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Attorneys for PLAINTIFF FINSTER PAUL, as an individual, and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

FINSTER PAUL III, an individual, and on
behalf of all others similarly situated,

Plaintiff,

vs.

CARE ACCESS RESEARCH LLC; and
DOES 1 through 5 inclusive,

Defendants.

Case No. 23STCV29366

CLASS ACTION COMPLAINT

1. Failure to Pay Minimum Wages
2. Failure to Pay Overtime Wages
3. Failure to Provide Required Meal Periods
4. Failure to Provide Required Rest Periods
5. Failure to Properly Pay Accrued Sick Days
6. Wilful Misclassification of Employees as Independent Contractors
7. Failure to Pay Timely Wages During Employment
8. Failure to Pay All Wages Due to Discharged and Quitting Employees
9. Failure to Maintain Required Records
10. Failure to Furnish Accurate, Itemized Wage Statements
11. Failure to Reimburse Necessary

Expenditures

12. Unfair and Unlawful Business Practices

13. Civil Penalties Pursuant to The Private Attorneys General Act

DEMAND FOR JURY TRIAL

PLAINTIFF FINSTER PAUL III (“PLAINTIFF”), as an individual, and on behalf of all others similarly situated, hereby submits this Complaint against CARE ACCESS RESEARCH LLC; and DOES 1 through 50, inclusive (collectively “DEFENDANTS”):

INTRODUCTION

1. This is a class action lawsuit being brought on behalf of PLAINTIFF and the class PLAINTIFF seeks to represent. The PLAINTIFF CLASS consists of all individuals who were misclassified as independent contractors and performed work for DEFENDANTS in California at any time within the four (4) years prior to the filing of the initial complaint in this action and through the date notice is mailed to a certified class.

2. The term “CLASS PERIOD” is defined as four (4) years prior to the filing of this complaint through the date final judgment is entered.

3. DEFENDANTS’ actions give rise to violations of state wage and hour laws, including laws mandating the payment of wages. Through this lawsuit, PLAINTIFF, and others similarly situated, seek to recover all wages which they and other employees of DEFENDANTS rightfully earned but have been denied, as well as any penalties associated with DEFENDANTS’ rampant and willful violations of the law, interest on the unpaid wage amounts, and attorney fees. PLAINTIFF also seeks equitable remedies in the form of declaratory and injunctive relief, and relief under Business and Professions Code section 17200 *et seq.* for unfair business practices.

4. At all times relevant herein, DEFENDANTS have consistently maintained and enforced against PLAINTIFF and the PLAINTIFF CLASS at least the following unlawful practices and policies:

- 1 a) willfully refusing to pay PLAINTIFF and the PLAINTIFF CLASS for all hours
2 worked, including both regular and overtime;
- 3 b) willfully refusing to permit PLAINTIFF and the PLAINTIFF CLASS from
4 taking meal periods or providing compensation in lieu thereof;
- 5 c) willfully refusing to permit PLAINTIFF and the PLAINTIFF CLASS from
6 taking rest periods or providing compensation in lieu thereof;
- 7 d) willfully refusing to furnish accurate itemized wage statements to PLAINTIFF
8 and the PLAINTIFF CLASS;
- 9 e) willfully refusing to pay PLAINTIFF and the PLAINTIFF CLASS timely
10 wages during employment pursuant to Labor Code § 204;
- 11 f) willfully refusing to pay PLAINTIFF and the PLAINTIFF CLASS all wages
12 earned and due at time of termination and/or resignation pursuant to Labor
13 Code §§ 201, 202 and 203;
- 14 g) willfully refusing to pay PLAINTIFF and the PLAINTIFF CLASS proper pay
15 for accrued sick days pursuant to Labor Code §§ 233, 246;
- 16 h) willfully refusing to reimburse PLAINTIFF and the PLAINTIFF CLASS for
17 necessary business expenditures;
- 18 i) willfully misclassifying PLAINTIFF and members of the PLAINTIFF CLASS
19 as independent contractors.

20 5. PLAINTIFF is informed and believes that DEFENDANTS, and each of them, were
21 on actual and constructive notice of the improprieties alleged herein and intentionally refused to
22 rectify their unlawful policies. DEFENDANTS' violations, as alleged above, during all relevant
23 times herein were willful and deliberate.

24 **JURISDICTION AND VENUE**

25 6. This Court is the proper Court, and this action is properly filed in Los Angeles
26 County because DEFENDANTS' obligations and liability arise therein, because DEFENDANTS
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1 transact business within Los Angeles County, and because the work that is the subject of this action
2 was performed by PLAINTIFF in Los Angeles County.

3 **THE PARTIES**

4 7. Plaintiff Finster Paul is, and at all times relevant hereto was, a resident of the State
5 of California, County of Los Angeles.

6 8. Defendant Care Access Research, LLC (“Care Access”) is, and at all times relevant
7 hereto was, a corporation, existing, doing business, and employing individuals in the County of Los
8 Angeles, State of California.

9 9. The true names and capacities, whether individual, corporate, associate, or otherwise
10 of the DEFENDANTS named herein as DOES 1-50, inclusive, are unknown to PLAINTIFF at this
11 time and therefore said DEFENDANTS are sued by such fictitious names. PLAINTIFF will seek
12 leave to amend this Complaint to insert the true names and capacities of said DEFENDANTS when
13 the same become known to Plaintiff. PLAINTIFF is informed and believes and thereupon alleges
14 that each of the fictitiously named DEFENDANTS is responsible for the wrongful acts alleged
15 herein and is therefore liable to PLAINTIFF as alleged hereinafter.

16 10. PLAINTIFF is informed and believes, and based thereupon allege, that at all times
17 relevant hereto, DEFENDANTS, and each of them, were the agents, employees, managing agents,
18 supervisors, conspirators, parent corporation, joint employers, alter ego, and/or joint ventures of the
19 other DEFENDANTS, and each of them, and in doing the things alleged herein, were acting at least
20 in part within the course and scope of said agency, employment, conspiracy, joint employment, alter
21 ego status, and/or joint venture and with the permission and consent of each of the other
22 DEFENDANTS.

23 11. PLAINTIFF is informed and believes, and based thereupon allege, that
24 DEFENDANTS, and each of them, including those DEFENDANTS named as DOES 1-50, acted in
25 concert with one another to commit the wrongful acts alleged herein, and aided, abetted, incited,
26 compelled, and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do
27 so. PLAINTIFF are further informed and believes, and based thereupon allege, that the
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1 DEFENDANTS, and each of them, including those DEFENDANTS named as DOES 1-50, formed
2 and executed a conspiracy or common plan pursuant to which they would commit the unlawful acts
3 alleged herein, with all such acts alleged herein done as part of and pursuant to said conspiracy,
4 intended to and actually causing PLAINTIFF' harm.

5 12. Whenever and wherever reference is made in this Complaint to any act or failure to
6 act by a Defendant or co-DEFENDANTS, such allegations and references shall also be deemed to
7 mean the acts and/or failures to act by each Defendant acting individually, jointly, and severally.

8 **ALTER EGO, AGENCY, AND JOINT EMPLOYER**

9 13. PLAINTIFF is informed and believes, and based thereon alleges, that there exists
10 such a unity of interest and ownership between DEFENDANTS and DOES 1-50 that the
11 individuality and separateness of DEFENDANTS have ceased to exist.

12 14. PLAINTIFF is informed and believes, and based thereon alleges, that despite the
13 formation of purported corporate existence, DOES 1-50 are, in reality, one and the same as
14 DEFENDANTS, including, but not limited to, for the following reasons:

15 a) DEFENDANTS are completely dominated and controlled by DOES 1-50, who
16 personally violated the laws set forth in this complaint, and who have hidden and currently hide
17 behind DEFENDANTS to circumvent statutes or accomplish some other wrongful or inequitable
18 purpose.

19 b) DOES 1-50 derive actual and significant monetary benefits by and through
20 DEFENDANTS' unlawful conduct, and by using DEFENDANTS as the funding source for their
21 own personal expenditures.

22 c) PLAINTIFF is informed and believes, and thereupon alleges, that DEFENDANTS
23 and DOES 1-50, while really one and the same, were segregated to appear as though separate and
24 distinct for purposes of circumventing a statute or accomplishing some other wrongful or inequitable
25 purpose.

26 d) PLAINTIFF is informed and believes that DEFENDANTS do not comply with all
27 requisite corporate formalities to maintain a legal and separate corporate existence.

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1 e) PLAINTIFF is informed and believes, and based thereon alleges, that the business
2 affairs of DEFENDANTS and DOES 1-50 are, and at all times relevant hereto were, so mixed and
3 intermingled that the same cannot reasonably be segregated, and the same are in inextricable
4 confusion. DEFENDANTS are, and at all times relevant hereto were, used by DOES 1-50 as a mere
5 shell and conduit for the conduct of certain of DEFENDANTS' affairs, and are, and were, the alter
6 ego of DOES 1-50. The recognition of the separate existence of DEFENDANTS would not promote
7 justice, in that it would permit DEFENDANTS to insulate themselves from liability to PLAINTIFF
8 for violations of the Government Code, Labor Code, and other statutory violations. The corporate
9 existence of DEFENDANTS and DOES 1-50 should be disregarded in equity and for the ends of
10 justice because such disregard is necessary to avoid fraud and injustice to PLAINTIFF herein.

11 15. Accordingly, DEFENDANTS constitute the alter ego of DOES 1-50, and the fiction
12 of their separate corporate existence must be disregarded.

13 16. As a result of the aforementioned facts, PLAINTIFF is informed and believes, and
14 based thereon alleges that DEFENDANTS and DOES 1-50 are PLAINTIFF's joint employers by
15 virtue of a joint enterprise, and that PLAINTIFF was an employee of DEFENDANTS and DOES
16 1-50. PLAINTIFF performed services for each and every one of DEFENDANTS, and to the mutual
17 benefit of all DEFENDANTS, and all DEFENDANTS shared control of PLAINTIFF as an
18 employee, either directly or indirectly, in the manner in which Defendant' business was and is
19 conducted.

20 17. PLAINTIFF is informed and believes and thereupon alleges that Care Access
21 Research, LLC and DOES 1-50 were the actual employers and/or "person[s] acting on behalf of the
22 employer" within the meaning of *Labor Code* section 558.1.

23 **PRIVATE ATTORNEYS GENERAL ACT ADMINISTRATIVE PREREQUISITE**

24 18. Pursuant to Labor Code section 2699.3, on September 08, 2023, prior to filing this
25 complaint, PLAINTIFF gave written notice to the Labor Workforce Development Agency
26 ("LWDA") and to DEFENDANTS, specifying the provisions alleged to have been violated by
27 DEFENDANTS, and including the facts and theories supporting the alleged violations.

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19. As of the date of this Complaint, sixty-five (65) days have passed since PLAINTIFF provided notice of the violations alleged herein to the Labor Workforce Development Agency (“LWDA”), and the LWDA has not provided notice of its intent to investigate PLAINTIFF’s claims.

GENERAL ALLEGATIONS

20. PLAINTIFF FINSTER PAUL performed work for DEFENDANTS from approximately April 01, 2021, to approximately May 15, 2023, within Los Angeles County. DEFENDANTS classified PLAINTIFF as an independent contractor but at all relevant times Plaintiff met the requirements of an employee pursuant to Labor Code section 2775.

21. PLAINTIFF and members of the PLAINTIFF CLASS performed work for remuneration for DEFENDANTS and qualified as employees pursuant to Labor Code section 2775, but were classified by DEFENDANTS as independent contractors. As a result PLAINTIFF and members of the PLAINTIFF CLASS have been subjected to a variety of wage and hour violations during their employment with DEFENDANTS.

Misclassification of Employees as Independent Contractors

22. California Labor Code § 226.8 provides that is unlawful for any person or employer to willfully misclassify an individual as an independent contractor.

23. DEFENDANTS classified PLAINTIFF and members of the PLAINTIFF CLASS as independent contractors. However, pursuant to Labor Code section 2775, PLAINTIFF and members of the PLAINTIFF CLASS should have been classified as employees, not independent contractors. DEFENDANTS willfully misclassified PLAINTIFF and members of the PLAINTIFF CLASS as independent contractors in order to avoid providing the benefits of employee status to these individuals. DEFENDANTS willful misclassification of PLAINTIFF and members of the PLAINTIFF CLASS is part of a pattern and practice of such misclassifications.

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Failure to Pay Wages for All Hours Worked

1 24. Throughout the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFF and
2 members of the PLAINTIFF CLASS for all hours worked in violation of Labor Code sections 1194,
3 1197, and the IWC Wage Orders. DEFENDANTS required and/or permitted off-the-clock work,
4 and work done while PLAINTIFF and members of the PLAINTIFF CLASS were entitled to meal
5 and rest periods, precluding the PLAINTIFF and the PLAINTIFF CLASS from being paid for all
6 time worked.

7 **Failure to Pay Proper Overtime Compensation**

8 25. Throughout the CLASS PERIOD, PLAINTIFF and members of the PLAINTIFF
9 CLASS were non-exempt employees under California law, covered by Labor Code § 510 and one
10 or more IWC Wage Orders. On multiple occasions throughout the CLASS PERIOD, PLAINTIFF
11 and members of the PLAINTIFF CLASS worked overtime by working in excess of eight (8) hours
12 in one workday, and/or in excess of forty (40) hours in any one workweek, and/or working on the
13 seventh day of work in any one workweek. Despite working overtime hours, PLAINTIFF and
14 members of the PLAINTIFF CLASS were not compensated at the rate of at least one and one-half
15 times the regular rate of pay for all overtime hours worked. Further, on multiple occasions
16 throughout the CLASS PERIOD, PLAINTIFF and members of the PLAINTIFF CLASS worked in
17 excess of twelve (12) hours in one day and/or in excess of eight (8) hours on the seventh day of
18 work in any one workweek, and were not compensated at the rate of at least twice the regular rate
19 of pay for these hours worked.

20 26. Off-the-Clock Hours Worked: DEFENDANTS' failure to properly pay overtime to
21 PLAINTIFF and members of the PLAINTIFF CLASS is and was due in part to DEFENDANTS'
22 failure to capture the off-the-clock work, as described above.

23 **Failure to Provide Rest Periods**

24 27. During the relevant time period, DEFENDANTS failed to maintain a compliant rest
25 period policy and practice. DEFENDANTS did not authorize or permit PLAINTIFF and members
26 of the PLAINTIFF CLASS to take at least a ten-minute rest period in which they were relieved of
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1 all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Labor Code §§
2 226.7, § 512 and applicable IWC Wage Orders.

3 28. DEFENDANTS further failed to pay PLAINTIFF and members of the PLAINTIFF
4 CLASS all premium compensation (one hour of pay at the employee's regular rate of pay for missed
5 or untimely rest periods) mandated by Labor code § 226.7(b) for these missed rest periods.

6 **Failure to Provide Timely, Uninterrupted Meal Periods**

7 29. During the relevant time period, DEFENDANTS failed to maintain a compliant meal
8 period policy and practice. DEFENDANTS failed to provide PLAINTIFF and members of the
9 PLAINTIFF CLASS with the right to take an off-duty 30-minute meal period. Labor Code § 512
10 provides, "[a]n employer may not employ an employee for a work period for more than five hours
11 per day without providing the employee with a meal period of not less than 30 minutes..." Labor
12 Code § 226.7(a) provides, "[n]o employer shall require an employee to work during any
13 meal...period mandated by an applicable order of the Industrial Welfare commission." Paragraph
14 11(A) of the Wage Orders provides, in pertinent part, "[u]nless the employee is relieved of all duty
15 during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and
16 counted as time worked."

17 30. Failure to Provide Second Meal Periods: Similarly, PLAINTIFF and members of the
18 PLAINTIFF CLASS were not authorized and permitted to take second meal periods during shifts
19 of ten hours or longer.

20 31. DEFENDANTS further failed to pay PLAINTIFF and members of the PLAINTIFF
21 CLASS all premium compensation (one hour of pay at the employee's regular rate of pay for missed
22 or untimely meal periods) mandated by Labor code § 226.7(b) for these missed meal periods.

23 **Failure to Reimburse for Required Business Expenses**

24 32. Labor Code § 2802 requires employers to indemnify employees for necessary
25 expenditures or losses incurred by employees in direct consequence of discharge of duties. Here,
26 DEFENDANTS required PLAINTIFF and members of the PLAINTIFF CLASS to use their
27 personal cellular phones and home internet for work related duties, but failed to reimburse
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1 PLAINTIFF and members of the PLAINTIFF CLASS as required by the Labor Code and applicable
2 Wage Order(s).

3 **Failure to Timely Pay All Wages Owed**

4 33. Failure to pay all wages owed to employees at termination/resignation: As set forth
5 above, due to DEFENDANTS' unlawful employment practices, DEFENDANTS knowingly and
6 willfully failed to timely pay all wages owed to PLAINTIFF and members of the PLAINTIFF
7 CLASS at the time that employment terminated. DEFENDANTS willfully failed to pay aggrieved
8 employees who are no longer employed all compensation due upon termination of employment as
9 required by Cal. Labor Code §§ 201 and 202. Pursuant to sections 203 and 256, PLAINTIFF and
10 members of the PLAINTIFF CLASS are now also entitled to recover up to thirty (30) days of wages
11 for DEFENDANTS' willful failure to comply with the statutory requirements of sections 201 and
12 202 of the Labor Code.

13 34. Failure to pay all wages owed twice per month: Labor Code § 204 requires employers
14 to pay all wages earned by non-exempt employees at least twice during each calendar month, within
15 seven calendar days following the close of the payroll period. DEFENDANTS failed to pay all
16 wages owed to PLAINTIFF and members of the PLAINTIFF CLASS as a result of the unlawful
17 employment policies and practices discussed herein.

18 **Failure to Provide Accurate Itemized Wage Statements and Maintain Required Records**

19 35. California labor Code § 226(a) provides that "[e]very employer shall, semimonthly
20 or at the time of each payment of wages, furnish each of his or her employees...an accurate itemized
21 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except
22 as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece
23 rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions
24 made on written orders of the employee may be aggregated and shown as one item, (5) net wages
25 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
26 employee and only the last four digits of his or her social security number or an employee
27 identification number other than a social security number, (8) the name and address of the legal
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1 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate by the employee.”

3 36. DEFENDANTS knowingly and intentionally failed to provide timely, accurate,
4 itemized wage statements to PLAINTIFF and members of the PLAINTIFF CLASS, as well as
5 maintain accurate records, in accordance with Labor Code §§ 226 and 1174. The wage statements
6 provided to PLAINTIFF and members of the PLAINTIFF CLASS have not accurately reflected
7 actual gross wages earned and total hours worked. Such failures cause actual injury to PLAINTIFF
8 and others, by, among other things, impeding them from knowing the total hours worked and the
9 amount of wages to which they are and were entitled. DEFENDANTS knowingly and intentionally
10 failed to itemize the correct wages earned, net wages earned, and total hours worked.

11 37. As a result of these violations of California Labor Code § 226(a), PLAINTIFF and
12 members of the PLAINTIFF CLASS suffered injury because, among other things,

- 13 a) the violations led them to believe that they were not entitled to be paid minimum
14 wages, overtime wages, meal period premium wages, and rest period premium wages
15 to which they were in fact entitled;
- 16 b) the violations led them to believe that they had been paid the minimum, overtime,
17 meal period premium, and rest period premium wages, even though they had not
18 been;
- 19 c) the violations hindered them from determining the amounts of minimum wages,
20 overtime, meal period premium, and rest period premium owed to them;
- 21 d) in connection with their employment, before and during this action, and in
22 connection with prosecuting this action, the violations caused them to have to
23 perform mathematical computations to determine the amounts of wages owed to
24 them, computations they would not have to make if the wage statements contained
25 the required accurate information;
- 26 e) the violations, by understating the wages truly due to PLAINTIFF and members of
27 the PLAINTIFF CLASS, caused them to lose entitlement and/or accrual of the full
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1 amount of Social Security, disability, unemployment, and other governmental
2 benefits;

3 f) the wage statements inaccurately understated the wages, hours, and wages rates to
4 which PLAINTIFF and members of the PLAINTIFF CLASS were entitled, and as a
5 result PLAINTIFF and members of the PLAINTIFF CLASS were in fact paid less
6 wages and/or a lower wage rate than the wages to which they were entitled.

7 **Failure to Pay Proper Sick Leave Wages**

8 38. During their employment with DEFENDANTS, PLAINTIFF and members of the
9 PLAINTIFF CLASS were entitled to “paid sick days” pursuant to California Labor Code section
10 245, *et seq.*

11 39. Labor Code § 246(l) requires that employers pay sick time pay to non-exempt
12 employees at the employee’s “regular rate of pay.” Employers may either calculate “paid sick days”
13 for non-exempt employees in California at the regular rate of pay for the workweek in which the
14 employee uses paid sick time or by dividing the employee’s total wages, into including overtime
15 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of
16 employment. Labor Code 246(l)(2). The “regular rate of pay” includes all remuneration for
17 employment paid to the employee and includes, but is not limited to, shift differentials and non-
18 discretionary incentive bonuses.

19 40. During the relevant time period, PLAINTIFF and members of the PLAINTIFF
20 CLASS accrued and took paid sick leave. However, DEFENDANTS failed to include non-
21 discretionary remuneration when determining the “regular rate of pay.” Instead, DEFENDANTS
22 only paid PLAINTIFF and members of the PLAINTIFF CLASS paid sick leave at their base hourly
23 rate, rather than at their “regular rate of pay.”

24 **CLASS ALLEGATIONS**

25 41. PLAINTIFF brings this class action pursuant to Code of Civil Procedure section 382.
26 PLAINTIFF brings this class action on behalf of PLAINTIFF and all other similarly situated
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1 individuals, with PLAINTIFF proceeding as the representative member of the proposed class as
2 follows:

3 a) **PLAINTIFF CLASS:** All individuals who were misclassified as independent
4 contractors and performed work for DEFENDANTS in California at any time
5 within the four (4) years prior to the filing of the initial complaint in this action and
6 through the date notice is mailed to a certified class.

7 b) PLAINTIFF reserves the right, under Rule 3.765 of the California Rules of Court, to
8 amend or modify the Class Members description with greater specificity or further division into
9 subclasses or limitation to particular issues.

10 42. There exists a well-defined community of interests among the PLAINTIFF CLASS
11 with respect to the claims asserted herein, and the PLAINTIFF CLASS is readily ascertainable for
12 the following reasons:

13 a) Numerosity and Ascertainability: The members of the class are so numerous that
14 joinder of all members would be unfeasible and not practicable. While PLAINTIFF
15 does not know the exact number and identity of all Class members, PLAINTIFF
16 alleges, on information and belief, that the members of the PLAINTIFF CLASS
17 exceed one hundred (100) persons. PLAINTIFF alleges, on information and belief,
18 that the identity of such membership is readily ascertainable via inspection of the
19 personnel records and other documents maintained by DEFENDANTS;

20 b) Typicality: The claims of PLAINTIFF, pleaded as class action claims, are typical of
21 the claims of all members of the class as they arise out of the same course of conduct
22 and are predicated on the same violation(s) of the law. PLAINTIFF and all members
23 of the PLAINTIFF CLASS sustained injuries and damages arising out of
24 DEFENDANTS' common course of conduct in violation of laws as complained of
25 herein.

26 c) Commonality: Common issues of fact and law predominate in this action over any
27 allegedly individual issues. The claims of PLAINTIFF and the PLAINTIFF CLASS
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1 members arise from the same events or patterns or practices and are based on the
2 same legal theories. Specifically, the following issues of fact and law, without
3 limitation, predominate and make this action superior to individual actions:

- 4 i. Whether DEFENDANTS denied PLAINTIFF and members of the
5 PLAINTIFF CLASS all of the wages to which they are entitled pursuant to
6 the California Labor Code, California IWC Wage Orders, and all other
7 applicable employment laws and regulations;
- 8 ii. Whether DEFENDANTS violated California Labor Code section 204 by
9 failing to pay all wages earned in a timely manner;
- 10 iii. Whether DEFENDANTS failed to pay the required rest break or meal
11 premiums to PLAINTIFF and members of the PLAINTIFF CLASS for all
12 missed rest or meal breaks.
- 13 iv. Whether DEFENDANTS owe PLAINTIFF and members of the PLAINTIFF
14 CLASS waiting time penalties pursuant to California Labor Code section
15 203;
- 16 v. Whether DEFENDANTS have failed to properly provide accurate itemized
17 wage statements as well as keep accurate records as required by California
18 Labor Code section 226 and the applicable Industrial Welfare Commission's
19 ("IWC") Wage Order;
- 20 vi. Whether DEFENDANTS willfully misclassified PLAINTIFF and members
21 of the PLAINTIFF CLASS as independent contractors;
- 22 vii. Whether DEFENDANTS failed to pay PLAINTIFF and members of the
23 PLAINTIFF CLASS the proper rate of pay for accrued and used sick pay;
- 24 viii. Whether DEFENDANTS failed to reimburse PLAINTIFF and members of
25 the PLAINTIFF CLASS for all business expenses;
- 26 ix. Whether DEFENDANTS engaged in unfair business practices under section
27 17200, *et. seq* of the California Business and Professions Code;
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1 x. The effect upon and the extent of damages suffered by PLAINTIFF and
2 members of the PLAINTIFF CLASS and the appropriate amount of
3 compensation.

4 d) Adequacy: PLAINTIFF and the PLAINTIFF CLASS all worked for
5 DEFENDANTS, share the same interests, and were subjected to DEFENDANTS'
6 unlawful policy and practice of failing to adequately compensate employees and/or
7 provide them with their statutory entitlements, including but not limited to: all owed
8 wages, meal and rest breaks, wage statements, as required by law. PLAINTIFF and
9 members of the PLAINTIFF CLASS do not have any conflicts of interest with other
10 members. Given the significance of the deprivation of their rights, PLAINTIFF will
11 prosecute this action vicariously on behalf of the PLAINTIFF CLASS. They have
12 retained competent and experienced legal counsel who specialize in employment,
13 wage and hour, and class action litigation to represent themselves and the proposed
14 PLAINTIFF CLASS.

15 e) Superiority of Class Action: The disposition of PLAINTIFF and the proposed
16 PLAINTIFF CLASS members' claims in a class action will provide substantial
17 benefits to both the parties and the Court. The nature of this action and the nature of
18 the laws available to the PLAINTIFF CLASS make use of the class action format a
19 particularly efficient and appropriate procedure to afford relief to the PLAINTIFF
20 CLASS. Further, this case involves a corporate employer and a large number of
21 individual employees possessing claims with common issues of law and fact. If each
22 employee were required to file an individual lawsuit, the corporate defendant would
23 necessarily gain an unconscionable advantage since each defendant would be able to
24 exploit and overwhelm the limited resources of each individual plaintiff with its
25 vastly superior financial and legal resources. Requiring each class member to pursue
26 an individual remedy would also discourage the assertion of lawful claims by
27 employees who would be disinclined to pursue an action against their present and/or
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1 former employer for an appreciable and justifiable fear of retaliation and permanent
2 damage to their careers at present and/or subsequent employment. Proof of a
3 common business practice or factual pattern, of which the named PLAINTIFF
4 experienced, is representative of the class mentioned herein and will establish the
5 right of each of the members of the class to recover on the claims alleged herein.

6 43. The prosecution of separate actions by the individual class members, even if possible,
7 would create: (a) a substantial risk of inconvenient or varying verdicts or adjudications with respect
8 to the individual class members against the defendants herein; and/or (b) legal determinations with
9 respect to individual class members which would, as a practical matter, be dispositive of the other
10 class members' claims who are not parties to the adjudications and/or would substantially impair or
11 impede the ability of class members to protect their interests. Further, the claims of the individual
12 members of the class are not sufficiently large to warrant vigorous individual prosecution
13 considering all of the concomitant costs and expenses attending thereto.

14 44. PLAINTIFF is unaware of any difficulties that are likely to be encountered in the
15 management of this action that would preclude its maintenance as a class action.

16 **FIRST CAUSE OF ACTION**

17 **Failure to Pay Minimum Wages**

18 [Cal. Lab. Code §§ 1194, 1197; IWC Wage Orders]

19 (PLAINTIFF, individually, and on behalf of all similarly situated employees against all
20 DEFENDANTS)

21 45. PLAINTIFF incorporates by reference all allegations in the foregoing paragraphs of
22 this Complaint as though fully set forth herein.

23 46. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Orders, payment
24 to an employee of less than the applicable minimum wage for all hours worked in a payroll period
25 is unlawful.

26 47. At all relevant times, DEFENDANTS failed to pay PLAINTIFF and members of the
27 PLAINTIFF CLASS minimum wages for all hours worked by, among other things: requiring,
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1 permitting or suffering PLAINTIFF to work off the clock; requiring, permitting or suffering
2 PLAINTIFF to work through meal and rest breaks; illegally and inaccurately recording time in
3 which PLAINTIFF worked; failing to properly maintain PLAINTIFF's records; failing to provide
4 accurate itemized wage statements to PLAINTIFF for each pay period; and other methods to be
5 discovered.

6 48. DEFENDANTS' conduct described herein violates California Labor Code §§ 1194,
7 1197, and IWC Wage Orders.

8 49. As a proximate result of the aforementioned violations, PLAINTIFF and members
9 of the PLAINTIFF CLASS have been damaged and seek all wages earned and due, plus interest
10 thereon.

11 50. Pursuant to Labor Code § 1194, PLAINTIFF and members of the PLAINTIFF
12 CLASS request that the court award reasonable attorney fees and costs incurred by PLAINTIFF and
13 members of the PLAINTIFF CLASS in this action.

14 51. In addition, pursuant to Labor Code § 1194.2, PLAINTIFF and members of the
15 PLAINTIFF CLASS are entitled to recover liquidated damages in an amount equal to the minimum
16 wages unlawfully withheld, and interest thereon.

17 **SECOND CAUSE OF ACTION**

18 **Failure to Pay Overtime Wages**

19 [Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Orders]

20 (PLAINTIFF, individually, and on behalf of all similarly situated employees against all
21 DEFENDANTS)

22 52. PLAINTIFF incorporates by reference all allegations in the foregoing paragraphs of
23 this Complaint as though fully set forth herein.

24 53. Pursuant to California Labor Code §§ 510, 1194, 1198 and IWC Wage Orders,
25 DEFENDANTS are required to compensate PLAINTIFF and members of the PLAINTIFF CLASS
26 for all overtime, which is calculated at one and one-half (1½) times the regular rate of pay for all
27 hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first
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1 eight (8) hours on the seventh consecutive workday, with double time for all hours worked in excess
2 of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the
3 seventh consecutive day of work in any workweek.

4 54. At all relevant times, PLAINTIFF and members of the PLAINTIFF CLASS were not
5 exempt and were entitled to the protections of California Labor Code §§ 510, 1194, 1198, and IWC
6 Wage Orders. DEFENDANTS failed to compensate PLAINTIFF and members of the PLAINTIFF
7 CLASS for all overtime hours worked as required under the foregoing provisions of the California
8 Labor Code and IWC Wage Orders.

9 55. In violation of California law, DEFENDANTS knowingly and willfully refused to
10 perform their obligations to compensate PLAINTIFF and members of the PLAINTIFF CLASS for
11 all wages earned and all hours worked. As a proximate result, PLAINTIFF and members of the
12 PLAINTIFF CLASS have suffered, and continue to suffer, substantial losses related to the use and
13 enjoyment of such wages, lost interest on such wages, and expenses and attorney fees in seeking to
14 compel DEFENDANTS to fully perform their obligations under state law.

15 56. DEFENDANTS' conduct described herein violates California Labor Code §§ 510,
16 1194, 1198 and IWC Wage Orders. Therefore, pursuant to California Labor Code 28 §§ 200, 203,
17 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor Code and IWC
18 Wage Orders, PLAINTIFF and members of the PLAINTIFF CLASS are entitled to recover the
19 unpaid balance of wages owed, plus interest, penalties, attorney fees, expenses, and costs.

20 **THIRD CAUSE OF ACTION**

21 **Failure to Provide Required Meal Periods**

22 [Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Orders]

23 (PLAINTIFF, individually, and on behalf of all similarly situated employees against all
24 DEFENDANTS)

25 57. PLAINTIFF incorporates by reference all allegations in the foregoing paragraphs of
26 this Complaint as though fully set forth herein.

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58. DEFENDANTS failed to provide PLAINTIFF and members of the PLAINTIFF CLASS with a 30-minute meal period free of all duties on days which they worked more than five (5) hours. Furthermore, DEFENDANTS also failed to provide PLAINTIFF and members of the PLAINTIFF CLASS with a second and third 30-minute meal period free of all duties on days on which PLAINTIFF worked more than 10 or 15 hours, pursuant to California Labor Code Section 226.7, 512 and IWC Orders.

59. DEFENDANTS further violated California Labor Code Section 226.7 and IWC Wage Orders by failing to compensate PLAINTIFF and members of the PLAINTIFF CLASS one additional hour of compensation at their regular rate of pay, including all non-discretionary pay, for each meal period that was not provided.

60. DEFENDANTS further violated California Labor Code Sections 226.7, 510, 1194, 1197, and IWC Wage Orders by failing to compensate PLAINTIFF and members of the PLAINTIFF CLASS for all hours worked during their meal periods.

61. As a proximate result of the aforementioned violations, PLAINTIFF and members of the PLAINTIFF CLASS have been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court. PLAINTIFF and members of the PLAINTIFF CLASS are entitled to recover the unpaid balance of wages owed; penalties, including penalties available pursuant to California Labor Code Sections 226, 226.7, and 558, plus interest; and costs of suit. PLAINTIFF and members of the PLAINTIFF CLASS are also entitled to attorney fees and costs pursuant to Labor Code Section 218.5 for DEFENDANTS' failure to pay all earned wages to PLAINTIFF and PLAINTIFF CLASS.

FOURTH CAUSE OF ACTION

Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7, 512; IWC Wage Orders]

(PLAINTIFF, individually, and on behalf of all similarly situated employees against all
DEFENDANTS)

62. PLAINTIFF incorporates by reference all allegations in the foregoing paragraphs of this Complaint as though fully set forth herein.

63. At all times relevant herein, DEFENDANTS failed to provide rest periods to PLAINTIFF and members of the PLAINTIFF CLASS as required under California Labor Code Sections 226.7 and 512, and IWC Wage Orders. DEFENDANTS also did not provide PLAINTIFF and members of the PLAINTIFF CLASS a second, third, or fourth rest period for each additional four (4) hours worked, or major fraction thereof.

64. DEFENDANTS further violated California Labor Code Section 226.7 and IWC Wage Orders by failing to compensate PLAINTIFF and members of the PLAINTIFF CLASS one additional hour of compensation at their regular rate of pay, including all non-discretionary pay, for each rest period that was not provided.

65. DEFENDANTS further violated California Labor Code Sections 226.7, 510, 1194, 1197, and IWC Wage Orders by failing to compensate PLAINTIFF and members of the PLAINTIFF CLASS for all hours worked during their rest periods.

66. As a proximate result of the aforementioned violations, PLAINTIFF and members of the PLAINTIFF CLASS have been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court. PLAINTIFF and members of the PLAINTIFF CLASS are entitled to recover the unpaid balance of wages owed; penalties, including penalties available pursuant to California Labor Code Sections 226, 226.7, and 558, plus interest, and costs of suit. PLAINTIFF and members of the PLAINTIFF CLASS are also entitled to attorney fees and costs pursuant to Labor Code Section 218.5 for DEFENDANTS' failure to pay all earned wages to PLAINTIFF and PLAINTIFF CLASS.

FIFTH CAUSE OF ACTION

Failure to Properly Pay Accrued Sick Days

[Cal. Lab. Code §§ 233, 246]

(PLAINTIFF, individually, and on behalf of all similarly situated employees against all
DEFENDANTS)

67. PLAINTIFF incorporates by reference all allegations in the foregoing paragraphs of this Complaint as though fully set forth herein.

68. PLAINTIFF and members of the PLAINTIFF CLASS worked for DEFENDANTS in California for thirty days or more within a year of the commencement of their employment and thus were entitled to paid sick days in accordance with Labor Code §§ 233 and 246.

69. PLAINTIFF and members of the PLAINTIFF CLASS used some or all of their accrued paid sick days during the relevant time period.

70. DEFENDANTS failed to pay PLAINTIFF and members of the PLAINTIFF CLASS the proper rate for their paid sick days, in accordance with Labor Code § 246(l), because DEFENDANTS did not include all wages earned by PLAINTIFF and members of the PLAINTIFF CLASS in their regular rate of pay calculations.

71. As a proximate result of the aforementioned violations, PLAINTIFF and members of the PLAINTIFF CLASS have been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court. PLAINTIFF and members of the PLAINTIFF CLASS are entitled to recover the unpaid balance of wages owed; penalties, including penalties available pursuant to California Labor Code Sections 226, 226.7, and 558, plus interest; and costs of suit. PLAINTIFF and members of the PLAINTIFF CLASS are also entitled to attorney fees and costs pursuant to Labor Code Section 218.5 for DEFENDANTS' failure to pay all earned wages to PLAINTIFF and PLAINTIFF CLASS.

SIXTH CAUSE OF ACTION

Wilful Misclassification of Employees as Independent Contractors

[Cal. Lab. Code § 226.8]

(PLAINTIFF, individually, and on behalf of all similarly situated employees against all
DEFENDANTS)

72. PLAINTIFF incorporates by reference all allegations in the foregoing paragraphs of this Complaint as though fully set forth herein.

73. Pursuant to California Labor Code Section 226.8, it is unlawful for any employer to willfully misclassify an individual as an independent contractor.

74. PLAINTIFF and members of the PLAINTIFF CLASS qualified as employees pursuant to Labor Code § 2775(b), *Dynamex Operations W. Inc. v. Superior Court* (2018) 4 Cal.5th 903, and/or *S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (1989) 48 Cal.3d 341. Nonetheless, DEFENDANTS classified PLAINTIFF and members of the PLAINTIFF CLASS as independent contractors.

75. DEFENDANTS voluntarily and knowingly misclassified PLAINTIFF and all other similarly situated employees in order to avoid employee status for these individuals and to avoid the attendant legal, wage and benefit requirements of such status.

76. As a proximate result, PLAINTIFF and members of the PLAINTIFF CLASS have suffered, and continue to suffer, substantial losses related to the use and enjoyment of additional wages owed to them as employees for minimum wages and overtime wages, and for missed meal and rest periods, as well as other benefits of employment. PLAINTIFF and members of the PLAINTIFF CLASS have been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court. PLAINTIFF and members of the PLAINTIFF CLASS are entitled to recover the unpaid balance of wages owed; penalties, including penalties available pursuant to California Labor Code Sections 226, 226.7, and 558, plus interest; and costs of suit. PLAINTIFF and members of the PLAINTIFF CLASS are also entitled to attorney fees and costs pursuant to Labor Code Section 218.5 for DEFENDANTS' failure to pay all earned wages to PLAINTIFF and PLAINTIFF CLASS.

SEVENTH CAUSE OF ACTION

Failure to Pay Timely Wages During Employment

[Cal. Lab. Code § 204]

(PLAINTIFF, individually, and on behalf of all similarly situated employees against all
DEFENDANTS)

77. PLAINTIFF incorporate by reference all allegations in the foregoing paragraphs of this Complaint as though fully set forth herein.

78. Pursuant to California Labor Code Section 204, for all labor performed between the 1st and 15th days of any calendar month, DEFENDANTS are required to pay their nonexempt employees between the 16th and 26th day of the month during which the labor was performed. California Labor Code Section 204 also provides that for all labor performed between the 16th and 26th days of any calendar month, DEFENDANTS are required to pay their nonexempt employees between the 1st and 15th day of the following calendar month. In addition, California Labor Code Section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday of the next regular payroll period.

79. DEFENDANTS knowingly and willfully failed to pay PLAINTIFF and members of the PLAINTIFF CLASS all the wages earned when due as required by California Labor Code Section 204.

80. Pursuant to California Labor Code Section 210, failure to pay the wages of each employee as provided in California Labor Code Section 204 will subject DEFENDANTS to a statutory penalty of: (1) one hundred dollars (\$100) for each failure to pay each employee for each initial violation; and (2) two hundred dollars (\$200) for each failure to pay each employee, plus twenty-five percent (25%) of the amount unlawfully withheld, for each subsequent violation.

81. DEFENDANTS' conduct described herein violates California Labor Code Section 204. As a proximate result of the aforementioned violations, PLAINTIFF and members of the PLAINTIFF CLASS have been damaged in an amount according to proof at trial. Pursuant to California Labor Code Sections 200, 210, 226, 558, 1194, 1197.1, 2699, and other applicable provisions under the Labor Code and IWC Wage Orders, PLAINTIFF and members of the PLAINTIFF CLASS are entitled to recover the unpaid balance of wages owed by DEFENDANTS, plus interest, penalties, attorney fees, expenses, and costs of suit.

EIGHTH CAUSE OF ACTION

Failure to Pay All Wages Due to Discharged and Quitting Employees

[Cal. Lab. Code §§ 201, 202, 203]

(PLAINTIFF, individually, and on behalf of all similarly situated employees against all
DEFENDANTS)

82. PLAINTIFF incorporates by reference all allegations in the foregoing paragraphs of this Complaint as though fully set forth herein.

83. Pursuant to California Labor Code Sections 201, 202, and 203, DEFENDANTS are required to pay all earned and unpaid wages to an employee who is discharged. California Labor Code Section 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately.

84. Furthermore, pursuant to California Labor Code Section 202, DEFENDANTS are required to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

85. California Labor Code Section 203 provides that if an employer willfully fails to pay, in accordance with California Labor Code Sections 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to 30 workdays.

86. DEFENDANTS have willfully failed to pay accrued wages, premium pay for missed meal and rest periods and other compensation to PLAINTIFF and members of the PLAINTIFF CLASS in accordance with California Labor Code Sections 201 and 202.

87. As a result, PLAINTIFF and members of the PLAINTIFF CLASS are entitled to all available statutory penalties, including the waiting time penalties provided in California Labor Code Section 203, together with interest thereon, attorney fees and costs as well as other available remedies.

NINTH CAUSE OF ACTION

Failure to Maintain Required Records

[Cal. Lab. Code §§ 226, 1174; IWC Wage Orders]

1 (PLAINTIFF, individually, and on behalf of all similarly situated employees against all
2 DEFENDANTS)

3 88. PLAINTIFF incorporates by reference all allegations in the foregoing paragraphs of
4 this Complaint as though fully set forth herein.

5 89. At all relevant times, DEFENDANTS knowingly and intentionally failed to maintain
6 records as required under California Labor Code Sections 226, 1174, and IWC Wage Orders,
7 including but not limited to the following records: total daily hours worked by each employee;
8 applicable rates of pay; all deductions; meal period pay; rest period pay; time records showing when
9 each employee begins and ends each work period; and accurate itemized statements.

10 90. As a result of DEFENDANTS' violations, PLAINTIFF and members of the
11 PLAINTIFF CLASS suffered injury because, among other things,

- 12 a) the violations led them to believe that they were not entitled to be paid minimum
13 wages, overtime wages, meal period premium wages, and rest period premium wages
14 to which they were in fact entitled;
- 15 b) the violations led them to believe that they had been paid the minimum, overtime,
16 meal period premium, and rest period premium wages, even though they had not
17 been;
- 18 c) the violations hindered them from determining the amounts of minimum wages,
19 overtime, meal period premium, and rest period premium owed to them;
- 20 d) in connection with their employment, before and during this action, and in
21 connection with prosecuting this action, the violations caused them to have to
22 perform mathematical computations to determine the amounts of wages owed to
23 them, computations they would not have to make if the wage statements contained
24 the required accurate information;
- 25 e) the violations, by understating the wages truly due to PLAINTIFF and members of
26 the PLAINTIFF CLASS, caused them to lose entitlement and/or accrual of the full
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1 amount of Social Security, disability, unemployment and other governmental
2 benefits;

3 f) the wage statements inaccurately understated the wages, hours, and wages rates to
4 which PLAINTIFF and members of the PLAINTIFF CLASS were entitled, and as a
5 result PLAINTIFF and members of the PLAINTIFF CLASS were in fact paid less
6 wages and/or a lower wage rate than the wages to which they were entitled.

7 91. As a proximate result of DEFENDANTS' unlawful actions and omissions,
8 PLAINTIFF and members of the PLAINTIFF CLASS have been damaged and are entitled to all
9 available statutory penalties, including but not limited to penalties pursuant to California Labor
10 Code Sections 226 (e), and an award of costs, expenses, and reasonable attorney fees, including but
11 not limited to those provided in Section 226 (e), as well as other available remedies.

12 **TENTH CAUSE OF ACTION**

13 **Failure to Furnish Accurate, Itemized Wage Statements**

14 [Cal. Lab. Code §§ 226; IWC Wage Orders]

15 (PLAINTIFF, individually, and on behalf of all similarly situated employees against all
16 DEFENDANTS)

17 92. PLAINTIFF incorporates by reference all allegations in the foregoing paragraphs of
18 this Complaint as though fully set forth herein.

19 93. DEFENDANTS routinely failed to provide PLAINTIFF and members of the
20 PLAINTIFF CLASS with timely, accurate, and itemized wage statements in writing showing each
21 employee's gross wages earned—including missed meal and rest period pay, total hours worked, all
22 deductions made, net wages earned, the name and address of the legal entity or entities employing
23 Plaintiff, and all applicable hourly rates in effect during each pay period and the corresponding
24 number of hours worked at each hourly rate, in violation of California Labor Code Section 226 and
25 IWC Wage Orders.

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1 94. DEFENDANTS knowingly and intentionally failed to provide PLAINTIFF and
2 members of the PLAINTIFF CLASS with timely, accurate, and itemized wage statements in
3 accordance with California Labor Code Section 226 (a).

4 95. As a result of DEFENDANTS' violations, PLAINTIFF and members of the
5 PLAINTIFF CLASS suffered injury because, among other things,

- 6 a) the violations led them to believe that they were not entitled to be paid minimum
7 wages, overtime wages, meal period premium wages, and rest period premium wages
8 to which they were in fact entitled;
- 9 b) the violations led them to believe that they had been paid the minimum, overtime,
10 meal period premium, and rest period premium wages, even though they had not
11 been;
- 12 c) the violations hindered them from determining the amounts of minimum wages,
13 overtime, meal period premium, and rest period premium owed to them;
- 14 d) in connection with their employment, before and during this action, and in
15 connection with prosecuting this action, the violations caused them to have to
16 perform mathematical computations to determine the amounts of wages owed to
17 them, computations they not have to make if the wage statements contained the
18 required accurate information;
- 19 e) the violations, by understating the wages truly due to PLAINTIFF and members of
20 the PLAINTIFF CLASS, caused them to lose entitlement and/or accrual of the full
21 amount of Social Security, disability, unemployment, and other governmental
22 benefits;
- 23 f) the wage statements inaccurately understated the wages, hours, and wages rates to
24 which PLAINTIFF and members of the PLAINTIFF CLASS were entitled, and as a
25 result PLAINTIFF and members of the PLAINTIFF CLASS were in fact paid less
26 wages and/or a lower wage rate than the wages to which they were entitled.
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96. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFF and members of the PLAINTIFF CLASS have been damaged and are entitled to all available statutory penalties, including but not limited to penalties pursuant to California Labor Code Sections 226 (e), and an award of costs, expenses, and reasonable attorney fees, including but not limited to those provided in Section 226 (e), as well as other available remedies.

ELEVENTH CAUSE OF ACTION

Failure to Reimburse Necessary Expenditures

[Cal. Lab. Code § 2802]

(PLAINTIFF, individually, and on behalf of all similarly situated employees against all
DEFENDANTS)

97. PLAINTIFF incorporates by reference all allegations in the foregoing paragraphs of this Complaint as though fully set forth herein.

98. Labor Code Section 2802 requires employers to indemnify employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

99. DEFENDANTS did not reimburse PLAINTIFF and members of the PLAINTIFF CLASS for all necessary expenditures or losses incurred by them during their employment.

100. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFF and members of the PLAINTIFF CLASS have been deprived of compensation and are entitled to recovery of such amounts, plus interest thereon, and attorney fees and costs.

TWELFTH CAUSE OF ACTION

Unfair and Unlawful Business Practices

[Cal. Bus. & Prof. Code §§ 17200, *et seq.*]

(PLAINTIFF, individually, and on behalf of all similarly situated employees against all
DEFENDANTS)

101. PLAINTIFF incorporates by reference all allegations in the foregoing paragraphs of this Complaint as though fully set forth herein.

102. Each and every one of DEFENDANTS' acts and omissions in violation of the California Labor Code and/or the applicable IWC Wage Orders as alleged herein constitutes an unfair and unlawful business practice under California Business and Professions Code § 17200 *et seq.*

103. DEFENDANTS' violations of California wage and hour laws constitute a business practice because DEFENDANTS' aforementioned acts and omissions were done repeatedly over a significant period of time, and in a systematic manner, to the detriment of PLAINTIFF and members of the PLAINTIFF CLASS.

104. DEFENDANTS have avoided payment of wages, and other benefits as required by the California Labor Code, the California Code of Regulations, and the applicable IWC Wage Orders. Further, DEFENDANTS have failed to record, report, and pay the correct sums of assessment to the state authorities under the California Labor Code and other applicable regulations.

105. As a result of DEFENDANTS' unfair and unlawful business practices, DEFENDANTS have reaped unfair and illegal profits at the expense of PLAINTIFF and members of the PLAINTIFF CLASS. DEFENDANTS should be made to disgorge its ill-gotten gains and to restore them to PLAINTIFF and members of the PLAINTIFF CLASS.

106. DEFENDANTS' unfair business practices entitle PLAINTIFF and the PLAINTIFF CLASS to seek preliminary and permanent injunctive relief, including but not limited to, orders that DEFENDANTS account for and restore to PLAINTIFF and the PLAINTIFF CLASS the compensation unlawfully withheld from them. Thus, they are entitled to restitution, in addition to interest, costs, and attorney fees for the underlying statutory violations incorporated herein, including but not limited to Labor Code Sections 1194, 1194.2, 218.5, *et seq.*, amongst other violations.

THIRTEENTH CAUSE OF ACTION

Civil Penalties Pursuant to The Private Attorneys General Act

[Labor Code § 2698 *et seq.*]

(PLAINTIFF, individually, and on behalf of all similarly situated employees against all

DEFENDANTS)

107. PLAINTIFF incorporates by reference all allegations in the foregoing paragraphs of this Complaint as though fully set forth herein.

108. PLAINTIFF alleges—on information and belief—that DEFENDANTS violated Labor Code sections 201, 202, 203, 256 (waiting time), 204, 210 (timely wages during employment), 226, 226(a), 226.3, 226.6 (wage statements), 226, 1174, 1174.5 (maintenance of records), 226.2, 226.7, 510, 512, 1194, 1197 (meal and rest periods), 226.8 (misclassification), 233, 246 (sick pay), 1182.12, 1194, 1197, 1197.1 (minimum wage), 510, 1194, 1198 (overtime), as well as all applicable Wage Orders, as alleged herein.

109. These violations subject employers and individuals to civil penalties as set forth in (1) the foregoing statutes to the extent that they are specified and contained therein, which PLAINTIFF will be seeking individually and on the behalf of all aggrieved employees; or to (2) to the extent that that the statutes do not provide for PAGA civil penalties or PAGA available relief, then PLAINTIFF will seek the default PAGA penalties for each of the preceding statutory violations in accordance with Labor Code section 2699(f), individually and for all aggrieved employees, as well as the LWDA.

110. Pursuant to Labor Code section 2699(g), PLAINTIFF is entitled to an award of reasonable attorney fees and costs in connection with the claim for civil penalties.

111. PLAINTIFF has exhausted the administrative remedies by providing notice to the LWDA and to DEFENDANTS as required by the PAGA statute, complying with all requirements to exhaust the administrative remedies on or about September 08, 2023. Neither PLAINTIFF nor PLAINTIFF's counsel received a response from DEFENDANTS or the LWDA.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF and the PLAINTIFF CLASS pray for judgment against DEFENDANTS, and each of the, as follows:

1. That this action be certified as a class action;
2. That PLAINTIFF be appointed as representative of the PLAINTIFF CLASS;

- 1 3. That counsel for PLAINTIFF be appointed as class counsel;
- 2 4. For unpaid wages and reimbursement of business expenses;
- 3 5. For actual damages pursuant to California Labor Code 226(e);
- 4 6. For meal and rest period compensation pursuant to California Labor Code § 226.7
- 5 and IWC Wage Orders;
- 6 7. For minimum wage liquidated damages pursuant to California Labor Code 1194.2;
- 7 8. For statutory and civil penalties, including under PAGA as provided by law;
- 8 9. For waiting time penalties pursuant to California Labor Code section 203;
- 9 10. For injunctive relief to stop DEFENDANTS' illegal practices described above,
- 10 including, but not limited to, the failure to pay all earned wages, including overtime wages, the
- 11 failure to provide accurate itemized statements, and other practices as mentioned herein;
- 12 11. For DEFENDANTS to be ordered and enjoined to make restitution to PLAINTIFF
- 13 and members of the PLAINTIFF CLASS and disgorgement of profits from their unlawful business
- 14 practices and accounting, pursuant to California Business and Professions Code § 17203 and 17204;
- 15 12. For costs of suit, attorney fees, and expert witness fees pursuant the Labor Code,
- 16 Code of Civil Procedure § 1021.5, and/or any other basis;
- 17 13. For pre- and post-judgment interest; and,
- 18 14. For all such other and further relief that the court may deem just and proper.

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21 DATED: November 30, 2023

Respectfully Submitted,

22 ELKIN | GAMBOA LLP

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24 By: 

25 Michael Elkin

26 Attorneys for Plaintiff Finster Paul

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DEMAND FOR TRIAL BY JURY

PLAINTIFF hereby demands a jury trial of all causes of action and claims with respect to which PLAINTIFF has a right to jury trial.

Respectfully Submitted,

DATED: November 30, 2023

ELKIN | GAMBOA LLP

By: 

Michael Elkin

Attorneys for Plaintiff Finster Paul