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 on behalf of himself and others similarly situated

FILED
 Superior Court of California
 County of Los Angeles
11/27/2023

David W. Slayton, Executive Officer / Clerk of Court
 By: R. Lozano Deputy

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

DAVID T. ATKINS, on behalf of himself
 and others similarly situated,

Plaintiff,

vs.

GODADDY.COM, LLC, a Delaware limited
 liability company; GODADDY MEDIA
 TEMPLE, INC. a California corporation; and
 DOES 1 through 50, inclusive,

Defendants.

Case No.: 23STCV23396

CLASS ACTION

Assigned for All Purposes To:
 Hon. William F. Highberger
 Dept.: 10

**FIRST AMENDED CLASS ACTION
 COMPLAINT FOR:**

1. Failure to Pay Minimum Wages and for All Hours Worked;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability under Labor Code § 226.7;
4. Rest-Break Liability under Labor Code § 226.7;
5. Violation of Labor Code § 226(a);
6. Violation of Labor Code § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203;
9. Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5;
10. Failure to Produce Requested Employment Records under Labor Code §§ 226, 1198.5;
11. Failure to Reimburse Necessary Business Expenses under Labor Code § 2802;
12. Violation of Business & Professions Code § 17200 *et seq.*; and
13. Penalties under PAGA, Labor Code § 2698

DEMAND FOR JURY TRIAL

Original Complaint filed: September 26, 2023

1 Plaintiff DAVID T. ATKINS (hereinafter “Plaintiff”), on behalf of himself and other
2 similarly situated non-exempt, hourly employees employed by Defendants in California, including
3 but not limited to those employed as care support guides, customer service representatives and
4 related positions (collectively, “Employees”; individually, “Employee”), complains of Defendants,
5 and each of them, as follows:

6 **INTRODUCTION**

7 1. Plaintiff brings this action on behalf of himself and all current and former
8 Employees within the State of California who, at any time from four years prior to the filing of
9 this lawsuit, are or were employed as non-exempt, hourly employees by Defendants
10 GODADDY.COM, LLC, a Delaware limited liability company, GODADDY MEDIA TEMPLE,
11 INC., a California corporation, and DOES 1 through 50 (all defendants being collectively referred
12 to herein as “Defendants”). Plaintiff alleges that Defendants, and each of them, violated various
13 provisions of the California Labor Code, relevant orders of the Industrial Welfare Commission
14 (“IWC”), and the California Business & Professions Code, and seeks redress for these violations.

15 2. Plaintiff and the Class members worked as hourly, non-exempt Employees for
16 Defendants, including as care support guides, customer service representatives and in related
17 positions pertaining to providing billing and technical support services to Defendants’ customers.
18 Plaintiff, and upon information and belief other similarly situated Employees were required to
19 perform customer service-related work tasks remotely and based out of Defendants’ facilities and
20 locations in California. Plaintiff was employed by Defendants as a Care Support Guide with duties
21 that included taking customer service calls and providing customers with billing and technical
22 support.

23 3. Defendants employed other similarly situated Class members as care support
24 guides, customer service representatives, and in similar and related positions pertaining to
25 providing billing and technical support services to Defendants’ customers both domestic and
26 international. Plaintiff and the other similarly situated Class members worked at Defendants’
27 behest without being paid all wages due. More specifically, Plaintiff and the other similarly
28 situated Class members were employed by Defendants and (1) shared similar job duties and

responsibilities (2) were subjected to the same policies and practices (3) and endured similar violations at the hands of Defendants as the other Employee Class members who served in similar and related positions.

4. Defendants failed to pay Plaintiff and the Employees in the Class at the appropriate rates for all hours worked, failed to pay at the appropriate rates for all holiday premiums and sick pay, failed to pay all wages due and owing at termination or resignation, and provided Plaintiff and the Class members with inaccurate wage statements that prevented them from learning of these unlawful pay practices. Defendants also failed to provide Plaintiff and the Class with meal period and rest break premiums at the appropriate rates when Employees were required to remain under Defendants' control and were not provided with the opportunity to take full uninterrupted, timely, and duty-free rest periods and meal breaks, as required by the Labor Code and the applicable paragraphs of the IWC Wage Orders.

5. Defendant GODADDY.COM, LLC is a Delaware limited liability company which lists its principal address with the California Secretary of State in Tempe, Arizona and does not list a California office. It lists its type of business as "Internet Product and Services." Defendant GODADDY.COM, LLC is listed as the employer on wage statements issued to Plaintiff by Defendants on a bi-weekly basis, and upon information and belief to other Class members, with the same Tempe, Arizona address. Its website explains that: "With nearly 20 years in the industry, we have the experience, the technology and the hosting experts to help web designers, developers, bloggers and online businesses create and maintain their online presence. Our secure web hosting platform, complete with cPanel, offers a 99.9% uptime guarantee and award-winning support, which has helped nearly 21+ million customers get online." Plaintiff worked for Defendants remotely from West Hollywood, California, and Defendants maintain operations based out of locations throughout Los Angeles County and California.

6. Defendant GODADDY MEDIA TEMPLE, INC. is a California corporation which lists its principal address with the California Secretary of State in Tempe, Arizona and does not list a California office. It lists its type of business as "Internet Product and Services & Related Services." Defendant GODADDY MEDIA TEMPLE, INC. was listed as the employer on wage

1 statements issued to Plaintiff by Defendants on a bi-weekly basis, and upon information and belief
2 to other Class members, with the same Tempe, Arizona address. Defendant GODADDY MEDIA
3 TEMPLE, INC. is the amended name of Media Temple, Inc., which, on information and belief,
4 was acquired by DEFENDANT GODADDY.COM, LLC and renamed GODADDY MEDIA
5 TEMPLE, INC. Plaintiff worked remotely from his home in West Hollywood, California for both
6 Defendants as joint or sequential employers, and Defendants maintain operations based out of
7 locations throughout Los Angeles County and California.

8 7. This Court has jurisdiction over this Action pursuant to California Code of Civil
9 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
10 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
11 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
12 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
13 obligations and liabilities giving rise to this lawsuit occurred, at least in part in Los Angeles
14 County, where Defendants operate and provide internet products and services to California
15 customers.

16 8. The true names and capacities, whether individual, corporate, associate, or
17 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
18 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
19 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
20 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
21 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
22 this Complaint to reflect the true names and capacities of the Defendants designated herein as
23 Does 1 through 50 when their identities become known.

24 9. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
25 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
26 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
27 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
28 all respects as the employers or joint employers of Employees. Defendants, and each of them,

1 exercised control over the wages, hours or working conditions of Employees, created and
2 implemented the policies and practices that governed the employment of Plaintiff and the Class
3 members and dictated their job duties and responsibilities, or otherwise suffered or permitted
4 Plaintiff and the other Employee Class members to work, or engaged, thereby creating a common
5 law employment relationship, with the Employee Class members. Therefore, Defendants, and each
6 of them, employed or jointly employed the Employee Class members.

7 **FACTUAL BACKGROUND**

8 10. The Employees who comprise the Class, including Plaintiff, are non-exempt
9 employees of Defendants pursuant to the applicable Wage Order of the Industrial Welfare
10 Commission (“IWC”). During the period of four years prior to the filing of this action through its
11 resolution, Plaintiff and the Class members were not paid by Defendants at the appropriate
12 minimum, regular and overtime rates, including for meal period and rest break premium
13 payments, holiday premium payments and sick pay. Plaintiff also contends that Defendants failed
14 to pay Plaintiff and the Class members all wages due and owing, including by miscalculating
15 wages owed and failing to furnish accurate wage statements and timely pay all wages owed, all in
16 violation of various provisions of the California Labor Code and applicable paragraphs of the
17 IWC Wage Orders.

18 11. During the course of Plaintiff and the Class members’ employment with
19 Defendants, they were not paid all wages they were owed, or were not paid at the correct rates.
20 This has resulted in systematic and ongoing violations of the California Labor Code and relevant
21 IWC Wage Orders. Upon information and belief, Defendants employ other non-exempt, hourly
22 employees as customer services-related workers based out of Defendants’ facilities and locations
23 in California and remotely throughout California.

24 12. Plaintiff worked as a Care Support Guide for Defendants, which included
25 answering phone calls from Defendants’ domestic and global customers and providing them
26 billing and technical support. As part of Defendants’ compensation scheme, Plaintiff and Class
27 members received nondiscretionary bonuses, in addition to their regular hourly rate. These
28 bonuses were part of an incentive plan designed to reward Employees for good customer service.

1 13. Plaintiff generally worked 40 hours a week or more, for five shifts per week with
2 scheduled hours from 7:00 a.m. through 3:30 p.m. Plaintiff worked different shift schedules and
3 hours as required, and often incurred overtime. Defendants failed to pay all overtime wages owed
4 including by requiring off the clock work before and during shifts, but Defendants would pay
5 some overtime compensation. However, if and when they did, Defendants failed to pay the
6 overtime compensation at the required rate by failing to include all forms of remuneration
7 received in a given pay period, including non-discretionary bonuses, in the regular rate used to
8 calculate and pay the overtime.

9 14. Due to the volume of work Defendants required from them, Plaintiff and the Class
10 members were also compelled to endure meal period and rest break violations. In some instances
11 when Defendants provided improper meal or rest breaks, they would pay some meal period and
12 rest break premiums. However, if and when they did, Defendants failed to pay meal period and
13 rest break premiums at the required rate by failing to include non-discretionary bonuses in the
14 regular rate used to calculate and pay the premiums. As meal period and rest break premium
15 payments are a form of wages, this further evidences Defendants' failure to pay wages for all
16 hours worked and at the appropriate regular and overtime rates. This systematic underpayment of
17 wages occurred, upon information and belief, in connection with the other similarly situated Class
18 members who were paid a bonus or other form of remuneration other than hourly wages and
19 received a meal or rest break premium payment in the same pay period.

20 15. Upon information and belief, Defendant similarly miscalculated the sick time paid
21 to Plaintiff and the other Class members by failing to include all forms of remuneration in the
22 regular rate upon which sick time was calculated and paid. Additionally, Defendants paid
23 Plaintiff and upon information and belief the other Class members certain holiday premiums, but
24 failed to include that premium in the regular rate used to pay meal and rest break penalty
25 premiums and to calculate and pay overtime in those pay periods.

26 16. Plaintiff was therefore not paid for all his hours worked, for meal and rest break
27 premiums wages, for holiday premiums and sick time at the required minimum, overtime and
28 double time wage rates due to Defendants' policy and practice of failing to include all forms of

1 remuneration in the regular rate of calculation and pay. Defendants thus systematically underpaid
2 Plaintiff and the Class members by failing to pay them at the required overtime rates for all hours
3 over eight in a work shift or over forty in a work week, and all hours over twelve in a day at the
4 required double time rate. Defendants also underpaid Plaintiff and the Class members by failing
5 to pay them at the required rates for meal and rest break premiums, holiday premiums, and sick
6 time, which in turn has also led to systematic derivative violations, including for failure to
7 provide accurate itemized wage statements and pay all wages upon termination or resignation.
8 Upon information and belief, the Class members were bound by similar scheduling and work
9 policies and endured similar violations at Defendants' hands as Plaintiff.

10 17. Defendants have either failed to maintain timekeeping records for Plaintiff that
11 would permit Plaintiff to discover the nature and extent of the work Defendants required and the
12 actual hours Plaintiff worked or the breaks he received or have otherwise declined to produce
13 them to Plaintiff in response to a timely and lawful records request. By failing to pay for all hours
14 worked, and by failing to record accurate meal period beginning and ending times, Defendants
15 have committed knowing and intentional ongoing violations of the record keeping requirements
16 under the Labor Code, including section 1174. Additionally, to the extent Defendants paid
17 overtime, meal and rest break premiums, holiday premiums, and sick time, it was underpaid as
18 addressed above or Defendants failed to include all forms of remuneration in the regular rate used
19 to calculate and pay these wages, thus resulting in further underpayment of wages earned by
20 Plaintiff and the Class members.

21 18. The failure to pay for all hours worked and underpayment of wages to Plaintiff
22 and the Class members is and has been a direct consequence of Defendants' unlawful
23 compensation policies and practices, which upon information and belief applied uniformly to the
24 Class members working at Defendants' locations and facilities. As a result of the above-described
25 regular rate miscalculation, the failure to accurately record all hours worked and pay wages at the
26 correct rates, and the off the clock hours and other wage violations they endured at Defendants'
27 hands, Plaintiff and the Class members were not properly paid all wages earned and all wages
28 owed to them by Defendants, including when they worked for more than eight hours in any given

1 day and/or more than forty hours in any given week.

2 19. Therefore, from at least four years prior to the filing of this lawsuit and continuing
3 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
4 hours worked and failing to pay minimum wages for all time worked, as required by California
5 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
6 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation
7 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a
8 week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of
9 Labor Code § 510 and the corresponding sections of IWC Wage Orders.

10 20. Defendants also failed to provide Plaintiff and the Class members with their
11 required meal periods and the at least two ten-minute rest breaks required for scheduled shifts of
12 eight hours. Demanding workloads contributed to Defendants' common policy of failing to
13 provide lawful meal periods to Plaintiff and the Class members, as required under the Labor Code
14 and Paragraph 11 of the IWC Wage Order(s). Defendants similarly systematically failed to
15 authorize and permit Plaintiff and the employee Class Members to take all required 10-minute
16 rest breaks, as required under the Labor Code and Paragraph 12 of the IWC Wage Order(s).

17 21. Defendants failed to provide duty-free meal periods of at least 30 uninterrupted
18 minutes during Plaintiff's work shifts. Plaintiff and the Class members generally worked shifts
19 that entitled them to receive at least one meal period and two rest breaks. However, Defendants
20 failed to provide all required meal periods and rest breaks to them. Defendants' uniformly applied
21 policies and practices systematically failed to provide required duty-free meal periods to Plaintiff
22 and the Class members. Defendants in fact made little or no effort to even schedule or otherwise
23 provide the opportunity for Class members to take at least one meal period on their work shifts of
24 eight hours or more.

25 22. To the extent Defendants ever did provide Class members with the opportunity to
26 take meal periods, upon information and belief they were often untimely or for less than 30
27 minutes, and they were invariably interrupted by work and customer demands or Plaintiff was
28 required to remain standing by to respond to them. Given the constant and ongoing job and

1 customer demands he faced, Plaintiff's meal periods would occasionally be interrupted, delayed
2 or shortened. By uniformly requiring Plaintiff and the other similarly situated Class members to
3 prioritize work over meal periods, Defendants committed systematic and ongoing meal break
4 violations.

5 23. Defendants appear to recognize and accept their unlawful policies, as Plaintiff's
6 wage statements evidence Defendant paying meal period premium payments under Labor Code §
7 226.7 to Plaintiff. As addressed above, Defendants committed similar and ongoing violations by
8 failing to include all forms of remuneration, including bonuses and premium payments to
9 Plaintiff and the Class members, in the regular hourly rate at which they paid the premiums.

10 24. As a result, Defendants' failure to provide Plaintiff and the Class members with all
11 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
12 periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants have
13 either failed to maintain required records of when meal periods were actually provided or failed to
14 produce them in response to Plaintiff's timely and lawful requests, or else maintained inaccurate
15 and incomplete records. Defendants also failed to pay Employees "premium pay," i.e. one hour of
16 wages at each Employee's effective hourly rate of pay, for each meal period or rest break that
17 Defendants failed to provide or deficiently provided. Upon information and belief, if and when
18 Defendants did pay any meal period premiums, they failed to include all forms of remuneration in
19 the regular rate used to calculate and pay it.

20 25. Therefore, for at least four years prior to the filing of this action and through to the
21 present, Plaintiff and the Class members were unable to take off-duty breaks or were otherwise not
22 provided with the opportunity to take required meal breaks due to Defendants' policies and
23 practices. On the occasions when Plaintiff and the Class members were provided with a meal
24 period, it was often untimely or interrupted, or was impermissibly shortened, and Employees were
25 not provided with one hour's wages in lieu thereof. Meal period violations thus occurred in one or
26 more of the following manners:

- 27 (a) Class members were not provided full thirty-minute duty free meal periods
28 for work days in excess of five hours and were not compensated one hour's

wages in lieu thereof, all in violation of, among others, Labor Code §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage Order(s);

- (b) Class members were not provided second full thirty-minute duty free meal periods for work days in excess of ten hours;
- (c) Class members were required to work through at least part of their daily meal period(s);
- (d) Meal periods were provided after five hours of continuous work during a shift; and
- (e) Class members were restricted in their ability to take a full thirty-minute meal period and were otherwise required to remain under Defendants' control during meal periods.

26. Defendants also failed to authorize and permit Plaintiff and the Class members to take duty-free, net ten minute rest breaks for every four hours of shift work, or major fraction thereof. There were similar issues with the required net ten-minute rest breaks that Plaintiff and the Class members were unable to take as with meal periods. Defendants made no efforts or provided no emphasis on authorizing and permitting Employees to take net ten-minute rest breaks for every four hours of work.

27. To the extent Defendants ever did provide Class members with the opportunity to take rest breaks, upon information and belief they were often untimely or for less than ten minutes, and they were invariably interrupted by work and customer demands or Plaintiff was required to remain standing by to respond to them. Given the constant and ongoing job and customer demands he faced, Plaintiff's rest breaks would occasionally be interrupted, delayed or shortened. By uniformly requiring Plaintiff and the other similarly situated Class members to prioritize work over rest break, and to remain under Defendants' control during any breaks they did take, Defendants committed systematic and ongoing rest break violations.

28. Defendants' management did not emphasize the requirement to provide at least one ten-minute duty-free rest period for each four-hour duty period, or major fraction thereof. If

1 and when Class members were permitted to take a ten-minute rest break on a shift, they were not
2 permitted to take a second one or a third one or any breaks were untimely or impermissibly
3 shortened. Further violations occurred as Plaintiff and the Class members were required to remain
4 under Defendants' control by Defendants' requirement that they remain ready to respond to work
5 requirements and instructions and job demands. Therefore, Defendants failed to authorize and
6 permit Class members to take all their required rest breaks.

7 29. Defendants' policies and practices thus systematically deny and denied Plaintiff
8 and the Class members full, duty-free ten-minute rest periods and thirty-minute, duty-free meal
9 periods. The California Supreme Court has instructed that the rest period requirement obligates
10 employers to permit and authorize employees to take-off-duty rest periods. That is, during rest
11 periods employers must relieve employees of all duties and relinquish control over how
12 employees spend their time. Plaintiff and the Class members were and are under Defendants'
13 control when they are working through rest breaks, and Defendants failed to schedule or account
14 for required first, second, and third rest breaks during the shifts Plaintiff and the Class members
15 generally worked.

16 30. Plaintiff and the Employees in the Class were not authorized and permitted to take
17 lawful rest periods, were systematically required by Defendants to work through or during breaks,
18 and were not provided with one hour's wages in lieu thereof. They were required to remain on
19 duty during breaks or portions of their breaks, thus making them either untimely or shortened and
20 on-duty under Defendants' policies and practices. Upon information and belief, they were also
21 not provided with one hour of regular rate compensation for any unprovided or unlawfully
22 provided rest breaks, but to the extent they ever were, Defendants miscalculated the regular rate
23 of compensation and underpaid the premiums as with meal periods. Rest period violations
24 therefore arose in one or more of the following manners:

- 25 (a) Class members were required to work without being provided a minimum
26 ten minute rest period for every four hours or major fraction thereof worked
27 and were not compensated one hour of pay at their regular rate of
28 compensation for each workday that a rest period was not provided, and to

1 the extent Defendants paid any premiums, they failed to include all forms of
2 remuneration in the regular rate used to calculate and pay them.

3 (b) Class members were not authorized and permitted to take timely rest periods
4 for every four hours worked, or major fraction thereof; and

5 (c) Class members were required to remain on duty and under Defendants'
6 control during rest periods or otherwise had their rest periods interrupted by
7 work demands.

8 31. From at least four years prior to the filing of this lawsuit and continuing to the
9 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
10 deducting the Employees' earned wages, including by requiring off the clock work during breaks
11 and before and after work shifts and by miscalculating the regular rate and accordingly
12 underpaying overtime wages, meal and rest break premiums, holiday premiums and sick pay. By
13 not compensating Employees for all hours worked at the correct rates, Defendants unlawfully
14 deducted wages earned by and owed to Plaintiff and the Class members, in violation of Labor
15 Code § 221.

16 32. As a result of the above described illegal policies and practices, Defendants engaged
17 in and enforced the following additional unlawful practices and policies against Plaintiff and the
18 Class members he seeks to represent:

19 (a) failing to pay all wages owed to Class members who either were discharged,
20 laid off, or resigned in accordance with the requirements of Labor Code §§
21 201, 202, 203;

22 (b) failing to pay all wages owed to the Class members twice monthly in
23 accordance with the requirements of Labor Code § 204;

24 (c) failing to pay Class members all wages owed, including all meal and rest
25 period premium wages;

26 (d) failing to maintain accurate records of Class members' earned wages and
27 meal periods in violation of Labor Code §§ 226 and 1174(d) and section 7
28 of the applicable IWC Wage Orders; and

1 (e) failing to produce timekeeping records in response to Plaintiff's timely and
2 lawful request to receive them under these authorities.

3 33. From at least four years prior to the filing of this lawsuit, and continuing to the
4 present, Defendants have also consistently failed to provide Employees with timely, accurate, and
5 itemized wage statements, in writing, as required by California wage-and-hour laws, including by
6 the failure to pay all overtime, failure to pay premium wages for unprovided or otherwise unlawful
7 meal and rest breaks, failure to pay all sick pay, and by miscalculating the regular rate used to pay
8 overtime wages, meal and rest break premiums, holiday premiums, and sick pay. Defendants have
9 also made it difficult to account with precision for the unlawfully withheld wages and meal and
10 rest period compensation owed to Plaintiff and the Class, during the liability period, because they
11 did not implement and preserve a record-keeping method as required for non-exempt employees
12 by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable California Wage
13 Orders. Upon information and belief, time clock punches were not maintained or were not
14 accurately maintained for work shifts and meal periods. Defendants also failed to accurately
15 record and pay for all regular and overtime hours worked by Plaintiff and the Class members.

16 34. Defendants also provided Plaintiff and the Class members with wage statements
17 that failed to accurately report all hours worked and applicable hourly rates for all hours worked.
18 For the same reasons as explained above, Plaintiff and the Class members were provided with
19 unlawful wage statements that failed to reflect all hours worked and failed to pay for all overtime
20 hours or failing to pay overtime wages at the correct overtime premium rate, and Defendants
21 miscalculated meal and rest break premiums, holiday premiums and sick time if and when they
22 did pay them. Defendants followed this unlawful policy and practice even though both Plaintiff
23 and Defendants were aware that Plaintiff and the Class members worked more total hours than
24 were reflected on the wage statements, including overtime hours, and were underpaid by regular
25 rate miscalculation. Plaintiff and the Employees in the Class were unable to discern from their
26 wage statements alone the actual hours they worked in total during a pay period and the rates they
27 were paid for those hours worked.

28 35. Defendants have thus also failed to comply with Labor Code § 226(a) by issuing

1 wage statements that inaccurately reported total hours worked and total wages earned by Plaintiff
2 and the Class members, along with the appropriate applicable rates, among other requirements.
3 Plaintiff and Class members are therefore entitled to penalties not to exceed \$4,000.00 for each
4 employee pursuant to Labor Code § 226(b). Defendants have also failed to comply with paragraph
5 7 of the applicable California IWC Wage Orders by failing to maintain accurate time records
6 showing when the employee begins and ends each work period, meal periods, wages earned
7 pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all
8 deductions from payment of wages and accurately reporting total hours worked by the Class
9 members.

10 36. Defendants failed to pay all overtime premium wages owed for work conducted on
11 a work shift and a workday or failed to pay it at the correct rate, and also failed to pay meal and
12 rest break premiums, holiday premium and sick time at the correct rate, as addressed above. Also,
13 when Plaintiff's employment with Defendants terminated, he was not provided with his final pay
14 in a timely manner. Therefore, from at least three or four years prior to filing this lawsuit and
15 continuing to the present, Defendants have also followed a uniform and consistent policy of failing
16 to pay all wages owed to Plaintiff and other similarly situated Employees at the time of their
17 termination or within seventy-two hours of their resignation, as required by California wage-and-
18 hour laws. Defendants also failed to pay all wages owed to those Class members at the time they
19 were terminated or otherwise separated from employment.

20 37. Plaintiff has requested records from Defendants and they have failed to
21 constructively respond or to fully respond. Therefore, Plaintiff also asserts that Defendants have
22 had a consistent policy of denying Plaintiff and Class members the right to inspect and receive all
23 of their payroll records, timecards, and personnel records.

24 38. Defendants also violated California Labor Code § 246 by not providing all
25 required paid sick days at the correct rates to Plaintiff and the similarly aggrieved Employees.
26 Labor Code § 246 provides that an Employee who "works in California for the same employer
27 for 30 or more days within a year from the commencement of employment is entitled to paid sick
28 days as specified in this section." Paid sick time for nonexempt employees shall be calculated in

1 the same manner as the regular pay rate for the workweek in which the employee uses the paid
2 sick time. Defendants failed to provide Plaintiff and the other similarly Aggrieved Employees
3 with all their required and earned sick days paid at the correct rate of pay, in violation of Labor
4 Code § 246. Additionally and upon information and belief, Defendants have failed to provide
5 COVID-19 supplemental sick leave paid at the correct rates to the Class members during the
6 relevant time period, including by failing to provide two work weeks of COVID-19 supplemental
7 paid sick leave paid at the correct rates as required under Labor Code §§ 248.1 and 248.2 and
8 including damages and penalties as these sections are enforced through Labor Code § 248.5,
9 which requires that: “If paid sick days were unlawfully withheld, the dollar amount of paid sick
10 days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250),
11 whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars
12 (\$4,000), shall be included in the administrative penalty.” Plaintiff accordingly seek this relief
13 available for Defendants’ failure to provide Employees with all their required and earned sick
14 days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1,
15 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246,
16 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys’ fees
17 and costs pursuant to Labor Code § 2699(g)(1).

18 39. Additionally, from at least four years prior to the filing of this lawsuit and
19 continuing to the present, Defendants have regularly required Plaintiff and the Class members to
20 incur necessary business expenses in the course of performing their required job duties working
21 remotely without proper reimbursement. This included home internet usage, electricity
22 consumption, and home office space. While Defendants offered some reimbursement, this only
23 began in 2020 and the amount was insufficient to cover costs incurred by Plaintiff and the Class.
24 Plaintiff and the Class members must be reimbursed for these necessary business expenses under
25 Labor Code § 2802 and Defendants systematically failed to do so.

26 40. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
27 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.4,
28 226.7, 246, 248.1, 248.2, 248.5, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194,

1 1194.2 1197, 1198.5, 1199, 2802, 2698 *et seq.*, and California Code of Regulations, Title 8, section
2 11000 *et seq.*

3 41. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff
4 and the Class members seek injunctive relief, restitution, and disgorgement of all benefits
5 Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or
6 fraudulent practices alleged in this Complaint.

7 **CLASS ALLEGATIONS**

8 42. Plaintiff brings this class action on behalf of himself, and all others similarly
9 situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the
10 Class” or “Class members”) defined as follows: “All individuals employed by Defendants at any
11 time during the period of four (4) years prior to the filing of this lawsuit and ending on a date as
12 determined by the Court (“the Class Period”), and who have been employed as non-exempt,
13 hourly employees within the State of California.” Further, Plaintiff seeks to represent the
14 Subclasses composed of and defined as follows:

15 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
16 compensated for all hours worked for Defendants at the applicable minimum wage.

17 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
18 compensated for all hours worked for Defendants at the required rates of pay, including for all
19 hours worked in excess of eight in a day and/or forty in a week.

20 c. Subclass 3. Meal Period Subclass. All Class members who were subject to
21 Defendants’ policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-
22 free meal periods or one hour of pay at the Employee’s regular rate of pay in lieu thereof.

23 d. Subclass 4. Rest Break Subclass. All Class members who were subject to
24 Defendants’ policy and/or practice of failing to authorize and permit Employees to take
25 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
26 thereof, and failing to pay one hour of pay at the Employee’s regular rate of pay in lieu thereof.

27 e. Subclass 5. Wage Statement Subclass. All Class members who, within the
28 applicable limitations period, were not provided with accurate itemized wage statements.

1 f. Subclass 6. Unauthorized Deductions from Wages Subclass. All Class members
2 who were subject to Defendants' policy and/or practice of deducting wages earned from their pay,
3 including by requiring off the clock work.

4 g. Subclass 7. Failure to Timely Pay Wages Twice Monthly Subclass. All Class
5 members who were subject to Defendants' policy and practice of not timely paying all wages
6 earned when they were due and payable at least twice monthly.

7 h. Subclass 8. Termination Pay Subclass. All Class members who, within the
8 applicable limitations period, either voluntarily or involuntarily separated from their employment
9 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
10 termination.

11 i. Subclass 9. Failure To Produce Requested Employment Records Subclass. All
12 Class members who, within the applicable limitations period, were denied the right to inspect and
13 receive all of their payroll records, timecards, and personnel records.

14 j. Subclass 10. Payroll Records Subclass. All Class members who were subject to
15 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
16 by California wage-and-hour laws.

17 i. Subclass 11. Expense Reimbursement Subclass. All Class members who incurred
18 necessary and reasonable expenses in connection with performing their job duties for Defendants
19 and who were subject to a policy and/or practice under which such expenses were not reimbursed.

20 j. Subclass 12. UCL Subclass. All Class members who are owed restitution as a
21 result of Defendants' business acts and practices, to the extent such acts and practices are found to
22 be unlawful, deceptive, and/or unfair.

23 43. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
24 modify the class description with greater particularity or to provide further division into subclasses
25 or limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class
26 against Defendants, the Class Period should be adjusted accordingly.

27 44. Defendants, as a matter of company policy, practice and procedure, and in violation
28 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements,

1 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged
2 in a practice whereby Defendants failed to correctly calculate and pay compensation for the time
3 worked by Plaintiff and the other members of the Class, even though Defendants enjoyed the
4 benefit of this work, required Employees to perform this work and permitted or suffered to permit
5 this work. Defendants have uniformly denied these Class members wages to which these
6 employees are entitled, and failed to provide meal periods or authorize and permit rest periods, in
7 order to unfairly cheat the competition and unlawfully profit.

8 45. This action has been brought and may properly be maintained as a class action
9 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
10 of interest in this litigation and the proposed Class is easily ascertainable from the employment
11 records for Plaintiff and the Class members that Defendants are required to maintain under
12 California law.

13 **A. Numerosity**

14 46. The potential members of the Class as defined are so numerous that joinder of all
15 the Class members is impracticable. While the precise number of Class member has not been
16 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
17 time period relevant to this lawsuit employed, at least hundreds of Employees who satisfy the
18 Class definition within the State of California. Plaintiff alleges that Defendants' employment
19 records will provide information as to the number and location of all Class members.

20 **B. Commonality**

21 47. There are questions of law and fact common to the Class that predominate over any
22 questions affecting only individual Class members. The common questions are numerous and
23 substantial and flow from Defendants' uniform policies and/or practices of violating the California
24 Labor Code addressed above. As such, these common questions predominate over individual
25 questions concerning each individual Class Member's showing as to his or her eligibility for
26 recovery or as to the amount of damages. These common questions of law and fact include:

- 27 a. Whether Defendants failed to pay Employees minimum wages;
- 28 b. Whether Defendants failed to pay Employees wages for all hours worked;

- 1 c. Whether Defendants failed to pay Employees overtime as required under Labor
2 Code § 510;
- 3 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
4 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
5 premium pay in lieu thereof;
- 6 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
7 Orders, by failing to authorize and permit Employees to take requisite rest breaks
8 or provide premium pay in lieu thereof;
- 9 f. Whether Defendants violated Labor Code § 226(a) by providing Employees with
10 inaccurate wage statements and wage statements that omitted many of the Section
11 226(a) requirements.
- 12 g. Whether Defendants violated Labor Code § 221;
- 13 h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
14 wages and compensation due and owing at the time of termination of employment;
- 15 i. Whether Defendants' conduct was willful;
- 16 j. Whether Defendants violated Labor Code § 226 and § 1174 and §1198 and the
17 IWC Wage Orders by failing to maintain accurate records of Class members'
18 earned wages and work periods;
- 19 k. Whether Defendants violated Labor Code § 1194 by failing to compensate all
20 Employees during the relevant time period for all hours worked, whether regular or
21 overtime;
- 22 l. Whether Defendants violated Labor Code § 204 by failing to pay Employees all
23 wages earned at least twice monthly;
- 24 m. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary
25 business expenses incurred by Employees;
- 26 n. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not
27 providing employees with all required sick days and COVID-19 supplemental sick
28 leave at the correct pay rates;

- o. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- p. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- q. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

C. Typicality

48. The claims of the named Plaintiff are typical of those of the other Employees. The Employee Class members all sustained injuries and damages arising out of and caused by Defendants' common course of conduct and uniformly applied policies in violation of statutes, as well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for the underpayment of wages and meal and rest violations they were required to endure are typical of those of the other Class members.

D. Adequacy of Representation

49. Plaintiff will fairly and adequately represent and protect the interest of the Employee Class members. Counsel who represents Plaintiff and the Employees in the Class are experienced and competent in litigating employment class actions.

E. Superiority of Class Action

50. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Employees is not practicable, and questions of law and fact common to all Employees predominate over any questions affecting only individual Employees. Each Employee in the Class has been damaged and is entitled to recovery by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

51. As to the issues raised in this case, a class action is superior to all other methods for the fair and efficient adjudication of this controversy, as joinder of all Class members is impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class members. Further, as the economic or other loss suffered by vast numbers of Class members may be relatively small, the expense and burden of individual actions makes it difficult for the Class members to individually redress the wrongs they have suffered. Moreover, in the event disgorgement is ordered, a class action is the only mechanism that will permit the employment of

1 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
2 managing this case as a class action, and proceeding on a class-wide basis will permit Employees
3 to vindicate their rights for violations they endured which they would otherwise be foreclosed
4 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

5 52. Class action treatment will allow those persons similarly situated to litigate their
6 claims in the manner that is most efficient and economical for the parties and the judicial system.
7 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
8 Plaintiff contemplates the eventual issuance of notice to the proposed Class members that would
9 set forth the subject and nature of the instant action. The Defendants' own business records can be
10 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent
11 that any further notice is required additional media and/or mailings can be used.

12 53. Defendants, as prospective and actual employers of the Employees in the Class,
13 had a special fiduciary duty to disclose to prospective Class members the true facts surrounding
14 Defendants' pay practices, policies and working conditions imposed upon the similarly situated
15 Employees as well as the effect of any alleged arbitration agreements that may have been forced
16 upon them. In addition, Defendants knew they possessed special knowledge about pay practices
17 and policies, most notably intentionally refusing to pay for all hours actually worked which should
18 have been recorded in Defendants' pay records and the consequence of the alleged arbitration
19 agreements and policies and practices on the Employees and Class as a whole.

20 54. Plaintiff and the Employees in the Class did not discover the fact that they were
21 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there
22 any discussion about Plaintiff's and the Class members' waiver of their Constitutional rights of
23 trial by jury, to collectively organize and oppose unlawful pay practices under California law as
24 well as obtain injunctive relief preventing such practices from continuing. As a result, the
25 applicable statutes of limitation tolled until such time as Plaintiff and the Class members
26 discovered their claims.

27 ///

28 ///

FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(Against All Defendants)

55. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in full herein.

56. Defendants failed to pay Employees minimum wages they were owed, including by their consistent policy of failing to pay Employees at the correct rates of pay for all hours worked. As part of Defendants' compensation scheme, Plaintiff and Class members were required to work off the clock and would receive nondiscretionary bonuses, in addition to their regular hourly rate. These bonuses were part of an incentive plan designed to reward Employees for stellar customer service. Employees would work hours and not receive wages paid at the correct rates, including as alleged above in connection with overtime, meal period and rest break violations, holiday premiums, and sick pay. Defendants failed to pay overtime wages, meal and rest break premiums, holiday premiums and sick pay at the required rates by failing to include all forms of remuneration, including bonuses, in the regular rate used to calculate and pay them, as alleged above. Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Class as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the other members of the Class as to minimum wage pay.

57. In California, employees must be paid at least the then applicable state minimum wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H) of the applicable IWC Wage Orders defines "Hours Worked" as "the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Additionally, pursuant to Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

58. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"

1 states: “The minimum wage for employees fixed by the commission is the minimum wage to be
2 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The
3 applicable minimum wage rate fixed by the commission for work during the relevant period is
4 found in the Wage Orders.

5 59. The minimum wage provisions of California Labor Code are enforceable by private
6 civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to
7 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
8 overtime compensation applicable to the employee is entitled to recover in a civil action the
9 unpaid balance of the full amount of this minimum wage or overtime compensation, including
10 interest thereon, reasonable attorney’s fees and costs of suit.”

11 60. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
12 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
13 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
14 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
15 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
16 the absence of a contractually agreed upon one. The underpayment of wages to Plaintiff and the
17 Class members is and has been a direct consequence of Defendants’ unlawful compensation
18 policies and practices, which applied uniformly to the Class members working at locations and
19 work sites throughout California.

20 61. In committing the above-described violations of the California Labor Code,
21 Defendants inaccurately recorded, or required Plaintiff and the Class members to input times that
22 did not reflect their actual hours worked, or calculated the correct time worked and consequently
23 underpaid the actual time worked by Plaintiff and other members of the Class, as addressed in
24 detail above. Defendants acted in an illegal attempt to avoid the payment of all earned wages, and
25 other benefits in violation of the California Labor Code, the Industrial Welfare Commission
26 requirements and other applicable laws and regulations. As a result of these violations, Defendants
27 also failed to timely pay all wages earned in accordance with California Labor Code § 1194.

28 62. California Labor Code § 1194.2 also provides for the following remedies: “In any

1 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
2 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
3 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

4 63. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
5 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial
6 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
7 pay each employee minimum wages.

8 64. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are
9 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
10 interest thereon.

11 65. Defendants have the ability to pay minimum wages for all time worked and have
12 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
13 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

14 66. Wherefore, Plaintiff and the Employee Class members are entitled to recover the
15 unpaid minimum wages (including double minimum wages), liquidated damages in an amount
16 equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees
17 and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other members of
18 the Class further request recovery of all unpaid wages, according to proof, interest, statutory costs,
19 as well as the assessment of any statutory and/or civil penalties against Defendants, in a sum as
20 provided by the California Labor Code, including § 558, and/or other applicable statutes. To the
21 extent minimum wage compensation is determined to be owed to the Class members who have
22 terminated their employment, Defendants’ conduct also violates Labor Code §§ 201 and/or 202,
23 and therefore these individuals are also be entitled to waiting time penalties under California
24 Labor Code § 203, which penalties are sought herein on behalf of these Class members.
25 Defendants’ failure to timely pay all wages owed also violated Labor Code § 204 for failure to pay
26 all wages owed twice monthly and resulted in violations of Labor Code § 226 because they
27 resulted in the issuance of inaccurate wage statements. Defendants’ conduct as alleged herein was
28 willful, intentional and not in good faith. Further, Plaintiff and other Class members are entitled to

1 seek and recover statutory costs.

2 **SECOND CAUSE OF ACTION**

3 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

4 **(Against All Defendants)**

5 67. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
6 full herein.

7 68. California Labor Code § 1194 provides that “any employee receiving less than the
8 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
9 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
10 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” The action
11 may be maintained directly against the employer in an employee’s name without first filing a
12 claim with the Division of Labor Standards and Enforcement.

13 69. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
14 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the
15 Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular
16 hourly rates for hours worked in excess of eight hours in a workday or in excess of forty hours in
17 any workweek or for the first eight hours worked on the seventh day of work in any one
18 workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve hours in any
19 one day or for hours worked in excess of eight hours on any seventh day of work in a workweek.
20 Defendants had a consistent policy of failing to pay Employees at the correct rates of pay for all
21 hours worked. As part of Defendants’ compensation scheme, Plaintiff and Class members would
22 receive nondiscretionary bonuses in addition to their regular hourly rate. These bonuses were part
23 of an incentive plan designed to reward Employees for stellar customer service. Employees would
24 work overtime hours and not receive wages paid at the correct rate, including as alleged above in
25 connection with overtime. Plaintiff and the Class members periodically worked past eight hours
26 on a shift which required that they be paid at the correct overtime rate of 1.5 times their regular
27 rate. Defendants failed to pay all overtime wages by failing to include all forms of remuneration,
28 including bonuses, in the regular rate Defendants used to calculate and pay overtime wages.

1 70. Defendants have also violated these provisions by requiring Plaintiff and other
2 similarly situated non-exempt employees to work through meal periods to complete their daily job
3 duties or to participate in company-required activities or remain under Defendants' control.
4 Therefore, Employees were not properly compensated, nor were they paid overtime rates for hours
5 worked in excess of eight hours in a given day, and/or forty hours in a given week. Based on
6 information and belief, Defendants did not make available to Employees a reasonable protocol for
7 correcting time records when Employees worked overtime hours or to fix incorrect time entries or
8 those that Defendants unlawfully under-recorded to the Employee's detriment, as Defendants
9 required time records to generally reflect scheduled shift times. Defendants also underpaid
10 Plaintiff and the putative Class members all wages by systematically miscalculating and
11 underpaying overtime wages they earned, as detailed above.

12 71. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of
13 regular wages owed and overtime compensation for all hours worked, as required by California
14 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable
15 IWC Wage Order, and is therefore unlawful.

16 72. Additionally, Labor Code § 558(a) provides "any employer or other person acting
17 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
18 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
19 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
20 pay period for which the employee was underpaid in addition to an amount sufficient to recover
21 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
22 underpaid employee for each pay period for which the employee was underpaid in addition to an
23 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
24 be paid to the affected employee." Labor Code § 558(c) states, "the civil penalties provided for in
25 this section are in addition to any other civil or criminal penalty provided by law." Defendants
26 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
27 Wage Orders. Accordingly, Plaintiff and the Class members seek the remedies set forth in Labor
28 Code § 558.

73. Defendants' failure to pay compensation in a timely fashion also constituted a violation of California Labor Code § 204, which requires that all wages shall be paid semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct violation of that provision of the California Labor Code, Defendants have failed to pay all wages and overtime compensation earned by Employees. Each such failure to make a timely payment of compensation to Employees constitutes a separate violation of California Labor Code § 204.

74. Employees have been damaged by these violations of California Labor Code §§ 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission” or if the employer pays “a wage less than the minimum fixed by an order of the commission” or “violates...any provision of this chapter or any order or ruling of the commission.”

75. Consequently, pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of all their unpaid wages and overtime compensation for all their hours worked, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes.

THIRD CAUSE OF ACTION

MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

76. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in full herein.

77. Employees regularly worked shifts greater than five hours and in some instances, greater than ten hours. Pursuant to Labor Code § 512, and paragraph 11 of the applicable IWC Wage Order, an employer may not employ someone for a shift of more than five hours without

1 providing him or her with a meal period of not less than thirty minutes or for a shift of more than
2 ten hours without providing him or her with a second meal period of not less than thirty minutes.

3 78. Defendants failed to provide Employees with meal periods as required under the
4 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required
5 to work or to otherwise remain under Defendants' control during meal periods, or Defendants
6 provided them after Employees worked beyond the fifth hour of their shifts or Employees
7 otherwise had them shortened and interrupted by work demands. Furthermore, upon information
8 and belief, on the occasions when Employees worked more than ten hours in a given shift, they
9 did so without receiving a second uninterrupted thirty-minute meal period as required by law.

10 79. Defendants thus failed to provide Plaintiff and the Class members with meal
11 periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,
12 including by not providing them with the opportunity to take meal breaks, by providing them late
13 or for less than thirty minutes, or by requiring them to perform work during breaks.

14 80. Moreover, Defendants failed to compensate Employees for each meal period not
15 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
16 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
17 employee a meal period in accordance with this section, the employer shall pay the employee one
18 hour of pay at the employee's regular rate of compensation for each workday that the meal period
19 is not provided. In the event Defendants did pay a meal period premium for a meal period
20 violation, as addressed above they failed to include all forms of remuneration in the regular rate at
21 which the premium was paid. Defendants failed to compensate the Employees in the Class for
22 each meal period not provided or inadequately provided, as required under Labor Code § 226.7
23 and paragraphs 11 and 20 of the applicable IWC Wage Order.

24 81. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the
25 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal
26 to one hour of wages at their effective hourly rates of pay for each meal period not provided or
27 deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory
28 penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and

1 other statutes and applicable IWC Wage Order paragraphs.

2 **FOURTH CAUSE OF ACTION**

3 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

4 **(Against All Defendants)**

5 82. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
6 full herein.

7 83. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders
8 provide that employers must authorize and permit all employees to take rest periods at the rate of
9 ten minutes net rest time per four work hours.

10 84. Employees consistently worked consecutive four hour shifts and were generally
11 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and
12 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable
13 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for
14 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest
15 breaks of not less than ten minutes for each consecutive four hour shift.

16 85. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage
17 Orders provide that if an employer fails to provide an employee rest period in accordance with this
18 section, the employer shall pay the employee one hour of pay at the employee's regular rate of
19 compensation for each workday that the rest period is not provided.

20 86. Defendants, and each of them, have therefore intentionally and improperly denied
21 rest periods to Plaintiff and the Class members in violation of Labor Code §§ 226.7 and 512 and
22 paragraph 12 of the applicable IWC Wage Orders.

23 87. Defendants failed to authorize and permit Plaintiff and the Class members to take
24 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
25 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
26 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
27 12 and 20 of the applicable IWC Wage Orders. To the extent Defendants did pay any rest break
28 premiums, Defendants failed to include all forms of remuneration in the regular hourly rate used to

1 calculate and pay them.

2 88. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the
3 applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one hour
4 of wages at their effective hourly rates of pay for each day worked without the required rest
5 breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against
6 Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

7 **FIFTH CAUSE OF ACTION**
8 **VIOLATION OF LABOR CODE § 226(a)**
9 **(Against All Defendants)**

10 89. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
11 full herein.

12 90. California Labor Code § 226(a) requires an employer to furnish each of his or her
13 employees with an accurate, itemized statement in writing showing the gross and net earnings,
14 total hours worked, and the corresponding number of hours worked at each hourly rate; these
15 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
16 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
17 statements may be given to the employee separately from the payment of wages; in either case the
18 employer must give the employee these statements twice a month or each time wages are paid.

19 91. Defendants failed to provide Plaintiff and the similarly situated Employee Class
20 members with accurate itemized wage statements in writing, as required by the Labor Code and
21 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements given to
22 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,
23 including by failing to pay for all hours worked, failing to pay for all overtime hours worked and
24 for providing deficient meal periods and rest breaks, all of which Defendants knew or reasonably
25 should have known were owed to the Employees, as alleged above.

26 92. Defendants also provided Plaintiff and the Class members with wage statements
27 that failed to accurately report all hours worked and applicable hourly rates for all hours worked.
28 Plaintiff and the Employees in the Class were unable to discern from their wage statements alone

1 the actual hours they worked in total during a pay period.

2 93. Throughout the liability period, Defendants intentionally failed to furnish to
3 Plaintiff and the Class members, upon each payment of wages, itemized statements accurately
4 showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-
5 rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net
6 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
7 the employee and only the last four digits of his or her social security number or an employee
8 identification number other than a social security number, (8) the name and address of the legal
9 entity that is the employer and (9) all applicable hourly rates in effect during the pay period and
10 the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor
11 Code § 226 and paragraph 7 of the applicable IWC Wage Orders, amongst other statutory
12 requirements. Defendants knowingly and intentionally failed to provide Plaintiff and the Class
13 members with such timely and accurate wage and hour statements.

14 94. Plaintiff and the Class members suffered injury as a result of Defendants' knowing
15 and intentional failure to provide them with the wage and hour statements as required by law and
16 are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the
17 Defendants have failed to provide an accurate wage statement, failed to provide accurate and
18 complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9),
19 inclusive, and the Plaintiff and Class members cannot promptly and easily determine from the
20 wage statement alone one or more of the following: (i) The amount of the gross wages or net
21 wages paid to the employee during the pay period or any of the other information required to be
22 provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of
23 subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net
24 wages paid to the employee during the pay period, (iii) The name and address of the employer
25 and, (iv) The name of the employee and only the last four digits of his or her social security
26 number or an employee identification number other than a social security number. For purposes
27 of Labor Code § 226(e) "promptly and easily determine" means a reasonable person [i.e. an
28 objective standard] would be able to readily ascertain the information without reference to other

documents or information.

95. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers are required “to pay each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Plaintiff and the Class members may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC Wage Orders.

96. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the Class suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

97. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable IWC Wage Order, Plaintiff and the Employee Class members are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) under Section 226(e). They are also entitled to an award of costs and reasonable attorneys’ fees.

SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 221
(Against All Defendants)

98. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in full herein.

99. Labor Code § 221 provides, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

1 Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and
2 public policy, an employer must timely pay its employees for all hours worked. Defendants failed
3 to do so.

4 100. Defendants unlawfully received and/or collected wages from the Employees in the
5 Class by implementing a policy miscalculating and underpaying overtime, meal and rest break
6 premiums, holiday premiums and sick pay as otherwise alleged above.

7 101. As a direct and proximate cause of the unauthorized deductions, Employees have
8 been damaged, in an amount to be determined at trial.

9 **SEVENTH CAUSE OF ACTION**
10 **VIOLATION OF LABOR CODE § 204**
11 **(Against All Defendants)**

12 102. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
13 full herein.

14 103. Labor Code § 204 instructs that: “All wages, ...earned by any person in any
15 employment are due and payable twice during each calendar month, on days designated in
16 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
17 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
18 during which the labor was performed, and labor performed between the 16th and the last day,
19 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
20 month.” Additionally, the requirements of this section shall be deemed satisfied by the payment
21 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
22 calendar days following the close of the payroll period.” As detailed above, Defendants
23 maintained a consistently applied policy and practice of not paying all wages earned between the
24 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
25 between the 16th and the last day of the month between the 1st and 10th day of the following month.
26 This included failing to pay all wages due and owing to Plaintiff and the Class members for all
27 hours they worked.

28 104. All wages due and owing to Plaintiff and the Class members, including as required

1 under Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages
2 required by Labor Code § 1194 and other sections became due and payable to each employee in
3 each pay period that he or she was not provided with a meal period or rest period or paid straight
4 or overtime wages to which he or she was entitled.

5 105. Defendants violated Labor Code § 204 by systematically refusing to timely pay
6 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the
7 applicable IWC Wage Orders, employers are required “to pay each employee, on the established
8 payday for the period involved, not less than the applicable minimum wage for all hours worked in
9 the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer
10 hours than those fixed by the order or under conditions of labor prohibited by the order is
11 unlawful.” Plaintiff and the Class members may therefore pursue damages and penalties for
12 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
13 penalties under paragraph 20 of the applicable IWC Wage Orders.

14 106. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
15 represent have been deprived of wages in amounts to be determined at trial, and they are entitled
16 to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs,
17 pursuant to Labor Code § 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
18 applicable IWC Wage Orders.

19 **EIGHTH CAUSE OF ACTION**
20 **VIOLATION OF LABOR CODE § 203**
21 **(Against All Defendants)**

22 107. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
23 full herein.

24 108. Plaintiff and numerous Class members are no longer employed by Defendants; they
25 either quit Defendants’ employ or were fired therefrom.

26 109. Defendants failed to pay Plaintiff, and upon information and belief the other
27 Employees, all wages due and certain at the time of termination or within seventy-two (72) hours
28 of resignation, as addressed in detail above.

1 110. The wages withheld from these Employees by Defendants remained due and owing
2 for more than thirty (30) days from the date of separation from employment.

3 111. Defendants failed to pay these Class members without abatement, all wages as
4 defined by applicable California law. Among other things, these Employees were not paid all
5 regular and overtime wages, including by Defendants failing to pay for all hours worked or by
6 unlawfully under-recording time entries and miscalculating and underpaying wages, and
7 Defendants failed to pay premium wages owed for unprovided meal periods and rest periods, or
8 miscalculated and underpaid those they did pay, as further detailed in this Complaint. Defendants'
9 failure to pay said wages within the required time was willful within the meaning of Labor Code §
10 203.

11 112. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
12 are required "to pay each employee, on the established payday for the period involved, not less
13 than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor
14 Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order
15 or under conditions of labor prohibited by the order is unlawful." Plaintiff on behalf of these Class
16 members may therefore pursue damages and penalties for violations of Labor Code § 203 and
17 paragraph 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the
18 applicable IWC Wage Orders. Also, under Labor Code § 1199(a)-(c), it is a misdemeanor and
19 Defendants are subject to a fine of not less than \$100 for causing Employees "to work for longer
20 hours than those fixed, or under conditions of labor prohibited by an order of the commission" or
21 if the employer pays "a wage less than the minimum fixed by an order of the commission" or
22 "violates...any provision of this chapter or any order or ruling of the commission."

23 113. Defendants' failure to pay wages, as alleged, entitles these former Employee Class
24 members to penalties under Labor Code § 203 and the applicable paragraphs of the IWC Wage
25 Orders as addressed above, including the requirement that an employee's wages shall continue
26 until paid for up to thirty (30) days from the date they were due.

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1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS, LABOR CODE §§ 1174, 1174.5**

3 **(Against All Defendants)**

4 114. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
5 full herein.

6 115. California Labor Code § 1174 requires that all employers shall keep accurate time
7 and wage records for all employees. California Labor Code § 1174.5 further requires that any
8 employee suffering injury due to a willful violation of the aforementioned obligations may seek
9 damages, including civil penalties, from the employer.

10 116. During the course of Plaintiff's and Employees' employment, Defendants
11 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as
12 required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages,
13 overtime, and premium pay as discussed above.

14 117. Defendants are also required by the California Labor Code § 1198 and the
15 applicable Wage Order to maintain a tracking system that accurately records the times at which
16 Employees works.

17 118. Defendants have maintained a common unlawful policy and practice of failing to
18 record or to accurately record meal breaks. At all times relevant hereto, Defendants had
19 maintained an unlawful uniform policy and practice of not recording the actual meal break times
20 recorded by the Employees and then automatically deducting 30 minutes as though Defendants'
21 Employees took timely and compliant meal breaks when they in fact did not.

22 119. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
23 knew wages to be due but failed to pay them.

24 120. Accordingly, Defendants are liable for civil penalties pursuant to the California
25 Labor Code including § 1174.5, for the three years prior to the filing of this Complaint.

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1 **TENTH CAUSE OF ACTION**

2 **FAILURE TO PRODUCE REQUESTED RECORDS, LABOR CODE §§ 226 and 1198**

3 **(Against All Defendants)**

4 121. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
5 full herein.

6 122. Pursuant to California Labor Code § 226, current and former employees have the
7 right to inspect or receive a copy of their records pertaining to their employment, upon reasonable
8 request to their employer. Under this statute, an employer that receives a request to inspect or
9 receive a copy of records pertaining to a current or former employee must comply with the request
10 as soon as practicable, but no later than twenty-one (21) calendar days from the date of the
11 request..

12 123. Pursuant to California Labor Code § 1198.5(a), every current and former employee,
13 or his or her representative, has the right to inspect and receive a copy of the personnel records
14 that the employer maintains relating to the employee's performance or to any grievance concerning
15 the employee. Under this statute, upon written request from a current or former employee or his or
16 her representative, an employer must make the contents of those personnel records available for
17 inspection or provide a copy of the personnel records to the current or former employee, or his or
18 her representative, not later than thirty (30) calendar days from the date the employer receives the
19 written request, subject to some limited exceptions. Failure to comply with these requests allows
20 for a civil penalty seven hundred fifty dollars (\$750), pursuant to Labor Code §§ 1198.5(k) and
21 226(f).

22 124. Plaintiff sent written requests through his counsel to Defendants for their payroll
23 records, timecards, and personnel records. However, Plaintiff has not received his requested
24 records as of the date of this Complaint

25 125. Defendants violated California Labor Code §§ 226 and 1198.5 by failing to timely
26 produce the required records requested by Plaintiff.

27 126. On information and belief, Defendants' failure to provide Plaintiff with all of his
28 requested employment records is not an isolated incident, but was instead consistent with

Defendants' policy and practice that applied to Plaintiff and Employees.

127. Pursuant to California Labor Code § 1198.5, Plaintiff and Employees are entitled to a penalty of seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and costs.

128. Pursuant to California Labor Code § 226(f), Plaintiff is entitled to a penalty of seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and cost.

ELEVENTH CAUSE OF ACTION
FOR FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES
UNDER LABOR CODE § 2802
(Against All Defendants)

129. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in full herein.

130. Plaintiff is informed and believes and based thereon alleges that throughout the period applicable, Defendants required Plaintiff and the Class members to pay for necessary work related expenses they incurred. This included home internet usage, electricity consumption, and home office space. While Defendants offered some reimbursement, this only began in 2020 and the amount was insufficient to cover costs incurred by Plaintiff and the Class. Plaintiff and the Class members must be reimbursed for these necessary business expenses under Labor Code § 2802 and Defendants systematically failed to do so.

131. Defendants thus followed a uniform policy and practice of failing to reimburse Employees for these necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

132. Defendants' knowing and willful failure to reimburse lawful necessary work related expenses and losses to Plaintiff and the Class members resulted in damages because, among other things, Defendants did not inform employees of their right to be reimbursed for those work related expenses. As Defendants failed to inform and misled Plaintiff and the Class members with regard to their rights, Plaintiff and the Class members were led to believe that incurring those lawful and necessary expenses was an expected and essential function of their employment with Defendants

1 and that failure to incur those expenses would have adverse consequences on their employment.

2 133. Therefore, Plaintiff and the Class members are entitled to reimbursement for any
3 and all necessary work related expenses, as provided for in Labor Code § 2802(b) and paragraph 9
4 of the applicable IWC Wage Orders, incurred during the direct discharge of their duties while
5 employed by Defendants, as well as accrued interest on those expenses that were not reimbursed
6 from the date Plaintiff and the Class members incurred those expenses. Further, Plaintiff and the
7 Class members are entitled to costs and attorney's fees pursuant to Labor Code § 2802(c).

8 **TWELFTH CAUSE OF ACTION**

9 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

10 **(Against All Defendants)**

11 134. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
12 full herein.

13 135. Plaintiff, on behalf of himself, the Employees in the Class, and the general public,
14 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of
15 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
16 harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting
17 the public interest within the meaning of Code of Civil Procedure § 1021.5.

18 136. Plaintiff is a "person" within the meaning of Business & Professions Code
19 § 17204, have suffered injury, and therefore has standing to bring this cause of action for
20 injunctive relief, restitution, and other appropriate equitable relief.

21 137. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
22 business practices. By the conduct alleged herein, Defendants' practices were deceptive and
23 fraudulent in that Defendants' policy and practice failed to provide the required amount of
24 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and
25 Class members for all hours worked, due to systematic business practices as alleged herein that
26 cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare
27 Commission requirements in violation of California Business and Professions Code §§ 17200, *et*
28 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California

1 Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

2 138. Wage-and-hour laws express fundamental public policies. Paying employees their
3 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental
4 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State
5 vigorously to enforce minimum labor standards, to ensure that employees are not required or
6 permitted to work under substandard and unlawful conditions, and to protect law-abiding
7 employers and their employees from competitors who lower costs to themselves by failing to
8 comply with minimum labor standards.

9 139. Defendants have violated statutes and public policies. Through the conduct alleged
10 in this Complaint, Defendants have acted contrary to these public policies, have violated specific
11 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
12 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,
13 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
14 guaranteed to all employees under the law. Defendants' conduct, as alleged above, constitutes
15 unfair competition in violation of the Business & Professions Code § 17200 *et seq.*

16 140. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
17 overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of
18 reasonable care should have known that their conduct was unlawful; therefore their conduct
19 violates the Business & Professions Code § 17200 *et seq.*

20 141. By the conduct alleged herein, Defendants have engaged and continue to engage in
21 a business practice which violates California and federal law, including but not limited to, the
22 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
23 Code including Sections 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 for which this Court
24 should issue declaratory and other equitable relief pursuant to California Business & Professions
25 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
26 competition, including restitution of wages wrongfully withheld.

27 142. As a proximate result of the above-mentioned acts of Defendants, Employees have
28 been damaged, in a sum to be proven at trial.

143. Unless restrained by this Court, Defendants will continue to engage in the unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use by Defendants or their agents or employees of any unlawful or deceptive practice prohibited by the Business & Professions Code, including but not limited to the disgorgement of such profits as may be necessary to restore Employees to the money Defendants have unlawfully failed to pay.

THIRTEENTH CAUSE OF ACTION
PENALTIES PURSUANT TO LABOR CODE § 2698, *ET SEQ.*
(Against All Defendants)

144. Plaintiff realleges and incorporate all preceding paragraphs, as though set forth in full herein.

145. Plaintiff and the Employees in the Class are also aggrieved employees as defined under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and either were or are employed by Defendants (“Aggrieved Employees”) during the relevant time period.

146. In failing to pay Aggrieved Employees minimum wages and overtime at the correct rates, not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders.

147. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, inter alia, on the following California Labor Code sections: 201, 202, 203, 204, 210, 221, 226, 226.3, 226.7, 246, 248.1, 248.2, 248.5, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et*

1 *seq.*, and 2802, including as follows:

2 148. More specifically, after complying with the notice procedures of Labor Code §
3 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
4 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed
5 underlying claims and seeking penalties as specified by the applicable corresponding provisions,
6 including as follows:

7 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees
8 all earned regular pay and minimum wages for regular hours worked, holiday premiums, sick time
9 and for failure to pay overtime premium wages for overtime hours worked under Labor Code §§
10 510, 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC
11 Wage Order(s) seeking all civil and statutory penalties available and applicable under Labor Code
12 §§ 510, 558, 1194.2, 1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and
13 costs pursuant to Labor Code § 2699(g)(1);

14 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
15 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
16 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
17 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC
18 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under
19 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,
20 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs
21 pursuant to Labor Code § 2699(g)(1);

22 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
23 Plaintiff and the Aggrieved Employees with wage statements or with accurate, itemized wage
24 statements and failure to maintain employment records for Plaintiff and Aggrieved Employees
25 under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable
26 IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable
27 under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the
28 applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code §

2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code §226.3, which in addition to other penalties provided by law, subjects Defendants to “a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...”;

(d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1);

(e) Unlawful Deductions and Failure to Reimburse Business Expenses: For Defendants’ unlawful deductions from wages and for Defendants’ failure to reimburse the necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1);

(f) Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave: For Defendants’ failure to provide Employees with all their required and earned sick days and all their COVID-19 supplemental sick leave and at the correct rates of pay in violation of Labor Code §§ 246, 248.1, 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1);

(g) All Alleged Violations of the IWC Wage Orders: For any above addressed violation of the applicable provisions of the IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5 and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys’ fees

1 and costs pursuant to Labor Code § 2699(g)(1).

2 149. As also addressed above, Plaintiff, on behalf of the Aggrieved Employees, also
3 seeks the penalties and remedies set forth in Labor Code § 558, which states:

4 (a) Any employer or other person acting on behalf of an employer who
5 violates, or causes to be violated, a section of this chapter or any provision
6 regulating hours and days of work in any order of the Industrial Welfare
7 Commission shall be subject to a civil penalty as follows: (1) For any initial
8 violation, fifty dollars (\$50) for each underpaid employee for each pay period for
9 which the employee was underpaid in addition to an amount sufficient to recover
underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for
each underpaid employee for each pay period for which the employee was
underpaid in addition to an amount sufficient to recover underpaid wages...

10 (b) If upon inspection or investigation the Labor Commissioner determines that
11 a person had paid or caused to be paid a wage for overtime work in violation of any
12 provision of this chapter, or any provision regulating hours and days of work in any
13 order of the Industrial Welfare Commission, the Labor Commissioner may issue a
citation. The procedures for issuing, contesting, and enforcing judgments for
14 citations or civil penalties issued by the Labor Commissioner for a violation of this
chapter shall be the same as those set out in Section 1197.1.

(c) The civil penalties provided for in this section are in addition to any other
civil or criminal penalty provided by law.

15 150. Plaintiff has exhausted his administrative remedies by submitting a certified letter to
16 the LWDA and Defendants on September 26, 2023 (LWDA-CM-983971-23) addressing in detail
17 the specific provisions of the Labor Code Defendants have violated and addressing the facts and
18 legal theories to support the alleged violations and requested penalties. The LWDA has not
19 provided notice of its intent to investigate the alleged violations within 65 calendar days of the
20 postmark date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the
21 violations addressed herein and in the PAGA Notice letter and the original Complaint.

22 RELIEF REQUESTED

23 WHEREFORE, Plaintiff prays for the following relief:

- 24 1. For an order certifying this action as a class action;
- 25 2. For compensatory damages in the amount of the unpaid minimum wages for work
26 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
27 the filing of this action, as may be proven;
- 28 3. For liquidated damages in the amount equal to the unpaid minimum wage and
interest thereon, from at least four (4) years prior to the filing of this action, according to proof;

1 4. For compensatory damages in the amount of all unpaid wages, including overtime
2 and double-time pay, as may be proven;

3 5. For compensatory damages in the amount of the hourly wage made by Employees
4 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
5 years prior to the filing of this action, as may be proven;

6 6. For compensatory damages in the amount of the hourly wage made by Employees
7 for each day requisite rest breaks were not provided or were deficiently provided where no
8 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
9 be proven;

10 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

11 8. For restitution and/or damages and penalties for Defendants' failure to pay all
12 wages due twice monthly under Labor Code § 204, as may be proven;

13 9. For restitution and/or damages for all amounts unlawfully withheld from the wages
14 for all class members in violation of Labor Code § 221, as may be proven;

15 10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
16 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

17 11. For damages and restitution for failure to reimburse all reasonable and necessary
18 business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;

19 12. For liquidated damages pursuant to California Labor Code 1194.2(a) for failure to
20 pay minimum wage;

21 13. For penalties pursuant to Labor Code § 1174.5, as may be proven;

22 14. For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;

23 15. For restitution for unfair competition pursuant to Business & Professions Code
24 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

25 16. For an order enjoining Defendants and their agents, servants, and employees, and
26 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
27 duties adumbrated in this Complaint;

28 17. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;

18. For penalties under Labor Code § 558, as may be proven;
19. For other wages and penalties under the Labor Code as may be proven;
20. For all general, special, and incidental damages as may be proven;
21. For an award of pre-judgment and post-judgment interest;
22. For an award providing for the payment of the costs of this suit;
23. For an award of attorneys' fees; and
24. For such other and further relief as this Court may deem proper and just.

DATED: November 27, 2023

D.LAW, INC.

By 
Emil Davtyan
David Yeremian
Alvin B. Lindsay
Tania Fonseca
Attorneys for Plaintiff
David T. Atkins and the putative class

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

DATED: November 27, 2023

D.LAW, INC.

By



Emil Davtyan
David Yeremian
Alvin B. Lindsay
Tania Fonseca
Attorneys for Plaintiff
David T. Atkins and the putative class

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 880 E Broadway, Glendale, CA 91205

On November 27, 2023, I served the foregoing: **FIRST AMENDED COMPLAINT** on Interested Parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

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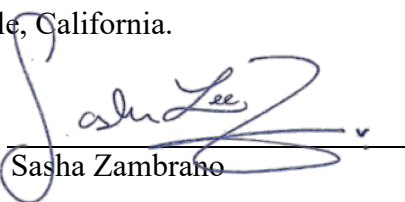
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2415 East Camelback Road
Phoenix, AZ 85016

[X] (BY MAIL) I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

[X] (COURTESY COPY BY ELECTRONIC TRANSMISSION) by use of email by scanning the documents and any and all documents and emailing them to email addresses above transmission.

[X] (STATE) I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 27, 2023, at Glendale, California.


Sasha Zambrano

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES Branch Name: Spring Street Courthouse Mailing Address: 312 North Spring Street City, State and Zip Code: Los Angeles CA 90012	
SHORT TITLE: DAVID T. ATKINS vs GODADDY.COM, LLC., et al. NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 23STCV23396

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of LOS ANGELES. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Legal Connect
 Reference Number: 8726511_2023_11_27_11_26_28_089_5
 Submission Number: 23LA01837133
 Court Received Date: 11/27/2023
 Court Received Time: 12:00 pm
 Case Number: 23STCV23396
 Case Title: DAVID T. ATKINS vs GODADDY.COM, LLC., et al.
 Location: Spring Street Courthouse
 Case Type: Civil Unlimited
 Case Category: Other Employment Complaint Case
 Jurisdictional Amount: Over \$25,000
 Notice Generated Date: 11/27/2023
 Notice Generated Time: 2:11 pm

Documents Electronically Filed/Received

Status

Amended Complaint

Accepted

Comments

Submitter's Comments:

Clerk's Comments:

Electronic Filing Service Provider Information

Service Provider: Legal Connect
 Contact: Legal Connect
 Phone: (800) 909-6859