

COMES NOW Plaintiff, JAMES ELEBY (hereinafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants BLACK BADGE EXECUTIVE PROTECTION; ELMA KESHISHYAN; RONMA RASHID PERRY; and DOES 1 to 25, inclusive, (hereinafter collectively known as "Defendant(s)" or "BLACK BADGE"), do business in the County of Los Angeles and because Defendants' obligations and liabilities arise therein. Moreover, Plaintiff's damages sought herein exceed \$25,000.

2. Plaintiff is a male resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant BLACK BADGE EXECUTIVE PROTECTION is and was a California business, form unknown, doing business in Los Angeles County, California, and which employed Plaintiff. Plaintiff is further informed and believes that at all times herein mentioned, Defendant ELMA KESHISHYAN is and was a female resident of the County of Los Angeles, State of California. Plaintiff is further informed and believes that at all times herein mentioned Defendant RONMA RASHID PERRY is and was an individual resident of the County of Los Angeles, State of California. Defendants ELMA KESHISHYAN and RONMA RASHID PERRY are being included in this lawsuit pursuant to Labor Code section 558.1 in that they were and are the owners, managing directors, and/or managing agents of BLACK BADGE EXECUTIVE PROTECTION, were involved in the day-to-day operations of the business, and as such, controlled the wages, hours, and/or working conditions of Plaintiff and other employees.

4. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or

1 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
2 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
3 defendants, numbers 1 to 25, reside in the State of California and are in some manner
4 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
5 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
6 and capacities of these fictitiously named defendants.

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8 5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
9 that information and belief, alleges that at all times herein mentioned, each of the remaining
10 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
11 under the authority of their agency, employment, or representative capacity, with the consent
12 of his/her codefendants.

13 **GENERAL ALLEGATIONS**

14 6. Plaintiff started working at BLACK BADGE on or around June 2023 as a security
15 guard. Plaintiff was seemingly misclassified as a 1099 employee. Plaintiff's employment ended
16 on or around September 2023.

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18 7. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018),
19 Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas
20 Security Services USA, Inc., an onsite security provider. After about a year of employment,
21 Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff
22 specifically alleged violations to the Labor Code requiring immediate payment of wages upon
23 termination of employment and weekly payment of wages to temporary employees. The trial
24 court determined Huff was not a temporary employee, and therefore, lacked standing to bring
25 the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court
26 granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue
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1 was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not
2 directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the
3 PAGA representative to sue for violations that the representative has personally suffered. The
4 PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves
5 and others. The statute also states that an “aggrieved employee” is “any person who was
6 employed by the alleged violator and against whom one or more of the alleged violations was
7 committed.” Because at least one of the violations that Huff had alleged had affected him
8 personally, the Court of Appeal denied Securitas’ motion.
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10 8. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
11 other employees, it allows for suits broader than the specific violations the named employee
12 experienced. Therefore, even if the employee did not personally experience the Labor Code
13 violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff’s
14 position that Plaintiff can equivocally bring the following labor code violations on behalf of all
15 other employees, including ALL hourly, non-exempt employees, irrespective of job title or job
16 duties, as well as workers who were misclassified as independent contractors but should have
17 been classified as hourly, non-exempt W2 employees and who worked for BLACK BADGE at
18 any of their locations in California during the relevant PAGA period.
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20 9. It is Plaintiff’s position that BLACK BADGE has violated the following Labor Code
21 Sections against Plaintiff and other similarly situated aggrieved employees, who include all
22 non-exempt, hourly employees and those who were supposed to be classified as hourly, non-
23 exempt employees and who worked for BLACK BADGE at their various locations in the State
24 of California during the relevant PAGA period.
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26 10. BLACK BADGE violated Labor Code section 226.8. Pursuant to Labor Code section
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1 226.8(a)(1), it is unlawful for any person or employer to willfully misclassify an individual as
2 an independent contractor. "Willful misclassification means avoiding employee status for an
3 individual by voluntarily and knowingly misclassifying that individual as an independent
4 contractor." Cal. Lab. Code Section 226.8(i)(4). If a person or employer has willfully
5 misclassified an individual as an independent contractor, the person or employer shall be
6 subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than
7 fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines
8 permitted by law. Cal. Lab. Code Section 226.8(b). If the person or employer has engaged in or
9 is engaging in a pattern or practice of willfully misclassifying individuals as independent
10 contractors, the person or employer shall be subject to a civil penalty of not less than ten
11 thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each
12 violation, in addition to any other penalties or fines permitted by law. Cal. Lab. Code Section
13 226.8(c).
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16 11. In a very important decision, Dynamex Operations v. Superior Court (2018) 4 Cal. 5th
17 903, the Supreme Court developed the "ABC TEST" to determine whether an independent
18 contractor is an employee. Under the ABC TEST, a worker will be deemed to have been
19 "suffered or permitted to work," and thus, an employee for wage order purposes, unless the
20 putative employer proves:

- 21 a. that the worker is free from the control and direction of the hiring entity in
22 connection with the performance of the work, both under the contract for the
23 performance of the work and in fact;
- 24 b. that the worker performs work that is outside the usual course of the hiring
25 entity's business; and
- 26 c. that the worker is customarily engaged in an independently established trade,
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1 occupation, or business of the same nature as the work performed.

2 12. Note that each of these requirements need to be met in order for the presumption that a
3 worker is an employee to be rebutted, and for a court to recognize that a worker has been
4 properly classified as an independent contractor.

5 13. Here, it is unequivocally clear that BLACK BADGE would not be able to get past the
6 second part of the test since Plaintiff and others, who were employed as security guards, were
7 unequivocally doing work related to BLACK BADGE's core business of providing security
8 services to its clientele. As such, BLACK BADGE willfully misclassified Plaintiff and other
9 aggrieved employees as independent contractors. Moreover, there was plenty of control by
10 BLACK BADGE as it related to Plaintiff's and other aggrieved employees' schedules, working
11 conditions, and work duties.

13 14. BLACK BADGE violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it
14 failed to pay Plaintiff and other similarly situated aggrieved employees for all hours worked,
15 including the statutory minimum wage for all hours worked and for "off the clock" work. This
16 is so because BLACK BADGE had a company policy wherein they would disproportionately
17 round down the number of hours worked, resulting in "time shaving" and further resulting in
18 aggrieved employees not being paid for all hours worked. Moreover, Plaintiff and others would
19 perform work before and/or after their scheduled shifts and were not compensated for this
20 additional work. To the extent that Plaintiff and others were classified as 1099 employees, the
21 latter would be illegal in violation of Labor Code section 226.8 due to the fact that BLACK
22 BADGE is in the business of security work and Plaintiff and others were security guards.
23 Under the ABC test, it is unequivocally clear that Plaintiff and others were supposed to be
24 classified as hourly, non-exempt employees. In addition, BLACK BADGE unequivocally
25 controlled Plaintiff's and others working hours, schedule, and job duties, among other things.
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1 15. Due to the above “off the clock” violations, BLACK BADGE also violated Labor Code
2 §510 because it failed to pay Plaintiff and other aggrieved employees overtime compensation,
3 even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per
4 week throughout their employment. Plaintiff’s and other aggrieved employees’ actual work
5 hours entitled them to overtime compensation, however, BLACK BADGE did not compensate
6 its hourly, non-exempt employees with overtime or the correct amount of overtime due to the
7 “off the clock” work and time shaving as described above and due to overall company policy
8 in treating its workers as independent contractors, thus not paying them any overtime
9 compensation. Furthermore, BLACK BADGE failed to include bonuses/incentive payments in
10 calculating employees’ regular rate of pay for use in deciphering the correct overtime rate of
11 pay. Additionally, the incentive and bonus payments were also not factored into employees’
12 regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews
13 case.
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15 16. BLACK BADGE also violated Labor Code § 226.7 and the appropriate Industrial
16 Welfare Commission Wage Order no. 4 because it failed to provide Plaintiff and other
17 similarly situated aggrieved employees with 10-minute rest periods for every four hours of
18 work, or majority portion thereof, throughout their employment. BLACK BADGE did not
19 completely relieve Plaintiff and others of all duty during said rest periods. BLACK BADGE
20 did not pay to Plaintiff and others one additional hour of pay at Plaintiff’s regular rate of
21 compensation for each workday that one or more statutory rest periods was not provided. It
22 was not part of the company policy for employees such as Plaintiff to take at least two rest
23 breaks per shift. The concept of rest breaks was not consistently implemented as it was not
24 company policy. Moreover, it would not have been possible for employees such as Plaintiff
25 and others to take such rest breaks due to having consistent security guard duties and no one to
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1 relieve him or allow for any type of a statutory break. Plaintiff was not able to take any rest
2 breaks throughout his employment. As such, the culture as well as the policies and procedures
3 of BLACK BADGE did not lend itself to the employees receiving consistent statutory rest
4 breaks wherein they were relieved of all work duties. The environment at BLACK BADGE
5 was not conducive to receiving multiple statutory rest breaks under California law and timely,
6 statutory rest breaks were not authorized or enforced.

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8 17. BLACK BADGE violated Labor Code §§ 512 and 226.7 and the appropriate Industrial
9 Welfare Commission Wage Order no. 4 because it failed to provide hourly, non-exempt
10 employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods
11 for every five (5) hours of work throughout their employment. BLACK BADGE did not
12 completely relieve Plaintiff and other employees of all duty during said meal periods. BLACK
13 BADGE did not pay to Plaintiff and its hourly, non-exempt employees one additional hour of
14 pay at their regular rate of compensation for each workday that one or more statutory meal
15 periods was not provided. Plaintiff and others simply did not receive timely, uninterrupted
16 meal breaks before the 5th hour worked, especially due to the fact that they were misclassified
17 as independent contractors. Moreover, even if aggrieved employees were able to take meal
18 breaks, the meal breaks would be late and after the 5th hour worked or they would be
19 interrupted. The latter was due to the workload and due to having consistent security guard
20 duties without any relief and without anyone to relieve Plaintiff and others of their job duties.
21 Like the rest breaks, receiving a thirty-minute uninterrupted and timely meal break was not part
22 of the company culture and was not enforced by BLACK BADGE. Consequently, it was the
23 normal practice and custom of BLACK BADGE not to authorize, permit, and enforce timely
24 statutory meal periods. If BLACK BADGE had Plaintiff sign a meal period waiver, it would
25 not be valid and enforceable since Plaintiff and others generally worked more than a 6-hour
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1 shift. If BLACK BADGE had Plaintiff sign an on-duty meal period agreement wherein
2 Plaintiff agreed to work through the meal periods, it would be invalid and unenforceable
3 because the nature of Plaintiff's job does not and did not prevent him from taking a meal
4 period and the company could have hired "breakers" to relieve Plaintiff of his job duties so that
5 he can actually take a timely, uninterrupted meal period. Moreover, any such "on duty" meal
6 period agreement did not allow for Plaintiff to revoke such an agreement even if it was signed.
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8 18. As such, Plaintiff and others did not always receive statutory, timely meal periods
9 during their employment. To the extent that BLACK BADGE argues that Plaintiff and others
10 were paid to work through their meal period, this argument is not compelling due to the
11 position that there was no valid meal period waiver in place and even if there was, it is still a
12 violation to prevent an employee from taking a meal break in order to rest and recover. To the
13 extent that BLACK BADGE argues that employees receive meal break premium pay for
14 missed, late or short meal and rest periods, that argument is inconsequential for PAGA penalty
15 purposes since the PAGA penalties are for the violations themselves, irrespective of whether
16 an employee received the premium payment for a missed, short, or interrupted meal period.
17 In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, "section 226.7 does not give
18 employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour
19 of pay." See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in
20 original). Thus, the extra hour of pay does not excuse the violation; the employer has still
21 committed a violation even if the remedy for the violation has been paid. See *Wert v. U.S.*
22 *Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment
23 and culture at BLACK BADGE was not conducive to receiving consistent, timely, statutory
24 meal breaks under California law. Moreover, any meal or rest break premiums paid were not
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1 compensated at the weighted average regular rate, inclusive of bonuses and/or incentive
2 payments as well as overtime compensation.

3 19. Furthermore, during the relevant time period, and due to the above labor code
4 violations, BLACK BADGE failed to pay Plaintiff and other similarly situated aggrieved
5 employees all wages due to them within any time period specified by California Labor Code
6 section 204. Furthermore, while employees like Plaintiff were supposed to be paid weekly,
7 their paychecks were consistently late. BLACK BADGE was also in violation of California
8 Labor Code section 226(a) by failing to include pertinent information on the wage statements,
9 including but not limited to, the correct hourly rate, all hours worked, overtime hours worked,
10 correct overtime pay, gross wages earned, net wages earned, premium pay for missed meal and
11 rest breaks, all deductions, the correct start and end of the pay period, all employee identifying
12 information, the correct and complete name and address of the legal employer, and
13 reimbursement for business expenses, among others. In fact, Plaintiff did not consistently
14 receive any paystubs from BLACK BADGE at all in violation of Labor Code section 226 as
15 the company would only provide Plaintiff with a notation of the number of hours worked
16 multiplied by the hourly rate of \$17.00/hour and would not specify in writing all of the
17 information per Labor Code section 226. Whatever BLACK BADGE provided to Plaintiff and
18 other employees cannot be categorized as paystubs at all. As such, BLACK BADGE did not
19 provide Plaintiff and other similarly situated aggrieved employees with complete, accurate
20 itemized wage statements.

21 20. During the relevant time period, BLACK BADGE also failed to keep accurate and
22 complete payroll records showing the actual hours worked per day and the wages paid to
23 Plaintiff and others pursuant to California Labor Code sections 1174(d).

24 21. BLACK BADGE also violated Labor Code § 203 because it willfully failed to pay
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1 Plaintiff and other similarly situated aggrieved employees earned and due wages upon
2 separation of employment, either immediately upon involuntary termination, or within 72
3 hours of resignation. These earned but unpaid wages include compensation for all hours
4 worked, including minimum wages, overtime compensation, and premium pay for missed meal
5 and rest breaks.

6 22. During the relevant time period, Plaintiff and other aggrieved employees incurred
7 necessary, business-related expenses and costs that were not reimbursed by BLACK BADGE.
8 These costs include, but are not limited to, uniforms, work equipment/tools, and use of
9 personal cell phones for work purposes as well as equipment to effectuate their job duties as
10 security guards. Accordingly, BLACK BADGE was in violation of California Labor Code
11 sections 2800 and 2802.
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13 23. Furthermore, Plaintiff believes Defendants have also violated Labor Code Section 558
14 and has engaged in business practices which violate Business and Professions Code Section
15 17200.
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17 **FIRST CAUSE OF ACTION**

18 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

19 **(California Industrial Welfare Commission Order 4-2001, California Code of**
20 **Regulations Title 8 Section 11040, and California Labor Code Section 1198)**

21 **(Plaintiff against all named defendants and all DOE defendants)**

22 24. Plaintiff re-alleges and incorporates by reference each and every allegation in
23 paragraphs 1 through 23, inclusive, of this Complaint as though fully set forth herein.

24 25. At all times relevant herein, Defendants were required to compensate its employees for
25 all hours worked upon reporting for work at the appointed time stated by the employer
26 pursuant to Industrial Welfare Commission Order 4-2001, California Code of
27 Regulations, Title 8, Section 11040.
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1 26. For the three (3) years preceding filing of this action, Defendants failed to compensate
2 Plaintiff for all hours worked.

3 27. Under the aforementioned wage order and regulations, Plaintiff is to recover
4 compensation for all hours worked but not paid by Defendants for the three (3) years
5 preceding the filing of this Complaint.

6 28. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
7 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
8 this Court.

9 29. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
10 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
11 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
12 reasonable attorney's fees and costs of suit.

13 30. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
14 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
15 amount known to Plaintiff once he has obtained all of his payroll records from
16 Defendants.

17 **SECOND CAUSE OF ACTION**

18 **FAILURE TO PAY MINIMUM WAGES**

19 **(California Labor Code Sections 1194, 1194.2, 1197)**

20 **(Plaintiff against all named defendants and all DOE defendants)**

21 31. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 30, inclusive, of this Complaint as though fully set forth herein.

23 32. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
24 to suffer or permit a California employee to work without paying wages at the minimum wage
25 rate for all hours worked as required by the applicable Industrial Welfare Commission
26 (hereinafter "IWC") Wage Order No. 4-2001, codified at California Code of
27 Regulations, Title 8, Section 11040, subdivision 4.
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1 33. Pursuant to IWC Wage Order no. 4-2001, subdivision 2, at all
2 relevant times, "hours worked" included "the time during which an employee is subject to the
3 control of an employer, and includes all the time the employee is suffered or permitted to work,
4 whether or not required to do so..."

5 34. During his employment, Plaintiff was regularly required as a matter of uniform
6 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
7 was paid less than the minimum wage rate by Defendants for hours worked in violation of
8 California Labor Code Section 1197 and the applicable California Industrial Wage
9 Commission wage order(s).

10 35. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
11 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
12 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
13 to believe that their acts or omissions were not contrary to California law.

14 36. For all hours worked by Plaintiff for which he was paid less than the minimum wage
15 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum
16 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
17 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
18 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

19 37. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
20 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
21 trial.

22 **THIRD CAUSE OF ACTION**

23 **FAILURE TO PAY OVERTIME**

24 **(California Industrial Welfare Commission Order 4-2001, California Code of Regulations
Title 8 Section 11040)**

25 **(Plaintiff against all named defendants and all DOE defendants)**

26 38. Plaintiff re-alleges and incorporates by reference each and every allegation in
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1 paragraphs 1 through 37, inclusive, of this Complaint as though fully set forth herein. This
2 cause of action is brought by Plaintiff against all Defendants jointly and individually.

3 39. Pursuant to Industrial Welfare Commission Orders No. 4-2001, California
4 Code of Regulations, Title 8, Section 11040, for the period of Plaintiff's employment,
5 Defendants were required to compensate Plaintiff for all overtime, which is calculated at one
6 and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day
7 or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in
8 excess of twelve (12) hours in a day or hours worked in excess of eight (8) on the seventh
9 consecutive work day in a week.

10 40. Plaintiff was a non-exempt employee entitled to the protections of the California
11 Industrial Welfare Commission Order No. 4-2001, California Code of Regulations,
12 Title 8, Section 11040.

13 41. Plaintiff worked more than eight (8) hours in a single workday or forty (40) hours in a
14 single workweek on numerous occasions.

15 42. Plaintiff worked more than twelve (12) hours in a single workday.

16 43. Plaintiff was entitled to the above overtime premiums.

17 44. Defendants did not pay Plaintiff premium wages of at least one and one-half times
18 Plaintiff's correct regular rate of pay for hours worked past eight (8) in a day.

19 45. Defendants did not pay Plaintiff premium wages of at least one and one-half times
20 Plaintiff's correct regular rate of pay for hours worked past forty (40) in a week.

21 46. Defendants did not pay Plaintiff premium wages of at least two times Plaintiff's correct
22 regular rate of pay for hours worked past twelve (12) in a day.

23 47. Plaintiff worked at least one pay period in which he was not properly paid the correct
24 amount of overtime within the three (3) years prior to the initiation of this lawsuit.

25 48. Defendants know or should know the actual dates of overtime worked, the amount of
26 overtime worked, and the amount of unpaid overtime due.

27 49. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
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1 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
2 Court.

3 50. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
4 Regulations, Title 8, Section 11040, Plaintiff is entitled to recover damages for the
5 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
6 reasonable attorney's fees and costs of suit.

7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

9 **(California Labor Code Section 226)**

10 **(Plaintiff against all named defendants and all DOE defendants)**

11 51. Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 50, inclusive, of this Complaint as though fully set forth herein. This
13 cause of action is brought by Plaintiff against all Defendants jointly and individually.

14 52. Labor Code section 226(a) requires employers provide employees with itemized wage
15 statements.

16 53. Labor Code section 226(a)(2) requires pay stubs accurately account for hours worked
17 and the applicable hourly rates.

18 54. Labor Code section 226(a)(9) requires pay stubs to accurately reflect all applicable
19 hourly rates in effect during the pay period and the corresponding number of hours worked at
20 each hourly rate.

21 55. Pursuant to California Labor Code Section 226, every employer must furnish each
22 employee an itemized statement of wages and deductions at the time of payment of wages.

23 56. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs
24 that accurately reflected all information required by Labor Code Section 226, including but not
25 limited to, gross wages earned, net wages earned, total hours worked by the employee, all
26 deductions, overtime hours and pay, premium pay for rest break and meal break violations, and
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1 business expense reimbursement, among others. Therefore, Defendants failed to maintain and
2 provide accurate itemized wage statements to Plaintiff in accordance with California Labor
3 Code Section 226(a).

4 57. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
5 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
6 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
7 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
8 reasonable attorney's fees.

9 58. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
10 sustained damages, including loss of earnings, in an amount to be established at trial. As a
11 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
12 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
13 and attorney's fees pursuant to statute.

14 **FIFTH CAUSE OF ACTION**

15 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

16 **(California Labor Code Section 204)**

17 **(Plaintiff against all named defendants and all DOE defendants)**

18 59. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 58, inclusive, of this Complaint as though fully set forth herein. This
20 cause of action is brought by Plaintiff against all Defendants jointly and individually.

21 60. California Labor Code Section 204 establishes the fundamental right of all employees
22 in the State of California to be paid wages in a timely fashion for their work.

23 61. At all times relevant during the liability period, Defendants failed to pay Plaintiff the
24 full amount of all owed wages when due as required by California Labor Code Section 204.

25 62. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
26 informed, believes, and thereon alleges, that all times relevant during the liability period,
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1 Defendants maintained a policy or practice of not paying Plaintiff the minimum wage for all
2 hours worked, not paying Plaintiff for all overtime hours worked, and not compensating
3 Plaintiff with premium pay for missed rest and meal breaks.

4 63. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
5 amount, subject to proof, to the extent he was not paid all wages each pay period. The precise
6 amount of unpaid wages is not presently known to Plaintiff but can be determined directly
7 from Defendants' records or indirectly based on information from Defendants' records.

8 **SIXTH CAUSE OF ACTION**

9 **FAILURE TO GIVE REST BREAKS**

10 **(Plaintiff against all named defendants and all DOE defendants)**

11 64. Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 63, inclusive, of this Complaint as though fully set forth herein. This
13 cause of action is brought by Plaintiff against all Defendants jointly and individually.
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15 65. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 16 a. Title 8 of the California Code of Regulations Section 11040(11)(A), which provides
17 that every employer shall authorize and permit all employees to take rest periods,
18 which insofar as practicable shall be in the middle of each work period. The
19 authorized rest period time shall be based on the total hours worked daily at the rate
20 of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
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22 b. Title 8 of the California Code of Regulations Section 11040(11)(B), which provides
23 that if an employer fails to provide an employee a rest period in accordance with the
24 applicable provisions of this order, the employer shall pay the employee one (1)
25 hour of pay at employee's regular rate of compensation for each workday that the
26 rest period is not provided;
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28 c. Title 8 of the California Code of Regulations section 11040(18)(A), which

1 penalizes the employer \$50.00 for each initial violation, per employee, of any
2 provision of the Wage Order, and \$100.00 for each additional violation thereafter
3 per employee; and

- 4 d. California Labor Code section 226.7, which states that (a) no employer shall require
5 any employee to work during any rest period mandated by an applicable order of
6 the Industrial Welfare Commission, and (b) if an employer fails to provide an
7 employee a rest period in accordance with an applicable order of the Industrial
8 Welfare Commission, the employer shall pay the employee one (1) additional hour
9 of pay at employee's regular rate of compensation for each work day that the rest
10 period is not provided.
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12 66. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute rest
13 break after every four (4) hours of work or major fraction thereof, as required by California
14 law.
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16 67. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
17 regulations, and wage orders alleged in this cause of action along with any allowable interest,
18 penalties, attorney's fees and costs, in an amount to be proven at trial. Specifically, Plaintiff
19 prays for the foregoing moneys calculated from 3 years immediately preceding the filing of
20 this lawsuit.

21 68. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's fees
22 as well as interest under Labor Code section 218.6.
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24 **SEVENTH CAUSE OF ACTION**

25 **FAILURE TO GIVE MEAL BREAKS**

26 **(Plaintiff against all named defendants and all DOE defendants)**

27 69. Plaintiff re-alleges and incorporates by reference each and every allegation in
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1 paragraphs 1 through 68, inclusive, of this Complaint as though fully set forth herein.

2 70. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 3 a. California Labor Code section 512(a), which requires that employees be given a 30-
4 minute uninterrupted meal break after five (5) hours of work, and a second
5 uninterrupted meal break after ten (10) hours of work;
- 6 b. California Labor Code section 226.7, which states that (a) no employer shall require
7 any employee to work during any meal period mandated by an applicable order of
8 the Industrial Welfare Commission, and (b) if any employer fails to provide an
9 employee a meal period in accordance with an applicable order of the Industrial
10 Welfare Commission, the employer shall pay the employee one (1) additional hour
11 of pay at the employee's regular rate of compensation for each workday that the
12 meal period is not provided;
- 13 c. California Industrial Welfare Commission Order No. 4 section 11(B)/10(B), as
14 codified under Title 8 of the California Code of Regulations Section 11040, which
15 state that if an employer fails to provide an employee a meal period in accordance
16 with the applicable provisions of the Wage Order, the employer shall pay the
17 employee one (1) hour of pay at the employee's regular rate of compensation for
18 each workday that the meal period is not provided;
- 19 d. California Industrial Welfare Commission Wage Order No. 4 Section
20 7(A)(3)/6(A)(3), as codified under Title 8 of the California Code of Regulations
21 Section 11040, which require an employer to maintain records documenting its
22 employees' meal periods;
- 23 e. California Industrial Welfare Commission wage order No. 4 Section 20(A)/18(A),
24 as codified under California Code of Regulations Section 11040, which penalizes
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1 the employer \$50.00 for each initial violation, per employee, of any provision of the
2 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
3 f. California Labor Code section 1171 and 1173, which have given the California
4 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order nos. 4)
5 as enforceable law.

6 71. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
7 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
8 take a second relieved meal break after ten (10) hours of work, as required by California law.
9 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
10 4, as codified under California Code of Regulations Sections 11040 et. seq., require that
11 employees receive uninterrupted meal periods every five (5) hours of consecutive work, and
12 that the meal period be at least 30 minutes in length, wherein employee is relieved of all work
13 duty. California Labor Code section 226.7 provides that employers may not require their
14 employees to work through their meal periods. California Labor Code section 226.7 and
15 California Code of Regulations section 11040 require that if the employer fails to provide the
16 employee with an uninterrupted meal period, the employer must pay the employee one (1) hour
17 of pay for each work day that the meal period is not given.
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20 72. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
21 regulations, and wage orders alleged in this cause of action along with any allowable interest,
22 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
23 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

24 73. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
25 fees as well as interest under Labor Code section 218.6.

26 74. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
27 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
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trial.

EIGHTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

(Plaintiff against all Defendants and DOE Defendants, and each of them)

75. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 74, inclusive, of this Complaint as thought fully set forth herein.

76. Labor Code section 2802 provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.”

77. Beginning at most 3 years prior to the filing of this complaint, in order to discharge their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course of completing his job duties, which were not reimbursed by Defendants. These expenses include, but are not limited to, uniforms, work equipment/tools, and use of personal cell phone for work purposes as well as equipment to effectuate job duties as a security guard.

78. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest and attorney’s fees and costs, under Labor Code section 2802.

NINTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS

(California Labor Code Sections 201, 202, 203)

(Plaintiff against all named defendants and all DOE defendants)

79. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 78, inclusive, of this Complaint as though fully set forth herein.

80. Pursuant to California Labor Code Section 201(a), an employer who discharges an employee must immediately pay for all compensation due and owing.

81. Pursuant to California Labor Code Section 202, when an employee resigns, the employer must pay all compensation due and owing within 72 hours of resignation, or on the

1 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

2 82. Pursuant to California Labor Code Section 203, if an employer willfully fails to
3 pay, without abatement or reduction, any wages of an employee whose employment ends, the
4 wages of the employee shall continue as a penalty from the due date at the same rate until paid
5 or until an action is commenced; however, the wages shall not continue for more than 30 days
6 for failure to pay an employee owed wages.

7 83. After Plaintiff's employment with Defendants ended, Defendants willfully
8 refused and continue to refuse to pay him unpaid wages as required by Labor Code Section
9 203.

10 84. Under this cause of action, Plaintiff prays for penalties due under the statutes
11 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
12 proof at trial. Moreover, Plaintiff prays for the above-mentioned money from 1 year
13 immediately preceding the filing of this lawsuit.

14 85. Under this cause of action, Plaintiff also prays for attorney's fees and costs
15 under California Labor Code Section 218.5 for time spent pursuing the non-payment of wages
16 as set forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

17 86. Under this cause of action, Plaintiff prays for penalties due under the statutes
18 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
19 proof at trial.
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21 **TENTH CAUSE OF ACTION**

22 **PRIVATE ATTORNEYS GENERAL ACT**

23 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
24 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 226.8, 510, 512, 558, 1174, 1174.5, 1194,**
1194.2, 1197, 1197.1, 1198, 2802)

25 **(Plaintiff Against all Named Defendants and all DOE Defendants)**

26 87. Plaintiff re-alleges and incorporates by reference each and every allegation in
27 paragraphs 1 through 86, inclusive, of this Complaint as though fully set forth herein.
28

1 88. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
2 Defendants of the specific violations of the California Labor Code that Defendants
3 and DOE defendants have violated and continue to violate.

4 89. Pursuant to California Labor code section 2699.3, no response was received from the
5 LWDA within 65 days of the postmark date of the above-alleged letter.

6 90. Plaintiff therefore has exhausted all administrative remedies required of him under
7 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
8 cause of action and pursue penalties in a representative action for Defendants' violations of the
9 Labor Code.

10 91. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
11 that provides for a civil penalty to be assessed and collected by the LWDA or any of its
12 departments, divisions, commissions, boards, agencies, or employees for violation of the code
13 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
14 on behalf of himself or herself and other current or former employees pursuant to the
15 procedures specified in California Labor Code section 2699.3.

16 92. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
17 violator and had one or more of the alleged violations committed against him, and therefore is
18 properly suited to represent the interests of other current and former hourly, non-exempt
19 employees who worked for BLACK BADGE at all locations in the state of California during
20 the relevant PAGA Period.

21 93. Based on the acts alleged above, Plaintiff, on behalf of others, seeks penalties under
22 California Labor Code sections 2698 and 2699 because of Defendants' violations of numerous
23 provisions of the California Labor Code as alleged in this Complaint.

24 94. Plaintiff therefore has exhausted all administrative remedies required of him under
25 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
26 cause of action and pursue penalties in a representative action for Defendants' violations of the
27 Labor Code.
28

1 95. California Labor Code section 2699 et seq. imposes penalties upon culpable
2 Defendants for violating the Labor Code.

3 96. California Labor Code section 558 establishes a civil penalty as follows: Any
4 employer or other person action on behalf of an employer who violates, or causes to be
5 violated, a section of this chapter or any provision regulating hours and days of work in any
6 order of the Industrial Welfare Commission (including the "Hours and Days of Work" section
7 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
8 dollars (\$50) for each underpaid employee for each pay period for which the employee was
9 underpaid... (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
10 employee for each pay period for which the employee was underpaid...

11 97. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
12 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
13 seeking individual/victim specific relief or underpaid wages for Plaintiff or other aggrieved
14 employees in this specific cause of action under the Private Attorneys General Act.

15 98. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
16 the following:

17 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
18 226.3, 226.7, 226.8, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198,
19 2802, via 2698 and 2699 and any other Labor Codes and Industrial Welfare Commission
20 Wage Order Provisions (no.4) violated based on the facts alleged in this Complaint.

21 99. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
22 costs, and civil penalties on behalf of other current and former aggrieved employees as alleged
23 herein in an amount to be shown according to proof at trial and within the jurisdictional limits
24 of this Court.

25 **ELEVENTH CAUSE OF ACTION**
26 **FAILURE TO PROVIDE PERSONNEL RECORDS**
27 **(Plaintiff against all named Defendants and all DOE Defendants)**
28

1 100. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 99, inclusive, of this Complaint as though fully set forth herein.

3 101. Labor Code section 1198.5 dictates “every current and former employee, or his
4 or her representative, has the right to inspect and receive a copy of the personnel records that
5 the employer maintains relating to the employee’s performance or to any grievance concerning
6 the employee.”

7 102. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, “the
8 employer shall make the contents of those personnel records available for inspection to the
9 current or former employee, or his or her representative, at reasonable intervals and at reasonable
10 times...” On information and belief, Defendants intentionally failed to provide Plaintiff with
11 personnel records when requested by Plaintiff via letter on September 26, 2023, as required by
12 law. Plaintiff requested his personnel records in accordance with California Labor Code section
1198.5(k) on September 26, 2023, via U.S. certified mail, return receipt requested.

13 103. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his
14 records within 30 days. As a direct result of Defendants’ violations alleged herein, Plaintiff has
15 suffered and continues to suffer substantial losses related to Defendants’ failure to provide
16 personnel records.

17 104. Plaintiff seeks all available remedies for Defendants’ violations including, but not
18 limited penalties, and costs to the extent permitted by law and according to proof at trial.
19 Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants in the
20 amount of \$750.00, along with costs and attorney’s fees.

21 **TWELFTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE PAY RECORDS**

23 **(Plaintiff against all named Defendants and all DOE Defendants)**

24 105. Plaintiff re-alleges and incorporates by reference each and every allegation in
25 paragraphs 1 through 104, inclusive, of this Complaint as though fully set forth herein.

26 106. Labor Code section 226 sub-section (b) dictates “an employer...shall afford
27 current and former employees the right to inspect or copy records pertaining to their
28 employment, upon reasonable request to the employer...”

1 107. Moreover, pursuant to sub-section (c) of Labor Code section 226, "an employer
2 who receives a written or oral request to inspect or copy records pursuant to subdivision (b)
3 pertaining to a current or former employee shall comply with the request as soon as practicable,
4 but no later than 21 calendar days from the date of the request." On information and belief,
5 Defendants intentionally failed to provide Plaintiff with pay records when requested by Plaintiff
6 via certified letter, return receipt requested, on September 26, 2023, and as required by law.
7 Plaintiff requested his pay records in accordance with California Labor Code section 226 on
8 September 26, 2023, via certified mail. Defendants failed to provide Plaintiff with an opportunity
9 to inspect or copy his pay records within 21 days.

10 108. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered
11 and continues to suffer substantial losses related to Defendants' failure to provide pay records.
12 Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants in the
13 amount of \$750.00, along with costs and attorney's fees.

14 109. Plaintiff seeks all available remedies for Defendants' violations including, but
15 not limited penalties, and costs to the extent permitted by law and according to proof at trial.

16 **THIRTEENTH CAUSE OF ACTION**

17 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

18 **(California Business and Professions Code Section 17200)**

19 **(Plaintiff against All Named Defendants and all DOE defendants)**

20 110. Plaintiff re-alleges and incorporates by reference each and every allegation in
21 paragraphs 1 through 109, inclusive, of this Complaint as though fully set forth herein.

22 111. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
23 constitute unfair and unlawful business practices under California Business and Professions
24 Code Section 17200, et seq.

25 112. Defendants' violations of California labor laws constitutes a business practice because
26 it was done repeatedly over a significant period of time in a systematic manner that was
27 detrimental to Plaintiff and others.
28

1 113. For the four years preceding the filing of this action, Plaintiff has suffered damages
2 and request damages and/or restitution of all monies and profits to be disgorged from
3 Defendants in an amount according to proof at time of trial, but in excess of the jurisdiction of
4 this Court.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as
7 follows:

- 8 1. For compensatory damages including lost past and future wages, regular wages,
9 overtime, and all other sums of money, including employment benefits, together with
10 interest on said amounts, and any other economic injury to Plaintiff, up to an amount of
11 **\$150,000;**
- 12 2. For special and consequential damages to Plaintiff in an amount up to **\$100,000;**
- 13 3. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount up
14 to **\$4,000;**
- 15 4. For damages and penalties pursuant to Labor Code Section 203 in an amount up to
16 **\$10,000;**
- 17 5. For damages and penalties pursuant to Labor Code Section 204/210 in an amount up to
18 **\$25,000;**
- 19 6. For damages and penalties pursuant to Labor Code Sections 1198.5 and 226 for failure
20 to provide personnel file and pay records in the aggregate amount of **\$1500.00;**
- 21 7. For restitution and disgorgement for all unfair business practices by corporate Defendants
22 against Plaintiff in an amount subject to proof at trial;
- 23 8. For an order enjoining corporate Defendants from further unfair and unlawful business
24 practices in violation of Business and Professions Code Sections 17200, et seq.;
- 25 9. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
26 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period for an
27 amount up to **\$25,000;**
- 28 10. For one hour of wages due to Plaintiff for each work period of four (4) hours or major

1 fraction thereof when Plaintiff did not receive a ten (10) minute rest break for an amount
2 up to **\$25,000**;

3 11. For maximum civil penalties available under the Labor Code and applicable Wage Order
4 against Defendant as described more particularly in the Complaint and Representative
5 PAGA claim/action up to an amount of **\$100,000** for Plaintiff individually and up to an
6 amount of **\$5,000,000** for other aggrieved employees;

7 12. For all remedies available to Plaintiff under the applicable Wage Order and the
8 Labor Code including an award of attorney's fees, costs, interest, and penalties
9 according to proof to the extent permitted by law;

10 13. For restitution and/or damages for all amounts unlawfully withheld from the wages of
11 Plaintiff, as may be proven;

12 14. For the imposition of civil penalties and/or statutory penalties;

13 15. For all interest as allowed by law;

14 16. For all costs and disbursements incurred in this suit;

15 17. Reasonable attorney's fees where available by law, including but not limited to,
16 pursuant to the California Labor Code, Code of Civil Procedure section 1021.5, and/or
17 other applicable laws; and

18 18. For such other and further relief as this Court may deem proper.

19 DATED: January 4, 2024

MESSRELIAN LAW INC.

20 By 
21 Harout Messrelian, Esq.
22 Attorneys for Plaintiff James Eleby

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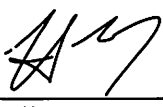
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

DATED: January 4, 2024

MESSRELIAN LAW INC.

By 
Harout Messrelian, Esq.
Attorneys for Plaintiff James Eleby