

FILED
Superior Court of California
County of Los Angeles

10/13/2023

David W. Slayton, Executive Officer / Clerk of Court

By: M. Arellanes Deputy

1 JAMIE K. SERB, ESQ. (SBN 289601)
jamie@crosnerlegal.com
2 NIKKI TRENNER, ESQ. (316007)
nikki@crosnerlegal.com
3 ZACHARY M. CROSNER, ESQ. (SBN 272295)
zach@crosnerlegal.com
4 **CROSNER LEGAL, PC**
5 9440 Santa Monica Blvd. Suite 301
6 Beverly Hills, CA 90210
7 Tel: (866) 276-7637
8 Fax: (310) 510-6429

9 Attorneys for Plaintiff CHAZLEY FOSTER
10 As an individual and on behalf of all others
11 similarly situated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF LOS ANGELES**

14 CHAZLEY FOSTER, as an individual and
15 on behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 AMERICAN HONDA MOTOR CO.,
19 INC., a California Corporation; and DOES
20 1-100, inclusive,

21 Defendants.

Case No.: 23STCV22112

**PLAINTIFF'S FIRST AMENDED CLASS
AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. **Recovery of Unpaid Minimum Wages
and Liquidated Damages**
2. **Recovery of Unpaid Overtime Wages**
3. **Failure to Provide Meal Periods or
Compensation in Lieu Thereof**
4. **Failure to Provide Rest Periods or
Compensation in Lieu Thereof**
5. **Failure to Furnish Accurate Itemized
Wage Statements**
6. **Failure to Timely Pay All Wages Due
Upon Separation of Employment**
7. **Failure to Reimburse Business Expenses**
8. **Unfair Competition and**
9. **Violation of the Private Attorneys
General Act of 2004**

DEMAND FOR JURY TRIAL

1 Plaintiff, CHAZLEY FOSTER, (“PLAINTIFF”), an individual on behalf of PLAINTIFF,
2 and all other similarly situated Class Members (as defined below), and Aggrieved Employees
3 (defined below) hereby files this First Amended Complaint against Defendants AMERICAN
4 HONDA MOTOR CO., INC., a California Corporation; and DOES 1-100, inclusive, (collectively
5 referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges
6 as follows:

7 **JURISDICTION AND VENUE**

8 1. This court possesses original subject matter jurisdiction over this matter. Venue is
9 proper in the County of Los Angeles pursuant to California Code of Civil Procedure section 395.5
10 because DEFENDANTS transact business within this judicial district, DEFENDANTS employed
11 PLAINTIFF to work in this judicial district and some of the acts, omissions, and conduct alleged by
12 PLAINTIFF herein occurred in this this judicial district. *See also Crestwood Behavioral Health,*
13 *Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a PAGA action is proper in any county
14 where the defendants committed Labor Code violations against some of its employees).

15 **THE PARTIES**

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

18 3. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
19 DEFENDANTS as a non-exempt employee with a job title of material handler and/or a similar
20 title(s) and/or position(s) from in or around 2011 through in or around May 2022 and continued to
21 receive inaccurate wage statements through the separation of his employment, in or around June
22 2023.

23 4. PLAINTIFF worked for DEFENDANTS at DEFENDANTS’ Torrance, California
24 location(s). PLAINTIFF regularly worked at least ten (10) to thirteen (13) hours per day hours, at
25 least five (5) days per week.

26 5. Defendant AMERICAN HONDA MOTOR CO., INC. is a California Corporation
27 that, at all relevant times, was authorized to do business within the State of California and is doing
28 business in the State of California.

1 6. DEFENDANTS own, operate, manage and/or staff its employees to work at the
2 warehouses, manufacturing centers, offices, facilities and/or other location(s) in California,
3 including, but not limited to, the warehouses, manufacturing centers, offices, facilities and/or other
4 locations, in Torrance, California. DEFENDANTS, through its various warehouses, manufacturing
5 centers, offices, facilities and/or other locations serve the manufacturing and/or automotive
6 industry.¹

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

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

23 **JOINT LIABILITY**

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

28

¹ See <https://www.honda.com/>. Last visited on September 13, 2023.

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

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

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

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

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

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

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

15. PLAINTIFF is informed and believes that DEFENDANTS exercised the same control over, applied the same policies and practices, and engaged in the same acts and omissions with regard to the other Class Members and Aggrieved Employees.

CLASS ALLEGATIONS

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

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

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

b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment because common questions of law and fact predominate over individual issues. Common questions include, but are not limited to, the following: (1) whether DEFENDANTS understated hours worked and failed to pay all amounts due to PLAINTIFF and the Class Members for wages earned, including minimum and overtime wages, under California law; (2) whether DEFENDANTS provided PLAINTIFF and the Class Members with all meal periods or premium payments in lieu thereof in compliance with California law; (3) whether DEFENDANTS

1 provided PLAINTIFF and the Class Members with all rest periods or premium
2 payments in lieu thereof, in compliance with California law; (4) whether
3 DEFENDANTS provided PLAINTIFF and Class Members with accurate,
4 itemized wage statements in compliance with California law, displaying,
5 including but not limited to, the total hours worked during the pay period; (5)
6 whether DEFENDANTS timely paid PLAINTIFF and the Class Members all
7 wages due upon separation of employment; (6) whether DEFENDANTS failed
8 to reimburse PLAINTIFF and the Class Members for all business expenses; and
9 (7) whether DEFENDANTS violated California Business and Professions Code
10 sections 17200, *et seq.*

- 11 c. Ascertainable Class. The proposed Class is ascertainable as members can be
12 identified and located using information in DEFENDANTS' business, payroll
13 and personnel records.
- 14 d. Typicality. PLAINTIFF's claims are typical of the claims of the Class Members.
15 PLAINTIFF suffered a similar injury as members of the Class as a result of
16 DEFENDANTS' common practices regarding, *inter-alia*, failure to calculate
17 and pay all owed minimum and overtime wages, failure to provide proper meal
18 periods and rest periods or premium compensation in lieu thereof, failure to
19 provide accurate wage statements, failure to reimburse business expenses, and
20 failure to timely pay all wages due upon separation of employment.
- 21 e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the
22 Class Members. PLAINTIFF has no interests adverse to the interests of the other
23 Class Members. Counsel who represent PLAINTIFF are competent and
24 experienced in litigating similar class action cases and are California lawyers in
25 good standing. Counsel for PLAINTIFF have the experience and resources to
26 vigorously prosecute this case.
- 27 f. Superiority. A class action is superior to other available means for the fair and
28 efficient adjudication of this controversy since individual joinder of all members

1 of the class is impractical. Class action treatment will permit a large number of
2 similarly situated persons to prosecute their common claims in a single forum
3 simultaneously, efficiently, and without the unnecessary duplication of effort
4 and expense that numerous individual actions would engender. Furthermore, as
5 the damages suffered by each individual member of the Class may be relatively
6 small, the expenses and burden of individual litigation would make it difficult
7 or impossible for individual members of the Class to redress the wrongs done to
8 them, while an important public interest will be served by addressing the matter
9 as a class action. The cost to the court system of adjudication of such
10 individualized litigation would be substantial. Individualized litigation would
11 also present the potential for inconsistent or contradictory judgments. Finally,
12 the alternative of filing a claim with the California Labor Commissioner is not
13 superior, given the lack of discovery in such proceedings, the fact that there are
14 fewer available remedies, and the losing party has the right to a trial de novo in
15 the Superior Court.

16 **FACTUAL AND LEGAL ALLEGATIONS**

17 17. During the relevant period, PLAINTIFF, and each of the Class Members and
18 Aggrieved Employees worked for DEFENDANTS in the State of California. At all times referenced
19 herein, DEFENDANTS exercised control over PLAINTIFF and Class Members and Aggrieved
20 Employees, and suffered and/or permitted them to work.

21 18. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
22 DEFENDANTS as a non-exempt employee with a job title of material handler and/or a similar
23 title(s) and/or position(s) from in or around 2011 through in or around May 2022 and continued to
24 receive inaccurate wage statements through the separation of his employment, in or around June
25 2023.

26 19. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Torrance, California
27 location(s). PLAINTIFF regularly worked at least ten (10) to thirteen (13) hours per day hours, at
28 least five (5) days per week.

1 20. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by
2 DEFENDANTS as hours worked. At all relevant times, PLAINTIFF was a non-exempt employee
3 that was paid on an hourly basis for time counted by DEFENDANTS as hours worked.

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

11 22. Based on information and belief, DEFENDANTS implemented a policy and/or
12 practice of rounding meal period start and end times and/or automatically deducting at least thirty
13 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
14 PLAINTIFF and other Class Members and Aggrieved Employees were subject to DEFENDANTS'
15 control during purported meal periods and/or were otherwise not afforded lawful meal periods,
16 depriving PLAINTIFF and Class Members and Aggrieved Employees of all wages owed.

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

21 24. For example, based on information and belief, at times, Class Members and
22 Aggrieved Employees were required to stand in line behind other employees to access
23 DEFENDANTS' time-keeping system and/or were required to spend time reinitiating
24 DEFENDANTS' time-keeping system before they could clock in for the start of their shifts and/or
25 after completing a purported meal period.

26 25. For example, PLAINTIFF was typically required to spend at least approximately two
27 (2) to three (3) minutes each workday waiting in line to utilize DEFENDANTS' timekeeping system
28 so PLAINTIFF could clock in for the start of PLAINTIFF's shift, resulting in pre-shift off-the-clock

1 work during most if not all shifts PLAINTIFF worked and the underpayment of wages owed to
2 PLAINTIFF.

3 26. Based on information and belief, DEFENDANTS required Class Members and
4 Aggrieved Employees to be at their assigned workstations at the start of a scheduled shift, thereby
5 forcing Class Members and Aggrieved Employees to gather work-related equipment and/or safety
6 gear, make any necessary adjustments to tools/equipment and/or perform maintenance/cleaning
7 tasks, don work clothing/uniforms and/or protective equipment, and/or complete other work tasks
8 prior to their scheduled shift and/or prior to clocking in/signing in, thereby resulting in pre-shift off-
9 the-clock work.

10 27. Based on information and belief, Class Members and Aggrieved Employees were
11 required to complete other off-the-clock work tasks after clocking out for the end of their shifts
12 and/or during uncompensated meal periods, resulting in off-the-clock work and the underpayment
13 of minimum and overtime wages owed to Class Members and Aggrieved Employees. For example,
14 based on information and belief, DEFENDANTS required Class Members and Aggrieved
15 Employees to clock out for the end of their shifts but to continue working due to the need to
16 return/maintain tools, clean and/or organize their work stations/areas, provide shift status updates
17 and/or debriefings and/or participate in work meetings, respond to work-related communications
18 and/or perform other work tasks off-the-clock, resulting in the underpayment of minimum wages
19 and overtime wages owed to Class Members and Aggrieved Employees.

20 28. Based on information and belief, DEFENDANTS did not compensate Class
21 Members and Aggrieved Employees for all time spent donning and doffing personal protective
22 equipment, safety equipment and/or uniforms/work clothing (e.g., gloves, goggles/safety glasses,
23 hard hats/bump caps/safety helmets and/or face masks) during meal periods, before the start of a
24 scheduled shift, and after completing a scheduled shift, resulting in DEFENDANTS' failure to pay
25 Class Members and Aggrieved Employees for all work time and the underpayment of minimum
26 wages and overtime wages owed to Class Members and Aggrieved Employees.

27 29. Based on information and belief, at times, DEFENDANTS' electronic employee
28 time-keeping system/app malfunctioned such that Class Members and Aggrieved Employees were

1 required to either reinitiate and/or otherwise troubleshoot the system prior to being able to clock in
2 and/or were unable to clock in at all for the start of their shifts and/or clock back in from meal
3 periods, resulting in off-the-clock work and the underpayment of wages owed to Class Members
4 and Aggrieved Employees. Based on information and belief, Class Members and Aggrieved
5 Employees experienced the same issues when clocking out for shifts and/or back in for meal periods.
6 This time spent under DEFENDANTS' control was not recorded and not compensated and resulted
7 in unpaid minimum wages owed to Class Members and Aggrieved Employees.

8 30. Based on information and belief, Class Members and Aggrieved Employees were
9 required to undergo security screenings and/or other mandated screenings before and/or after a
10 scheduled shift and/or before or after clocking in/out for work, resulting in pre-shift and/or post-
11 shift off-the-clock work.

12 31. Based on information and belief, DEFENDANTS required Class Members and
13 Aggrieved Employees to undergo COVID-19 temperature screenings and/or complete
14 questionnaires prior to beginning their scheduled shift and/or prior to clocking/signing in, thereby,
15 resulting in pre-shift off-the-clock work.

16 32. Based on information and belief, Class Members and Aggrieved Employees were
17 also pressured to complete at least some additional work tasks off-the-clock in order to meet
18 DEFENDANTS' goals and expectations.

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

25 34. Based on information and belief, DEFENDANTS failed to pay Class Members and
26 Aggrieved Employees the applicable minimum wage for the county and/or city within which the
27 Class Member worked in California.

28 35. Based on information and belief, DEFENDANTS failed to pay Class Members and

1 Aggrieved Employees for time they were required to spend completing orientation, policy
2 questionnaires, and/or time spent completing the onboarding process including but not limited to
3 reviewing various documents and policies provided by DEFENDANTS. Based on information and
4 belief, this work time was completed off-the-clock and was not compensated.

5 36. Based on further information and belief, DEFENDANTS implemented a time-
6 rounding system that as applied systematically deprived PLAINTIFF and other Class Members and
7 Aggrieved Employees of compensable time because the time-rounding system implemented by
8 DEFENDANTS would almost always, if not always, result in understating actual compensable work
9 time.

10 37. Based on information and belief, DEFENDANTS paid Aggrieved Employees that
11 worked in the County of Los Angeles according to California minimum wage rather than minimum
12 wage established for the County of Los Angeles for an employer who employees 26 or more
13 employees. Based on information and belief, DEFENDANTS calculated the owed overtime rate(s)
14 based on the California minimum wage rate as opposed to calculating the overtime rate(s) based on
15 the minimum wage established for the County of Los Angeles, resulting in the miscalculation and
16 underpayment of overtime wages owed to Aggrieved Employees who worked in the County of Los
17 Angeles.

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

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

1 40. Based on information and belief, DEFENDANTS failed and continue to fail to pay
2 Class Members and Aggrieved Employees two times their regular rate of pay for time worked
3 beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh
4 consecutive day of work in a work week, in violation of California's overtime laws.

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

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

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

24 44. For example, based on information and belief, PLAINTIFF and other Class Members
25 and Aggrieved Employees were not required to clock out for any meal periods nor did
26 DEFENDANTS provide them with any mechanism with which to do so. Instead, DEFENDANTS
27 automatically deducted at least thirty minutes per shift for missed, shortened, interrupted and/or on-
28 duty meal periods (including meal periods restricted to DEFENDANTS' premises), despite having

1 actual and/or constructive knowledge that PLAINTIFF and other Class Members and Aggrieved
2 Employees did not receive lawful meal periods.

3 45. For example, based on information and belief, PLAINTIFF and other Class Members
4 and Aggrieved Employees were not required to clock out for any meal periods nor did
5 DEFENDANTS provide them with any mechanism with which to do so. Instead, DEFENDANTS
6 automatically deducted at least thirty minutes per shift for missed, shortened, interrupted and/or on-
7 duty meal periods (including meal periods restricted to DEFENDANTS' premises), despite having
8 actual and/or constructive knowledge that PLAINTIFF and other Class Members and Aggrieved
9 Employees did not receive lawful meal periods.

10 46. Based on information and belief, other Class Members and Aggrieved Employees
11 were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had
12 their meal periods interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise
13 on duty due to commentary from supervisors, understaffing, the nature and constraints of their job
14 duties, and/or the need to meet DEFENDANTS' goals and expectations.

15 47. Based on information and belief, DEFENDANTS implemented policies and/or
16 practices that failed to relieve Class Members and Aggrieved Employees of all duties and
17 DEFENDANTS' control during unpaid meal periods.

18 48. Based on information and belief, DEFENDANTS required Class Members and
19 Aggrieved Employees to complete off-the-clock work prior to their scheduled shift time which
20 DEFENDANTS failed to take into account when scheduling meal periods for Class Members and
21 Aggrieved Employees. Based on information and belief, meal periods were late, in part due to
22 unaccounted pre-shift off-the-clock work.

23 49. Based on information and belief, despite DEFENDANTS' failure to provide lawful
24 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
25 times of PLAINTIFF's and other Class Members and Aggrieved Employees' meal periods and/or
26 automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal
27 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Class
28 Members and Aggrieved Employees did not receive lawful meal periods.

1 50. Moreover, per DEFENDANTS' uniform policy and practice, Class Members and
2 Aggrieved Employees who worked shifts of more than ten hours did not receive a second legally
3 compliant thirty (30) minute second meal period.

4 51. For example, when PLAINTIFF worked more than ten (10) and/or twelve (12) hours
5 in a shift, PLAINTIFF was frequently required to work through part or all of PLAINTIFF's second
6 meal period.

7 52. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
8 other Class Members and Aggrieved Employees as to the timing and duty-free nature of meal
9 periods. Based on further information and belief, DEFENDANTS did not have a written meal period
10 policy, nor did DEFENDANTS have any sort of compliant policy in practice.

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

18 54. Based on information and belief, DEFENDANTS had actual and/or constructive
19 knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which
20 were free of DEFENDANTS' control owed to PLAINTIFF and other Class Members and Aggrieved
21 Employees, in violation of California's meal period laws.

22 55. DEFENDANTS failed to pay PLAINTIFF and other Class Members and Aggrieved
23 Employees, an additional hour of wages at their respective regular rates of compensation for each
24 workday a lawful meal period was not provided. DEFENDANTS either failed to pay a meal period
25 premium at all for each workday a lawful meal period was not provided and/or failed to pay the
26 proper meal period premium for failure to incorporate all non-discretionary remuneration, including
27 but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into
28 the regular rate or compensation for purposes of calculating the owed meal period premium.

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

5 57. PLAINTIFF and other Class Members and Aggrieved Employees were not
6 adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest
7 periods per California law. Based on information and belief, DEFENDANTS had no policy in place
8 nor instruction as to the taking of duty-free rest periods.

9 58. Based on information and belief, DEFENDANTS did not have a have a compliant
10 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
11 practice.

12 59. For example, based on information and belief, Class Members and Aggrieved
13 Employees were at times unable to take compliant rest periods due to their need to complete assigned
14 job duties and/or were unable to take a net ten-minute rest period in a suitable rest area and/or had
15 purported rest periods restricted to DEFENDANTS' premises.

16 60. Also, DEFENDANTS failed to provide PLAINTIFF and other Class Members and
17 Aggrieved Employees with any version of a third rest period on shifts lasting longer than ten (10)
18 hours.

19 61. Based on information and belief, Class Members and Aggrieved Employees' rest
20 periods were interrupted, cut short, on duty, restricted to premises and/or late due to understaffing,
21 the nature and constraints of their job duties, and/or due to commentary from supervisors/managers
22 pressuring them to skip rest periods completely or otherwise take non-compliant rest periods.

23 62. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
24 lasting longer than ten hours. For example, as explained above DEFENDANTS failed to provide
25 PLAINTIFF and other Class Members and Aggrieved Employees with any version of a third rest
26 period on shifts lasting longer than ten (10) hours.

27 63. Based on information and belief, DEFENDANTS implemented policies and/or
28 practices that failed to relieve PLAINTIFF and other Class Members and Aggrieved Employees of

1 all duties and DEFENDANTS' control during rest periods.

2 64. Based on information and belief, Class Members and Aggrieved Employees were
3 pressured to complete their work duties according to a designated schedule such that rest periods
4 were only taken once tasks were completed, and/or as time permitted.

5 65. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
6 which PLAINTIFF and Class Members and Aggrieved Employees experienced a missed/unlawful
7 rest period in violation of California law. DEFENDANTS either failed to pay a rest period premium
8 at all for each workday a proper rest period was not provided and/or failed to pay the proper rest
9 period premium for failure to incorporate all non-discretionary remuneration, including but not
10 limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
11 regular rate of compensation for purposes of calculating the owed rest period premium.

12 66. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
13 provide PLAINTIFF and other Class Members and Aggrieved Employees with accurate wage
14 statements that complied with Labor Code section 226. As DEFENDANTS failed to provide
15 PLAINTIFF and Class Members and Aggrieved Employees with meal and rest periods that
16 complied with Labor section 226.7, the wage statements DEFENDANTS issued to PLAINTIFF and
17 Class Members and Aggrieved Employees failed and continue to fail to correctly set forth the gross
18 wages earned, the total hours worked, the net wages earned, and all applicable hourly rates in effect
19 during the pay period and the corresponding number of hours worked at each hourly rate by the
20 employee.

21 67. DEFENDANTS issued wage statements to PLAINTIFF and Class Members and
22 Aggrieved Employees that also failed to indicate the earned gross and net wages earned during the
23 pay period, the correct applicable rates of pay for all hours worked, and the total hours worked by
24 PLAINTIFF and Class Members and Aggrieved Employees (by virtue of rounded time entries,
25 automatic deduction for meal periods/failure to relieve Class Members and Aggrieved Employees
26 of all duties and employer control during unpaid meal periods, payment according to scheduled
27 hours worked rather than actual hours worked, and/or other off-the-clock work policies and
28 practices) which results in a violation of Labor Code section 226(a).

1 68. Separately, and independent of the above allegations, based on information and
2 belief, DEFENDANTS issued wage statements to Class Members and Aggrieved Employees that
3 failed to list the total hours worked during the pay period, in violation of, including but not limited
4 to, Labor Code section 226(a)(2).

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

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

13 71. For example, based on information and belief, DEFENDANTS issued wage
14 statements to Class Members and Aggrieved Employees that do not provide an accurate overtime
15 rate because instead of multiplying the regular rate of pay by one and one-half, the wage statements
16 either fail to provide an accurate overtime rate of pay that incorporates all non-discretionary
17 remuneration and/or the wage statements provide at least two (2) separate rate categories with
18 each/all providing corresponding rates that are either the same as the base and/or list a rate that is
19 half the base rate of pay and/or otherwise fail to list the accurate overtime rate of pay, further
20 requiring Class Members and Aggrieved Employees to perform extensive calculations to determine
21 what their pay rate was for each corresponding hour worked. See, e.g., *McKenzie v. Fedex*, 765 F.
22 Supp. 2d 1222 (C.D. Cal. 2011). As such, DEFENDANTS do not list an accurate overtime rate
23 anywhere on wage statements issued to Class Members and Aggrieved Employees, in violation of
24 California law, including but not limited to, Labor Code section 226(a)(9).

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

27 73. Also, DEFENDANTS' wage statements do not show the rate of pay for all payments
28 received, including but not limited to payments categorized as awards and/or bonuses. For example,

1 PLAINTIFF received a payment categorized as an Award, but no pay period and/or rate of pay was
2 associated with the purported Award, such that PLAINTIFF could not determine whether he
3 received the full amount owed to him, in violation of, including but not limited to, Labor Code
4 sections 226(a)(6) and/or 226(a)(9).

5 74. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Class
6 Members and Aggrieved Employees that were not accurate and did not include all of the statutorily
7 required information. As such, DEFENDANTS violated Labor Code section 226.

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

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

19 77. For example, DEFENDANTS did not furnish PLAINTIFF with any final paycheck
20 for at least approximately one (1) to two (2) weeks following the date of separation of PLAINTIFF's
21 employment, and PLAINTIFF's late final paycheck was devoid of all wages owed, including
22 without limitation, all owed minimum wages, overtime wages, premium wages, vacation pay, all
23 owed sick leave and/or paid time off wages at the properly accrued rates, (including but not limited
24 to, all owed vacation pay/paid time off paid at the final rate including non-discretionary
25 compensation, including but not limited to, shift differentials).

26 78. Based on further information and belief, DEFENDANTS failed to timely provide all
27 owed wages immediately upon discharge of employment. Based in information and belief, at times,
28 Class Members and Aggrieved Employees experienced breaks in employment caused by

1 DEFENDANTS whereby Class Members and Aggrieved Employees would not be called in for work
2 for longer than a single pay period due to including but not limited to DEFENDANTS' lack of work
3 or lack of assignments. Such instances qualify as a discharge of employment. Yet, DEFENDANTS
4 failed to timely pay all owed wages at the end of such periods of employment, in violation of
5 including but not limited to Labor Code section 201-202.

6 79. These violations subject DEFENDANTS to civil penalties under Labor Code section
7 203, 210, and/or 256.

8 80. **Unreimbursed Business Expenses.** Based on information and belief,
9 DEFENDANTS required PLAINTIFF and Class Members and Aggrieved Employees to incur
10 business expenses as a direct consequence of the performance of their job duties without providing
11 reimbursement, in violation of Labor Code section 2802. Based on information and belief,
12 PLAINTIFF and Class Members and Aggrieved Employees were improperly required to provide
13 and maintain work tools that are supposed to be the responsibility of the employer.

14 81. Based on information and belief, DEFENDANTS shifted the costs of doing business
15 onto PLAINTIFF and other Class Members and Aggrieved Employees requiring them to pay for
16 business expenses. including but not limited to, uniforms/work clothing/work shoes/personal
17 protective/safety gear and the use of Class Members and Aggrieved Employees' personal cell
18 phones/mobile devices, internet and/or data usage for work-related purposes, including but not
19 limited to, to receive and respond to work-related messages and/or phone calls.

20 82. For example, based on information and belief, Class Members and Aggrieved
21 Employees were required to receive and respond to work-related calls and/or messages from
22 supervisors and/or other Class Members and Aggrieved Employees regarding scheduling and/or
23 other work tasks but were not reimbursed by DEFENDANTS at all and/or in full for these business
24 expenses.

25 83. For example, DEFENDANTS required PLAINTIFF to respond to work-related calls
26 and/or messages during most if not all shifts PLAINTIFF worked, yet DEFENDANTS did not
27 provide PLAINTIFF with any reimbursement for being required to use his personal cell
28 phone/mobile device for work.

1 84. Based on information and belief, Class Members and Aggrieved Employees were
2 not reimbursed for the cost of purchasing and/or maintaining their own hand tools and/or equipment
3 required to perform their assigned job duties and/or for the costs of purchasing and/or maintaining
4 work uniforms/clothing/shoes and/or protective gear (e.g., gloves and/or face masks).

5 85. For example, PLAINTIFF and other Class Members and Aggrieved Employees were
6 required to purchase face masks and/or hand sanitizers and/or other tools and/or protective
7 equipment required for work, yet DEFENDANTS did not provide PLAINTIFF and other Class
8 Members and Aggrieved Employees with any and/or full reimbursement for these business
9 expenses.

10 86. Based on information and belief, at times, Class Members and Aggrieved Employees
11 were not reimbursed for the business use of their personal vehicles, including mileage, wear and
12 tear and/or cost of fuel when they were required to drive around and/or between job sites, and/or
13 otherwise use their personal vehicles in carrying out the duties assigned by DEFENDANTS. As
14 such, DEFENDANTS failed to compensate Class Members and Aggrieved Employees at the legally
15 mandated Internal Revenue Service (IRS) per mile compensation rates in effect during the relevant
16 period.

17 87. As explained above, based on information and belief, Class Members and Aggrieved
18 Employees were not reimbursed for the cost of using their personal phone for work-related purposes
19 and/or the cost of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal
20 protective/safety gear.

21 88. Based on information and belief, DEFENDANTS regularly failed to reimburse and
22 indemnify Class Members and Aggrieved Employees for business expenses. Pursuant to California
23 Labor Code section 2802, PLAINTIFF and Class Members and Aggrieved Employees were entitled
24 to be reimbursed for all reasonable expenses associated with carrying out DEFENDANTS' orders
25 and/or carrying out the duties assigned by DEFENDANTS.

26 89. DEFENDANTS' failure to provide Class Members and Aggrieved Employees with
27 full reimbursement for all reasonable expenses associated with carrying out their duties required
28 that Class Members and Aggrieved Employees subsidize and/or carry the burden of business

1 expenses in violation of Labor Code section 2802.

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

5 **FIRST CAUSE OF ACTION**

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

7 91. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

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

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

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

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

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

10 **SECOND CAUSE OF ACTION**
11 **Recovery of Unpaid Overtime Wages**
12 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

13 98. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

14 99. Employees in California must be paid overtime, equal to one and one-half times the
15 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
16 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
17 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
18 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
19 consecutive day of work in a workweek, unless they are exempt.

20 100. PLAINTIFF and the Class Members worked overtime hours for which they were not
21 compensated by DEFENDANTS by virtue of, among other things, DEFENDANTS' time rounding,
22 automatic deduction for meal periods, off-the-clock/unpaid work completed during meal periods,
23 other pre-shift, post-shift and/or otherwise off-the-clock work, and/or payment according to
24 scheduled hours worked rather than actual hours worked (described above), and/or other unlawful
25 policies and/or practices described above which resulted in unpaid minimum and overtime wages
26 which resulted in the failure to account for all hours worked and thus the denial of all owed overtime
27 wages.

28 101. Based on information and belief, DEFENDANTS failed to pay twice Class
Members' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for

1 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in
2 violation of California's overtime laws.

3 102. Based on information and belief, DEFENDANTS further violated California's
4 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
5 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
6 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
7 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
8 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
9 other Class Members.

10 103. DEFENDANTS' conduct described above is in violation of California Labor Code
11 sections 510 and 1194 and all applicable Wage Orders.

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

14 **THIRD CAUSE OF ACTION**

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

16 105. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

17 106. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
18 DEFENDANTS were required to provide PLAINTIFF and the Class Members with one 30-minute
19 meal break free from all duties and employer control for all shifts longer than 5 hours, and a second
20 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be
21 waived, but only under the following circumstances: (1) if an employee's total work period in a day
22 is over five (5) hours but no more than six (6) hours, the required meal period may be waived by
23 mutual consent of the employer and employee, and (2) if an employee's total work period in a day
24 is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be
25 waived by mutual consent of the employer and employee, but only if the first meal period was not
26 waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their
27 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
28 done so.

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

5 108. As explained above, PLAINTIFF and other Class Members were consistently unable
6 to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being
7 forced to take late meal periods, interrupted meal periods, and/or work through part or all of their
8 meal periods due to understaffing, the nature and constraints of their job duties, and/or commentary
9 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
10 completely.

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

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

17 111. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
18 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
19 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in
20 violation of California's meal period laws.

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

26 113. As a result, under Labor Code section 226.7, PLAINTIFF and the Class Members
27 are entitled to one additional hour's pay at the employee's regular rate of compensation for each day
28 a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and costs,

1 all in an amount to be proved at trial.

2 **FOURTH CAUSE OF ACTION**

3 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
4 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

5 114. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

16 116. If the employer fails to provide any required rest period, the employer must pay the
17 employee one hour of pay at the employee’s regular rate of compensation for each workday the
18 employer did not provide at least one legally required rest period, pursuant to Labor Code section
19 226.7.

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

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

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

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

14 121. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
15 period premium to PLAINTIFF and other Class Members for each workday in which there was a
16 missed or otherwise unlawful rest period. Based on further information and belief, when a rest
17 premium was paid, DEFENDANTS failed to include non-discretionary compensation including but
18 not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
19 regular rate of compensation for purposes of determining the owed rest period premium.

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

25 **FIFTH CAUSE OF ACTION**

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

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

28 124. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFF and the Class

1 Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized
2 wage statement accurately stating the following:

3 (1) gross wages earned, (2) total hours worked by the employee,
4 except for any employee whose compensation is solely based on a
5 salary and who is exempt from payment of overtime under
6 subdivision (a) of Section 515 or any applicable order of the Industrial
7 Welfare Commission, (3) the number of piece-rate units earned and
8 any applicable piece rate if the employee is paid on a piece-rate basis,
9 (4) all deductions, provided that all deductions made on written orders
10 of the employee may be aggregated and shown as one item, (5) net
11 wages earned, (6) the inclusive dates of the period for which the
12 employee is paid, (7) the name of the employee and his or her social
13 security number, except that by January 1, 2008, only the last four
14 digits of his or her social security number or an employee
15 identification number other than a social security number may be
16 shown on the itemized statement, (8) the name and address of the
17 legal entity that is the employer, and (9) all applicable hourly rates in
18 effect during the pay period and the corresponding number of hours
19 worked at each hourly rate by the employee.

12 125. As DEFENDANTS failed to provide PLAINTIFF and other Class Members with
13 meal and rest periods that complied with Labor Code section 226.7, the wage statements
14 DEFENDANTS issued to PLAINTIFF and other Class Members failed and continue to fail to
15 correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the
16 total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages
17 earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect
18 during the pay period and the corresponding number of hours worked at each hourly rate by the
19 employee, in violation of Labor Code section 226(a)(9).

20 126. Moreover, due to violations detailed above, including but not limited to,
21 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide
22 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
23 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
24 PLAINTIFF and other Class Members with accurate, itemized wage statements that listed the gross
25 and net wages earned and the correct applicable rates of pay for all hours worked. Based on
26 information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
27 compensation earned during the pay period into the regular rate of pay for purposes of calculating
28

1 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
2 overtime worked by PLAINTIFF and other Class Members.

3 127. As explained above, wage statements issued by DEFENDANTS failed to list the
4 “total hours worked” by PLAINTIFF and Class Members (by virtue of rounded time entries,
5 automatic deduction for meal periods/failure to relieve Class Members of all duties and employer
6 control during unpaid meal periods, payment according to scheduled hours worked rather than actual
7 hours worked, and/or other off-the-clock work policies and practices all described in greater detail
8 *supra*), which results in a violation of Labor Code section 226(a).

9 128. Separately, and independent of the above allegations, based on information and
10 belief, DEFENDANTS issued wage statements to Class Members that failed to list the total hours
11 worked during the pay period, in violation of, including but not limited to, Labor Code section
12 226(a)(2).

13 129. Failure to list all hours worked on a wage statement, gives rise to an inference of
14 injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th
15 1308, 1337).

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

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

21 132. DEFENDANTS’ failure to accurately list all hours worked on all wage statements
22 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Class
23 Members over whether they received all wages owed to them.

24 133. As a result, PLAINTIFF and other Class Members have suffered injury as they could
25 not easily determine whether they received all wages owed to them and whether they were paid for
26 all hours worked.

27 134. Based on information and belief, wage statements issued by DEFENDANTS failed
28 to list all applicable hourly rates in effect during the pay period and the corresponding number of

1 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

2 135. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
3 Class Members with accurate, itemized wage statements.

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

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

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

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

28 ///

SIXTH CAUSE OF ACTION

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

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

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

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

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

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

SEVENTH CAUSE OF ACTION

**Failure to Reimburse Business Expenses
(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

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

146. California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable Wage Orders section 9(b). Furthermore, “for purposes of [section 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees

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

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

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

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

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

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

22 **EIGHTH CAUSE OF ACTION**

23 **Unfair Competition**

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

25 152. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

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

11 154. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
12 California Labor Code, DEFENDANTS have gained a competitive advantage over other
13 comparable companies doing business in the State of California that comply with their obligations
14 to authorize or permit rest periods and meal periods or pay proper meal and rest period premiums
15 in lieu thereof, to properly accrue and pay sick time benefits, to provide complete and accurate
16 itemized wage statements, to reimburse employees for all business expenses, to pay all owed
17 minimum and overtime wages and to pay all wages due upon separation of employment of their
18 employees.

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

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

28 ///

1 **NINTH CAUSE OF ACTION**

2 **Violation of the Private Attorneys General Act of 2004**
3 **(By PLAINTIFF and the Aggrieved Employees Against All DEFENDANTS)**

4 157. PLAINTIFF incorporates all preceding paragraphs as if full alleged herein.

5 158. PLAINTIFF brings this action under the Private Attorneys General Act of 2004,
6 Labor Code sections 2698, et seq., ("PAGA"), as a representative action on behalf of PLAINTIFF,
7 the State of California and Aggrieved Employees, regarding violations of the California Labor Code
8 as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

9 All current and former non-exempt employees that worked either
10 directly or via a staffing agency for any one or more of the
11 DEFENDANTS at any location in California at any time from one
12 year plus 65 days from the filing of the initial Complaint through the
13 present ("PAGA Period").

14 159. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
15 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
16 limitations period and suffered one or more of the Labor Code violations set forth herein.
17 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California and all Aggrieved
18 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
19 PLAINTIFF has standing to bring a PAGA cause of action on behalf of PLAINTIFF, the State of
20 California, and all Aggrieved Employees, as PLAINTIFF was jointly employed by DEFENDANTS
21 and is thereby affected by one or more of the alleged violations. See *Huff v. Securitas Security*
22 *Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties
23 for all known violations committed by the employer - regardless of whether Plaintiff experienced
24 all violations personally. *Id.* at 760-761.

25 **COMPLIANCE WITH PAGA'S NOTIFICATION REQUIREMENTS**

26 160. On August 4, 2023, PLAINTIFF, through counsel, gave written notice by online
27 filing with the California Labor and Workforce Development Agency ("LWDA") informing it that
28 DEFENDANTS failed to comply with California's labor laws with regard to the allegations alleged
in this Complaint ("PAGA Notice").

1 161. The LWDA did not provide notice of its intention to investigate DEFENDANTS'
2 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
3 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
4 Accordingly, PLAINTIFF has exhausted the administrative remedies as required by Labor Code
5 section 2699.3. Consequently, PLAINTIFF's right to file the instant lawsuit against DEFENDANTS
6 has duly accrued.

7 162. PLAINTIFF seeks to recover the PAGA civil penalties through a representative
8 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
9 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

10 163. From one year prior to PLAINTIFF's filing of the required PAGA notice with the
11 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated California
12 Labor Code sections, 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 432, 432.5, 432.7, 510,
13 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all
14 applicable Wage Orders.

15 164. As set forth above, DEFENDANTS have committed numerous violations of the
16 California Labor Code due to including but not limited to their failure to pay all owed minimum
17 wages and all owed overtime wages, failure to provide lawful meal and rest periods or compensation
18 in lieu thereof, failure to provide accurate wage statements, failure to reimburse business expenses,
19 and failure to pay all wages owed upon separation of employment as alleged above. PAGA penalties
20 are in addition to any other relief available under the Labor Code.

21 165. Additionally, DEFENDANTS have violated the following Labor Code sections and
22 provisions of the applicable Wage Order as to the PLAINTIFF and other Aggrieved Employees.

23 **Failure to Keep Accurate Records**

24 166. California Labor Code § 1174 requires employers to keep "accurate and complete"
25 payroll records showing, among other things, the hours worked daily by all non-exempt employees.
26 All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the
27 times during which all owed meal periods were provided each day.

28 167. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate

1 and complete records as required by law, including but not limited to the following records: total
2 daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other
3 Aggrieved Employees began and ended each work period, time records of meal periods, and
4 accurate itemized wage statements.

5 168. DEFENDANTS' failure to keep "accurate and complete" payroll records for
6 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
7 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
8 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
9 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
10 period during which the referenced statutes and Wage Order provisions were violated.²

11 **Failure to Provide Suitable Resting Facilities**

12 169. Per section 13 of all applicable IWC Wage Orders, including but not limited to Wage
13 Order 4, employees shall be provided with suitable resting facilities. Section 13(B) of the Wage
14 Orders provides: "Suitable resting facilities shall be provided in an area separate from the toilet
15 rooms and shall be available to employees during work hours."

16 170. DEFENDANTS' locations/facilities are generally similar in layout and design, and
17 there was, and continues to be, space that allows for a resting facility that employees may use to
18 cease work and recover during meal or rest periods. DEFENDANTS could have provided Aggrieved
19 Employees with a resting facility within DEFENDANTS' facilities/locations with reasonable or no
20 modification, but instead denied and continues to deny, employees with suitable areas to rest (e.g. a
21 breakroom). As a result, Aggrieved Employees were forced to adjust to areas not conducive to
22 resting, including but not limited to leaning up against the wall, or search for facilities outside of
23 DEFENDANTS' premises which are not designated or reserved for their rest, such as their personal
24 vehicles.

25 ² Labor Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Labor
26 Code § 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the
27 employee was underpaid"); All applicable wage orders, § 20 (establishing that "in addition to any other civil
28 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid") (emphasis added).

1 171. DEFENDANTS did not provide Aggrieved Employees with suitable resting facilities
2 during their hours of work, particularly during meal and/or rest periods.

3 172. DEFENDANTS' failure to provide suitable resting facilities to Aggrieved
4 Employees violated and continue to violate the applicable Wage Order, section 13(B) and the
5 California Labor Code, including but not limited to section 1198.

6 **Failure to Provide Written Commission Agreements**

7 173. Labor Code section 2751 requires that all commission contracts "be in writing and .
8 . . set forth the method by which the commissions shall be computed and paid." Cal. Lab. Code
9 section 2751(a) (2012). Under the statute, employers must also "give a signed copy of the contract
10 to every employee who is a party [to the contract] and . . . obtain a signed receipt for the contract
11 from each employee." *Id.* section 2751(b).

12 174. Based on information and belief, DEFENDANTS failed to provide Aggrieved
13 Employees who were compensated on a commission basis with proper written commission
14 agreements, in violation of Labor Code section 2751.

15 **Violation of Labor Code Section 226.2**

16 175. Labor Code section 226.2 requires an employer to pay employees compensated on a
17 piece-rate basis separately for rest and recovery periods and nonproductive time, apart from any
18 piece-rate pay. This statute further requires an employer to include on the wage statements for these
19 employees the total hours of compensable rest and recovery period, the total hours for other non-
20 productive time, the rates of compensation for these hours, and the gross wages paid for these hours.
21 In addition, the statute requires that employees shall be compensated for rest and recovery periods at
22 a regular hourly rate that is no less than the higher of: (i) an average hourly rate determined by
23 dividing the total compensation for the workweek, exclusive of compensation for rest and recovery
24 periods and any premium compensation for overtime, by the total hours worked during the
25 workweek, exclusive of rest and recovery periods, or (ii) The applicable minimum wage. Per case
26 law, Labor Code section 226.2 also applies to employees compensated on a commission basis.

27 176. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
28 Employees who were paid solely on a piece rate and/or commission basis separately for the rest

1 periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based
2 on information and belief, DEFENDANTS further failed to include this information on Aggrieved
3 Employees' wage statements. As such, DEFENDANTS failed to comply with Labor Code section
4 226.2.

5 **Statutory Wage Violations**

6 177. California Labor Code section 223 makes it unlawful for an employer to secretly pay
7 wages lower than required by statute while purporting to pay legal wages. As described above,
8 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
9 earned minimum and overtime compensation for all hours worked which resulted in the payment of
10 less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
11 statutory wages, including, but not limited to, minimum and overtime wages, to which they were
12 entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other Aggrieved
13 Employees lower wages than those they were entitled to while purporting that PLAINTIFF and
14 other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Aggrieved
15 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
16 Labor Code § 2699(f)-(g).

17 **Refusal to Make Payment**

18 178. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
19 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
20 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
21 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
22 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
23 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
24 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
25 each Aggrieved Employee, for each pay period during which the statute provisions were violated.³

26 _____
27 ³ Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

1 **Standard Conditions of Labor Violations**

2 179. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
3 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
4 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
5 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
6 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
7 minimum/overtime wages and other violations described herein result in separate violations of
8 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
9 1197.1 and 2699.

10 **Sick Leave Violations**

11 180. DEFENDANTS violated California's paid sick leave laws including, Labor Code
12 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
13 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
14 DEFENDANTS' failure to account for actual hours worked (as explained above), and/or failure to
15 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but
16 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
17 compensation into the sick leave pay rate calculation.

18 181. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
19 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
20 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
21 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
22 Aggrieved Employees' intelligent exercise of their paid sick leave.

23 182. But for this failure, PLAINTIFF and other Aggrieved Employees would have used
24 their paid sick leave at least prior to their respective separations, for as on several occasions
25 thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate
26 compensation.

27 183. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
28 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all

1 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
2 were entitled to the maximum number of hours accruable.

3 184. Upon information and belief, DEFENDANTS failed and continue to fail to comply
4 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with
5 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
6 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
7 wages.

8 185. These practices violated California's sick leave laws, Labor Code section 245, *et seq.*

9 186. On information and belief, PLAINTIFF alleges that all of these practices were
10 experienced and continue to be experienced by other Aggrieved Employees.

11 187. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the
12 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
13 seeks injunctive relief, attorney's fees, declaratory relief, and penalties as permitted by law.

14 **Failure To Provide Supplemental Paid Sick Leave**

15 188. Labor Code § 248.2 provides that all employers with 26 or more employees are
16 required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental
17 Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related.
18 DEFENDANTS violated Labor Code § 248.2 by not providing PLAINTIFF and other Aggrieved
19 Employees with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information
20 and belief, DEFENDANTS failed to provide Supplemental Paid Sick Leave in 2022 in violation of
21 Labor Code section 248.6.

22 **Failure to Pay Vested Vacation/Paid Time Off**

23 189. California Labor Code section 227.3 provides that when an employer policy provides
24 for paid vacations and/or paid time off, and an employee is terminated without having taken off his,
25 her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the
26 employee's final rate in accordance with such contract of employment or employer policy respecting
27 eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time
28 off upon termination.

1 190. Based on information and belief, DEFENDANTS had and continue to have a
2 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
3 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
4 (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-
5 discretionary compensation, including but not limited to, shift differentials) to Aggrieved
6 Employees upon separation of employment, in violation of California law, including but not limited
7 to, Labor Code section 227.3.

8 **Unlawful Deductions**

9 191. Labor Code section 221 prohibits an employer from “collect[ing] or receiv[ing] from
10 an employee any part of wages theretofore paid by said employer to said employee.” Based on
11 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees
12 paychecks during the relevant period including but not limited to, deducting costs of uniforms and/or
13 other business costs and/or deducting wages for purported overpayments from previous pay periods
14 and/or unlawfully deducting wages for negligently damaged property. Such a practice is in violation
15 of including but not limited to, Labor Code Sections 221-222 which subjects DEFENDANTS to
16 civil penalties under Labor Code Section 2699.

17 192. Each violation results in a separate civil penalty, for each Aggrieved Employee, for
18 each pay period during which the statute provisions were violated. See Lab. Code §225.5
19 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
20 provided in this article, every person who unlawfully withholds wages due any employee in
21 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure
22 to pay each employee”).

23 **Reporting Time Pay Violations.**

24 193. Section 5 of all applicable IWC Wage Orders, provides as follows:

25 194. (A) Each workday an employee is required to report for work and does report, but is
26 not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the
27 employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two
28 (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less

1 than the minimum wage. (B) If an employee is required to report for work a second time in any one
2 workday and is furnished less than two (2) hours of work on the second reporting said employee
3 shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the
4 minimum wage.

5 195. Based on information and belief, Aggrieved Employees not paid reporting time
6 wages in accordance with California law, including but not limited to the applicable IWC Wage
7 Order. For example, based on information and belief, at times, Aggrieved Employees reported to
8 work for a scheduled shift but were sent home and/or were not put to work and were not paid all
9 owed reporting time pay wages in accordance with California law.

10 196. Based on information and belief, DEFENDANTS have a policy and practice of
11 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,
12 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS' failure to
13 pay all reporting time wages to Aggrieved Employees violated and continues to violate the
14 applicable Wage Order, and the California Labor Code, including but not limited to section 1198.

15 **Violation of California Day of Rest Law**

16 197. Under California law, every employee in California is "entitled" to "one day's rest
17 [from labor] in seven"; and, no employer may "cause" its employees "to work more than six days in
18 seven." See Labor Code Sections 551 and 552. Labor Code section 553 provides that a violation of
19 the foregoing sections is a misdemeanor.

20 198. Based on information and belief, DEFENDANTS have and continue to have a
21 uniform policy and practice of requiring Aggrieved Employees to work at least seven days
22 consecutively in a workweek, in violation of including but not limited to, Labor Code Section
23 551. Based on information and belief, Aggrieved Employees were suffered, permitted, or required
24 to work at least seven (7) days consecutively in a workweek, in violation of California law, including
25 but not limited to Labor Code Section 551.

26 **Seating Violations**

27 199. Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be
28 provided with suitable seats when the nature of the work reasonably permits the use of seats and

1 when they are not actively engaged in the work duties that would not permit them to be seated.

2 200. All applicable IWC Wage Orders, Section 14(A-B) provides:

3 (A) All working employees shall be provided with suitable seats when the nature of the
4 work reasonably permits the use of seats.

5 (B) When employees are not engaged in the active duties of their employment and the
6 nature of the work requires standing, an adequate number of suitable seats shall be placed in
7 reasonable proximity to the work area and employees shall be permitted to use such seats when it
8 does not interfere with the performance of their duties.

9 201. Suitable seating is one of the worker protections covered by California's Wage
10 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly
11 construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker*
12 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

13 202. Based on information and belief, DEFENDANTS failed to provide other Aggrieved
14 Employees with suitable seating, and when such employees were not engaged in duties which
15 required them to stand, no seating was placed in reasonable proximity to their workstations.

16 203. Moreover, based on information and belief, the nature of the work reasonably
17 permitted the use of seats for at least part of the time that Aggrieved Employees were working.
18 Lastly, there were periods of time when Aggrieved Employees were not engaged in active duties of
19 their employment, yet there were no suitable seats in reasonable proximity to the work area and use
20 of seats would not interfere with the performance of their duties.

21 204. The Aggrieved Employees worked in various positions. The nature of Aggrieved
22 Employees' work reasonably permitted the use of seats. However, DEFENDANTS failed to provide
23 suitable seating in reasonable proximity to Aggrieved Employees' work areas in violation of section
24 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting
25 DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each violation of each
26 Labor Code section and IWC Wage Order provision, for each Aggrieved Employee, results in a
27 separate civil penalty.

28 ///

1 **Violation of Labor Code Section 208**

2 205. Labor Code Section 208 provides: Every employee who is discharged shall be paid
3 at the place of discharge, and every employee who quits shall be paid at the office or agency of the
4 employer in the county where the employee has been performing labor. All payments shall be made
5 in the manner provided by law.

6 206. Based on information and belief, DEFENDANTS have a policy and practice of
7 failing to provide Aggrieved Employees who are terminated with their final paychecks at the place
8 of discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the
9 office or agency of DEFENDANTS in the county where the work was performed, in violation of
10 Labor Code Section 208.

11 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

12 207. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall
13 require any employee or applicant for employment to agree, in writing, to any term or condition
14 which is known by such employer...to be prohibited by law.” DEFENDANTS required and
15 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful
16 conditions of employment including but not limited to unlawful compensation agreements and/or
17 non-solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure
18 agreements, unlawful releases and/or waivers of rights, including but not limited to, unlawful meal
19 period waivers, unlawful forum selection clauses and/or choice of law provisions/agreements and/or
20 unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment
21 in violation of Labor Code section 432.5.

22 208. The California Labor Code places certain procedural and substantive limits on an
23 employers’ ability to conduct employee background checks and on how employers can use the
24 information they obtain through those background checks. Labor Code section 1024.5 states that
25 employers, except for financial institutions, may order a credit check only if the individual works
26 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
27 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
28 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15

1 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
2 background check, including but not limited to identifying an appropriate reason for the background
3 check, a separate consent form with required disclosures and certain formatting requirements,
4 additional forms such as a summary of rights, a way by which to request a copy of the report, as
5 well as proper notice of adverse actions taken, among other statutory requirements.

6 209. Based on information and belief, DEFENDANTS ordered unlawful financial credit
7 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required them to
8 provide ongoing written consent to the unlawful credit checks as a condition of employment, in
9 violation of California and Federal law, which results in a violation of Labor Code section 432.5.

10 210. Based on information and belief, DEFENDANTS required Aggrieved Employees to
11 submit and/or agree to submit in writing to unlawful criminal background checks as a condition of
12 obtaining and/or holding employment in violation of the ICRAA and the FCRA as alleged above.

13 211. Based on further information and belief, DEFENDANTS required Aggrieved
14 Employees to agree in writing to provide DEFENDANTS with ongoing consent to conduct
15 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
16 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
17 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

18 212. Based on further information and belief, DEFENDANTS knew that requiring
19 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
20 condition of obtaining and/or holding employment was unlawful.

21 213. By requiring that Aggrieved Employees sign off on the illegal background and/or
22 financial checks, DEFENDANTS violated Labor Code section 432.5.

23 Unlawful Inquires into Criminal History

24 214. Labor Code section 432.7 prohibits an employer from asking applicants about past
25 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
26 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in
27 convictions on its employment application, in violation of California law.

28 215. Upon information and belief, DEFENDANTS, in violation of California law,

1 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
2 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
3 employment and/or otherwise impermissibly inquired into criminal history on its employment
4 application in violation of California law.

5 216. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
6 Code section 432.7. By asking about convictions at the application phase or prior to extending an
7 employment offer, DEFENDANTS violated California’s Fair Chance Act, and thereby violated
8 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
9 disclose arrests and/or convictions as a condition of employment.

10 217. Under the provisions of PAGA and the above mentioned Labor Code sections,
11 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
12 226.7, 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1,
13 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5, and all applicable Wage Orders as well as all
14 interpretations of these laws by California Courts and administrative bodies, as well as any other
15 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

- 16 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
17 relevant California Labor Code provisions listed herein only if permitted by the
18 PAGA statute, pursuant to Labor Code section 2699(a); and
19 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
20 violations without a civil penalty recoverable under the PAGA, all in the default
21 amounts provided by Labor Code section 2699(f).
22 c. The proper measure of penalties under PAGA is the number of violations,
23 whether those violations were committed as against PLAINTIFF or any
24 Aggrieved Employee, whether a party to this action or not.

25 218. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
26 PLAINTIFF is entitled to recover civil penalties, costs, and attorney’s fees.

27 ///

28 ///

1 **PRAYER FOR RELIEF**

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

- 4 1. For an order that the action be certified as a class action;
5 2. For an order that PLAINTIFF be appointed as class representative;
6 3. For an order that counsel for PLAINTIFF be appointed as class counsel;
7 4. For compensatory damages according to proof;
8 5. For liquidated damages according to proof;
9 6. For penalties according to proof;
10 7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully
11 withheld from PLAINTIFF and the Class Members;
12 8. For an order finding DEFENDANTS have engaged in unfair competition in violation of
13 section 17200, *et seq.*, of the California Business and Professions Code;
14 9. For an order enjoining DEFENDANTS from further acts of unfair competition;
15 10. For pre-judgment interest as permitted by law;
16 11. For attorney's fees and costs reasonably incurred;
17 12. For civil penalties according to proof, including PAGA penalties (75% payable to
18 the LWDA and 25% payable to Aggrieved Employees); and
19 13. For such other and further relief that the Court deems just and proper.
20

21 Dated: October 13, 2023

CROSNER LEGAL, PC

22
23 By: _____


24 Jamie K. Serb, Esq.
25 Nikki Trenner, Esq.
26 Zachary M. Crosner, Esq.
27 Attorneys for Plaintiff,
28 CHAZLEY FOSTER

1 **DEMAND FOR JURY TRIAL**

2 PLAINTIFF demands a trial by jury on all claims so triable.

3
4 Dated: October 13, 2023

CROSNER LEGAL, PC

5
6 By: 

7 Jamie K. Serb, Esq.
8 Nikki Trenner, Esq.
9 Zachary M. Crosner, Esq.
Attorneys for Plaintiff,
CHAZLEY FOSTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE
Chazley Foster v. American Honda Motor Co., Inc.
Los Angeles County Superior Court Case No. 23STCV22112

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 9440 Santa Monica Blvd., Ste. 301, Beverly Hills, CA 90210.

On October 13, 2023, I served true copies of the following document(s) described as

**PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION
COMPLAINT**

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

☒ BY ELECTRONIC TRANSMISSION. I transmitted copies of the above-referenced document(s) from the email address manny@crosnerlegal.com to the interested parties in this action by electronic transmission. Said electronic transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on October 13, 2023, at Los Angeles, California.



Manuel Martinez

1 SERVICE LIST

2 *Chazley Foster v. American Honda Motor Co., Inc.*

3 *Los Angeles County Superior Court Case No. 23STCV22112*

4 **SEYFARTH SHAW LLP**

Attorneys for Defendant

5 Lorraine H. O'Hara

American Honda Motor Co., Inc.

6 *lohara@seyfarth.com*

7 Lauren S. Schwartz

8 *lschwartz@seyfarth.com*

9 2029 Century Park East, Suite 3500

Los Angeles, California 90067

Telephone: (310) 277-7200

Facsimile: (310) 201-5219

10 Justin T. Curley

11 *jcurley@seyfarth.com*

12 560 Mission Street, Suite 3100

San Francisco, California 94105

13 Telephone: (415) 397-2823

14 Facsimile: (415) 397-8549