

MANAHAN O'DELL LLP
Amanda E. Manahan (SBN 199197)
amanahan@manahanodell.com
Shaheen Anthony Etemadi (SBN 319138)
setemadi@manahanodell.com
20 Enterprise, Suite 375
Aliso Viejo, CA 92656
Telephone: (949) 799-8002

Attorneys for Plaintiff Nicholas J. Pirtle

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

NICHOLAS J. PIRTLE,
Plaintiff,

v.

MALUCKY, LLC; and DOES 1-10, inclusive,
Defendants.

Case No. **23SMCV05852**

COMPLAINT FOR:

1. Retaliation in Violation of Government Code § 12940(h) and Labor Code §§ 98.6, 232.5, 233, 234, 246.5, and 1102.5;
2. Failure to Prevent Discrimination, Harassment, and/or Retaliation in Violation of Government Code § 12940(k);
3. Intentional Infliction of Emotional Distress;
4. Negligent Infliction of Emotional Distress;
5. Wrongful Termination of Employment in Violation of Public Policy;
6. Failure to Pay All Wages;
7. Meal Period Violations;
8. Rest Period Violations;
9. Failure to Reimburse Business Expenses;
10. Wage Statement Violations;
11. Waiting Time Penalties;
12. Unfair Business Practices; and
13. Violations of the Private Attorneys General Act of 2004

DEMAND FOR JURY TRIAL

1 Plaintiff Nicholas J. Pirtle (“Plaintiff”) hereby brings this Complaint against Defendant
2 MALUCKY, LLC and DOES 1-10, inclusive (collectively, “Defendants”), and hereby alleges with
3 knowledge with respect to his own acts and on information and belief as to other matters as follows:

4 **INTRODUCTION**

5 1. Through this action, Plaintiff seeks statutory, compensatory and punitive damages,
6 penalties, interest as allowed by law, costs, attorneys’ fees, declaratory relief, and other appropriate and
7 just relief due to Defendants’ unlawful conduct in violation of Plaintiff’s rights under state law to be free
8 from discrimination, harassment, and/or retaliation in violation of California common law, California
9 Government Code (“Government Code”), and California Civil Code (“Civil Code”) as well as unpaid
10 wages, liquidated and statutory damages, treble damages, restitution, interest as allowed by law, costs,
11 attorneys’ fees, and other sums that Defendants owe to Plaintiff under the California Labor Code (“Labor
12 Code”), Industrial Welfare Commission (“IWC”) Wage Orders, California Business and Professions Code
13 (“Business and Professions Code”), and California Penal Code (“Penal Code”).

14 2. Plaintiff also brings a representative action, individually and on behalf of all other aggrieved
15 employees who are and were employed by Defendants as non-exempt employees throughout California
16 during the PAGA Period, under the Private Attorneys General Act of 2004, Labor Code sections 2698 *et*
17 *seq.* (“PAGA”), against Defendants for violations of Labor Code sections 98.6, 201, 202, 203, 204, 206,
18 210, 221, 223, 226, 226.3, 226.7, 227.3, 232.5(c), 233, 234, 246, 351, 353, 450, 510, 511, 512, 558, 558.1,
19 1102.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802, and 2804. The term PAGA
20 Period is defined as one (1) year prior to Plaintiff’s notice of Labor Code violations to the Labor and
21 Workforce Development Agency (“LWDA”) and Defendants until judgment.

22 **PARTIES**

23 3. Plaintiff is an individual residing in California.

24 4. MALUCKY, LLC is a California limited liability company doing business in California,
25 including Los Angeles County. MALUCKY, LLC is, and at all relevant times was, an employer subject to
26 California’s wage and hour laws and the Fair Employment and Housing Act.

27 5. Plaintiff is unaware of the true names and capacities of those Defendants identified as DOES
28 1 through 10. Therefore, Plaintiff identifies those Defendants fictitiously. Each DOE Defendant was a

1 parent, sister, or related corporate entity of Defendants, or an owner, employee or agent of Defendants, and
2 each related entity, and was acting with the knowledge and authorization of each of the other Defendants.
3 Plaintiff will seek to amend this Complaint to allege the true names and capacities of each DOE Defendant
4 when their names have been ascertained and identified. Each of the Defendants sued as DOES 1 through
5 10 participated in, received the benefit of, or was in some way responsible for one or more of the wrongful
6 acts and omissions and some portion of the damages alleged in this Complaint.

7 6. At all times relevant, each defendant acted in all respects pertinent to this action as the agent
8 of the other defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto,
9 and the acts of each defendant are legally attributable to the other defendants. Furthermore, Defendants in
10 all respects acted as the employer and/or joint employer of Plaintiff.

11 7. Defendants, each and all of them, at all times relevant, were the joint employers, parent
12 companies, successor companies, predecessors in interest, affiliates, agents, employees, servants, joint
13 venturers, directors, fiduciaries, representatives, and/or co-conspirators of each of the remaining
14 Defendants. Defendants, unless otherwise alleged, at all times relevant, performed all acts and omissions
15 alleged herein within the course and scope of said relationship(s), and are a proximate cause of Plaintiff's
16 damages alleged herein. Moreover, Plaintiff is informed and believes and thereon alleges that each
17 Defendant has authorized and/or ratified the wrongful activities of each of the remaining Defendants and
18 their agents.

19 8. There exists a unity of interest in ownership between Defendants and DOES 1 through 10,
20 inclusive, such that any individuality and separateness between the individual and the corporation does not
21 exist, as Defendants, and DOES 1 through 10, inclusive, are alter egos, in that: (a) Defendants are and at
22 all times mentioned herein were mere shells, instrumentalities and conduits through which DOES 1 through
23 10, inclusive, carried out their business in the business name, exercising complete control and dominance
24 over such business; (b) that Defendants were conceived, intended and used by DOES 1 through 10,
25 inclusive, as devices to avoid individual liability and in place of Defendants, and DOES 1 through 10,
26 inclusive, and were without the financial solvency and responsibility required by law; and (c) that all of the
27 assets of the Defendants have been transferred to DOES 1 through 10, inclusive, or some other individual
28 or entity which it, he, or she owns or controls, with the intent to hinder, delay or defraud creditors of

1 Defendants, leaving Defendants with no assets. Further, there exists a principal-agency relationship
2 between and among Defendants.

3 **JURISDICTION AND VENUE**

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

8 10. The California Superior Court has jurisdiction over Defendants because Defendants are
9 entities doing business within the State of California.

10 11. Venue in this County is proper because a substantial part of Defendants’ conduct, acts, and
11 omissions alleged in this Complaint occurred in this County, Defendants conduct substantial business in
12 this County, and/or Defendants’ liability arose in this County.

13 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

14 12. Prior to filing this Complaint, Plaintiff filed a timely administrative charge with the DFEH
15 and received a right-to-sue letter.

16 **FACTUAL ALLEGATIONS**

17 13. Defendants employed Plaintiff from approximately February 10, 2022 until July 2023.
18 Plaintiff was a bartender and server at one of Defendants’ restaurants in Malibu, California.

19 14. Throughout his employment with Defendants, Plaintiff performed his job duties well and
20 was never told he had any disciplinary issues.

21 15. In July 2023, during a work meeting which took place during Plaintiff’s purported meal
22 period, Defendants’ cook provided Plaintiff with a meal. Because Plaintiff was highly allergic to peanuts,
23 prior to eating the meal, Plaintiff asked if the meal contained peanuts. Defendants’ representative told him
24 there was no peanuts in the meal. In fact, there were peanuts in the meal. Immediately after eating the meal,
25 Plaintiff started to experience impaired breathing, swelling of the throat, dizziness, and the like. When
26 Plaintiff told Defendants’ representative that he was experiencing these symptoms after eating the meal,
27 Defendants’ representative finally told Plaintiff that the meal had peanuts.

28 16. Rather than call an ambulance for Plaintiff, who was experiencing anaphylactic shock,

1 Defendants forced him to continue running food because Defendants had a large party and were
2 shorthanded. Eventually, Plaintiff went to the parking lot and called 911 himself. An ambulance took
3 Plaintiff to a nearby hospital. Plaintiff spent the next 24 hours in the emergency room. When Plaintiff
4 returned to work, he requested that Defendants pay his out-of-pocket medical expenses. Employer agreed
5 to pay a portion of Plaintiff's out-of-pocket medical expenses and simultaneously terminated his
6 employment.

7 17. This retaliation has caused significant emotional distress to Plaintiff.

8 18. The alleged harassment and retaliation against Plaintiff was condoned, permitted and
9 encouraged by Defendants, and each of them, in a manner which was grossly negligent, reckless, willful,
10 malicious, and deliberately indifferent to the Plaintiff's personal rights to a retaliation free work
11 environment. Accordingly, Defendants failed to prevent harassment from occurring in the workplace.

12 **FACTUAL ALLEGATIONS CONCERNING PAGA CLAIMS**

13 19. Through this action, Plaintiff alleges Defendants have consistently maintained and enforced
14 against Plaintiff and Aggrieved Employees unlawful employment practices and policies which violate the
15 Labor Code and IWC Wage Orders.

16 20. **Unpaid Wages:** Plaintiff is informed, believes, and thereon alleges that during the PAGA
17 Period, Defendants failed to pay Plaintiff and Aggrieved Employees minimum, regular, overtime, and/or
18 double time wages for all hours worked at the legally mandated rates. During the PAGA Period, Plaintiff
19 and Aggrieved Employees regularly worked more than eight (8), 10, and/or 12 hours per workday and/or
20 over 40 hours per workweek. Defendants' practices and policies deprived Plaintiff and Aggrieved
21 Employees of minimum, regular, overtime, and/or double time wages for work they performed off the
22 clock. Defendants required Plaintiff and Aggrieved Employees to complete work-related tasks off the
23 clock, such as communicating with Defendants' representatives and attending work-related meetings
24 during purported meal periods. Furthermore, Defendants rounded Plaintiff and Aggrieved Employees'
25 hours worked, thereby depriving them of wages for all hours worked at the legally mandated rates.
26 Defendants did not compensate Plaintiff and Aggrieved Employees for all hours worked because Plaintiff
27 and Aggrieved Employees were regularly on-duty during their meal and/or rest periods. Finally,
28 Defendants failed to accurately calculate the regular rate of pay by, among other things, failing to include

1 a remuneration when calculating the rate of pay for overtime, double time, meal and rest period premiums,
2 vacation pay, and sick pay. Accordingly, Defendants failed to pay Plaintiff and Aggrieved Employees the
3 proper minimum, regular, overtime, and double time wages for all hours worked, sick pay, and vacation
4 pay.

5 21. **Meal Break Violations:** Plaintiff is informed, believes, and thereon alleges that during the
6 PAGA Period, Defendants failed to authorize and permit and/or make available to Plaintiff and Aggrieved
7 Employees timely off-duty 30-minute meal periods within the appropriate time intervals required by Labor
8 Code Section 512 and Section 11 of the applicable IWC Wage Order(s). Specifically, Plaintiff and
9 Aggrieved Employees frequently had their meal periods shortened, interrupted, late, and/or missed
10 altogether due to Defendants' practice of understaffing and prioritizing work demands over taking
11 compliant breaks. Defendants also failed to authorize and permit and/or make available to Plaintiff and
12 Aggrieved Employees second meal periods when they worked more than 10 hours. Moreover, Defendants
13 rounded Plaintiff and Aggrieved Employees' time punches for meal periods. Accordingly, Defendants
14 failed to authorize and permit and/or make available to Plaintiff and Aggrieved Employees timely,
15 uninterrupted off-duty meal periods for at least 30 minutes when they worked more than five (5) hours
16 and/or 10 hours in a workday, and failed to compensate Plaintiff and Aggrieved Employees with an
17 additional hour of pay at their regular rate of pay for every day in which they were denied a compliant meal
18 period.

19 22. **Rest Break Violations:** Plaintiff is informed, believes, and thereon alleges that during the
20 PAGA Period, Defendants failed to authorize and permit and/or make available ten-minute rest periods for
21 every four (4) hours or major fraction thereof worked. Defendants failed to implement a compliant rest
22 break policy and/or practice, and failed to provide uninterrupted, off-duty 10-minute rest breaks. Plaintiff
23 and Aggrieved Employees missed their rest breaks or had them interrupted or governed by Employer's
24 practices and policies. Specifically, Defendants never scheduled rest breaks for Plaintiff and Aggrieved
25 Employees and Plaintiff and Aggrieved Employees were never authorized and permitted to take rest breaks.
26 Defendants also failed to adopt and implement a practice of providing third rest breaks when Plaintiff and
27 Aggrieved Employees worked over 10 hours. Notwithstanding the above rest break violations, Defendants
28 failed to compensate Plaintiff and Aggrieved Employees with an additional hour of pay at their regular rate

1 of pay for every day in which they suffered a rest period violation.

2 23. **Unreimbursed Business Expenses:** Plaintiff is informed, believes, and thereon alleges that
3 during the PAGA Period, Defendants failed to reimburse Plaintiff and Aggrieved Employees for necessary
4 business expenses incurred in the performance of their duties in violation of the Labor Code and IWC
5 Wage Orders. During the PAGA Period, Defendants failed to reimburse Plaintiff and Aggrieved Employees
6 for all business expenses incurred for Defendants' benefit. For example, Plaintiff and Aggrieved
7 Employees were required to use their personal cell phones to discuss work-related matters with Defendants'
8 representatives and for other work purposes without reimbursement. In addition, Plaintiff and Aggrieved
9 Employees were required to purchase and maintain uniforms without reimbursement. In addition, Plaintiff
10 and Aggrieved Employees were required to incur expenses associated with using their personal vehicles
11 for work-related tasks, including deliveries, without reimbursement for mileage or related costs.

12 24. **Sick Pay Violations:** Plaintiff is informed, believes, and thereon alleges that during the
13 PAGA Period, Defendants failed to calculate and pay sick pay at the regular rate of pay for the workweek
14 in which Plaintiff and Aggrieved Employees used paid sick time, or by dividing the Plaintiff and Aggrieved
15 Employees' total wages, not including overtime premium pay, by the Plaintiff and Aggrieved Employees'
16 total hours worked in the full pay periods of the prior 90 days of employment, in violation of Labor Code
17 Sections 246, 246.5, 247, 247.5, and 248.5 and the Healthy Workplaces, Healthy Families Act of 2014. In
18 addition, during the PAGA Period, Defendants failed to permit Plaintiff and Aggrieved Employees to use
19 in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less
20 than the sick leave that would be accrued during six months at the employee's then current rate of
21 entitlement, for the reasons specified in subdivision (a) of Section 246.5.

22 25. **Violations of Gratuities Laws:** Plaintiff is informed, believes, and thereon alleges that
23 during the PAGA Period, Defendants failed to properly pay out Plaintiff and Aggrieved Employees' tips
24 earned during regular working hours. Defendants made unlawful deductions to Plaintiff and Aggrieved
25 Employees' tips. In addition, during the PAGA Period, Defendants failed to keep accurate records of all
26 gratuities, whether received directly from the employee or indirectly by means of deductions from the
27 wages of the employee or otherwise.

28 26. **Failure to Pay Accrued Vacation Wages:** Plaintiff is informed, believes, and thereon

alleges that during the PAGA Period, Defendants failed to provide to Plaintiff and Aggrieved Employees accrual of vacation wages and failed to pay to Plaintiff and Aggrieved Employees vested vacation wages.

27. **Waiting Time Penalties:** Plaintiff is informed, believes, and thereon alleges that during the PAGA Period, Defendants willfully failed to timely pay all wages due to Plaintiff and Aggrieved Employees upon separation of employment in violation of the Labor Code and IWC Wage Orders. Plaintiff and Aggrieved Employees were not paid all wages (including minimum, regular, overtime, and double time wages, sick pay, and vacation pay), reimbursements, meal period premiums, and/or rest period premiums within the required time period in violation of the Labor Code and applicable IWC Wage Orders.

28. **Wage Statement Violations:** Plaintiff is informed, believes, and thereon alleges that during the PAGA Period, Defendants failed to furnish Plaintiff and Aggrieved Employees with accurate and complete wage statements in violation of the Labor Code and IWC Wage Orders. Plaintiff and Aggrieved Employees received wage statements which did not accurately reflect the gross and net wages earned, total hours worked, all applicable rates of pay and the corresponding number of hours worked at each pay rate, and correct entity name and address on wage statements issued to Plaintiff and Aggrieved Employees, among other things in violation of the Labor Code and IWC Wage Orders.

29. **Retaliation for Engaging in Protected Activity:** Plaintiff is informed, believes, and thereon alleges that during the PAGA Period, Plaintiff and Aggrieved Employees engaged in quintessential protected activity by making complaints to Defendants regarding workplace conditions they reasonably believed to be illegal. For example, Plaintiff made protected complaints to Defendants regarding various medical expenses he incurred because of Defendants' acts or omissions. Specifically, Plaintiff made a demand for reimbursement for medical expenses for injuries he sustained at Defendants' worksite. Immediately after Plaintiff engaged in this protected activity, Defendants' supervisors and management discriminated, retaliated, and/or took adverse actions against Claimant, including, without limitation, terminating his employment.

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1 **FIRST CAUSE OF ACTION**

2 **(Retaliation)**

3 **(Violations of Government Code §§ 12900, *et seq.* and Labor Code §§ 98.6, 232.5, 233, 234, 246.5,**
4 **and 1102.5)**

5 **(Against All Defendants)**

6 30. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth
7 in this paragraph.

8 31. At all times relevant, FEHA and the Labor Code was in full force and effect and was binding
9 on Defendants.

10 32. FEHA and Labor Code Sections 98.6, 232.5, 233, 234, 246.5, and 1102.5 were intended to
11 prevent the type of injury and damage alleged in this Complaint. FEHA and Labor Code Sections 98.6,
12 232.5, 233, 234, 246.5, and 1102.5 require Defendants to refrain from retaliating or discriminating against
13 Plaintiff for protected activities.

14 33. Plaintiff was, at all times relevant, a member of the class of persons intended to be protected
15 by FEHA and Labor Code Sections 98.6, 232.5, 233, 234, 246.5, and 1102.5.

16 34. Plaintiff engaged in protected conduct by requesting that Defendants pay his out-of-pocket
17 medical expenses caused by Defendants' acts or omissions, and using or attempting to use his accrued sick
18 leave to deal with a medical emergency.

19 35. Defendants terminated Plaintiff's employment and took the other alleged retaliatory actions.

20 36. Plaintiff's protected conduct was a motivating reason for Defendants' decision to terminate
21 him and the other alleged retaliatory actions.

22 37. As a result of the foregoing acts and omissions of Defendants, and each of them, Plaintiff
23 has been directly and legally caused to suffer actual damages including, but not limited to, loss of earnings
24 and future earning capacity, and other pecuniary loss not presently ascertained.

25 38. As a further direct and legal result of the acts and conduct of Defendants, and each of them,
26 Plaintiff has been caused to and did suffer and continues to suffer severe emotional and mental distress,
27 anguish, humiliation, embarrassment, fright, shock, pain, discomfort, and anxiety. The exact nature,
28 duration, and extent of said injuries is presently unknown to Plaintiff, but Plaintiff is informed and believes

1 and thereon alleges that some if not all of the injuries are reasonably certain to be permanent in character.

2 39. Defendants and their managers, officers, and/or directors committed the acts alleged herein
3 maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with
4 an improper and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's
5 rights. Moreover, Defendants and their managers, officers, and/or directors authorized or ratified the
6 wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. As such,
7 Plaintiff is entitled to recover punitive damages in an amount according to proof at trial.

8 40. Pursuant to Government Code Section 12965(b), Plaintiff is entitled to recover costs,
9 including reasonable attorneys' fees and expert witness fees, according to proof at trial.

10 **SECOND CAUSE OF ACTION**

11 **(Failure to Prevent Discrimination, Harassment, and/or Retaliation)**

12 **(Violation of Government Code § 12940(k))**

13 **(Against All Defendants)**

14 41. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth
15 in this paragraph.

16 42. FEHA requires an employer to take reasonable steps to prevent discrimination, harassment,
17 and/or retaliation in the workplace.

18 43. Defendants failed to take reasonable steps, and failed to prevent discrimination, harassment,
19 and/or retaliation against Plaintiff, as alleged above.

20 44. As a result of the foregoing acts and omissions of Defendants, and each of them, Plaintiff
21 has been directly and legally caused to suffer actual damages including, but not limited to, loss of earnings
22 and future earning capacity, and other pecuniary loss not presently ascertained.

23 45. As a further direct and legal result of the acts and conduct of Defendants, and each of them,
24 Plaintiff has been caused to and did suffer and continues to suffer severe emotional and mental distress,
25 anguish, humiliation, embarrassment, fright, shock, pain, discomfort, and anxiety. The exact nature,
26 duration, and extent of said injuries is presently unknown to Plaintiff, but Plaintiff is informed and believes
27 and thereon alleges that some if not all of the injuries are reasonably certain to be permanent in character.

28 46. Defendants and their managers, officers, and/or directors committed the acts alleged herein

1 maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with
2 an improper and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's
3 rights. Moreover, Defendants and their managers, officers, and/or directors authorized or ratified the
4 wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. As such,
5 Plaintiff is entitled to recover punitive damages in an amount according to proof at trial.

6 47. Pursuant to Government Code Section 12965(b), Plaintiff is entitled to recover costs,
7 including reasonable attorneys' fees and expert witness fees, according to proof at trial.

8 **THIRD CAUSE OF ACTION**

9 **(Intentional Infliction of Emotional Distress)**

10 **(Against All Defendants)**

11 48. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth
12 in this paragraph.

13 49. California law prohibits persons from intentionally or recklessly causing another emotional
14 distress.

15 50. Defendants intentionally or recklessly caused Plaintiff severe emotional distress.

16 51. Defendants' conduct was outrageous.

17 52. Plaintiff suffered harm as a result of Defendants' conduct.

18 53. Defendants and their managers, officers, and/or directors committed the acts alleged herein
19 maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with
20 an improper and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's
21 rights. Moreover, Defendants and their managers, officers, and/or directors authorized or ratified the
22 wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. As such,
23 Plaintiff is entitled to recover punitive damages in an amount according to proof at trial.

24 **FOURTH CAUSE OF ACTION**

25 **(Negligent Infliction of Emotional Distress)**

26 **(Against All Defendants)**

27 54. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth
28 in this paragraph.

1 55. California law prohibits persons from negligently causing another emotional distress.

2 56. Defendants negligently caused Plaintiff severe emotional distress, including suffering,
3 anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and shame.

4 57. Defendants' conduct was outrageous.

5 58. Defendants' conduct was a substantial factor in causing Plaintiff's serious emotional
6 distress.

7 **FIFTH CAUSE OF ACTION**

8 **(Wrongful Termination in Violation of Public Policy)**

9 **(Against All Defendants)**

10 59. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth
11 in this paragraph.

12 60. There is a strong and well defined public policy against retaliation and workers'
13 compensation claim retaliation in California.

14 61. Defendants terminated Plaintiff's employment in violation of these public policies.

15 62. Plaintiff was harmed as a result of Defendants' conduct.

16 63. Defendants and their managers, officers, and/or directors committed the acts alleged herein
17 maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with
18 an improper and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's
19 rights. Moreover, Defendants and their managers, officers, and/or directors authorized or ratified the
20 wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. As such,
21 Plaintiff is entitled to recover punitive damages in an amount according to proof at trial.

22 64. Plaintiff is entitled to recover costs, including reasonable attorneys' fees, according to proof
23 at trial.

24 **SIXTH CAUSE OF ACTION**

25 **(Failure to Pay All Wages)**

26 **(Against All Defendants)**

27 65. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth
28 in this paragraph.

1 66. At all relevant times, Defendants had a duty to comply with Labor Code Sections 204, 206,
2 210, 221, 223, 224, 227.3, 246, 510, 558, 1182.12, 1194, 1194.2, 1197, 1198, and the applicable IWC
3 Wage Orders and California Code of Regulations.

4 67. Labor Code Section 204 and the IWC Wage Orders require timely payment of all wages
5 owed on regularly scheduled paydays at least twice during each calendar month, on days designated in
6 advance by the employer as the regular paydays. All wages in earned in excess of the normal work period
7 must be paid no later than the payday for the next regular payroll period.

8 68. Labor Code Section 206 provides that in case of a dispute over wages, the employer shall
9 pay, without condition and promptly under the Labor Code all wages conceded due, leaving to the
10 employee all remedies he/she is otherwise entitled to as to any balance claimed.

11 69. Labor Code Section 210 provides:

12 every person who fails to pay the wages of each employee as provided in
13 Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5,
14 shall be subject to a penalty as follows: (1) For any initial violation, one
15 hundred dollars (\$100) for each failure to pay each employee. (2) For each
16 subsequent violation, or any willful or intentional violation, two hundred
17 dollars (\$200) for each failure to pay each employee, plus 25 percent of the
 amount unlawfully withheld. (b) The penalty shall either be recovered by
 the employee as a statutory penalty pursuant to Section 98 or by the Labor
 Commissioner as a civil penalty through the issuance of a citation or
 pursuant to Section 98.3.

18 70. Labor Code Section 221 provides “[i]t shall be unlawful for any employer to collect or
19 receive from an employee any part of wages theretofore paid by said employer to said employee.”

20 71. Labor Code Section 223 provides “[w]here any statute or contract requires an employer to
21 maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to
22 pay the wage designated by statute or by contract.”

23 72. Labor Code Section 224 prohibits any deduction from an employee’s wages which is not
24 either authorized by the employee in writing or permitted by law.

25 73. Labor Code Section 227.3 requires employers to pay terminated employees for their unused
26 paid vacation time at their final rate of pay.

27 74. Labor Code Section 246 requires employers to provide and allow employees to use at least
28 24 hours, or three days, of paid sick leave per year.

1 75. At all times relevant, Labor Code Section 510, and applicable sections of the California
2 Code of Regulations and the IWC Wage Orders applied to Plaintiff's work with Defendants. Labor Code
3 section 510 and applicable provisions of the California Code of Regulations and IWC Wage Orders state
4 that any work performed in excess of eight hours in a workday and/or 40 hours in a workweek must be
5 paid at one and one-half times the employee's regular rate of pay. Any work performed in excess of 12
6 hours in a workday must be compensated at the rate of no less than twice the regular rate of pay for an
7 employee.

8 76. Labor Code Section 558 provides "[a]ny employer or other person acting on behalf of an
9 employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours
10 and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as
11 follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period
12 for which the employee was underpaid in addition to an amount to recover underpaid wages. (2) For each
13 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for
14 which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3)
15 Wages recovered pursuant to this section shall be paid to the affected employee."

16 77. Labor Code Section 1182.12 sets forth the minimum hourly wage that must be paid to all
17 employees in California for all hours worked. Local minimum wage ordinances may provide for higher
18 minimum wage rates that must be paid to employees for all hours worked in those locales where each local
19 ordinance is in effect. Labor Code Section 1197 affirms that it is unlawful to pay less than the state or local
20 minimum wage, whichever is higher, for any hour of work.

21 78. Labor Code Section 1194 provides that any employee receiving less than the legal minimum
22 wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action
23 the unpaid balance of the full amount of the minimum wage or overtime compensation, including interest
24 thereon, reasonable attorney's fees, and costs of suit.

25 79. Labor Code Section 1194.2 authorizes the recovery of liquidated damages in an amount
26 equal to the wages unlawfully unpaid and interest thereon for unpaid wage violations.

27 80. Labor Code Section 1197 provides that the minimum wage for employees fixed by the
28 commission is the minimum wage to be paid to the employees, and the payment of a less wage than

1 minimum so fixed is unlawful.

2 81. Labor Code Section 1198 prohibits employers from employing for longer hours or less
3 favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise set by the
4 Labor Commissioner.

5 82. Plaintiff is informed, believes, and thereon alleges that at all relevant times, Plaintiff
6 regularly worked more than eight (8) hours, 10, and/or 12 hours per workday, more than 40 hours per
7 workweek, and/or more than eight (8) hours on the seventh consecutive day of work.

8 83. Plaintiff is informed, believes, and thereon alleges that at all relevant times, Defendants
9 failed to pay Plaintiff all wages for hours worked (including minimum, regular, overtime, and double time
10 wages, sick pay, and vacation pay), failed to pay overtime, double time, sick pay, and/or vacation pay at
11 the proper rates of pay, auto-deducted and rounded meal periods, unlawfully deducted wages, and required
12 off-the-clock work without compensation, among other things.

13 84. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has sustained
14 and continues to sustain damages, including loss of earnings including minimum, regular, overtime, and
15 double time compensation due, in an amount to be established at trial, plus prejudgment interest, attorneys'
16 fees, and costs pursuant to statute.

17 85. Plaintiff is informed, believes, and thereon alleges that Defendants, through their conduct
18 described herein, have committed an "intentional theft of wages in an amount greater than nine hundred
19 fifty dollars (\$950) from any one employee, or two thousand three hundred fifty dollars (\$2,350) in the
20 aggregate from two or more employees...in any consecutive 12-month period" within the meaning of
21 California Penal Code Section 487m. Specifically, Defendants have intentionally deprived Plaintiff of
22 wages, as defined in Section 200 of the Labor Code, gratuities, as defined in Section 350 of the Labor
23 Code, benefits, or other compensation, by unlawful means, with the knowledge that the wages, gratuities,
24 benefits, or other compensation is due to Plaintiff under the law. Plaintiff is thus entitled to recover from
25 Defendants treble damages and costs, including reasonable attorneys' fees, pursuant to California Penal
26 Code Section 496(c).

27 :: ::

28 :: ::

1 **SEVENTH CAUSE OF ACTION**

2 **(Meal Period Violations)**

3 **(Against All Defendants)**

4 86. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth
5 in this paragraph.

6 87. Labor Code Section 512(a) prohibits employers from employing any person for a work
7 period of more than five (5) hours without a meal period of not less than thirty (30) uninterrupted minutes.
8 Further, employers may not employ an employee for a work period of more than ten (10) hours per day
9 without providing the employee with a second meal period of not less than thirty (30) minutes.

10 88. At all relevant times, Plaintiff regularly worked more than five (5) hours and/or 10 hours
11 per workday without being provided an uninterrupted, off-duty 30-minute meal period since Plaintiff's
12 meal periods were late, interrupted, short, and/or on-duty.

13 89. Defendants failed to pay Plaintiff meal period premiums for noncompliant meal periods
14 pursuant to Labor Code Section 226.7(b) and the applicable IWC Wage Order.

15 90. Defendants have willfully, unfairly, fraudulently or unlawfully failed to allow Plaintiff to
16 take meal breaks pursuant to Labor Code Section 512(a). As a result, Defendants are liable to Plaintiff for
17 premium compensation of one hour of pay at the employee's regular rate for each workday that the meal
18 period was not provided pursuant to Labor Code Section 226.7, according to proof at trial.

19 91. Plaintiff is informed, believes, and thereon alleges that Defendants, through their conduct
20 described herein, have committed an "intentional theft of wages in an amount greater than nine hundred
21 fifty dollars (\$950) from any one employee, or two thousand three hundred fifty dollars (\$2,350) in the
22 aggregate from two or more employees...in any consecutive 12-month period" within the meaning of
23 California Penal Code Section 487m. Specifically, Defendants have intentionally deprived Plaintiff of
24 wages, as defined in Section 200 of the Labor Code, gratuities, as defined in Section 350 of the Labor
25 Code, benefits, or other compensation, by unlawful means, with the knowledge that the wages, gratuities,
26 benefits, or other compensation is due to Plaintiff under the law. Plaintiff is informed, believes, and thereon
27 alleges that meal period premiums are wages, gratuities, benefits, or other compensation within the
28 meaning of California Penal Code Section 487m. Plaintiff is thus entitled to recover from Defendants treble

1 damages and costs, including reasonable attorneys' fees, pursuant to California Penal Code Section 496(c).

2 **EIGHTH CAUSE OF ACTION**

3 **(Rest Period Violations)**

4 **(Against All Defendants)**

5 92. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth
6 in this paragraph.

7 93. California law and applicable Wage Orders require employers to authorize and permit all
8 employees to take uninterrupted rest periods. The rest period time shall be based on the total hours worked
9 daily at the rate of 10 minutes net rest time per four hours or major fraction thereof.

10 94. During the relevant time period, Defendants failed to provide compliant rest breaks.
11 Specifically, Plaintiff had his rest breaks on-duty, interrupted, missed, or shortened. Consequently, Plaintiff
12 did not receive a 10-minute rest period for every four (4) hours worked or major fraction thereof.

13 95. During the relevant time period, Defendants failed to pay Plaintiff rest period premiums for
14 noncompliant rest periods pursuant to Labor Code Section 226.7(b) and the applicable IWC Wage Order.

15 96. Defendants have willfully, unfairly, fraudulently or unlawfully failed to allow Plaintiff to
16 take rest periods pursuant to California law. As a result, Defendants are liable to Plaintiff for premium
17 compensation of one hour of pay at the employee's regular rate for each workday that the rest period was
18 not provided pursuant to Labor Code Section 226.7, in an amount to be established at trial.

19 97. Plaintiff is informed, believes, and thereon alleges that Defendants, through their conduct
20 described herein, have committed an "intentional theft of wages in an amount greater than nine hundred
21 fifty dollars (\$950) from any one employee, or two thousand three hundred fifty dollars (\$2,350) in the
22 aggregate from two or more employees...in any consecutive 12-month period" within the meaning of
23 California Penal Code Section 487m. Specifically, Defendants have intentionally deprived Plaintiff of
24 wages, as defined in Section 200 of the Labor Code, gratuities, as defined in Section 350 of the Labor
25 Code, benefits, or other compensation, by unlawful means, with the knowledge that the wages, gratuities,
26 benefits, or other compensation is due to Plaintiff under the law. Plaintiff is informed, believes, and thereon
27 alleges that rest period premiums are wages, gratuities, benefits, or other compensation within the meaning
28 of California Penal Code Section 487m. Plaintiff is thus entitled to recover from Defendants treble damages

1 and costs, including reasonable attorneys' fees, pursuant to California Penal Code Section 496(c).

2 **NINTH CAUSE OF ACTION**

3 **(Failure to Reimburse Business Expenses)**

4 **(Against All Defendants)**

5 98. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth
6 in this paragraph.

7 99. At all relevant times, Defendants had a duty to comply with Labor Code Sections 2800 and
8 2802. Defendants failed to comply with these indemnification and reimbursement requirements with
9 respect to Plaintiff.

10 100. Labor Code Section 2800 requires employers to indemnify employees for losses caused by
11 the employer's want of ordinary care. To the extent Defendants claim that Plaintiff failed to request,
12 demand, notify or otherwise seek reimbursement for their expenses and losses, Defendants were obligated
13 to nevertheless indemnify Plaintiff due to their own negligence.

14 101. Labor Code Section 2802(a) requires that employers indemnify and reimburse employees
15 for all business expenses, which are defined as all necessary expenditures or losses incurred by the
16 employee in direct consequence of the discharge of the employee's duties or otherwise incurred based on
17 the employee's obedience to the employer's directions. Labor Code Section 2802(b) authorizes employees
18 to recover in a court action interest which shall accrue from the date on which the employee incurred the
19 necessary expenditure or loss. Labor Code Section 2802(c) authorizes employees, who to enforce their
20 right to reimbursements under Labor Code Section 2802, to also recover attorneys' fees and costs.

21 102. Defendants failed to pay and indemnify Plaintiff for his necessary expenditures and losses
22 incurred in direct consequence of the discharge of Plaintiff's duties or of Plaintiff's obedience to
23 Defendants' directions. For example, Defendants required Plaintiff to use his personal cell phone to discuss
24 work-related matters with Defendants' representatives and for other work purposes without reimbursement.
25 In addition, Defendants required Plaintiff to purchase and maintain a uniform without reimbursement. In
26 addition, Defendants required Plaintiff to incur expenses associated with using his personal vehicle for
27 work-related tasks, including deliveries, without reimbursement for mileage or related costs.

28 103. As a result of Defendants' failure to indemnify and reimburse Plaintiff for all business and

1 work-related costs, expenditures, losses and expenses in accordance with Labor Code Sections 2800 and
2 2802, Plaintiff is entitled to recover the full unreimbursed balance of reimbursements, expenditures and
3 losses, prejudgment interest, and statutory penalties, along with attorneys' fees and costs according to proof
4 at trial.

5 **TENTH CAUSE OF ACTION**

6 **(Wage Statement Violations)**

7 **(Against All Defendants)**

8 104. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth
9 in this paragraph.

10 105. Labor Code Section 226(a) requires employers, at the time of each payment of wages, to
11 furnish each employee with an accurate statement itemizing, among other things: (1) gross wages earned;
12 (2) the total hours worked by the employee; (3) all deductions; (4) net wages earned; (5) the inclusive dates
13 of the period for which the employee is paid; (6) the name of the employee and his or her social security
14 number (last four digits); (7) the name and address of the legal entity that is the employer; and (8) all
15 applicable hourly rates in effect during the pay period and the corresponding number of hours worked at
16 each hourly rate by the employee. Labor Code Section 1174 further requires that such payroll records be
17 kept in a central location.

18 106. Labor Code Section 226(e) further provides that if an employer knowingly and intentionally
19 fails to provide a statement itemizing, among other things, the total hours worked by the employee, then
20 the employee is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial
21 violation and one hundred dollars (\$100) for each subsequent violation, up to four thousand dollars
22 (\$4,000).

23 107. As alleged above, Defendants failed to pay all wages, reimbursements, and premiums. Thus,
24 Defendants have knowingly and intentionally failed to comply with the Labor Code on each and every
25 wage statement that should have been provided to Plaintiff by failing to provide itemized wage statements
26 to Plaintiff that accurately reported, among other things, the gross and net wages earned, the total hours
27 worked, all applicable hourly rates in effect during the pay period, and the corresponding number of hours
28 worked at each hourly rate.

108. By failing to keep accurate records and provide such records to Plaintiff as required by Labor Code Sections 226(a) and 1174, Defendants have injured Plaintiff and made it difficult to calculate the unpaid wages earned and due to Plaintiff. Moreover, Defendants' failure to comply with Labor Code Section 1174 is unlawful under Labor Code Section 1175.

109. Because of Defendants' willful failure to provide Plaintiff with accurate records as required by Labor Code Section 226(a), Plaintiff is entitled to damages under Labor Code Section 226(e) according to proof at trial.

ELEVENTH CAUSE OF ACTION

(Waiting Time Penalties)

(Against All Defendants)

110. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth in this paragraph.

111. Labor Code Section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Labor Code Section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge as required under Labor Code Section 201, the employer is liable to the employee for penalties.

112. At the time of Plaintiff's termination of employment, Plaintiff had unpaid wages, reimbursements, and premium pay for missed meal and rest periods outstanding.

113. Defendants have willfully, unfairly, fraudulently, or unlawfully failed to pay Plaintiff compensation owed upon termination of employment under Labor Code Section 201. Plaintiff's employment with Defendants terminated but Defendants failed to pay Plaintiff any of the unpaid wages, reimbursements, and premiums due and owing to Plaintiff at the time of Plaintiff's termination. As a result, Defendants are liable to Plaintiff for waiting time penalties under Labor Code Section 203 according to proof at trial.

TWELFTH CAUSE OF ACTION

(Unfair Business Practices)

(Against All Defendants)

114. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth

1 in this paragraph.

2 115. The Unfair Competition Law as codified in Business and Professions Code Sections 17200,
3 *et seq.* (“UCL”) defines unfair business competition to include any “unlawful, unfair or fraudulent” act or
4 practice.

5 116. A business act or practice is “illegal” under the UCL if it violates any statute, regulation, or
6 ordinance.

7 117. A business practice is “unfair” under the UCL if the reasons, justifications, and motives of
8 the alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims.

9 118. A business act or practice is “fraudulent” under the UCL if it is “likely to deceive” members
10 of the general public.

11 119. Plaintiff is informed, believes, and thereon alleges that Defendants’ unlawful failure to
12 timely pay wages, meal and rest periods or compensation, provide accurate itemized wage statements,
13 reimburse expenses, among other things, constitute violations of the UCL.

14 120. Plaintiff is informed, believes, and thereon alleges that Defendants’ acts in violation of
15 FEHA constitute violations of the UCL.

16 121. Defendants’ failure to pay Plaintiff in a lawful manner as set forth above and below is
17 fraudulent and deceptive and constitutes an ongoing and continuous unfair business practice within the
18 meaning of the UCL. Members of the public have been deceived in the past, and will be in the future
19 continue to be deceived, by these continuous unfair business practices.

20 122. The illegal conduct alleged in this Complaint is continuing, and there is no indication that
21 Defendants will not continue such activity in the future. Plaintiff alleges that if Defendants are not enjoined
22 from their illegal conduct, they will continue to fail to provide rest periods and meal breaks or provide
23 appropriate compensation in-lieu thereof.

24 123. A request for injunctive relief, restitution and for the disgorgement of unlawfully earned
25 profits is specifically authorized by the UCL. Thus, on behalf of himself and the general public, Plaintiff
26 seeks injunctive relief, restitution, and the disgorgement of all unlawfully earned profits as a result of
27 Defendants’ alleged acts or omissions described in this Complaint. Furthermore, Plaintiff requests
28 attorneys’ fees and costs pursuant to Code of Civil Procedure Section 1021.5.

124. Plaintiff is informed, believes, and thereon alleges that unless restrained and ordered to pay restitution and disgorge profits derived from said unfair and unlawful business practices, Defendants will continue to engage in the alleged acts and/or omissions described in this Complaint.

THIRTEENTH CAUSE OF ACTION

(Violations of the Private Attorneys General Act of 2004)

(Against All Defendants)

125. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth in this paragraph.

126. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under PAGA only after giving the LWDA and the employer notice of the Labor Code sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate or after 65 days have passed without notice from the LWDA.

127. On September 27, 2023, Plaintiff gave written notice of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations, as required by Labor Code section 2699.3. This written notice was provided via certified mail to Defendants and to the LWDA by electronically filing the notice via the Department of Industrial Relations' website. More than 65 days have passed since Plaintiff submitted the notice to the LWDA without notice from the LWDA. Accordingly, Plaintiff has exhausted the procedural requirements under Labor Code section 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all other aggrieved employees under PAGA.

128. Under Labor Code section 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to the procedures specified in Labor Code section 2699.3.

129. For all provisions of the Labor Code except those for which a civil penalty is specifically provided, Labor Code section 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for

1 each aggrieved employee per pay period for each subsequent pay period in which Defendants violated these
2 provisions of the Labor Code.

3 130. Pursuant to Labor Code sections 2699.3 and 2699.5, Plaintiff may seek civil penalties for
4 any alleged violation of the following provisions: subdivision (k) of section 96, sections 98.6, 201, 201.3,
5 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and
6 212, subdivision (d) of section 213, sections 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive,
7 (7), and (9) of subdivision (a) of section 226, sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4,
8 230.7, 230.8, and 231, subdivision (c) of section 232, subdivision (c) of section 232.5, sections 233, 234,
9 351, 353, and 403, subdivision (b) of section 404, sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512,
10 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976,
11 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of section 1174, sections
12 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of section 1198.3, sections 1199, 1199.5, 1290,
13 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5,
14 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of section 1695.5, sections 1695.55, 1695.6,
15 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and
16 1700.47, sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of section
17 2673.1, sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of section 2929, and sections
18 3073.6, 6310, 6311, and 6399.7.

19 131. Defendants' conduct violates numerous Labor Code sections, including, but not limited to,
20 the following:

21 (a) Violation of Labor Code sections 201-204, 206, 210, 221, 223, 227.3, 246, 510, 558,
22 1194, 1197, 1197.1, and 1198 for failure to timely pay all sick pay, vacation pay, and earned wages
23 (including minimum, regular, overtime, and double time wages) owed to Plaintiff and other aggrieved
24 employees during employment and upon separation of employment;

25 (b) Violation of Labor Code sections 226.7 and 512 for failure to provide meal periods
26 to Plaintiff and/or other Aggrieved Employees and failure to pay premium wages for missed meal periods;

27 (c) Violation of Labor Code section 226.7 for failure to permit rest breaks to Plaintiff
28 and/or other Aggrieved Employees and failure to pay premium wages for missed rest periods;

1 (d) Violation of Labor Code sections 226 and 226.3 for failure to provide accurate
2 itemized wage statements to Plaintiff and/or other Aggrieved Employees;

3 (e) Violation of Labor Code sections 226, 226.3, 1174, and 1174.5 for failure to
4 calculate sick pay at the regular rate of pay for the workweek in which Plaintiff and/or other Aggrieved
5 Employees used paid sick time, or by dividing the Plaintiff and/or other Aggrieved Employees' total wages,
6 not including overtime premium pay, by the Plaintiff and/or other Aggrieved Employees' total hours
7 worked in the full pay periods of the prior 90 days of employment, in violation of Labor Code Sections
8 246, 246.5, 247, 247.5, and 248.5 and the Healthy Workplaces, Healthy Families Act of 2014;

9 (f) Violation of Labor Code sections 233 and 234 for failure to permit Plaintiff and/or
10 Aggrieved Employees to use in any calendar year the employee's accrued and available sick leave
11 entitlement;

12 (g) Violation of Labor Code section 227.3 for failure to provide to Plaintiff and/or
13 Aggrieved Employees accrual of vacation wages and failure to pay to Plaintiff and/or Aggrieved
14 Employees vested vacation wages;

15 (h) Violation of Labor Code section 351 for failing to properly pay out Plaintiff and/or
16 Aggrieved Employees' gratuities earned during regular working hours;

17 (i) Violation of Labor Code section 353 for failing to keep accurate records of all
18 gratuities;

19 (j) Violation of Labor Code sections 221 and 223 for secretly paying Plaintiff and/or
20 Aggrieved Employees less than the statutory or contractual rate;

21 (k) Violation of Labor Code sections 1174 and 1174.5 for failure to maintain accurate
22 records regarding the employment of Plaintiff and/or other Aggrieved Employees;

23 (l) Violation of Labor Code sections 450, 2800, 2802, and 2804 for failure to reimburse
24 business expenses to Plaintiff and other Aggrieved Employees;

25 (m) Violation of Labor Code sections 98.6, 232.5(c), and 1102.5 for discriminating,
26 retaliating, and/or taking adverse actions against Plaintiff and/or Aggrieved Employees for engaging in
27 quintessential protected activity; and

28 (n) Violation of Labor Code section 1199 for the foregoing Labor Code violations.

1 132. Labor Code section 226.3 provides: “[a]ny employer who violates subdivision (a) of Section
2 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per
3 violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a
4 subsequent citation, for which the employer fails to provide the employee a wage deduction statement or
5 fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this
6 section are in addition to any other penalty provided by law.”

7 133. Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an
8 employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours
9 and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as
10 follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period
11 for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100)
12 for each underpaid employee for each pay period for which the employee was underpaid.”

13 134. Labor Code section 1174.5 provides a \$500 penalty for an employer’s failure to maintain
14 accurate and complete payroll records showing the hours worked daily by and the wages paid to employees.

15 135. Labor Code section 1197.1 also provides “[a]ny employer or other person acting either
16 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any
17 employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the
18 commission shall be subject to a civil penalty . . . as follows: (1) For any initial violation that is intentionally
19 committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the
20 employee is underpaid . . . (2) For each subsequent violation for the same specific offense, two hundred
21 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid
22 regardless of whether the initial violation is intentionally committed.

23 136. As set forth above, Defendants have violated numerous provisions of the Labor Code
24 regulating hours and days of work as well as the IWC Wage Orders. Accordingly, Plaintiff also seeks the
25 civil penalties set forth in Labor Code sections 226.3, 226.8, 558, 1174.5, and 1197.1 individually, on
26 behalf of all aggrieved employees, and the State of California.

27 137. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
28 violators and had one or more of the alleged violations committed against Plaintiff, and therefore is properly

1 suited to represent the interests of all other aggrieved employees.

2 138. Plaintiff has exhausted the procedural requirements under Labor Code section 2699.3 as to
3 Defendants and is therefore able to pursue a claim for penalties individually and on behalf of all other
4 aggrieved employees under the PAGA.

5 139. Pursuant to Labor Code sections 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover
6 civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

7 140. Plaintiff is also entitled to attorneys' fees and costs.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff, individually, prays for judgment against Defendants, jointly and
10 severally, as follows:

- 11 1. For general damages, according to proof at trial;
- 12 2. For compensatory damages, according to proof at trial;
- 13 3. For loss of earnings and other economic or pecuniary damages, according to proof at trial;
- 14 4. For prejudgment interest on all sums recovered pursuant to other compensatory damages
15 at the legal rate from the date of injury or pursuant to Code of Civil Procedure Sections 3287 and
16 3289, and Labor Code Section 218.6;
- 17 5. For exemplary and punitive damages in an amount sufficient to deter Defendants,
18 according to proof at trial;
- 19 6. For treble damages pursuant to Penal Code Section 496(c), according to proof at trial;
- 20 7. For waiting time penalties under Labor Code Section 203;
- 21 8. For liquidated damages under Labor Code Section 1194.2;
- 22 9. For statutory penalties to the extent permitted by law, including those under the Labor
23 Code and IWC Wage Orders;
- 24 10. For attorneys' fees under Labor Code Sections 218.6, 226, 1194, and 2802, Code of Civil
25 Procedure Section 1021.5, Government Code Section 12965(b), Penal Code Section 496(c), and any
26 other applicable provisions of law;
- 27 11. For costs of suit incurred; and
- 28 12. For such other and further relief as the Court may deem just and proper.

1 WHEREFORE, Plaintiff, on behalf of himself, the Aggrieved Employees, and the State of
2 California, prays for judgment against Defendants, jointly and severally, as follows:

3 13. For civil penalties against Defendants on behalf of all Aggrieved Employees and the State
4 of California pursuant to, *inter alia*, Labor Code Sections 210, 226.3, 558, 1174.5, 1197.1, and 2698,
5 *et seq.*;

6 14. For reasonable attorneys' fees and costs of suit to the extent permitted by law, including
7 pursuant to Labor Code Sections 2699(g), 2802(c) and CCP Section 1021.5; and

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

10 Dated: December 14, 2023

MANAHAN O'DELL LLP

11 By: Shaheen A. Etemadi
12 Amanda E. Manahan
13 Shaheen A. Etemadi
14 Attorneys for Plaintiff Nicholas J. Pirtle
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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

Dated: December 14, 2023

MANAHAN O'DELL LLP

By: Shaheen A. Etemadi
Amanda E. Manahan
Shaheen A. Etemadi
Attorneys for Plaintiff Nicholas J. Pirtle