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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

Johnny Barnes, in his representative capacity
on behalf of himself, the State of California,
and fellow current and former aggrieved
employees,

Plaintiff,

v.

Sunbelt Rentals, Inc., Brendan Horgan, John
Schoenberger, Kurt Kenkel, and DOES 1-25

Defendants.

Case No. 23CV052291

COMPLAINT FOR DAMAGES

DEMAND FOR JURY TRIAL

PLAINTIFF JOHNNY BARNES ("PLAINTIFF") in his representative capacity on behalf of himself, the State of California, and fellow current and former AGGRIEVED EMPLOYEES, defined below, against DEFENDANT SUNBELT RENTALS, INC, DEFENDANT BRENDAN HORGAN, DEFENDANT JOHN SCHOENBERGER, DEFENDANT KURT KENKEL, and DOES 1-25 ("Defendant DOES") (collectively "DEFENDANTS"), alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

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I. INTRODUCTION

1. PLAINTIFF brings this action as an individual and as a representative action on behalf of himself and pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of other current and former AGGRIEVED EMPLOYEES of DEFENDANTS for engaging in a pattern and practice of wage and hour violations under the California Labor Code.

2. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS decreased their employment-related costs by systematically violating California wage and hour laws.

3. DEFENDANTS’ systematic pattern of wage and hour and IWC Wage Order violations toward PLAINTIFF and other AGGRIEVED EMPLOYEES in California include, *inter alia*:

- a. Failure to provide meal periods;
- b. Failure to provide rest periods;
- c. Failure to pay all regular wages;
- d. Failure to provide accurate payroll records;
- e. Failure to provide accurate itemized wage statements;
- f. Failure to timely pay wages due during, and upon termination of employment.

4. PLAINTIFF brings the representative action against DEFENDANTS on behalf of himself and all other AGGRIEVED EMPLOYEES of DEFENDANTS in California, seeking all civil penalties and unpaid wages permitted pursuant to California Labor Code § 2699, *et seq.*

5. PLAINTIFF reserves the right to name additional representatives throughout the State of California.

I. PARTIES

6. PLAINTIFF JOHNNY BARNES (“PLAINTIFF”), an individual, has resided, and at all times mentioned in this Complaint, continues to reside in Alameda County.

1 7. Defendant, SUNBELT RENTALS, INC, a North Carolina corporation, registered
2 with the California Secretary of State as file No. 2254282, that at all relevant times mentioned herein
3 conducted and continues to conduct substantial and regular business throughout California.

4 8. DEFENDANT BRENDAN HORGAN is, on information and belief, doing business
5 in California as the Chief Executive Officer of Defendant Sunbelt Rentals, Inc. Brendan Horgan is
6 an owner, director, officer, or managing agent of Sunbelt Rentals, Inc.

7 9. DEFENDANT JOHN SCHOENBERGER is, on information and belief, doing
8 business in California as the Chief Financial Officer of Defendant Sunbelt Rentals, Inc. John
9 Schoenberger is an owner, director, officer, or managing agent of Sunbelt Rentals, Inc.

10 10. DEFENDANT KURT KENKEL is, on information and belief, doing business in
11 California as the Secretary of Defendant Sunbelt Rentals, Inc. Kurt Kenkel is an owner, director,
12 officer, or managing agent of Sunbelt Rentals, Inc.

13 11. Defendant DOES 1-25 ("Defendant DOES") are persons and/or entities that at all
14 relevant times mentioned herein conducted and continue to conduct substantial and regular business
15 throughout California.

16 12. Each of the fictitiously named DEFENDANTS participated in the acts alleged in this
17 Complaint. The true names and capacities, whether individual, corporate, subsidiary, partnership,
18 associate or otherwise of DEFENDANT DOES 1 through 25, inclusive, are presently unknown to
19 PLAINTIFF who therefore sues these DEFENDANTS by such fictitious names pursuant to Cal.
20 Civ. Proc. Code. § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true
21 names and capacities of DOES 1 through 50, inclusive, when they are ascertained. PLAINTIFF is
22 informed and believes, and based upon that information and belief alleges, that the DEFENDANTS
23 named in this Complaint, including DOES 1 through 25, inclusive (hereinafter collectively
24 "DEFENDANTS"), are responsible in some manner for one or more of the events and happenings
25 that proximately caused the injuries and damages hereinafter alleged.

26 13. DEFENDANTS own, operate, and/or manage a chain of general construction and
27 industrial equipment and tool rental facilities throughout the United States including California.

1 14. DEFENDANTS employed PLAINTIFF between approximately December 2022,
2 and October 5, 2023, at DEFENDANT SUNBELT RENTAL INC’S Branch #1577 in San Leandro.

3 15. At all times, DEFENDANTS paid PLAINTIFF on an hourly basis.

4 **II. JOINT EMPLOYER AND PAGA**

5 16. PLAINTIFF brings the representative action in a representative capacity on behalf
6 of the State of California and on behalf of all non-union individuals who are or previously were
7 employed by DEFENDANTS in California who suffered one or more Labor Code violations
8 enumerated in Labor Code §§ 2698 *et seq.* (hereinafter “AGGRIEVED EMPLOYEES”) and who
9 worked for DEFENDANTS between August 16, 2022, and the present (“PAGA PERIOD”).

10 17. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code
11 § 2699(c) because he was employed by DEFENDANTS and suffered one or more of the alleged
12 Labor Code violations committed by DEFENDANTS.

13 18. PLAINTIFF and all other AGGRIEVED EMPLOYEES are, and at all relevant times
14 were, employees of DEFENDANTS, within the meanings set forth in the California Labor Code
15 and the applicable Industrial Welfare Commission Wage Order.

16 19. The Private Attorney General Act (“PAGA”), permits an aggrieved employee to
17 enforce any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* §
18 2699(a).)

19 20. Section 558 of the California Labor Code provides that “any employer *or other*
20 *person* acting on behalf of an employer who violates, or causes to be violated, a section of this
21 chapter or any provision regulating hours and days of work in any order of the Industrial Welfare
22 Commissions shall be subject to a civil penalty...” (*Lab. Code* § 558(a).)

23 21. Section 1197.1 of the Labor Code provides that “[a]ny employer *or other person*
24 acting either individually or as an officer, agent, or employee of another person, who pays or causes
25 to be paid to any employee a wage less than the minimum fixed by an applicable state or local law,
26 or by an order of the commission shall be subject to a civil penalty...” (*Lab. Code* § 1197.1(a).)

27 22. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held
28 that a corporate employer’s owners, officers and directors, are subject to civil penalties for the

1 employer's failure to pay appropriate wages to its employees, and, since liability under either 558
2 or 1197.1 does not depend on a finding of an alter ego, no alter ego allegations or findings are
3 necessary. *Atempa v. Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v.*
4 *Cjaders Food, Inc.* (2009 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203
5 Cal.App.4th 1112, 1145-1146.

6 23. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS, and
7 each of them, are subject to civil penalties for their failure to pay PLAINTIFF and other
8 AGGRIEVED EMPLOYEES the appropriate wages as complained of herein and proximately
9 caused the complaints, injuries, and damages alleged herein.

10 24. At all relevant times, each DEFENDANT, whether named or fictitious, was the
11 agent, employee or other person acting on behalf of each other DEFENDANT, and, in participating
12 in the acts alleged in this Complaint, acted within the scope of such agency or employment and
13 ratified the acts of the other.

14 25. Each DEFENDANT, whether named or fictitious, exercised control over
15 PLAINTIFF' wages, working hours, and/or working conditions.

16 26. Each DEFENDANT, whether named or fictitious, acted in all respects pertinent to
17 this action as the agent of the other DEFENDANTS, carried out a joint scheme, business plan or
18 policy, and the acts of each DEFENDANT are legally attributable to the other DEFENDANTS.

19 **IV. JURISDICTION AND VENUE**

20 27. This Court has jurisdiction over this Action pursuant to California Code of Civil
21 Procedure, Section 410.10.

22 28. Venue is proper in this Court pursuant to California Code of Civil Procedure,
23 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and
24 DEFENDANTS (i) currently maintain and at all relevant times maintained offices and facilities in
25 this County, and (ii) committed the wrongful conduct herein alleged in this County against
26 PLAINTIFF.

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V. FACTUAL ALLEGATIONS

A. Rest Period Violations

29. PLAINTIFF and other AGGRIEVED EMPLOYEES were required to work in excess of four (4) hours without being provided ten (10) minute rest periods as a result of the nature and constraints of their job duties, commentary from DEFENDANTS' managers and supervisors, DEFENDANTS' understaffing, and DEFENDANTS' policies and practices.

30. PLAINTIFF and other AGGRIEVED EMPLOYEES, from time-to-time were required to work in excess of eight (8) hours or more, without being provided a second ten (10) minute rest period for the same reasons.

31. Specifically, DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to either postpone or skip their rest periods as a result of the nature and constraints of their job duties, commentary from DEFENDANTS' managers and supervisors, DEFENDANTS' understaffing, and DEFENDANTS' policies and practices.

32. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one-hour wages *in lieu* thereof, and as a result, PLAINTIFF and other AGGRIEVED EMPLOYEES were denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

33. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to provide rest periods to PLAINTIFF and other AGGRIEVED EMPLOYEES per every four (4) hours worked or major fraction thereof or provide the employee one (1) hour of pay at the employee's regular rate of compensation for each workday the rest period is not provided. During the entirety of PLAINTIFF'S employment and the PAGA Period, DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to work through rest periods without paying them in accordance with Industrial Wage Orders. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited their regular wages by working without compensation at the applicable wage and rates. DEFENDANTS had, and may continue to practice, a uniform policy to not pay PLAINTIFF and other AGGRIEVED EMPLOYEES all rest premiums owed.

B. Meal Period Violations

34. DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to

1 work during the meal break during what was supposed to be PLAINTIFF'S and other AGGRIEVED
2 EMPLOYEES' off-duty meal break due to the nature and constraints of their job duties, commentary
3 from DEFENDANTS' managers and supervisors, DEFENDANTS' understaffing, and
4 DEFENDANTS' policies and practices.

5 35. Specifically to PLAINTIFF, DEFENDANTS required and directed PLAINTIFF to
6 either postpone or skip his meal period(s) due to commentary from DEFENDANTS' managers and
7 supervisors, DEFENDANTS' understaffing, and DEFENDANTS' policies and practices. For
8 instance, on some occasions DEFENDANTS' manager demanded PLAINTIFF get the job done and
9 told PLAINTIFF to work through his meal period and that DEFENDANTS would add the missed
10 meal premium to his paycheck but then failed to do so. PLAINTIFF was often not compensated for
11 missed meal periods despite DEFENDANTS' promises.

12 36. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
13 required to provide meal periods of not less than thirty (30) minutes to PLAINTIFF and other
14 AGGRIEVED EMPLOYEES for each work period of more than five (5) hours, except when that
15 work period is not more than six (6) and validly waived or provide one (1) hour of pay at the
16 employee's regular rate of compensation. DEFENDANTS required PLAINTIFF and other
17 AGGRIEVED EMPLOYEES to work during the meal break during what was supposed to be off-
18 duty meal break. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited their
19 meal premiums without compensation at the applicable wage and rates. DEFENDANTS had, and
20 may continue to practice, a uniform policy to not pay PLAINTIFF and other AGGRIEVED
21 EMPLOYEES meal periods.

22 37. As a result of work requirements and DEFENDANTS' inadequate staffing practices,
23 PLAINTIFF and other AGGRIEVED EMPLOYEES were unable to take thirty (30) minute off-duty
24 meal breaks and were not fully relieved of duty for their meal period. PLAINTIFF and other
25 AGGRIEVED EMPLOYEES were required to perform work as ordered by DEFENDANTS for
26 more than five (5) hours during some shifts without receiving a meal break. The nature of the work
27 performed by PLAINTIFF and other AGGRIEVED EMPLOYEES do not qualify for limited and
28 narrowly construed "on-duty" meal period exception. PLAINTIFF and other AGGRIEVED

1 EMPLOYEES therefore forfeited meal breaks without additional compensation and in accordance
2 with DEFENDANTS' policies and practices.

3 C. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations

4 38. During PLAINTIFF'S employment and the PAGA Period, DEFENDANTS failed to
5 accurately pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all hours worked.

6 39. DEFENDANTS required PLAINTIFF and AGGRIEVED EMPLOYEES to perform
7 off-the-clock work. DEFENDANTS failed to pay PLAINTIFF and other AGGRIEVED
8 EMPLOYEES necessary wages for attending and performing work at DEFENDANTS' direction,
9 request and benefit, while off-the clock. When PLAINTIFF and other AGGRIEVED EMPLOYEES
10 performed off-the-clock work, DEFENDANTS' managers verbally assured employees their time
11 would be accurately recorded and updated. However, throughout PLAINTIFF'S and other
12 AGGRIEVED EMPLOYEES employment, these hours were not accurately recorded during the
13 relevant pay period.

14 40. DEFENDANTS directed and directly benefited from the uncompensated off-the-
15 clock work performed by PLAINTIFF and other AGGRIEVED EMPLOYEES.

16 41. DEFENDANTS controlled the work schedules, duties, protocols, applications,
17 assignments, and employment conditions of PLAINTIFF and other AGGRIEVED EMPLOYEES.

18 42. DEFENDANTS were able to track the amount of time PLAINTIFF and other
19 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document, track,
20 or pay PLAINTIFF and other AGGRIEVED EMPLOYEES all wages earned and owed for all the
21 work they performed, including during off-the-clock work.

22 43. PLAINTIFF and other AGGRIEVED EMPLOYEES were non-exempt employees,
23 subject to the requirements of the California Labor Code.

24 44. DEFENDANTS' policies and practices deprived PLAINTIFF and other
25 AGGRIEVED EMPLOYEES of all regular wages and from time to time, overtime wages owed for
26 the off-the-clock work activities.

27 45. DEFENDANTS knew or should have known that PLAINTIFF and other
28 AGGRIEVED EMPLOYEES' off-the-clock work was compensable under the law.

1 46. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited wages due
2 them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent while
3 off-the-clock. DEFENDANTS have a uniform policy and practice to not pay PLAINTIFF and other
4 AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law.

5 47. Moreover, as a result, DEFENDANTS provided PLAINTIFF and other
6 AGGRIEVED EMPLOYEES with a paystub that failed to comply with Cal. Lab. Code § 226 and
7 did not maintain accurate payroll and timekeeping records.

8 D. Timekeeping Manipulation

9 48. During PLAINTIFF's employment and during the PAGA Period, DEFENDANTS,
10 did not have an immutable timekeeping system to accurately record and pay PLAINTIFF and other
11 AGGRIEVED EMPLOYEES for the actual time PLAINTIFF and other AGGRIEVED worked each
12 day, including regular time, meal and rest breaks. As a result, DEFENDANTS were able to and did
13 in fact, unlawfully and unilaterally alter the time recorded in DEFENDANTS' timekeeping system
14 for PLAINTIFF and other AGGRIEVED EMPLOYEES to avoid paying these employees for all
15 hours worked, overtime wages, and applicable meal premiums and rest premiums.

16 49. DEFENDANTS manipulated PLAINTIFF and other AGGRIEVED EMPLOYEES'
17 timecards to show less time worked and complaint meal periods to avoid penalties or shorten the
18 amount of time worked by employees. As mentioned above, DEFENDANTS' managers regularly
19 added false meal periods to PLAINTIFF and other AGGRIEVED EMPLOYEES' timecards and
20 reduced the total hours worked by employees.

21 50. For instance, PLAINTIFF regularly notified DEFENDANTS that his paystub was
22 incorrect because it did not accurately reflect the total hours PLAINTIFF worked in the relevant pay
23 period. DEFENDANTS continued to provide verbal assurances to PLAINTIFF that this error would
24 be resolved but then failed to do so and failed to pay PLAINTIFF all wages owed.

25 51. Additionally, as a result of DEFENDANTS' consistent time manipulation practice,
26 PLAINTIFF was overpaid in March 2023. DEFENDANTS did not receive PLAINTIFF'S consent
27 or authorization, nor did DEFENDANTS' seek PLAINTIFF'S approval before significant amounts
28 of money from PLAINTIFF'S subsequent wages to correct their own mistake. DEFENDANTS

1 deducted nearly \$600 each paycheck from PLAINTIFF'S wages.

2 52. As a result of DEFENDANTS' practices, PLAINTIFF and other AGGRIEVED
3 EMPLOYEES, from time-to-time, forfeited time worked by working without their time being
4 accurately recorded and without compensation at the applicable pay rates.

5 53. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited wages due
6 them for all hours worked at DEFENDANTS' direction, control and benefit. DEFENDANTS'
7 uniform policy and practice to not pay PLAINTIFF and other AGGRIEVED EMPLOYEES wages
8 for all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
9 records and employee testimony.

10 E. Violations for Untimely Payment of Wages

11 54. Pursuant to California Labor Code section 204, PLAINTIFF and other
12 AGGRIEVED EMPLOYEES are entitled to timely payment of wages during their employment.
13 PLAINTIFF and other AGGRIEVED EMPLOYEES, from time to time, did not receive payment of
14 all wages, including, but not limited to, overtime wages, minimum wages, meal period premium
15 wages, and rest period premium wages within permissible time period and on days designated in
16 advance by the employer as regular paydays.

17 55. Further, DEFENDANTS promised a \$900.00 bonus to non-union team members as
18 a result of their hard work and DEFENDANTS' growth. This bonus was to be paid on June 1, 2023,
19 or June 8, 2023, according to the employees' pay cycle. However, DEFENDANTS failed to disperse
20 the bonus to PLAINTIFF and other AGGRIEVED EMPLOYEES working at Branch # 1577 in San
21 Leandro.

22 F. Inaccurate Itemized Wage Statements

23 56. California Labor Code Section 226 requires an employer to furnish its employees an
24 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3)
25 the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
26 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
27 employee and only the last four digits of the employee's social security number or an employee
28 identification number other than a social security number, (8) the name and address of the legal

entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee

57. During PLAINTIFF'S employment and during the PAGA period, PLAINTIFF and other AGGRIEVED EMPLOYEES were not paid meal and rest period premiums and were not paid for all hours worked. DEFENDANTS failed to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with complete and accurate wage statements. DEFENDANTS' paystubs failed to show, among other things, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods.

58. DEFENDANTS routinely failed to keep, maintain, and store accurate payroll records and provide wage statements that comply with Cal. Lab. Code § 226.

59. PLAINTIFF and other AGGRIEVED EMPLOYEES suffered damages as a result of DEFENDANTS' aforementioned violation because they could not promptly and easily determine from the wage statement alone the applicable hourly rate and the corresponding number of hours worked at the applicable hourly rate for this remuneration.

60. As a result, DEFENDANTS issued PLAINTIFF and other AGGRIEVED EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS' violations are knowing and intentional, and were not isolated or due to an unintentional payroll error due to clerical or inadvertent mistake.

G. Unlawful Deductions

61. As mentioned above, in March and April 2023, DEFENDANTS unlawfully deducted wages from PLAINTIFF without authorization or consent. As a result of DEFENDANTS' time keeping manipulation, DEFENDANTS inaccurately recorded PLAINTIFF'S time worked and issued a paystub for 94 hours when PLAINTIFF only worked 58 hours.

62. DEFENDANTS informed PLAINTIFF they would deduct small increments over a period of time. DEFENDANTS did not tell PLAINTIFF how much they would deduct, nor did they have PLAINTIFF sign any sort of acknowledgment or notice about such deductions. Instead, DEFENDANTS then deducted nearly \$600 from PLAINTIFF'S next three paychecks in violation

1 of Labor Code Section § 221.

2 H. Split Shift Resulting in Minimum Wage Violations

3 63. DEFENDANTS, from time to time, required PLAINTIFF and other AGGRIEVED
4 EMPLOYEES to work split shifts by requiring employees to work a typical shift between 7:00 a.m.
5 and 3:30 p.m., allow employees to clock-out for the day, return home, and then demand employees
6 come back to work at 7:00 p.m. or 8:00 p.m. to perform work tasks like unload trucks that arrived
7 after business hours.

8 64. On these occasions, DEFENDANTS implemented a work schedule that is
9 interrupted by non-paid and non-working time period, which was longer than a bone fide meal
10 period on the same workday.

11 65. On these occasions, DEFENDANTS would tell PLAINTIFF and OTHER
12 AGGRIEVED EMPLOYEES they will fix the timecards to reflect such work, that was separated by
13 a period of non-paid, non-working time but then failed to do so.

14 66. DEFENDANTS did not pay split shift premiums on these instances in violation of
15 Industrial Welfare Orders despite DEFENDANTS directing PLAINTIFF and OTHER
16 AGGRIEVED EMPLOYEES to work split shifts.

17 I. Solicitation of Employee

18 67. In December 2022, during PLAINTIFF'S interview process with DEFENDANTS,
19 DEFENDANTS informed PLAINTIFF that after his probationary period of ninety (90) days, he
20 would receive 1) two weeks of vacation time, 2) forty hours of sick leave, and 3) between two and
21 three floating days. DEFENDANTS further told PLAINTIFF he would be expected to work between
22 7:00 A.M. and 3:30 P.M. with occasional overtime hours.

23 68. PLAINTIFF relied on DEFENDANTS' representations to accept the offered position
24 with DEFENDANTS and started his employment in December 2022.

25 69. However, upon the termination PLAINTIFF'S probationary period, PLAINTIFF did
26 not receive the described benefits. In fact, DEFENDANTS informed PLAINTIFF these benefits
27 were not offered to employees.

28 70. Further, when DEFENDANTS demanded PLAINTIFF to work 12+ hours shifts,

1 PLAINTIFF stated the characteristics and duties were not what the employer represented nor were
2 they consistent with working conditions DEFENDANTS promised. DEFENDANTS told
3 PLAINTIFF this was a 24/7 job that he was expected to be on-call for at all times.

4 71. DEFENDANTS' managers mischaracterized the benefits and other terms and
5 conditions of employment in violation of Labor Code Section 970.

6 J. Defendants' Negligence

7 72. In July 2023, DEFENDANTS sent PLAINTIFF by himself to pick up a 6" Hydraulic
8 Pump Head 60 HP which weighs approximately 205lbs in truck with a bed that frequently
9 malfunctioned DEFENDANTS.

10 73. PLAINTIFF immediately notified DEFENDANTS that there was no other person or
11 equipment on-site to assist him load the pump into his truck and expressed his concern about his
12 ability to load such a large item without help and with a bed that frequently got stuck.

13 74. DEFENDANTS disregarded PLAINTIFF'S safety concerns and told him to "DROP
14 THE BED" of the truck to complete the job. DEFENDANTS further told PLAINTIFF that he was
15 acting like he was personally going to have to pay for the bed to be replaced.

16 75. As a result of DEFENDANTS' direction, PLAINTIFF injured his back from lifting a
17 heavy item by himself without any equipment.

18 K. Defendants' Retaliation

19 76. During his tenure with DEFENDANTS, PLAINTIFF repeatedly vocalized concerns
20 about numerous labor code violations committed by DEFENDANTS' and DEFENDANTS'
21 managers.

22 77. For instance, when PLAINTIFF complained about not being able to take meal or rest
23 periods, unpaid overtime, being required to show up at work after work hours, or vocalized concerns
24 about safety violations, he was reprimanded by his managers and encouraged to stop making waves.
25 PLAINTIFF was told that if he is given a task, he needs to get it done, or that employees are on call
26 24/7 and should be available on the weekends. On another occasion, one of PLAINTIFF'S
27 managers, Charity Richards, told him if he didn't want to do the work, she can find someone who
28 will. On another occasion, she told him that he is just a f***** driver and he doesn't get to make

1 that decision.

2 78. PLAINTIFF'S complaints caused a strain in his relationship with his managers.
3 PLAINTIFF was told this told other employees she wont let Johnny "ruin" her chance at manager
4 and things were going to change.

5 79. PLAINTIFF advocated for himself and other employees to protect rights afforded to
6 him under California labor law and in place in place to protect employees like PLAINTIFF.
7 However, DEFENDANTS' systematic violation of such protections even resulted in Plaintiff's
8 physical injury at work.

9 80. This physical injury resulted from DEFENDANTS excessive demands, violations of
10 labor code, and protections afforded under CAL OSHA. DEFENDANTS used this physical injury
11 as a pretext to write PLAINTIFF up for damaging equipment when attempting to complete tasks
12 assigned to him.

13 81. DEFENDANTS issued a written warning to PLAINTIFF, and he was forced to take
14 a leave of absence.

15 82. As a result of these actions, PLAINTIFF suffered adverse employment action in the
16 form of a forced leave of absence. This leave serves as tangible evidence of retaliation by
17 DEFENDANTS for PLAINTIFF'S commitment to uphold the Labor Code and advocating for the
18 rights of his peers.

19 **VI. CAUSES OF ACTION**

20 **FIRST CAUSE OF ACTION**

21 For Unfair Competition
22 (Cal. Bus. & Prof. Code §§ 17200 et seq.)
(Against All DEFENDANTS)

23 83. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
24 every allegation set forth above.

25 84. DEFENDANTS are a "person" as that term is defined under Cal. Bus. And Prof.
26 Code § 17021.

1 85. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines unfair
2 competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes
3 injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

4 Any person who engages, has engaged, or proposes to engage in unfair competition
5 may be enjoined in any court of competent jurisdiction. The court may make such
6 orders or judgments, including the appointment of a receiver, as may be necessary to
7 prevent the use or employment by any person of any practice which constitutes unfair
8 competition, as defined in this chapter, or as may be necessary to restore to any
9 person in interest any money or property, real or personal, which may have been
10 acquired by means of such unfair competition. (Cal. Bus. & Prof. Code § 17203).

11 86. By the conduct alleged herein, DEFENDANTS have engaged and continue to engage
12 in a business practice that violates California law, including but not limited to, the applicable Wage
13 Order(s), the California Code of Regulations and the California Labor Code including Sections §§
14 98.6, 201, 202, 203, 204, 210, 218.6, 226, 226.3, 226.7, 510, 512, 558, 970, 1194, 1197, 1197.1,
15 1174.5, 1198, 1199 and for which this Court should issue declaratory and other equitable relief
16 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
17 held to constitute unfair competition, including restitution of wages wrongfully withheld.

18 87. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and unfair
19 in that these practices violated public policy, were immoral, unethical, oppressive unscrupulous or
20 substantially injurious to employees, and were without valid justification or utility for which this
21 Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
22 Business & Professions Code, including restitution of wages wrongfully withheld.

23 88. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and
24 fraudulent in that DEFENDANTS’ uniform policy and practice failed to provide the legally
25 mandated meal and rest periods and the required amount of compensation for missed meal and rest
26 periods, and failed to pay minimum wages owed, due to a systematic business practice that cannot
27 be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
28 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue

1 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of
2 wages wrongfully withheld.

3 89. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair,
4 and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and other
5 AGGRIEVED EMPLOYEES to be underpaid during their employment with DEFENDANTS.

6 90. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
7 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
8 mandatory meal and/or rest breaks to PLAINTIFF and other AGGRIEVED EMPLOYEES as
9 required by Cal. Lab. Code §§ 226.7 and 512.

10 91. Therefore, PLAINTIFF demands on behalf of himself and on behalf of other
11 AGGRIEVED EMPLOYEES, one (1) hour of pay for each workday in which an off-duty meal
12 period was not timely provided for each five (5) hours of work.

13 92. PLAINTIFF further demands on behalf of himself and on behalf of other
14 AGGRIEVED EMPLOYEES, one (1) hour of pay for each workday in which a rest period was not
15 timely provided as required by law.

16 93. By and through the unlawful and unfair business practices described herein,
17 DEFENDANTS have obtained valuable money and services from PLAINTIFF and other
18 AGGRIEVED EMPLOYEES, including earned wages for all time worked, and has deprived them
19 of valuable rights and benefits guaranteed by law and contract, all to the detriment of these
20 employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly compete
21 against competitors who comply with the law.

22 94. All the acts described herein as violations of, among other things, the Industrial
23 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
24 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and
25 unscrupulous, were deceptive, and thereby constitute unlawful, unfair, and deceptive business
26 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

27 95. PLAINTIFF and other AGGRIEVED EMPLOYEES are entitled to, and do, seek
28 such relief as may be necessary to restore to them the money and property which DEFENDANTS

1 have acquired or of which PLAINTIFF and other AGGRIEVED EMPLOYEES have been deprived,
2 by means of the above described unlawful and unfair business practices, including earned but unpaid
3 wages for all time worked.

4 **SECOND CAUSE OF ACTION**

5 For Failure to Pay Wages

6 (Cal. Lab. Code § 204, 1193.6, 210, 221)

7 (Against All DEFENDANTS)

8 96. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
9 and every allegation set forth above.

10 97. Labor Code Section 204 provides in part provides in part that “all wages, ..., earned
11 by any person in any employment are due and payable twice during each calendar month, on days
12 designated in advance by the employer as the regular paydays.”

13 98. Plaintiff is informed and believes, and thereon alleges that DEFENDANTS did not
14 pay PLAINTIFF and OTHER AGGRIEVED EMPLOYEES all earned wages, including regular
15 and/or overtime, on regularly established paydays.

16 99. In violation of Labor Code section 204, defendants knowingly and willfully refused
17 to perform their obligations to compensate their employees for all wages earned.

18 100. Further, and as detailed above, DEFENDANTS failed to pay PLAINTIFF and other
19 AGGRIEVED EMPLOYEES a \$900 bonus, which under Lab. Code § 206, are considered wages.

20 101. Pursuant to Labor Code section 210, PLAINTIFF is entitled to recover a penalty of
21 \$100.00 for the initial failure to timely pay each employee all of the wages earned, and \$200.00
22 for each subsequent failure to pay each employee all of the wages earned; in addition, pursuant to
23 section 210, for each subsequent failure to pay in compliance with Labor Code section 204,
24 PLAINTIFF is entitled to recover an additional amount equal to 25% of the unlawfully withheld
25 wages.

26 102. As a direct and proximate result of defendants’ conduct in violation of Labor Code
27 section 204 as alleged above, DEFENDANTS’ employees have suffered, and continue to suffer,
28 losses related to the use and enjoyment of wages and lost interest on such wages all to their
damage in amounts according to proof at trial.

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103. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and every allegation set forth above.

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1 worked by PLAINTIFF and other AGGRIEVED EMPLOYEES. DEFENDANTS acted in an
2 illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the
3 California Labor Code, the Industrial Welfare Commission requirements and other applicable laws
4 and regulations.

5 110. PLAINTIFF and other AGGRIEVED EMPLOYEES were paid less for time
6 worked than they were entitled to, constituting a failure to pay all earned wages.

7 111. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
8 PLAINTIFF and other AGGRIEVED EMPLOYEES have suffered and will continue to suffer an
9 economic injury including the use and enjoyment of wages and lost interest on such wages all to
10 their damage in amounts in amounts which are presently unknown to them, and which will be
11 ascertained according to proof at trial.

12 112. DEFENDANTS knew or should have known that PLAINTIFF and other
13 AGGRIEVED EMPLOYEES were under-compensated for their time worked. DEFENDANTS
14 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay
15 employees for their labor as a matter of uniform corporate policy, practice and procedure, and
16 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and other
17 AGGRIEVED EMPLOYEES the correct wages for their time worked.

18 113. DEFENDANTS maintained a uniform wage practice of not only paying
19 PLAINTIFF and other AGGRIEVED EMPLOYEES without regard to the correct amount of time
20 worked by PLAINTIFF and other AGGRIEVED EMPLOYEES. DEFENDANTS' uniform policy
21 and practice was to unlawfully and intentionally deny accurate and full payment of wages due to
22 PLAINTIFF and other AGGRIEVED EMPLOYEES.

23 114. In performing the acts and practices herein alleged in violation of California labor
24 laws, and refusing to compensate PLAINTIFF and other AGGRIEVED EMPLOYEES for all time
25 worked and provide them with the requisite compensation, DEFENDANTS acted and continue to
26 act intentionally, oppressively, and maliciously toward PLAINTIFF and other AGGRIEVED
27 EMPLOYEES with a conscious disregard for their legal rights, or the consequences to them, and
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1 with the intent of depriving them of their property and legal rights, and otherwise causing them
2 injury in order to increase company profits at the expense of this employees.

3 115. PLAINTIFF and other AGGRIEVED EMPLOYEES therefore, request recovery of
4 all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any
5 statutory penalties against DEFENDANTS, in a sum as provided by the California Labor Code
6 and/or other applicable statutes.

7 116. To the extent minimum wage compensation is determined to be owed to
8 PLAINTIFF and other AGGRIEVED EMPLOYEES, whose employment has terminated,
9 DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore these
10 individuals are also entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties
11 are sought herein on behalf of the PLAINTIFF and other AGGRIEVED EMPLOYEES.
12 DEFENDANTS' conduct as alleged herein was willful, intentional, and not in good faith. Further,
13 PLAINTIFF and other AGGRIEVED EMPLOYEES are entitled to seek and recover statutory
14 costs.

15 **FOURTH CAUSE OF ACTION**

16 For Failure to Provide Rest Periods

17 (Cal. Lab. Code §§ 226.7 & 512)

(Against All DEFENDANTS)

18 117. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
19 every allegation set forth above.

20 118. Labor Code Sections 226.7 and 512 and the Industrial Wage Orders requires
21 DEFENDANTS to provide employees all rest periods specified in the applicable Wage Order. These
22 laws and regulations further entitle employees to be paid one additional hour of pay at their regular
23 rate of compensation for each day of denied rest period.

24 119. PLAINTIFF and other AGGRIEVED EMPLOYEES were required to work in excess
25 of four (4) hours without being provided ten (10) minute rest periods. Further and for the same
26 reasons PLAINTIFF and other AGGRIEVED EMPLOYEES were denied their first rest periods of
27 at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, PLAINTIFF
28 and other AGGRIEVED EMPLOYEES were denied a first and second rest period of at least ten

1 (10) minutes for shifts worked of between six (6) and eight (8) hours. PLAINTIFF and other
2 AGGRIEVED EMPLOYEES were also not provided with one-hour wages in lieu thereof.

3 120. As a result of the work schedules and staffing practices by DEFENDANTS,
4 PLAINTIFF and other AGGRIEVED EMPLOYEES were denied their proper rest periods by
5 DEFENDANTS and DEFENDANTS' managers.

6 121. DEFENDANTS violated California Labor Code §§ 226.7 and the applicable IWC
7 Wage Order by failing to compensate PLAINTIFF and other AGGRIEVED EMPLOYEES who
8 were not provided a rest period, in accordance with the applicable Wage Order, one additional hour
9 of compensation at each employee's regular rate of pay for each workday that rest period was not
10 provided.

11 122. As a proximate result of the aforementioned violations, PLAINTIFF and other
12 AGGRIEVED EMPLOYEES have been damaged in an amount according to proof at trial, and seek
13 all wages earned and due, interest, penalties, expenses and costs of suit.

14 **FIFTH CAUSE OF ACTION**

15 For Failure to Provide Required Meal Periods

16 (Cal. Lab. Code §§ 226.7& 512)

(Against All DEFENDANTS)

17 123. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
18 every allegation set forth above.

19 124. DEFENDANTS failed to provide all the legally required off-duty meal breaks to
20 PLAINTIFF and other AGGRIEVED EMPLOYEES as required by the applicable Wage Order and
21 Labor Code. The nature of the work performed by PLAINTIFF and other AGGRIEVED
22 EMPLOYEES does not prevent these employees from being relieved of all of their duties for the
23 legally required off-duty meal periods. As a result of their work schedules and inadequate staffing
24 practices by DEFENDANTS, PLAINTIFF and other AGGRIEVED EMPLOYEES were regularly
25 not fully relieved of duty by DEFENDANTS for their meal periods.

26 125. DEFENDANTS further violated California Labor Code §§ 226.7, 512 and the
27 applicable IWC Wage Order by failing to compensate PLAINTIFF and other AGGRIEVED
28 EMPLOYEES who were not provided a meal period, in accordance with the applicable Wage Order,

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

3 126. As a proximate result of the aforementioned violations, PLAINTIFF and other
4 AGGRIEVED EMPLOYEES have been damaged in an amount according to proof at trial, and seek
5 all wages earned and due, interest, penalties, expenses and costs of suit.

6 **SIXTH CAUSE OF ACTION**
7 **FOR FAILURE TO PAY WAGES WHEN DUE**
8 **(Cal. Lab. Code § 202, 203)**
9 **(Against all Defendants)**

10 127. PLAINTIFF incorporate by reference and reallege as if fully stated herein each and
11 every allegation set forth above.

12 128. If an employer willfully fails to pay, without abatement or reduction, in accordance
13 with Sections 201, . . . 202, any wages of an employee who is discharged or who quits, the wages
14 of the employee shall continue as a penalty from the due date thereof at the same rate until paid or
15 until an action therefor is commenced; but the wages shall not continue for more than 30 days.
(Cal. Lab. Code § 203).

16 129. To date, DEFENDANTS, have yet to pay PLAINTIFF and other AGGRIEVED
17 EMPLOYEES all of the wages and all premiums due for bonuses, off-the-clock work, missed
18 meal breaks and missed rest breaks and DEFENDANTS have failed to pay any penalty wages
19 owed under California Labor Code section 203.

20 130. Additionally, the employment of PLAINTIFF and many AGGRIEVED
21 EMPLOYEES terminated, and DEFENDANTS have not tendered payment of wages to these
22 employees who were underpaid for minimum wage, and/or missed meal and rest breaks, as
23 required by law.

24 131. Defendants knowingly and willfully violated the laws, regulations and orders
25 governing the wages of PLAINTIFF and other AGGRIEVED EMPLOYEES as described in the
26 causes of action above.

27 132. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and other
28 AGGRIEVED EMPLOYEES whose employment has terminated, PLAINTIFF demands up to

thirty (30) days of pay as penalty for not paying all wages due at time of termination and demand an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

SEVENTH CAUSE OF ACTION

For Failure to Pay Overtime Compensation

(Cal. Lab. Code §§ 558, 510, 1194, 1198)

(Against All DEFENDANTS)

133. PLAINTIFF incorporate by reference and reallege as if fully stated herein each and every allegation set forth above.

134. Labor Code section 558 provides for a civil penalty to be assessed against any employer or other person acting on behalf of an employer who fails to compensate employees at the statutory overtime rate for any work in excess of eight hours in one day or any work in excess of 40 hours in any workweek or who fails to compensate employees at the statutory double time rates for any work in excess of twelve hours in one day or any work in excess of 8 hours on the seventh day of a workweek.

135. DEFENDANTS routinely and systematically failed to properly record accurate time records for each employee showing when each employee began and ended each work period. By failing to properly record hours DEFENDANTS routinely and systematically failed to compensate employees at the statutory overtime rate for any work in excess of eight hours in one day or any work in excess of 40 hours in any workweek as required by Labor Code section 510 and Section 3 of the applicable Wage Order.

136. Pursuant to Labor Code section 558, PLAINTIFF is entitled to recover a penalty of \$50.00 for the initial failure to compensate employees at the statutory overtime rate for any work in excess of eight hours in one day or any work in excess of 40 hours in any workweek and/or failure to compensate employees at the statutory double time rates for any work in excess of twelve hours in one day in addition to any underpaid wages; and \$100.00 for each subsequent failure to compensate employees at the statutory overtime rate for any work in excess of eight hours in one day or any work in excess of 40 hours in any workweek in addition to any underpaid wages.

1 137. As a proximate result of DEFENDANTS' failure to pay overtime and/or wages as
2 alleged above, PLAINTIFF is entitled to recover from DEFENDANTS penalties pursuant to
3 section 558 as may be established according to proof at trial.

4 138. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
5 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab.
6 Code § 1198 further states that the employment of an employee for longer hours than those fixed
7 by the Industrial Welfare Commission is unlawful.

8 139. During PLAINTIFF'S employment and the PAGA PERIOD, PLAINTIFF and
9 other AGGRIEVED EMPLOYEES were required by DEFENDANTS to work overtime for
10 DEFENDANTS and were not paid for all the time they worked, including overtime work.

11 140. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
12 without limitation, applicable to AGGRIEVED EMPLOYEES as a whole, as a result of
13 implementing a uniform policy and practice that failed to accurately record overtime worked by
14 PLAINTIFF and other AGGRIEVED EMPLOYEES and denied accurate compensation to
15 PLAINTIFF and other AGGRIEVED EMPLOYEES for overtime worked, including, the overtime
16 work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday,
17 and/or forty (40) hours in any workweek.

18 141. DEFENDANTS acted in an illegal attempt to avoid the payment of all earned
19 wages, and other benefits in violation of the California Labor Code, the Industrial Welfare
20 Commission requirements and other applicable laws and regulations.

21 142. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
22 PLAINTIFF and other AGGRIEVED EMPLOYEES did not receive the correct overtime
23 compensation for their time worked for DEFENDANTS.

24 143. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
25 from the overtime requirements of the law. None of these exemptions are applicable to
26 PLAINTIFF and other AGGRIEVED EMPLOYEES. Further, PLAINTIFF and other
27 AGGRIEVED EMPLOYEES are not subject to a valid collective bargaining agreement that
28 would preclude the causes of action contained herein this Complaint. Rather, PLAINTIFF bring

1 this Action on behalf of himself, and other AGGRIEVED EMPLOYEES, based on
2 DEFENDANTS' violations of non-negotiable, non-waivable rights provided by the State of
3 California.

4 144. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
5 compensation to PLAINTIFF and other AGGRIEVED EMPLOYEES for the true amount of
6 overtime they worked, PLAINTIFF and other AGGRIEVED EMPLOYEES have suffered and
7 will continue to suffer an economic injury in amounts which are presently unknown to them, and
8 which will be ascertained according to proof at trial.

9 145. DEFENDANTS knew or should have known that PLAINTIFF and the other
10 AGGRIEVED EMPLOYEES were undercompensated for their time worked. DEFENDANTS
11 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay
12 them for their labor as a matter of uniform company policy, practice and procedure, and
13 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and other
14 AGGRIEVED EMPLOYEES the correct overtime wages for their overtime worked.

15 146. In performing the acts and practices herein alleged in violation of California labor
16 laws, and refusing to compensate PLAINTIFF and other AGGRIEVED EMPLOYEES for all time
17 worked and provide them with the requisite compensation, DEFENDANTS acted and continues to
18 act intentionally, oppressively, and maliciously toward PLAINTIFF and other AGGRIEVED
19 EMPLOYEES with a conscious of and utter disregard for their legal rights, or the consequences to
20 them, and with the despicable intent of depriving them of their property and legal rights, and
21 otherwise causing them injury in order to increase company profits at the expense of these
22 employees.

23 147. Therefore, PLAINTIFF and other AGGRIEVED EMPLOYEES request recovery
24 of overtime wages, according to proof, interest, statutory costs, as well as the assessment of any
25 statutory penalties against DEFENDANTS, in a sum as provided by the California Labor Code
26 and/or other applicable statutes.

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1 **EIGHTH CAUSE OF ACTION**

2 For Failure to Provide Accurate, Itemized Wage Statements

3 (Cal. Lab. Code §§ 226; 226.3; 1174.5)

4 (Against All DEFENDANTS)

5 148. PLAINTIFF incorporate by reference and reallege as if fully stated herein each and
6 every allegation set forth above.

7 149. Labor Code section 226 requires defendants to provide employees an accurate
8 itemized statement showing (1) gross wages earned, (2) total hours worked by the employee, (3)
9 the number of piece units and rates if applicable, (4) all deductions, (5) net wages earned, (6) the
10 inclusive date of the period for which the employee is paid, (7) the name of the employee and his
11 or her social security number, (8) the name and address of the legal entity that is the employer, and
12 (9) all applicable hourly rates in effect and the corresponding number of hours worked

13 150. DEFENDANTS did not accurately record PLAINTIFF'S and other AGGRIEVED
14 EMPLOYEES' wages, off-the-clock work, and missed meal and rest breaks. DEFENDANTS failed
15 to provide an accurate wage statement in writing that properly and accurately itemizes all wages,
16 missed meal and rest periods, and reporting time wages owed to PLAINTIFF and other
17 AGGRIEVED EMPLOYEES and thereby also failed to set forth the correct wages earned by the
18 employees.

19 151. DEFENDANTS knowingly and intentionally failed to comply with Labor Code
20 section 226(a) on each and every wage statement that they provided to PLAINTIFF and other
21 AGGRIEVED EMPLOYEES.

22 152. By failing to keep adequate records, as required by Labor Code section 226 and 1174,
23 DEFENDANTS injured PLAINTIFF and other AGGRIEVED EMPLOYEES making it difficult for
24 these employees to calculate the minimum wages owed. Those injuries include unpaid wages,
25 interest, and penalties thereon.

26 153. PLAINTIFF seeks to recover the statutory penalties provided by Labor Code section
27 226(e), 226.3, and 1174.5 for the wage statement violations committed by DEFENDANTS.

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1 **NINTH CAUSE OF ACTION**

2 For Recovery of Civil Penalties Under the Labor Code Private Attorney General Act
3 (Cal. Lab. Code §§ 2698 et seq.)
4 (Against All DEFENDANTS)

5 154. PLAINTIFF incorporate by reference and reallege as if fully stated herein each and
6 every allegation set forth above.

7 155. As a result of the acts alleged herein, PLAINTIFF, as AGGRIEVED EMPLOYEES
8 within the meaning of Labor Code section 2699, subdivision (c), on behalf of themselves and all
9 other AGGRIEVED EMPLOYEES of DEFENDANTS, seek the recovery of civil penalties against
10 DEFENDANTS pursuant to California Labor Code sections 2698 et seq., for the following knowing
11 and intentional violations of the California Labor Code:

- 12 a. For failing to pay wages promptly or when due and payable, in violation of Labor
13 Code sections 201, 202, 203, and 204;
- 14 b. For failing to maintain for and provide accurate, itemized wage statements required
15 by Labor Code Section 226.
- 16 c. For failing to compensate employees who were not provided a meal period in
17 violation of Labor Code Section 226.7; and
- 18 d. For failing to compensate employees who were not provided a rest period in violation
19 of Labor Code Section 226.7; and
- 20 e. For failing to provide employees who worked more than eight (8) hours per workday
21 and more than forty (40) hours per workweek additional compensation beyond their
22 regular wages in violation of Labor Code Section 510.
- 23 f. For failure to furnish and use safety devices and safeguards, and adopt and use
24 practices, means, methods, operations, and processes which are reasonably adequate
25 to render such employment and place of employment safe and healthful in violation
26 of Labor Code Section 6401.
- 27 g. For failing to provide and use reasonably adequate safety devices and safeguards, or
28 adopt or use reasonably adequate methods and processes, or to do every other thing
reasonably necessary to protect the life safety and health of employees in violation

1 of Labor Code Section 6403.

2 156. The above-referenced civil penalties shall include the recovery of amounts specified
3 in the applicable sections of the Labor Code, and if not specifically provided, those under section
4 2699(f), and shall include those amounts sufficient to recover underpaid wages pursuant to Labor
5 Code sections §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 351, 510, 512, 558, 1194,
6 1197.1, 1198, 1199, 6401, 640s and 2699, subdivisions (a) and (f).

7 157. PLAINTIFF filed this complaint after the LWDA was afforded the opportunity to
8 consider PLAINTIFF'S notice of DEFENDANTS' Labor Code violations and of PLAINTIFF'S
9 intent to prosecute a private enforcement action for civil penalties under PAGA. After the LWDA
10 declined to investigate, PLAINTIFF brought this PAGA cause of action against DEFENDANTS,
11 pursuant to California Labor Code section 2699.3, subdivision (a)(2)(A).

12 **TENTH CAUSE OF ACTION**

13 For Solicitation of an Employee to Relocate his or her Residence by Knowingly False
14 Misrepresentations
15 (Cal. Lab. Code § 970)
(Plaintiff Against All DEFENDANTS)

16 158. PLAINTIFF incorporate by reference and reallege as if fully stated herein each and
17 every allegation set forth above.

18 159. Pursuant to Labor Code section 970, no person shall influence or persuade any
19 person to change from one place to another in this State for the purpose of working in any branch
20 of labor through knowingly false representations regarding the compensation for the work.

21 160. As detailed above, DEFENDANTS misrepresented the working conditions, hours
22 of work, and benefits to PLAINTIFF to PLAINTIFF'S detriment.

23 161. PLAINTIFF relied on DEFENDANTS representations to accept his position and
24 DEFENDANTS did not provide the promised representations.

25 162. Pursuant to section 971 and 972, any person who violates Section 970 is guilty of a
26 misdemeanor and civilly liable to the party aggrieved, and subject to double damages resulting
27 from such misrepresentations.

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1 172. Labor Code section 98.6 prohibits an employer from discriminating or retaliating
2 against an employee for raising concerns about workplace violations or for exercising any of the
3 rights provided under the Labor Code or Orders of the Industrial Welfare Commission.

4 173. Throughout PLAINTIFF'S employment, he engaged in various protected activities
5 by repeatedly vocalizing concerns about workplace violations and advocating on behalf of himself
6 and his colleagues' rights under the California Labor Code.

7 174. Throughout PLAINTIFF'S employment, PLAINTIFF additionally advocated on
8 behalf of others for unpaid wages and other rights afforded under California Labor Code.

9 175. PLAINTIFF suffered an adverse employment action when he was written-up and
10 placed on a forced leave of absence. This write-up occurred despite the fact that PLAINTIFF had
11 been advocating for adherence to company policy and workers' safety protections afforded under
12 state law.

13 176. Plaintiff's complaints about unpaid wages and rights afforded under the Labor
14 Code and Orders of Industrial Welfare Commission were a substantial motivating reason for
15 DEFENDANTS' decision to write-up and place PLAINTIFF on a forced leave of absence.

16 177. DEFENDANTS actions towards PLAINTIFF were a result of his proactive and
17 consistent engagement in protected activities. DEFENDANTS were further motivated by
18 PLAINTIFF'S continued complaints and demands for his wages and vocalization of violations of
19 California Labor Code.

20 178. Thus, PLAINTIFF'S write-up and forced leave of absence was retaliatory and in
21 violation of Cal. Lab. Code § 98.6 because it is connected to, and a consequence of, his actions in
22 raising his rights and engagement in protected activity.

23 179. As a proximate result of DEFENDANTS' conduct, PLAINTIFF has suffered
24 actual, consequential and incidental financial losses, including without limitation, loss of salary
25 and benefits, the intangible loss of employment-related opportunities with DEFENDANTS, and
26 damage to his reputation in a small work community, all in an amount subject to proof.

27 180. PLAINTIFF claims such amounts as damages together with civil penalties pursuant
28 to Cal. Lab. Code § 98.6(b)(3).

181. The acts taken toward PLAINTIFF were carried out by and/or ratified by DEFENDANTS and/or managing agent employees of DEFENDANTS acting in a despicable, oppressive, fraudulent, malicious, deliberate, egregious, and inexcusable manner in order to injure and damage PLAINTIFF, thereby justifying an award to him of punitive damages in a sum appropriate to punish DEFENDANTS.

DEMAND FOR RELIEF

WHEREFORE, PLAINTIFF prays for a judgment against each DEFENDANT, jointly and severally, as follows:

1. On behalf of the PLAINTIFF:

A. An order requiring DEFENDANTS to pay all regular wages and all sums unlawfully withheld from compensation due to PLAINTIFF and other AGGRIEVED EMPLOYEES;

B. Compensatory damages, according to proof at trial, including unpaid wages, due to PLAINTIFF and other AGGRIEVED EMPLOYEES, during the applicable PAGA Period plus interest thereon at the statutory rate;

C. Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANTS' violations due to PLAINTIFF and to other AGGRIEVED EMPLOYEES.

D. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;

E. The wages of all terminated employees from the AGGRIEVED EMPLOYEES as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;

F. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226.

G. Punitive damages in an amount to punish DEFENDANTS to be proven at trial.

H. Liquidates damages pursuant to Cal. Lab. Code § 1194.2 in an amount equal to the

1 unpaid minimum wages according to proof at trial;

2 I. Double compensatory damages pursuant to Cal. Lab. Code § 972 or punitive
3 damages in an amount to punish DEFENDANTS;

4 2. On Behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES

5 i. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
6 General Act of 2004;

7 2. On all claims:

8 A. An award of interest, including prejudgment interest at the legal rate;

9 B. Such other and further relief as the Court deems just and equitable; and

10 C. An award of penalties, attorneys' fees and cost of suit, as allowable under the law.

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12 DATED: October 27, 2023

EMRAN LAW

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15 By: 
16 Harris Emran
17 Attorney for PLAINTIFF and OTHER
18 AGGRIEVED EMPLOYEES
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DEMAND FOR A JURY TRIAL

PLAINTIFF demand a jury trial on issues triable to a jury.

DATED: October 27, 2023

EMRAN LAW

By: 
Harris Emran
Attorney for PLAINTIFF and OTHER
AGGRIEVED EMPLOYEES