liquidated damages under Labor Code sections 1194 and 1194.2;

24 5. For an order awarding attorney's fees pursuant to Labor Code section 1194;

25 6. For an order awarding meal period premium wages pursuant to Labor Code section
26 226.7;

27 7. For an order awarding rest break premium wages pursuant to Labor Code section 226.7;

28 8. For an order awarding "waiting time" penalties under California Labor Code section

203;

9. For an order awarding penalties, injunctive relief, attorney's fees and costs pursuant to Labor Code section 226;

10. For an order awarding earned but unpaid wages as equitable relief to Plaintiffs and the Class under the UCL for a period that extends the statute of limitations or recovery period for wages to four years;

11. For a declaratory judgment that the actions, conduct, and practices of Defendants complained of herein constitute unfair business practices under the UCL;

12. For an injunction and order permanently restraining and enjoining Defendants from engaging in and continuing the unlawful policies and practices complained of herein;

13. For an order certifying a class pursuant to Code of Civil Procedure section 382;

14. For an order appointing Plaintiffs as class representatives;

15. For an order appointing counsel for Plaintiffs as class counsel;

16. For an order awarding reasonable attorney's fees and costs, including expert witness fees, pursuant to Code of Civil Procedure section 1021.5 and other provisions of the Labor Code;

17. For backpay, the value of the costs of benefits, damages, penalties, attorney's fees and costs pursuant to the WARN Act, Labor Code section 1402, 1403, 1404.

18. For an order awarding interest to the extent permitted by law;

19. For an order awarding costs and expenses of this action; and

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

VIII. DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on claims so triable.

Dated: September 5, 2023

ADVOCATES FOR WORKER RIGHTS LLP



Marco A. Palau
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