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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF ALAMEDA**

**Dorian Laviene**, individually and on behalf of all similarly situated individuals,

Plaintiff,

vs.

**Urban Flavours**, a California Corporation; **Urban Flavours Delivery LLC**, a California Limited Liability Company; **Urban Flavours CBD LLC**, a California Limited Liability Company; **Josephus Stallworth**, an individual; and **Does 1-10**, inclusive;

Defendants.

CASE NO. 23CV040942

**CLASS ACTION COMPLAINT FOR:**

1) **Failure to Pay Minimum Wages;**
2) **Failure to Pay Overtime Wages;**
3) **Failure to Provide Meal Periods ;**
4) **Failure to Provide Rest Periods;**
5) **Failure to Provide and Maintain Complete and Accurate Wage Statements;**
6) **Failure to Provide Wages When Due;**
7) **Failure to Reimburse Necessary Business Expenses;**
8) **PAGA Penalties; and**
9) **Violation of California Business & Professions Code §§ 17200, et seq.**

<u>**Jury Trial Requested**</u>

Plaintiff hereby brings this action on behalf of himself and all other similarly situated current and former employees, by and through his counsel of record, alleges as follows:

**PARTIES**

1. At all relevant times for this Complaint, Plaintiff **Dorian Laviene**, ("Plaintiff") has been a resident of Oakland, California. Plaintiff was employed as an hourly, non-exempt employee of Defendants from in or around February 2017 to on or around June 26, 2023. Plaintiff was subject to the policies and practices described in this complaint at all times during his employment at Defendants.

2. Defendant **Urban Flavours, Inc.** ("Urban Flavours") is part of a series of interrelated group of entities involved in cannabis distribution specializing in the residential delivery of cannabis. On information and belief, Urban Flavours employs at least 50 hourly, non-exempt employees. Upon information and belief, Urban Flavours operates a facility in California in Oakland, CA.

3. Defendant **Urban Flavours Delivery LLC.** ("Urban Flavours Delivery") is part of a series of interrelated group of entities involved in cannabis distribution specializing in the residential delivery of cannabis. On information and belief, Urban Flavours employs at least 50 hourly, non-exempt employees. Upon information and belief, Urban Flavours operates a facility in California in Oakland, CA.

4. Defendant **Urban Flavours CBD LLC.** ("Urban Flavours CBD") is part of a series of interrelated group of entities involved in cannabis distribution specializing in the residential delivery of cannabis. On information and belief, Urban Flavours employs at least 50 hourly, non-exempt employees. Upon information and belief, Urban Flavours operates a facility in California in Oakland, CA.

5. Defendant **Josephus Stallworth** ("Stallworth" or hereinafter "Defendants" with Defendant Urban Flavours, Urban Flavours Delivery, and Urban Flavours CBD) is the Chief Executive Officer at Urban Flavours. Upon information and belief, he is a resident of the County of Sacramento in the State of California. Since Mr. Stallworth is a managing agent, director, and/or officer of Defendants and because he caused or directed the acts described herein, he is personally liable for the Labor Code violations set forth in this Complaint under Labor Code section 558.1.

6. Plaintiff is not currently aware of the names and true identities of defendants Does 1-10. Plaintiff reserves the right to amend this complaint to allege their true names and capacities when this information is available. Each Doe defendant is responsible for the damages alleged pursuant to each of

the causes of action asserted, either through its own conduct, or vicariously through the conduct of others. All further references in this complaint to any of the named Defendants includes the fictitiously named defendants.

7. At all times alleged herein, each Defendant was an agent, servant, joint employer, employee, partner, and/or joint venture of every other Defendant and was acting within the scope of the Defendants' relationship. Moreover, the conduct of every Defendant was ratified by each other Defendant.

## VENUE AND JURISDICTION

8. The court has jurisdiction over all causes of action in this complaint pursuant to Article VI, § 10 of the California Constitution. No federal question is at issue; Plaintiff relies solely on California statutes and law, including the Labor Code and the Business & Professions Code. Because putative class members were employed by Defendants, the policies and practices complained of herein were implemented in Alameda, and Defendants transact business within Alameda County, Defendant is within the jurisdiction of the court for service of process. Moreover, Business & Professions Code § 17204 provides that any person acting on their own behalf may bring an action in any court of competent jurisdiction.

9. Venue as to Defendant is proper in this Superior Court pursuant to California Code of Civil Procedure § 395. Defendants transact business and/or have offices in this county, employ putative class members in this County, and the acts and omissions alleged herein took place in this county. Moreover, this action is brought on behalf of the State of California as a private attorney general and has jurisdiction in this venue.

## CLASS ACTION ALLEGATIONS

1. At all times relevant to this Complaint, Defendants were dispatched to conduct deliveries of cannabis product. However, Plaintiff or Class Members were not paid for all hours worked, including 1.5–times his hourly rate for his work performed over 8 hours in a day, and/or 40 hours in a week. Defendants were aware of these violations as they willfully failed to pay Plaintiff or Class Members.

2. As a matter of uniform and systemic policy, Defendants failed to authorize and/or permit non-exempt employees to take bona fide meal and rest breaks pursuant to Labor Code § 226.7.

3. Defendants have consistently denied their non-exempt employees the opportunities to take

compliant 30-minute meal periods in accordance with California's Labor Code. Upon information and believe, Class Members, including Plaintiff, were required to interrupt their meal periods to conduct deliveries of cannabis, answer phone calls, otherwise interrupt or cut short their meal periods, or remain on duty and under Defendants' control during their meal periods to perform other tasks at Defendants' directions due to Defendants' policies and practices, including their scheduling and staffing practices and policies. By way of further example, Defendants scheduled routes through an app called OnFleet, which did not allow Plaintiff or Class Members the ability to take an uninterrupted meal period due to the press of the delivery-based platform.

4. Accordingly, Defendants failed to authorize and permit compliant meal periods as required by law.

5. As a matter of uniform and systemic policy, Defendant requires non-exempt employees to continue working during their rest periods by answering phone calls, otherwise interrupting or cut short their rest periods, or remain on duty and under Defendants' control during their rest periods to perform other tasks at Defendants' directions due to Defendants' policies and practices, including their scheduling and staffing practices and policies.

6. Accordingly, Defendants failed to authorize and permit compliant rest periods as required by law.

7. In failing to authorize and/or permit meal and rest periods, Defendants have also implemented a uniform policy of denying compensation in lieu of meal and rest periods to its non-exempt employees, notwithstanding its actual knowledge that such employees were uniformly denied compliant meal and rest periods.

8. As a matter of uniform and systemic policy, Defendants failed to provide its non-exempt employees with their itemized wage statements in accordance with California's Labor Code. Upon information and believe, Defendants failed to furnish Plaintiff, or Class Members, either semimonthly or at the time of each payment of wages, either as a detachable part of the check or separately, an accurate, itemized statement in writing showing pick pay, gross wages earned, all deductions, and the net wages earned by Plaintiff for the inclusive dates for which the Plaintiff worked.

9. As a matter of uniform and systemic policy, Defendants required non-exempt employees

to utilize their personal cell phones for work-related purposes, including answering texts and calls from their supervisors while at work or on a break, for purposes of scheduling and re-scheduling future work, being assigned tasks, and general administrative matters, and required the use of various mobile phone applications including OnFleet and Slack. Defendants further failed to compensate their non-exempt employees for reasonable costs associated with utilizing their personal cell phones for work-related purposes.

10. Plaintiff therefore brings this action on behalf of himself and as a class action on behalf of the following defined Class:

**Non-Exempt Employee Class:**

*All persons who worked at least one 3.5-hour shift as a non-exempt employee in the State of California from the period four years prior to the filing of the Action and the date of trial ("Class").*

11. Common methods of proof exist for determining these issues on a class-wide basis, including but not limited to, Defendants' employment records, payroll records, timesheets, policies, and disciplinary records.

12. **Numerosity.** Plaintiff is informed and believes that, during the class period, at least 50 Class Members have been employed as non-exempt employees by Defendants within the state of California. The number of Class Members is sufficiently numerous such that joinder of all members is impossible or impracticable.

13. **Typicality.** Plaintiff's claims are typical of all Class Members. Plaintiff, like all other Class Members, was subjected to the policies and practices set forth above. Plaintiff's job duties were typical of Class Members in all relevant respects.

14. **Adequacy.** There are no material conflicts between the claims of the representative Plaintiff and Class Members that would make class certification inappropriate. Plaintiff understands his obligation to inform the Court of any relationship, conflicts, or differences with any Class Member. Plaintiff will fairly and adequately protect the interests of the Class Members. Plaintiff is invested in redressing Defendants' illegal practices on behalf of all Class Members. Moreover, Plaintiff has retained competent counsel experienced in both class action and employment litigation. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement, and will vigorously assert the claims of all Class Members. Plaintiff have incurred, and 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.

15. **Existence and Predominance of Common Issues.** Common questions of law and fact exist as to all Class Members and predominate over issues affecting individual Class Members, including, but not limited to:

a. Whether Defendants had a common policy and/or practice of depriving Plaintiff and Class Members of required overtime wages;

b. Whether Defendants unlawfully and/or willfully failed to compensate Plaintiff and Class Members required overtime wages;

c. Whether Defendants had a common policy and/or practice of depriving Plaintiff and Class Members of compliant, off-duty meal and/or rest periods;

d. Whether Defendants unlawfully and/or willfully deprived Plaintiff and Class Members of compliant, off-duty meal and/or rest periods;

e. Whether Defendants have a common policy and/or practice of failing to maintain accurate payroll records in the State of California;

f. Whether Defendants unlawfully and/or willfully failed to maintain accurate payroll records in the State of California;

g. Whether Defendants have a common policy and/or practice of failing to provide accurate wage statements reflecting hours worked and wages earned to Plaintiff and Class Members;

h. Whether Defendants unlawfully and/or willfully failed to provide accurate wage statements reflecting hours worked and wages earned to Plaintiff and Class Members;

i. Whether Defendants have a common policy and/or practice of failing to reimburse Plaintiff and Class Members for reasonable business expenses;

j. Whether Defendants unlawfully and/or willfully failed to reimburse Plaintiff and Class Members for reasonable business expenses;

k. Whether Defendants has a policy and/or practice of failing to pay Plaintiff and Class

Members final wages owed upon termination;

l. Whether Defendants unlawfully and/or willfully failed to promptly pay compensation due to Plaintiff and Class Members upon termination of employment in violation of Labor Code §§ 201, 202, and 203;

m. Whether Plaintiff and Class Members sustained damages as a result of any of the aforementioned violations, and, if so, the proper measure of those damages, including interest, penalties, costs, attorneys' fees, and equitable relief; and

n. Whether Defendants violated the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, et seq., by violating the above provisions of law.

16. **Superiority.** A class action is superior to other available means for the fair and efficient adjudication of this dispute. The damages suffered by individual Class Members, while substantial, are small compared to the burden and expense of individual prosecution of the complex and expensive litigation necessary to address Defendants' conduct. Even if Class Members themselves could afford individual litigation, the court system would be overwhelmed by individual lawsuits if all Class Members sought redress. In addition, individualized litigation increases the delay and expense to all parties and to the court system resulting from the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. By contrast, the class action device presents far fewer management difficulties; it allows the hearing of claims which might otherwise go unaddressed because of the relative expense of bringing individual lawsuits, and it provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. Plaintiff contemplates providing individual notice to members of the class defined above as identified through Defendants' records.

## CAUSES OF ACTION

## FIRST CAUSE OF ACTION

***California Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198***

***Failure to Pay Minimum Wages for All Hours Worked***

**(Plaintiff and Class Against Defendants)**

17. Plaintiff repeats and incorporates by reference all allegations contained in the preceding

paragraphs as if fully set forth herein.

18. California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that payment of a wage less than the minimum wage as set by statute, commission, or by the general prevailing rate is unlawful. Compensable work time is defined in Wage Order No. 4 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

19. Defendants failed to compensate Plaintiff and the Class for all hours worked because Defendants had a policy and/or practice whereby they required and/or pressured Class Members to work under Defendants' control while off-the-clock. Class Members were also required to take late and/or interrupted unrecorded meal periods but were deprived of hours worked through Defendants' policies, which underpaid them by for shifts where they didn't take a meal period or it was truncated.

20. Defendants further failed to pay Plaintiff and Class Members any wages for time engaged in this off-the-clock work.

21. Defendants implemented other uniform policies and practices resulting in off-the-clock work and underpayment of wages, including requiring Class Members to: wait in line to clock in and out of work; change clothes before clocking in and/or after clocking out; pass through security, health, and/or bag check points before clocking in or after clocking out; wait in line to pass through such security, health, and/or bag check points; and walk to or from time clock stations before clocking in or after clocking out.

22. Finally, Defendants failed to pay other wages (either in full or at the correct rate), including payment of vested and accrued vacation pay and/or sick pay at Class Members' regular rates of pay in violation of Labor Code §§ 246, 227.3, and 226.7.

23. Defendants' failure to pay Plaintiff and Class Members minimum wages for all hours worked violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

24. Pursuant to California Labor Code section 1194.2, Plaintiff and Class Members are entitled to recover the amount of underpaid wages, plus liquidated damages in an amount equal to the wages

unlawfully unpaid and interest thereon, along with other applicable penalties.[1]

## SECOND CAUSE OF ACTION

***California Labor Code §§ 510 and 1198***

***Unpaid Overtime***

**(Plaintiff and Class Against Defendants)**

25. Plaintiff incorporates by reference every allegation in this complaint as if fully set forth herein.

26. California Labor Code §§ 510 and 1198 provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

27. Plaintiff and Class Members who work more than eight hours in a day or more than forty hours in a workweek are to be paid at the rate of time and one-half (1½) for all hours worked in excess of eight hours in a day or more than forty hours in a workweek. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including commissions, non-discretionary bonuses and incentive pay. *Alvarado v. Dart Container Corp. of California*, 4 Cal. 5th 542, 573 (2018), as modified (Apr. 25, 2018).

28. Throughout the Class Period, Plaintiff and other Class Members were not paid overtime premiums for all of the hours they worked in excess of eight hours in a day, in excess of twelve hours in a day, in excess of eight hours on the seventh consecutive day of work in a workweek, and in excess of forty hours in a week.

29. Defendants knew or should have known that Plaintiff and Class Members did not receive overtime compensation. Because Plaintiff and Class Members sometimes worked shifts of more than eight hours a day or forty hours a week, they should have been adequately compensated at their appropriate overtime rate of pay. Accordingly, Defendants' failure to pay overtime compensation resulted in Plaintiff and Class Members being deprived of earned overtime wages.

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[1] Defendants are liable for civil penalties in the amount of $100 per initial violation and $250 for each subsequent pay period, plus injunctive relief and reasonable attorney's fees and costs. Lab. Code § 1197.1.

30. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

**THIRD CAUSE OF ACTION**

***California Labor Code §§ 226.7, 512(a), and 1198***

***Meal Period Violations***

**(Plaintiff and Class Against Defendants)**

31. Plaintiff incorporates by reference every allegation in this complaint as if fully set forth herein.

32. At all times relevant to this complaint, Defendants knew they were obligated to provide legally-compliant meal breaks to its non-exempt employees pursuant to Labor Code §§ 512 and 226.7. Labor Code § 512(a) states in pertinent part: "[A]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes."

33. Labor Code section 226.7, 512(a), and 1198 provide that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC. "An off-duty meal period, therefore, is one in which the employee is relieved of all duty during the 30-minute meal period . . .an employer's obligation is to provide an off-duty meal period: an uninterrupted 30–minute period during which the employee is relieved of all duty." *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1035 (2012).

34. Defendants' policies and practices served to deprive the Class of a full 30-minute break period free of employer control or relieved of all duties. Upon information and belief, employees were required to skip breaks, take breaks after the fifth hour of work, or work through them due to Defendants' policies and practices.

35. Accordingly, Plaintiff and Class Members were uniformly denied meal periods as a result of Defendants' formal policies and practices. By failing to consistently provide uninterrupted, off-duty 30-minute meal periods, Defendants violated the Labor Code as to Plaintiff and Class Members.

36. Pursuant to Labor Code § 226.7(b), Plaintiff and Class Members are entitled to recover

from Defendants an additional hour of pay at their regular rates of pay for each shift in which a required meal period was not provided.

## FOURTH CAUSE OF ACTION

### *Labor Code §§ 226.7 and 1198*

### *Failure to Provide Rest Periods or Premium Pay in Lieu Thereof*

### (Plaintiff and Class Against Defendants)

37. Plaintiff incorporates by reference every allegation in this complaint as if fully set forth herein.

38. At all times relevant to this complaint, Defendants knew they were obligated to provide compliant rest breaks to its non-exempt employees pursuant to Labor Code § 226.7.

39. Labor Code § 226.7 provides:

> (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
>
> (b) If any employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

40. Labor Code § 226.7, 512(a), and 1198 provide that no employer shall require an employee to work during any rest or meal period mandated by an applicable order of the IWC, including Wage Order No. 1. Employers must authorize and permit employees to be relieved of all duty during their rest and meal periods: "A rest period, in short, must be a period of rest."[2] *Augustus v. ABM Sec. Servs., Inc.*, 385 P.3d 823, 834 (2016).

41. Employees must also be free to leave the employer's premises during their rest period. *See id.* at 270 ("In the context of a 10-minute break that employers must provide during the work period, a

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[2] Employees must also be free to leave the premises. *Augustus*, 2 Cal. 5th at 270; *see also* Department of Industrial Relations, "Rest Periods/Lactation Accommodations," *available at https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm* ("Q. Can my employer require that I stay on the work premises during my rest period? A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself.")

broad and intrusive degree of control exists when an employer requires employees to remain on call and respond during breaks. An employee on call cannot take a brief walk—five minutes out, five minutes back—if at the farthest extent of the walk he or she is not in a position to respond. Employees similarly cannot use their 10 minutes to take care of other personal matters that require truly uninterrupted time."); *see also* Department of Industrial Relations, "Rest Periods," *available at https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm* ("Q. Can my employer require that I stay on the work premises during my rest period? A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself.").

42. Defendants failed to authorize or permit all required compliant paid rest periods for shifts between 3.5 and ten hours, or subjected employees to interrupted or shortened rest periods. Defendants further failed to authorize or permit a compliant third rest period for shifts in excess of 10 hours.

43. As a direct and proximate result of Defendants' willful and unlawful conduct, Plaintiff and Class Members have sustained damages, including lost compensation resulting from missed or non-compliant rest periods, in an amount to be established at trial.

44. Pursuant to Wage Order No. 4 and Labor Code § 226.7(b), Plaintiff and Class Members are entitled to recover from Defendants an additional hour of pay at their regular rates of pay for each shift that a compliant rest period was not provided. Defendants were aware that their actions were a violation of applicable law but consistently refused to pay premium pay as required by law.

## FIFTH CAUSE OF ACTION

### *Labor Code §§ 226. 226.3, and 1174*

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

### (Plaintiff and Class Against Defendants)

45. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

46. Labor Code § 226 requires employers to furnish employees with an accurate, itemized statement in writing showing, among other things, (1) gross wages earned; (2) total hours worked by the employee (for hourly-paid, non-exempt employees); (3) all deductions; (4) net wages earned; (5) the inclusive dates of the period for which the employee is paid; (6) the name of the employee and the last four

digits of his or her social security number; (7) the name and address of the legal entity that is the employer; and (8) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

47. At all times relevant to this complaint, Defendants' failure to pay premium wages for missed meal and/or rest periods further ensured that Class Members' wage statements inaccurately reflected gross and net wages earned. Defendants failure to compensate all hours worked and/or pay all required overtime rates further left the wage statements they provided to employees to be inaccurate.

48. Defendants also failed to provide wage statements at all to certain members of the Class.

49. Defendants have also failed to keep accurate payroll records for Plaintiff and Class Members in accordance with Labor Code § 1174. Defendants' failure to keep and maintain accurate payroll records reflecting hours worked and wages earned has impeded Plaintiff and Class Members' ability to calculate unpaid wages earned.

50. Injury. Defendants knowingly and intentionally failed to comply with Labor Code § 226, causing injury and damages to Plaintiff and Class Members. Plaintiff and all those similarly situated were injured by these failures because, among other things, they were confused about whether they were paid properly and/or they were misinformed about how much compensation was owed. These damages include, but are not limited to, costs incurred calculating the correct net wages for each pay period and the amount of employment taxes that were not paid to state and federal tax authorities.

51. Relief. Labor Code § 226(e)(1) provides that an employee suffering injury as a result of not being provided with an accurate itemized wage statement is entitled to recover the greater of all actual damages suffered or fifty ($50) dollars for the initial violation and one hundred ($100) dollars for each subsequent violation, up to $4,000. Pursuant to Labor Code §§ 226(e) and (g), Plaintiff and all others similarly situated are entitled to injunctive relief to ensure Defendant's compliance with Labor Code § 226, as well as attorney's fees and costs of suit.

## SIXTH CAUSE OF ACTION

***Labor Code §§ 201, 202, 203, and 204***

***Failure to Pay Wages When Due***

**(Plaintiff and Class Against Defendants)**

52. Plaintiff incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

53. Labor Code § 201 provides, in relevant part, that:

> If an employee not having a written contract for a definite period quits his or her employment, his or her wages[3] shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of quitting.

54. Defendants do not include definite periods of service in their contracts of employment for Class Members employed at their California facility. Plaintiff's contract of employment did not include a definite term.

55. Labor Code § 203 provides:

> If an employer willfully fails to pay, without abatement or reduction, in accordance with § 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

56. Labor Code § 204 provides that all wages, other than those mentioned in Section 201 and 202, are due and payable twice during each calendar month, on days designated in advance by the employer as regular paydays.

57. <u>Failure to Timely Pay Wages Due.</u> As set forth above, Defendants failed to timely pay the

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[3] Labor Code § 200 defines "wages" as "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation." "Labor" is defined as "labor, work, or service . . . if the labor to be paid for is performed personally by the person demanding payment."

overtime wages and meal and rest period premiums resulting from its deficient timekeeping and meal and rest period policies.

58. Failure to Pay Upon Termination. Plaintiff and many Class Members have left Defendants' employ during the Class Period. As discussed above, Defendants knowingly failed to pay Plaintiff and Class Members all earned wages upon termination. Instead, Defendants willfully and intentionally refused to pay the earned rest and/or meal period premiums and earned minimum wages as alleged herein to Plaintiff and Class Members in violation of Labor Code §§ 201 and 202.

59. Relief. Defendants' failure to pay Plaintiff and those Class Members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employment, violates Labor Code §§ 201 and 202. Plaintiff and formerly employed Class Members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a 30-day maximum penalty under Labor Code § 203.

## SEVENTH CAUSE OF ACTION

***California Labor Code § 2802***

***Failure to Reimburse Necessary Business Expenses***

**(Plaintiff and Class Against Defendants)**

60. Plaintiff repeats, repleads, and incorporates by reference, as though fully set forth in this paragraph, all the allegations of this Complaint.

61. Labor Code section 2802 provides that "[a]n employer shall indemnify his or his employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or his duties, or of his or his obedience to the directions of the employer." Lab. Code § 2802. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. Cochran v. Schwan's Home Service, Inc., 228 Cal. App. 4th 1137, 1144 (2014).

62. Defendants required Plaintiff and Class Members to use their cellphones in the regular course of employment by answering texts and calls from their supervisors while at work or on a break, for purposes of scheduling and re-scheduling future work, being assigned tasks, and general administrative

matters, and required the use of various mobile phone applications.

63. Defendants failed to reimburse a reasonable portion of the Class Members' cellphone related expenses despite requiring the use of the device and/or applications that required a data plan. *See Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1144 ("We hold that when employees must use their personal cell phones for work related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills."). Defendant further failed to reimburse Plaintiff and the Class Members for the purchase of work-related equipment.

64. By unlawfully failing to pay Plaintiff and Class Members, Defendants are liable for a reasonable portion of the incurred expenses, to be determined upon trial, plus reasonable attorneys' fees and costs. Lab. Code § 2802.

## EIGHTH CAUSE OF ACTION

***Labor Code §§ 558, 2698, et seq.***

***Private Attorneys General Act ("PAGA") Penalties***

**(Plaintiff and Class Against Defendants)**

65. Plaintiff incorporates by reference all the allegations of this Complaint as though fully set forth herein.

66. Entitlement to Penalties. Under the California Private Attorneys General Act ("PAGA"), Labor Code § 2698, *et seq.*, an aggrieved employee may bring a representative action as a private attorney general, on behalf of himself and other current or former employees as well as the general public, to recover penalties for an employer's violations of the Labor Code and IWC Wage Orders. These penalties are in addition to any other relief available under the Labor Code and are allocated seventy-five percent to the Labor and Workforce Development Agency and twenty-five percent to the affected employees.

67. These penalties may be "stacked" separately for each of Defendants' violations of the Labor Code. *See, e.g.*, *Hernandez v. Towne Park, Ltd.*, No. CV 12-02972, 2012 WL 2373372, at *17 n.77 (C.D. Cal. June 22, 2012) ("[F]ederal courts applying California law have concluded that stacking is appropriate."); *see also O'Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, 2016 WL 3548370, at *7 (N.D. Cal. June 30, 2016) ("Finally, Plaintiff ignore the potential for stacking of PAGA penalties related to wage-and-

hour claims other than the gratuities and expense reimbursement claim, i.e., meal and rest breaks, minimum wage and overtime, and workers' compensation.").

68. Plaintiff is an "aggrieved employee" under PAGA, as he was employed by Defendants during the applicable statutory period and suffered the Labor Code violations alleged herein. Accordingly, he seeks to recover, on behalf of himself and all other current and former aggrieved employees of Defendants, the civil penalties provided by PAGA, including civil penalties for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1182.12, 1401, 1174, 1194, 1198, and Industrial Wage Order No. 1, plus reasonable attorneys' fees and costs.

69. Representative Action. Plaintiff seeks to recover the PAGA civil penalties through a representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not required, but Plaintiff may choose to seek certification of the PAGA claims.

70. Labor Code § 2699(a), which is part of PAGA, provides:

> Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of themselves or themselves and other current or former employees pursuant to the procedures specified in § 2699(a).

71. Penalties. Labor Code § 2699(f), which is part of PAGA, provides:

> For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation.

72. Based on the foregoing, Plaintiff and aggrieved employees are entitled to civil penalties, to be paid by Defendants and allocated as required by PAGA in the following formula: (a) in an amount set forth as a civil penalty in the underlying statute; or (b) $100 per initial violation per employee per pay period, and $200 for each subsequent violation per employee per pay period. Plaintiff, the aggrieved employees, and the State of California are entitled to recover the maximum civil penalties allowed by law for

the violations of the Labor Code and IWC Wage Order No. 4 as alleged in this Complaint.

73. Plaintiff is also entitled to recover for himself, other aggrieved employees, and the State of California, civil penalties pursuant to Labor Code § 210 (entirely independent and apart form, any other penalty provided in this article) in the amount of $100 per employee per initial violation of the timely payment requirements of Labor Code § 240 (semimonthly payments) and $200 per employee for each subsequent violation, plus 25% of the amount unlawfully withheld, and Labor Code § 558 in the amount $50 per underpaid employee for each pay period for which the employee was underpaid and for each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid.

74. Procedural Requirements Met. Plaintiff electronically filed a notice of claims with the LWDA contemporaneously with this Complaint and sent a copy to Defendants by certified mail. Plaintiff has not received notice from the LWDA that it was exercising jurisdiction over the allegations set forth in the notice. As of 65 days from date of electronic filing, all requirements for administrative exhaustion for bringing these PAGA claims will have been met. Labor Code § 2699.3(a)(2).

## NINTH CAUSE OF ACTION

***California Business & Professions Code §§ 17200, et seq.***

***Unlawful Business Practices***

**(Plaintiff and Class Against Defendants)**

75. Plaintiff repeats and incorporate by reference every allegation in this complaint as if fully set forth herein.

76. Defendants Urban Flavours and Stallworth are "persons" as defined by California Business & Professions Code § 17201, as they are a natural person, corporations, firms, partnerships, joint stock companies, and/or associations.

77. Unlawful Business Practices. Defendants' knowing violations of the Labor Code constitutes an unlawful business practice as set forth in Business & Professions Code § 17200, et seq.

78. Defendants' failure to abide by the laws discussed herein provided Defendants an unfair advantage over their competitors at the expense of their workers. Instead, Defendants cuts corners in the name of higher profits and at the expense of employee well-being. Defendants' actions thereby constitute

an unfair, fraudulent, and/or unlawful business practice under Business & Professions Code § 17200, et seq.

79. Relief. Plaintiff brings this cause of action seeking equitable and injunctive relief to stop Defendant's willful and ongoing misconduct, and to seek restitution of the amounts Defendants acquired through the unfair, unlawful, and fraudulent business practices described herein. In addition, Plaintiff seeks an award of costs and attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

## DEMAND FOR JURY TRIAL

Pursuant to California Code of Civil Procedure § 631, Plaintiff demands a trial by jury on all issues so triable.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays judgment as follows:

A. For an Order:
   a. Certifying the Class;
   b. Appointing Plaintiff as representative of the Class;
   c. Appointing Plaintiff's counsel as Class Counsel;

B. For actual and liquidated damages according to proof at trial;

C. For statutory and civil penalties and special damages, according to proof at trial;

D. For pre- and post-judgment interest on monetary damages;

E. For preliminary and permanent injunctive relief;

F. For reasonable attorney's fees and costs and expert fees and costs as allowed by law; and

G. For such other relief as this Court deems just and proper.

Dated: August 16, 2023

Respectfully submitted,

**KING & SIEGEL LLP**

By: Elliot J. Siegel

Elliot J. Siegel, Esq.
Julian Burns King, Esq.
Attorneys for Plaintiffs

Dated: August 16, 2023

**BARAHMAND LAW GROUP**

By: /s/ Navid Barahmand

Navid Barahmand, Esq.
Attorneys for Plaintiffs