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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN BERNARDINO
10

11 BRETT CONSTANT, individually, on a
12 representative basis, and on behalf of all
others similarly situated;

13 Plaintiff,

14 vs.

15 ELITE ROOTER, INC., a California
16 Corporation; ELITE ROOTER ORANGE,
17 INC., a California Corporation; ELITE
ROOTER SDN, INC., a California
18 Corporation; ELITE ROOTER PENINSULA,
19 INC., a California Corporation; ELITE
ROOTER PHOENIX, INC., a California
20 Corporation; ELITE ROOTER SAN JOSE,
INC., a California Corporation; ELITE
21 ROOTER SFV, INC., a California
Corporation; ELITE ROOTER SOUTH BAY,
22 INC., a California Corporation; ELITE
23 ROOTER FRESNO, INC., a California
Corporation; and DOES 1 through 20,
24 inclusive;

25 Defendants.
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Case No.: CIVSB2326553
*[Assigned to Hon. Jessica Morgan, Dept S26,
for all purposes]*

FIRST AMENDED COMPLAINT

CLASS ACTION CLAIMS

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Meal Periods;
- (4) Failure to Provide Rest Breaks;
- (5) Failure to Reimburse Bus. Expenses;
- (6) Failure to Pay Vested Vacation;
- (7) Failure to Timely Pay Final Wages;
- (8) Failure to Provide Accurate Itemized Wage Statements;
- (9) Unfair and Unlawful Competition

PAGA CLAIMS

- (10) Failure to Pay Minimum Wages;
- (11) Failure to Pay Overtime Wages;
- (12) Failure to Provide Meal Periods;
- (13) Failure to Provide Rest Breaks;
- (14) Failure to Reimburse Bus. Expenses;
- (15) Failure to Pay Vested Vacation;
- (16) Failure to Timely Pay Wages Each Period;
- (17) Failure to Timely Pay Final Wages;
- (18) Failure to Provide Accurate Itemized Wage Statements; and
- (19) Failure to Maintain Records

1 Plaintiff Brett Constant (“Plaintiff”) on behalf of himself, on a representative basis, and
2 on behalf of others similarly situated, complains and alleges as follows

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against his employer(s), Elite Rooter, Inc., Elite Rooter
5 Orange, Inc., Elite Rooter SDN, Inc., Elite Rooter Peninsula, Inc., Elite Rooter Phoenix, Inc.,
6 Elite Rooter San Jose, Inc., Elite Rooter SFV, Inc., Elite Rooter South Bay, Inc., Elite Rooter
7 Fresno, Inc., and DOES 1 through 20, inclusive, (collectively, “Defendants”) on behalf of all
8 current and former nonexempt employees employed by Defendants in California (the “Class” or
9 “Represented Employees”) for Labor Code violations stemming from Defendants’ failure to pay
10 all wages owed, including minimum, regular, and overtime wages, failure to provide meal
11 periods, failure to provide rest breaks, failure to reimburse business expenses, failure to pay all
12 vested vacation owed upon separation of employment, failure to timely pay wages each period
13 and upon separation of employment, and failure to provide accurate itemized wage statements.

14 2. Plaintiff was employed by Defendants from approximately August through
15 October 2023.

16 3. Plaintiff alleges on information and belief that the Represented Employees were
17 subjected to the same policies, working conditions, and corresponding wage and hour violations
18 to which Plaintiff was subjected during employment.

19 4. Plaintiff and the Represented Employees were not provided all minimum, regular,
20 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
21 worked. As one specific example, Plaintiff and the Represented Employees were paid on a
22 commission-only basis. But, under this commission-only pay plan, Defendants failed to pay the
23 Represented Employees at no less than the minimum wage for unpaid, on-duty time and tasks
24 performed for Defendants (*i.e.*, Represented Employees did not receive any compensation for
25 non-commission-generating tasks or mandated paid rest breaks). And Defendants did not pay
26 any overtime compensation despite that the Represented Employees frequently worked in excess
27 of 8 hours per day and 40 hours per week.
28

1 5. Plaintiff and the Represented Employees were also denied 30-minute off-duty
2 meal periods, as mandated by California law. As a result of Defendants' policies and practices,
3 the Represented Employees were subjected to meal period violations when they were: (1) unable
4 to take a meal period due to workload, (2) forced to take an on-duty meal period while under the
5 control of Defendants, (3) forced to take a shortened meal period, (4) forced to take a meal
6 period after the 5th hour of work, and (5) not provided mandated second meal periods for shifts
7 in excess of 10 hours. Moreover, Defendants failed to record or keep accurate information
8 regarding when Plaintiff and the Represented Employees took mandated meal periods, in
9 violation of the applicable IWC Wage Order § 7(A)(3).

10 6. Defendants also failed to provide Plaintiff and the Represented Employees with
11 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
12 mandated by California law. Defendants did not schedule rest breaks for Plaintiff and the
13 Represented Employees, the Represented Employees were unable to leave the premises for rest
14 breaks, and the Represented Employees were often not authorized and/or permitted to take
15 mandated rest breaks due to being overwhelmed by their hectic workload. Furthermore, on
16 occasions when Plaintiff and the Represented Employees worked longer shifts, Defendants failed
17 to authorize and/or permit additional mandated rest breaks. Furthermore, Plaintiff and the
18 Represented Employees were denied paid rest breaks by virtue of Defendants' policy that only
19 paid on a commission basis. As Plaintiff and the Represented Employees could not generate
20 commission compensation during a rest break, Plaintiff and the Represented Employees were
21 illegally denied paid rest breaks.

22 7. Moreover, at all relevant times, Defendants required Plaintiff and the Represented
23 Employees to incur necessary business-related expenses and costs without reimbursement,
24 including, but not limited to, acquiring and maintaining cellular phones (including related data
25 plans) and tools to perform their tasks for Defendants.

26 8. Also, at all relevant times, Defendants utilized a policy and practice through
27 which Plaintiff and the Represented Employees accrued vacation and/or paid time off hours
28 (collectively, "vacation hours"). California law, specifically Labor Code § 227.3, requires

1 Defendants to pay all accrued and unused vacation hours upon separation of employment at the
2 final rate of pay. However, Defendants failed to pay all accrued and unused vacation hours to
3 the Represented Employees upon separation of employment. And, for vacation hours that
4 Defendants *did* pay, Defendants failed to calculate and pay for said hours at the “final rate” of
5 pay as required by Labor Code § 227.3 (the final rate of pay for the Represented Employees was
6 often higher than the base rate due to other nondiscretionary compensation, yet Defendants failed
7 to calculate the correct rate to pay all vested vacation wages due and owing).

8 9. Plaintiff further alleges that he and the Represented Employees were not paid all
9 wages due and owing each pay period (Labor Code § 204) and upon separation of employment
10 within the time required by Labor Code §§ 201 – 203. Plaintiff further alleges that Defendants
11 engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Represented
12 Employees at the time their employment ended with Defendants, including, but not limited to
13 minimum, regular, and overtime wages, wage premiums, vacation and sick wages, among others.

14 10. Plaintiff further alleges that Defendants failed to provide accurate itemized wage
15 statements that fully complied with the requirements of Labor Code § 226(a).

16 11. Plaintiff alleges that Defendants’ violations of the wage and hour components of
17 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their
18 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
19 its competitors.

20 12. At all material times, Defendants and DOES 1 through 20 were and/or are the
21 Represented Employees’ employers or persons acting on behalf of the Represented Employees’
22 employer, within the meaning of California Labor Code § 558, who violated or caused to be
23 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
24 hours and days of work in an IWC Wage Order and, as such, are subject to penalties for each
25 underpaid employee as set forth in Labor Code § 558 and under California law.

26 13. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
27 monetary relief against Defendants and each of them, on behalf of himself and the Represented
28 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys’ fees,

1 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
2 210, 218.6, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197,
3 1197.1, 1198, 1199, and 2802, among possibly other sections inadvertently omitted. Plaintiff
4 also reserves the right to name additional representatives throughout the State of California.

5 **II. JURISDICTION**

6 14. This Court has jurisdiction over the claims for relief of Plaintiff and the
7 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

8 **III. VENUE**

9 15. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
10 Procedure § 395(a). Defendants transact business in San Bernardino County, the unlawful acts
11 alleged herein have a direct effect on Plaintiff and the Represented Employees in San Bernardino
12 County, and Defendants employs/employed Represented Employees in San Bernardino County.

13 **IV. PARTIES**

14 **Plaintiff**

15 16. Plaintiff and Class Representative Brett Constant was employed by Defendants
16 from approximately August through October 2023 and performed work for Defendants in San
17 Bernardino County.

18 **Defendants**

19 17. Plaintiff is informed and believes and alleges that Defendant Elite Rooter, Inc. is a
20 California corporation authorized to and doing business in San Bernardino County and is or was
21 the legal employer of Plaintiff and the Represented Employees during the applicable periods.

22 18. Plaintiff is informed and believes and alleges that Defendant Elite Rooter Orange,
23 Inc. is a California corporation authorized to and doing business in San Bernardino County and is
24 or was the legal employer of Plaintiff and the Represented Employees during the applicable
25 periods.

26 19. Plaintiff is informed and believes and alleges that Defendant Elite Rooter SDN,
27 Inc. is a California corporation authorized to and doing business in San Bernardino County and is
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1 or was the legal employer of Plaintiff and the Represented Employees during the applicable
2 periods.

3 20. Plaintiff is informed and believes and alleges that Defendant Elite Rooter
4 Peninsula, Inc. is a California corporation authorized to and doing business in San Bernardino
5 County and is or was the legal employer of Plaintiff and the Represented Employees during the
6 applicable periods.

7 21. Plaintiff is informed and believes and alleges that Defendant Elite Rooter
8 Phoenix, Inc. is a California corporation authorized to and doing business in San Bernardino
9 County and is or was the legal employer of Plaintiff and the Represented Employees during the
10 applicable periods.

11 22. Plaintiff is informed and believes and alleges that Defendant Elite Rooter San
12 Jose, Inc. is a California corporation authorized to and doing business in San Bernardino County
13 and is or was the legal employer of Plaintiff and the Represented Employees during the
14 applicable periods.

15 23. Plaintiff is informed and believes and alleges that Defendant Elite Rooter SFV,
16 Inc. is a California corporation authorized to and doing business in San Bernardino County and is
17 or was the legal employer of Plaintiff and the Represented Employees during the applicable
18 periods.

19 24. Plaintiff is informed and believes and alleges that Defendant Elite Rooter South
20 Bay, Inc. is a California corporation authorized to and doing business in San Bernardino County
21 and is or was the legal employer of Plaintiff and the Represented Employees during the
22 applicable periods.

23 25. Plaintiff is informed and believes and alleges that Defendant Elite Rooter Fresno,
24 Inc. is a California corporation authorized to and doing business in San Bernardino County and is
25 or was the legal employer of Plaintiff and the Represented Employees during the applicable
26 periods.

27 26. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
28 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,

1 inclusive, but on information and belief alleges that those Defendants are legally responsible for
2 the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of
3 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
4 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
5 Defendants when ascertained.

6 27. Plaintiff is informed and believes and thereon alleges that he and the Represented
7 Employees worked under the joint direction and control of Defendants and that Defendants, and
8 each of them, acted in all respects pertinent to this action as the agent of the other Defendants,
9 carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of
10 each Defendant are legally attributable to the other Defendants. On information and belief, a
11 unity of interest and ownership between each Defendant exists such that all Defendants acted as
12 a single employer of Plaintiff and other Represented Employees.

13 28. Furthermore, Plaintiff is informed and believes and thereon alleges that
14 Defendants, and each of them, are an integrated enterprise and should be treated as a single
15 employer because these entities share an interrelation of operations, with common human
16 resources and personnel policies and shared common offices and facilities. Additionally,
17 Defendants also have a shared website, common management, a centralized control of labor
18 operations, and common ownership or financial control.

19 29. Plaintiff is informed and believes and thereon alleges that, in conducting
20 themselves in the manner described herein, Defendants, and each of them, were acting in active
21 concert with one another such that the acts of each were and are fully attributable to the others in
22 all material respects. Plaintiff is further informed and believes that at all relevant times
23 Defendants and each of them are now, and at all material times herein mentioned were, the
24 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining
25 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and
26 purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of
27 their remaining co-Defendants.
28

1 30. Plaintiff is further informed and believes that at all relevant times, Defendants
2 have been inadequately capitalized to conduct business, have failed to follow appropriate
3 corporate formalities, and have simply been a shell and instrumentality through which
4 Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly,
5 the corporate veil should be pierced, and any liability attached to Defendants should be imposed
6 jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the
7 separate existence of these corporate entities would permit abuse of the corporate privilege,
8 thereby sanctioning fraud and promoting injustice.

9 **V. CLASS ACTION ALLEGATIONS**

10 31. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
11 as if fully alleged herein.

12 32. Plaintiff brings this action on behalf of himself and all others similarly situated as
13 a class action, pursuant to Code of Civil Procedure § 382.

14 33. The relevant time period for this class action is defined as the period beginning
15 four years prior to the filing of this action until class certification (the “Relevant Time Period”).

16 34. The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to
17 represent is defined as follows:

18 All current and former nonexempt employees employed by
19 Defendants in California during the Relevant Time Period.

20 35. Plaintiff also seeks to represent the following subclasses:

21 **Meal Break Subclass**

22 All Represented Employees who worked a shift in excess of
23 5 hours during the Relevant Time Period.

24 **Rest Break Subclass**

25 All Represented Employees who worked a shift of at least
26 3.5 hours during the Relevant Time Period.

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1 **Vested Vacation Subclass**

2 All Represented Employees who had accrued but unused
3 vacation upon separation of employment during the period
4 four years before the filing of this action and ending when
5 final judgment is entered.

6 **Unreimbursed Expense Subclass**

7 All Represented Employees who were required to incur
8 expenses to discharge their duties for Defendants without
9 reimbursement during the Relevant Time Period.

10 **Waiting Time Penalties Subclass**

11 All Represented Employees who separated from their
12 employment with Defendants during the period three years
13 before the filing of this action and ending when final
14 judgment is entered.

15 **Wage Statement Penalties Subclass**

16 All Represented Employees during the period one year
17 before the filing of this action and ending when final
18 judgment is entered.

19 36. Plaintiff reserves the right to amend or modify the class description with greater
20 specificity or further division into subclasses or limitation to particular issues as appropriate.

21 37. Plaintiff, as Class Representative, is a member of the class and subclasses that he
22 seeks to represent.

23 38. This action has been brought and may properly be maintained as a class action
24 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
25 litigation and the proposed class is easily ascertainable from Defendants' records.

26 39. **Numerosity:** The potential members of the Class as defined are so numerous that
27 a joinder of all Represented Employees is impracticable. Although the exact number is currently
28 unknown to Plaintiff, this information is easily ascertainable from Defendants' records.

1 40. **Commonality:** There are questions of law and fact common to the class which
2 predominate over any questions affecting only individual members of the class, including
3 without limitation:

4 i. Whether Defendants violated the California Labor Code and applicable
5 IWC Wage Order by failing to pay wages to Plaintiff and the Represented Employees for all
6 hours worked;

7 ii. Whether Defendants violated the California Labor Code and applicable
8 IWC Wage Order by failing to pay proper overtime wages to Plaintiff and the Represented
9 Employees for hours above 8 and/or 12 per day and/or 40 per week;

10 iii. Whether Defendants violated the California Labor Code and applicable
11 IWC Wage Order by failing to provide compliant meal periods to Plaintiff and the Meal Break
12 Subclass and whether Defendants failed to compensate Plaintiff and the Meal Break Subclass
13 with one additional hour of wages at the regular rate of pay for each instance when a compliant
14 meal period was not provided;

15 iv. Whether Defendants violated the California Labor Code and applicable
16 IWC Wage Order by failing to provide compliant rest breaks to Plaintiff and the Rest Break
17 Subclass and whether Defendants failed to compensate Plaintiff and the Rest Break Subclass
18 with one additional hour of wages at the regular rate of pay for each instance when a paid rest
19 break was not provided;

20 v. Whether Defendants violated the Labor Code by failing to compensate
21 Plaintiff and the Vested Vacation Subclass for all accrued but unused vacation hours upon
22 separation of employment;

23 vi. Whether Defendants violated the California Labor Code and applicable
24 IWC Wage Order by failing to reimburse Plaintiff and the Unreimbursed Expense Subclass for
25 business expenses incurred while discharging their duties or in obedience to the directions of
26 their employer;

vii. Whether Defendants violated the California Labor Code by failing to timely pay all wages due upon separation of employment between Defendants and Plaintiff and the Waiting Time Penalties Subclass, whether such separation was voluntary or involuntary;

viii. Whether Defendants violated the California Labor Code by failing to provide Plaintiff and the Wage Statement Penalties Subclass with complete, accurate, itemized wage statements;

ix. Whether Defendants violated California Business & Professions Code §§ 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest breaks, failure to provide mandated meal periods, failure to pay vested vacation, failure to reimburse business expenses, and failure to timely pay final wages; and

x. Whether Plaintiff and Represented Employees are entitled to equitable relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

41. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants' ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all wages owed, failure to provide mandated meal periods and rest breaks, failure to pay vested vacation, failure to reimburse business expenses, failure to timely pay wages upon separation of employment, and failure to provide accurate itemized wage statements.

42. **Adequacy of Representation.** Plaintiff, as Class Representative, will fairly and adequately represent and protect the interests of the Class. Plaintiff's interests are not in conflict with those of the Class. Class Representative's counsel are competent and experienced in litigating employment class actions and other complex litigation matters similar to this case.

43. **Superiority of Class Action.** Class certification is appropriate because a class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Represented Employees is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each Represented Employee has been damaged and is entitled to recovery by reason of Defendants' illegal policies and practices set forth above. Class action

1 treatment will allow those similarly situated persons to litigate their claims in the manner that is
2 most efficient and economical for the parties and the judicial system.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**

5 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

6 *Plaintiff and the Represented Employees Against All Defendants*

7 44. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
8 as if fully alleged herein.

9 45. Plaintiff and the Represented Employees were not exempt from the requirement
10 to be paid at least the applicable California minimum wage throughout the statutory period for
11 each hour worked.

12 46. Plaintiff and the Represented Employees were not provided proper minimum and
13 regular wages due to Defendants' failure to accurately record and compensate for all hours
14 worked. As a result of this policy and practice, Plaintiff and the Represented Employees were
15 required to perform off-the-clock work that Defendants either knew or should have known they
16 were performing.

17 47. Consequently, Defendants violated California Labor Code laws and minimum
18 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
19 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

20 48. Plaintiff is informed and believes and thereon alleges that Defendants
21 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Represented
22 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

23 49. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
24 Represented Employees were entitled to be paid wages throughout the statutory period for each
25 hour worked, including proper minimum and regular wages, yet Defendants chose not to pay
26 them in accordance thereto.

27 50. At all material times, Defendants DOES 1 through 20 were and/or are the
28 employer of Plaintiff and the Represented Employees or were persons acting on behalf of said

1 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be
2 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
3 Labor Code regulating hours and days of work respectively.

4 51. During employment of Plaintiff and the Represented Employees, Defendants
5 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

6 52. As a result of the Defendants' wrongful conduct, Plaintiff and the Represented
7 Employees have been damaged in amounts to be proven at trial.

8 53. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of
9 all unpaid minimum wages, liquidated damages, penalties, interest, and attorneys' fees and costs,
10 under Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be proven at trial.

11 **SECOND CAUSE OF ACTION**

12 **FAILURE TO PAY OVERTIME WAGES**

13 (Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

14 *Plaintiff and the Represented Employees Against All Defendants*

15 54. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
16 as if fully alleged herein.

17 55. Plaintiff and the Represented Employees were employees of Defendants who did
18 not receive proper protections and benefits of the laws governing payment of overtime wages.

19 56. Labor Code § 204 requires that the employer timely pay all overtime wages to its
20 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
21 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in
22 any one workweek shall be compensated at the rate of no less than one and one-half times the
23 regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12)
24 in one workday shall be compensated at twice the regular rate of pay for an employee.

25 57. At all relevant times, Plaintiff and the Represented Employees were required by
26 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, as a
27 result of the policies and practices described in this Complaint, Defendants failed to pay Plaintiff
28 and the Represented Employees for all overtime hours worked.

1 58. Additionally, Defendants paid Plaintiff and the Represented Employees on an
2 hourly basis but also paid additional nondiscretionary compensation. However, during
3 workweeks where the Represented Employees worked overtime hours and earned additional
4 nondiscretionary compensation, Defendants failed to include that compensation in the
5 calculations for the regular rate of pay – violating the well-established rule that overtime must
6 always be paid at time and one-half the regular rate of pay.

7 59. As a result of these policies and practices, Defendants failed to pay Plaintiff and
8 the Represented Employees for all overtime hours worked.

9 60. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
10 Order § 3(A) every pay period with respect to Plaintiff and the Represented Employees because
11 Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per
12 week without proper overtime compensation.

13 61. Plaintiff is informed and believes and thereon alleges that Defendants
14 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the
15 Represented Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

16 62. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
17 Represented Employees were entitled to be paid proper overtime wages throughout the statutory
18 period, yet Defendants chose not to pay them in accordance thereto.

19 63. At all material times, Defendants DOES 1 through 20 were and/or are the
20 employer of Plaintiff and the Represented Employees or were persons acting on behalf of said
21 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be
22 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
23 Labor Code regulating hours and days of work respectively.

24 64. During the employment of Plaintiff and the Represented Employees, Defendants
25 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

26 65. As a result of Defendants' wrongful conduct, Plaintiff and the Represented
27 Employees have been damaged in amounts to be proven at trial.

1 66. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of
2 all unpaid overtime wages, penalties, interest, attorneys' fees, and costs of suit against
3 Defendants in an amount to be proven at trial.

4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO PROVIDE MEAL PERIODS**

6 (Labor Code §§ 226.7 and 512; IWC Wage Order § 11, 12)

7 *Plaintiff and the Meal Break Subclass Against All Defendants*

8 67. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
9 as if fully alleged herein.

10 68. Plaintiff and the Represented Employees are and/or were employees of
11 Defendants who did not receive proper protections and benefits of laws governing mandatory
12 meal periods.

13 69. Labor Code § 226.7 requires employers, including Defendants, to provide
14 employees with meal periods as mandated by the Industrial Welfare Commission.

15 70. Labor Code § 512(a), in part, provides that employers, including Defendants, may
16 not employ an employee for a work period of more than five hours per day without providing an
17 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
18 except that if the total work period per day of the employee is no more than six hours, the meal
19 period may be waived by mutual consent of both the employer and the employee. Employers
20 may not employ an employee for a work period more than 10 hours per day without providing
21 the employee with a second meal period of not less than 30 minutes.

22 71. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
23 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
24 pay for each meal period that is missed.

25 72. At all relevant times, and as a result of the policies and practices described in this
26 Complaint, Plaintiff and the Represented Employees were denied the 30-minute meal periods to
27 which they were entitled.
28

1 73. Moreover, Defendants failed to record or keep accurate information regarding
2 when Plaintiff and the Represented Employees took mandated meal periods, in violation of the
3 applicable IWC Wage Order § 7(A)(3).

4 74. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
5 Order every pay period because Plaintiff and the Represented Employees were not provided with
6 all mandatory meal periods and Defendants failed to pay Plaintiff and the Represented
7 Employees one additional hour of compensation at the regular rate of pay in lieu thereof.

8 75. On information and belief, Plaintiff and the Represented Employees did not
9 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
10 obtained from Plaintiff and the Represented Employees were not willfully obtained, were not
11 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
12 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Represented
13 Employees to take meal periods in accordance with California law.

14 76. At all relevant times herein, Defendants failed to provide Plaintiff and the Meal
15 Break Subclass all mandated meal breaks and failed to pay wage premiums in lieu of mandated
16 meal breaks, thereby receiving an economic benefit.

17 77. By their failure to provide Plaintiff and the Meal Break Subclass with meal
18 periods as required by California law and failing to pay one hour of additional wages in lieu of
19 each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and
20 IWC Wage Order § 11. Accordingly, Defendants are liable for one hour of additional wages at
21 the employee's regular rate of compensation for each work day that a meal period was not
22 lawfully provided in an amount to be proven at time of trial.

23 78. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
24 and IWC Wage Order § 11, Defendants, and each of them, are liable to Plaintiff and the Meal
25 Break Subclass for unpaid wage premiums, penalties, costs, and interest.

26 ///

27 ///

28 ///

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE REST BREAKS**

3 (Labor Code §§ 226.7 and 512; IWC Wage Order § 12)

4 *Plaintiff and the Rest Break Subclass Against All Defendants*

5 79. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
6 alleged herein.

7 80. Plaintiff and the Represented Employees are and/or were employees of
8 Defendants who did not receive proper protections and benefits of the laws governing mandatory
9 rest breaks.

10 81. Labor Code § 226.7 requires employers, including Defendants, to provide rest
11 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

12 82. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
13 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
14 each work period. Employees shall receive a 10-minute rest period every four hours or major
15 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
16 hours worked, for which there shall be no deduction from wages.

17 83. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
18 Order, Defendants shall pay Plaintiff and the Represented Employees one additional hour of pay
19 at their regular rate of compensation for each day that the rest period is not provided.

20 84. At all relevant times, and as a result of the policies and practices described in this
21 Complaint, Plaintiff and the Represented Employees were denied mandated rest breaks.

22 85. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
23 Order every pay period because Plaintiff and the Represented Employees were not provided with
24 all mandatory rest periods and Defendants failed to pay Plaintiff and the Represented Employees
25 one additional hour of compensation in lieu thereof.

26 86. At all relevant times herein, Defendants failed to provide Plaintiff and the Rest
27 Break Subclass all mandated rest breaks and failed to pay wage premiums in lieu of mandated
28 rest periods, thereby receiving an economic benefit.

87. By their failure to provide Plaintiff and the Rest Break Subclass with rest breaks as required by California law, and failing to pay one hour of additional wages in lieu of each rest break not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage Order § 12. Accordingly, Defendants are liable for one hour of additional wages at the employee's regular rate of compensation for each workday that a paid rest break was not lawfully provided in an amount to be proven at time of trial.

88. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512, and IWC Wage Order § 12, Defendants, and each of them, are liable to Plaintiff and the Rest Break Subclass for unpaid wage premiums, penalties, costs, and interest.

FIFTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802)

Plaintiff and the Unreimbursed Expense Subclass Against All Defendants

89. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

90. Plaintiff and the Represented Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing reimbursement of business expenses.

91. Labor Code § 2802(a) requires that the employer indemnify its employees for expenses and losses incurred while discharging their duties or in obedience to the directions of their employer.

92. At all relevant times herein mentioned, Defendants violated Labor Code § 2802(a) when they failed to reimburse Plaintiff and the Represented Employees for expenses incurred as a direct consequence of employment with Defendants and/or under the direction of Defendants.

93. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage Order § 9(B), Plaintiff and the Unreimbursed Expense Subclass have suffered, and continue to suffer, substantial losses related to such incurred expenses, expenses, and attorney's fees in seeking to compel Defendants to fully perform their obligations under the law, all in an amount

1 to be proved at time of trial.

2 94. Pursuant to Labor Code § 2802, Plaintiff and the Represented Employees seek to
3 recover the unreimbursed expenses, interest on the unreimbursed expenses, and the costs and
4 attorney's fees necessarily incurred in pursuing same. The exact amount of reimbursements,
5 interest, costs, and attorney's fees will be in an amount to be proved at the time of trial.

6 **SIXTH CAUSE OF ACTION**

7 **FAILURE TO PAY VESTED VACATION**

8 (Labor Code § 227.3)

9 *Plaintiff and the Vested Vacation Subclass Against All Defendants*

10 95. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
11 as if fully alleged herein.

12 96. Plaintiff and the Represented Employees were employees of Defendants who did
13 not receive proper protections and benefits of the laws governing the payment of vested vacation
14 time and/or paid time off upon separation of employment.

15 97. Pursuant to Labor Code § 227.3, an employer that has implemented a paid
16 vacation, paid time off, or compensated time off policy must, upon an employee's separation
17 from employment, pay to the employee all vested but unused vacation and/or paid time off at her
18 final rate of pay.

19 98. At all relevant times, and as a result of the policies and practices described in this
20 Complaint, Defendants violated Labor Code § 227.3 when they failed to pay the Represented
21 Employees for all accrued and unused vacation hours to the Represented Employees upon
22 separation of employment and, moreover, failed to calculate and pay for said hours at the "final
23 rate" of pay as required by Labor Code § 227.3.

24 99. As a result, Plaintiff and the Vested Vacation Subclass did not receive
25 compensation for all accrued but unused vacation hours as required by Labor Code § 227.3.

26 100. At all relevant times herein, Defendants failed to pay the Vested Vacation
27 Subclass, including Plaintiff, all vested but unused vacation time and/or paid time off upon
28 separation from employment, thereby receiving an economic benefit.

1 101. Plaintiff is informed and believes and thereon alleges that Defendants, and each of
2 them, knowingly refused to perform their obligations to compensate the Vested Vacation
3 Subclass for all vested but unused vacation time and/or paid time off upon separation from
4 employment.

5 102. As a result of Defendants' violations of Labor Code § 227.3, Plaintiff and the
6 Vested Vacation Subclass seek to recover the unpaid vacation hours, as well as penalties,
7 interest, attorneys' fees, and costs as permitted under California law.

8 **SEVENTH CAUSE OF ACTION**

9 **FAILURE TO TIMELY PAY FINAL WAGES**

10 (Labor Code §§ 201 – 203)

11 *Plaintiff and the Waiting Time Penalties Subclass Against All Defendants*

12 103. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
13 as if fully alleged herein.

14 104. Plaintiff and the Represented Employees are and/or were employees of
15 Defendants who did not receive proper protections and benefits of the laws governing the timing
16 and payment of wages.

17 105. Labor Code § 201 requires that the employer immediately pay any wages, without
18 abatement or reduction, to any employee who is discharged.

19 106. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
20 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
21 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

22 107. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
23 penalty from the due date thereof at the same rate until paid or until an action therefore is
24 commenced, but the wages shall not continue for more than thirty (30) days.

25 108. At all relevant times, Defendants employed a policy and practice whereby
26 Plaintiff and the Represented Employees were not paid all wages due and owing upon separation
27 of employment within the time required by Labor Code §§ 201 and 202.
28

109. Also, at all relevant times, Defendants engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Represented Employees upon separation of employment, including, but not limited to, minimum, regular, and overtime wages, meal and rest period premiums, and vested vacation wages.

110. Additionally, at all relevant times, Defendants failed to pay all mandated sick wages owed to the Represented Employees at the proper rate of pay under Labor Code § 246(l).

111. Plaintiff alleges that, at all times material to this action, Defendants had a planned pattern and practice of failing to timely pay Plaintiff and the Waiting Time Penalties Subclass all wages due and owing upon separation of employment as required by Labor Code §§ 201 and 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Waiting Time Penalties Subclass the above-described waiting time penalty, all in an amount to be shown according to proof at trial and within the jurisdiction of this Court.

EIGHTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226)

Plaintiff and the Wage Statement Penalties Subclass Against All Defendants

112. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

113. Plaintiff and the Represented Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing the provision of accurate itemized wage statements.

114. Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, all deductions, net wages earned, the inclusive dates of the pay period, the employee's name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

1 115. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
2 and the Represented Employees due to violations including: failure to accurately state total hours
3 worked (for example, the wage statements failed to accurately state total hours worked and/or
4 reflect the correct compensable hours); failure to accurately state gross wages earned, all
5 deductions, and net wages earned (due to, for example, the failure to pay all required minimum
6 and overtime wages); failure to state the applicable hourly rates (including the accurate overtime
7 rate of pay); failure to state the inclusive dates of the pay period; failure to accurately state the
8 name and address of the legal entity of the employer; and failure to accurately state the
9 corresponding number of hours worked at each hourly rate.

10 116. Moreover, Defendants' wage statements directly violated Labor Code § 226(a)
11 each period due to the failure to pay and report premium wages for denied meal periods and rest
12 breaks under § 226.7.

13 117. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
14 to Plaintiff and the Wage Statement Penalties Subclass because Defendants failed to provide a
15 wage statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
16 requirements of Labor Code § 226(a).

17 118. Defendants' failure to provide the required writing deprived Plaintiff and the
18 Wage Statement Penalties Subclass of the ability to know, understand, and question the rate of
19 pay and hours used to calculate the wages paid by Defendants. Therefore, Plaintiff and the Wage
20 Statement Penalties Subclass had no way to dispute the resulting miscalculation of wages, all of
21 which resulted in an unjustified economic enrichment to said Defendants. As a direct result,
22 Plaintiff and the Wage Statement Penalties Subclass have suffered and continue to suffer,
23 substantial losses related to the use and enjoyment of such wages, lost interest on such wages and
24 expenses and attorney's fees in seeking to compel Defendants to fully perform its obligation
25 under state law, all to their respective damages in amounts according to proof at trial.

26 119. As a result of Defendants' knowing and intentional failure to comply with Labor
27 Code § 226(a), Plaintiff and the Wage Statement Penalties Subclass have suffered an injury in
28 that each was prevented from knowing, understanding and disputing the wage payments paid to

1 them. Furthermore, Plaintiff and the Wage Statement Penalties Subclass have each suffered an
2 injury in that the failure to show all wages earned on the itemized wage statements resulted in
3 Plaintiff and the Represented Employees being denied all necessary deductions, payments, and
4 withholdings owed by the employer, including, but not limited to, the failure to make all
5 necessary contributions for unemployment benefits, social security benefits, proper payment of
6 taxes and withholdings, and other mandated state and federal benefits.

7 120. Plaintiff has also been injured as a result of having to bring this action to attempt
8 to obtain correct wage information following Defendants' refusal to comply with many of the
9 mandates of California's Labor Code and related laws and regulations.

10 121. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
11 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and
12 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
13 attorney's fees and costs, to Plaintiff and the Wage Statement Penalties Subclass who were
14 injured by Defendants' failure to comply with Labor Code § 226(a). The exact amount of the
15 applicable penalty is all in an amount to be shown according to proof at trial.

16 **NINTH CAUSE OF ACTION**

17 **UNFAIR AND UNLAWFUL COMPETITION**

18 (Business and Professions Code § 17200, *et seq.*)

19 *Plaintiff and the Represented Employees Against All Defendants*

20 122. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
21 as if fully alleged herein.

22 123. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
23 competition, which includes any "unlawful, unfair or fraudulent business act or practice." The
24 Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact,
25 due to the unfair and unlawful business practices of Defendants as alleged herein.

26 124. Defendants, and each of them, are "persons" as defined under Business &
27 Professions Code § 17021.
28

1 125. As alleged herein, Defendants engaged in conduct that violated California's wage
2 and hour laws, including failure to pay minimum, regular, and overtime wages, failure to provide
3 mandated meal periods and rest breaks, failure to pay vested vacation, failure to reimburse
4 business expenses, and failure to timely pay wages upon separation of employment, all to
5 decrease their costs and increase profits.

6 126. At all times relevant herein, Defendants did not pay Plaintiff and the Represented
7 Employees wages and monies and other financial obligations to which they were entitled.

8 127. As a result of Defendants' failure to comply with the Labor Code and IWC
9 Orders, Represented Employees, including Plaintiff, suffered a loss of wages and monies, all in
10 an amount to be shown according to proof at trial. Defendants' ongoing violations of the
11 foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

12 128. Defendants' violations of the California Labor Code and IWC Wage Orders and
13 its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business
14 practices because it was done in a systematic manner over a period of time to the detriment of the
15 Plaintiff and all others similarly-situated.

16 129. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
17 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
18 Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code
19 of Civil Procedure § 1021.5.

20 130. A violation of California Business & Professions Code § 17200, *et seq.* may be
21 predicated on the violation of any state or federal law. All of the acts described herein as
22 violations of, among other things, the California Labor Code and IWC Wage Orders, are
23 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,
24 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
25 practices in violation of California Business and Professions Code §§ 17200, *et seq.*

26 131. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
27 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
28 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of

1 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
2 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
3 harm unless Defendants, and each of them, are restrained from continuing to engage in said
4 unfair, unlawful and/or fraudulent business practices.

5 132. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
6 and does, seek such relief as may be necessary to disgorge the profits which Defendants have
7 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the
8 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
9 Represented Employees are not obligated to establish individual knowledge of the unfair
10 practices of Defendants in order to recover restitution.

11 133. Plaintiff, individually, and on behalf of the Represented Employees, is further
12 entitled to and do seek a declaration that the above described business practices are unfair,
13 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
14 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
15 the future.

16 134. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and
17 Represented Employees are entitled to restitution of the wages withheld and retained by
18 Defendants during a period that commences four years prior to the filing of this complaint; a
19 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
20 Represented Employees; an award of attorneys' fees pursuant to California Code of Civil
21 Procedure § 1021.5 and other applicable laws; and an award of costs.

22 **VI. PAGA CAUSES OF ACTION (Cal. Lab. Code. §§ 2698 – 2699.5)**

23 135. Plaintiff is an “aggrieved employee” under the PAGA as he was employed by
24 Defendants during the applicable statutory period and suffered one or more of the Labor Code
25 violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil
26 action filed on behalf of himself and all other similarly situated current and former aggrieved
27 employees in California against whom one or more of the alleged violations was committed
28 (hereinafter the “Aggrieved Employees”).

136. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by PAGA through a representative action pursuant to the PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor does he, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

137. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. More than sixty-five (65) days have elapsed since the date Plaintiff provided the written notice of the claims alleged herein without the LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiff has fully satisfied the administrative prerequisites to suit under the PAGA.

TENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES

(Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

Plaintiff and the Aggrieved Employees against All Defendants

138. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

139. Plaintiff and the Aggrieved Employees were not exempt from the requirement to be paid at least the applicable California minimum wage throughout the statutory period for each hour worked.

140. Plaintiff and the Aggrieved Employees were not provided proper minimum and regular wages due to Defendants' failure to accurately record and compensate for all hours worked. As a result of this policy and practice, Plaintiff and the Aggrieved Employees were required to perform off-the-clock work that Defendants either knew or should have known they were performing.

141. Consequently, Defendants violated California Labor Code laws and minimum wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

143. Defendants' conduct was willful, as Defendants knew that Plaintiff and the Aggrieved Employees were entitled to be paid wages throughout the statutory period for each hour worked, including proper minimum and regular wages, yet Defendants chose not to pay them in accordance thereto.

ELEVENTH CAUSE OF ACTION

(Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

145. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

147. Labor Code § 204 requires that the employer timely pay all overtime wages to its employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12) in one workday shall be compensated at twice the regular rate of pay for an employee.

1 148. At all relevant times, Plaintiff and the Aggrieved Employees were required by
2 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, as a
3 result of the policies and practices described in this Complaint, Defendants failed to pay Plaintiff
4 and the Aggrieved Employees for all overtime hours worked.

5 149. Additionally, Defendants paid Plaintiff and certain non-union Aggrieved
6 Employees on an hourly basis but also paid additional nondiscretionary compensation. However,
7 during workweeks where the non-union Aggrieved Employees worked overtime hours and
8 earned additional nondiscretionary compensation, Defendants failed to include that
9 compensation in the calculations for the regular rate of pay – violating the well-established rule
10 that overtime must always be paid at time and one-half the regular rate of pay.

11 150. As a result of these policies and practices, Defendants failed to pay Plaintiff and
12 the Aggrieved Employees for all overtime hours worked.

13 151. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
14 Order § 3(A) every pay period with respect to Plaintiff and the Aggrieved Employees because
15 Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per
16 week without proper overtime compensation.

17 152. Plaintiff is informed and believes and thereon alleges that Defendants
18 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the
19 Aggrieved Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

20 153. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
21 Aggrieved Employees were entitled to be paid proper overtime wages throughout the statutory
22 period, yet Defendants chose not to pay them in accordance thereto.

23 154. As a result of the unlawful employment practices alleged herein, Plaintiff, on
24 behalf of the State of California, seeks the assessment of all applicable and available PAGA
25 remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or
26 any other damages permitted under PAGA.

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1 **TWELFTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS**

3 (Labor Code § 226.7 and 512; IWC Wage Order § 11, 12)

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 155. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 156. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
8 who did not receive proper protections and benefits of laws governing mandatory meal periods.

9 157. Labor Code § 226.7 requires employers, including Defendants, to provide
10 employees with meal periods as mandated by the Industrial Welfare Commission.

11 158. Labor Code § 512(a), in part, provides that employers, including Defendants, may
12 not employ an employee for a work period of more than five hours per day without providing an
13 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
14 except that if the total work period per day of the employee is no more than six hours, the meal
15 period may be waived by mutual consent of both the employer and the employee. Employers
16 may not employ an employee for a work period more than 10 hours per day without providing
17 the employee with a second meal period of not less than 30 minutes.

18 159. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
19 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
20 pay for each meal period that is missed.

21 160. At all relevant times, and as a result of the policies and practices described in this
22 Complaint, Plaintiff and the Aggrieved Employees were denied the 30-minute meal periods to
23 which they were entitled.

24 161. Moreover, Defendants failed to record or keep accurate information regarding
25 when Plaintiff and the Aggrieved Employees took mandated meal periods, in violation of the
26 applicable IWC Wage Order § 7(A)(3).

27 162. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
28 Order every pay period because Plaintiff and the Aggrieved Employees were not provided with

1 all mandatory meal periods and Defendants failed to pay Plaintiff and the Aggrieved Employees
2 one additional hour of compensation at the regular rate of pay in lieu thereof.

3 163. On information and belief, Plaintiff and the Aggrieved Employees did not
4 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
5 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not
6 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
7 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved
8 Employees to take meal periods in accordance with California law.

9 164. As a result of the unlawful employment practices alleged herein, Plaintiff, on
10 behalf of the State of California, seeks the assessment of all applicable and available PAGA
11 remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or
12 any other damages permitted under PAGA.

13 **THIRTEENTH CAUSE OF ACTION**

14 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS**

15 (Labor Code § 226.7 and 512; IWC Wage Order § 12)

16 *Plaintiff and the Aggrieved Employees against All Defendants*

17 165. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
18 as if fully alleged herein.

19 166. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
20 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

21 167. Labor Code § 226.7 requires employers, including Defendants, to provide rest
22 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

23 168. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
24 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
25 each work period. Employees shall receive a 10-minute rest period every four hours or major
26 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
27 hours worked, for which there shall be no deduction from wages.
28

169. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage Order, Defendants shall pay Plaintiff and the Aggrieved Employees one additional hour of pay at their regular rate of compensation for each day that the rest period is not provided.

170. At all relevant times, and as a result of the policies and practices described in this Complaint, Plaintiff and the Aggrieved Employees were denied mandated rest breaks.

171. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order every pay period because Plaintiff and the Aggrieved Employees were not provided with all mandatory rest periods and Defendants failed to pay Plaintiff and the Aggrieved Employees one additional hour of compensation in lieu thereof.

172. As a result of the unlawful employment practices alleged herein, Plaintiff, on behalf of the State of California, seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

FOURTEENTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802)

Plaintiff and the Aggrieved Employees against All Defendants

173. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

174. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing reimbursement of business expenses.

175. Labor Code § 2802(a) requires that the employer indemnify its employees for expenses and losses incurred while discharging their duties or in obedience to the directions of their employer.

176. At all relevant times herein mentioned, Defendants violated Labor Code § 2802(a) when they failed to reimburse Plaintiff and the Aggrieved Employees for expenses incurred as a direct consequence of employment with Defendants and/or under the direction of Defendants.

1 177. As a result of the unlawful employment practices alleged herein, Plaintiff, on
2 behalf of the State of California, seeks the assessment of all applicable and available PAGA
3 remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or
4 any other damages permitted under PAGA.

5 **FIFTEENTH CAUSE OF ACTION**

6 **PAGA ASSESSMENT FOR FAILURE TO PAY VESTED VACATION**

7 (Labor Code § 227.3)

8 *Plaintiff and the Aggrieved Employees against All Defendants*

9 178. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
10 as if fully alleged herein.

11 179. Plaintiff and the Aggrieved Employees were employees of Defendants who did
12 not receive proper protections and benefits of the laws governing the payment of vested vacation
13 time and/or paid time off upon separation of employment.

14 180. Pursuant to Labor Code § 227.3, an employer that has implemented a paid
15 vacation, paid time off, or compensated time off policy must, upon an employee's separation
16 from employment, pay to the employee all vested but unused vacation and/or paid time off at her
17 final rate of pay.

18 181. At all relevant times, and as a result of the policies and practices described in this
19 Complaint, Defendants violated Labor Code § 227.3 when they failed to pay the Aggrieved
20 Employees for all accrued and unused vacation hours to the Aggrieved Employees upon
21 separation of employment and, moreover, failed to calculate and pay for said hours at the "final
22 rate" of pay as required by Labor Code § 227.3.

23 182. As a result of the unlawful employment practices alleged herein, Plaintiff, on
24 behalf of the State of California, seeks the assessment of all applicable and available PAGA
25 remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or
26 any other damages permitted under PAGA.

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1 **SIXTEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD**

3 (Labor Code § 204)

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 183. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 184. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees
8 of Defendants who did not receive proper protections and benefits of the laws regarding the
9 timing of payment of wages each period.

10 185. Labor Code § 204(a) states that all wages earned by a person are due and payable
11 twice during each calendar month, and further states that wages earned during the first through
12 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
13 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
14 the following month.

15 186. Furthermore, Labor Code § 204(d) states “[t]he requirements of this section shall
16 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
17 the wages are paid not more than seven calendar days following the close of the payroll period.”

18 187. At all relevant times herein, Defendants did not provide Plaintiff and the
19 Aggrieved Employees with all wages due and owing each pay period, including, but not limited
20 to, minimum, regular, and overtime wages, as well as meal and rest period premiums, within the
21 time specified by Labor Code § 204.

22 188. As a result of the unlawful employment practices alleged herein, Plaintiff, on
23 behalf of the State of California, seeks the assessment of all applicable and available PAGA
24 remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys’ fees, costs, and/or
25 any other damages permitted under PAGA.

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1 **SEVENTEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES**

3 (Labor Code §§ 201 – 203)

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 189. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 190. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
8 who did not receive proper protections and benefits of the laws governing the timing and
9 payment of wages.

10 191. Labor Code § 201 requires that the employer immediately pay any wages, without
11 abatement or reduction, to any employee who is discharged.

12 192. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
13 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
14 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

15 193. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
16 penalty from the due date thereof at the same rate until paid or until an action therefore is
17 commenced, but the wages shall not continue for more than thirty (30) days.

18 194. At all relevant times, Defendants employed a policy and practice whereby
19 Plaintiff and the Aggrieved Employees were not paid all wages due and owing upon separation
20 of employment within the time required by Labor Code §§ 201 and 202.

21 195. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
22 wages due and owing to Plaintiff and the Aggrieved Employees upon separation of employment,
23 including, but not limited to, minimum, regular, and overtime wages, meal and rest period
24 premiums, and vested vacation wages.

25 196. Additionally, at all relevant times, Defendants failed to pay all mandated sick
26 wages owed to the Aggrieved Employees at the proper rate of pay under Labor Code § 246(l).
27
28

197. Plaintiff alleges that, at all times material to this action, Defendants had a planned pattern and practice of failing to timely pay Plaintiff and the Aggrieved Employees all wages due and owing upon separation of employment as required by Labor Code §§ 201 and 202.

198. As a result of the unlawful employment practices alleged herein, Plaintiff, on behalf of the State of California, seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

EIGHTEENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226)

Plaintiff and the Aggrieved Employees against All Defendants

199. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

200. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing the provision of accurate itemized wage statements.

201. Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, all deductions, net wages earned, the inclusive dates of the pay period, the employee's name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

202. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff and the Aggrieved Employees due to violations including: failure to accurately state total hours worked (for example, the wage statements failed to accurately state total hours worked and/or reflect the correct compensable hours); failure to accurately state gross wages earned, all deductions, and net wages earned (due to, for example, the failure to pay all required minimum

1 and overtime wages); failure to state the applicable hourly rates (including the accurate overtime
2 rate of pay); failure to state the inclusive dates of the pay period; failure to accurately state the
3 name and address of the legal entity of the employer; and failure to accurately state the
4 corresponding number of hours worked at each hourly rate.

5 203. Moreover, Defendants' wage statements directly violated Labor Code § 226(a)
6 each period due to the failure to pay and report premium wages for denied meal periods and rest
7 breaks under § 226.7.

8 204. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
9 to Plaintiff and the Aggrieved Employees because Defendants failed to provide a wage statement
10 to Plaintiff and the Aggrieved Employees that complied with the requirements of § 226(a).

11 205. Unlike class action claims, a PAGA plaintiff need not meet the "injury" and
12 "knowing and intentional" violation requirements of Labor Code § 226(e). See *Lopez v. Friant*
13 & Associates, LLC (2017) 15 Cal.App.5th 773, 788 ("a plaintiff seeking civil penalties under
14 PAGA for a violation of section 226(a) does not have to satisfy the "injury" and "knowing and
15 intentional" requirements of section 226(e)(1)"); See also *Lawson v. ZB, N.A.* (2017) 18
16 Cal.App.5th 705, 722 ("the scienter requirement [of § 226(e)] has no application in a PAGA
17 claim for violation of [§ 226(a)]").

18 206. As a result of the unlawful employment practices alleged herein, Plaintiff, on
19 behalf of the State of California, seeks the assessment of all applicable and available PAGA
20 remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or
21 any other damages permitted under PAGA.

22 **NINETEENTH CAUSE OF ACTION**

23 **PAGA ASSESSMENT FOR FAILURE TO MAINTAIN RECORDS**

24 (Labor Code § 1174, *et seq.*; IWC Wage Order § 6(A) or § 7(A))

25 *Plaintiff and the Aggrieved Employees against All Defendants*

26 207. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
27 as if fully alleged herein.
28

1 208. Labor Code § 1174 requires employers to keep payroll records showing the hours
2 worked daily by and the wages paid to each employee “for not less than three years.”

3 209. The applicable IWC Wage Order, at either § 6(A) or § 7(A) [depending on which
4 IWC Wage Order applies], requires that an employer keep “accurate information with respect to
5 each employee” including, but not limited to: time records showing when the employee begins
6 and ends each work period, whether an employee took a meal period and when it occurred, daily
7 hours worked, total wages paid each payroll period, and total hours worked during the payroll
8 period and the applicable rates of pay.

9 210. Here, Defendants failed to maintain records for each Aggrieved Employee as
10 required by Labor Code § 1174 and the applicable IWC Wage Order. Notably, Defendants did
11 not maintain the records as required, did not maintain them for the required 3-year period, and
12 failed to keep accurate records due to the wage and timekeeping violations discussed above.

13 211. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
14 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
15 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

16 **VII. PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff, on behalf of himself, on a representative basis, and all others
18 similarly situated, prays for judgment and relief against Defendants, jointly and severally, as
19 follows:

- 20 1. As to the Tenth through Nineteenth Causes of Action, the assessment of all
21 applicable and available remedies under PAGA;
- 22 2. For reasonable attorneys’ fees and costs as permitted under PAGA;
- 23 3. That the First through Ninth Causes of Action be certified as a class action;
- 24 4. That Plaintiff be appointed as Class Representative;
- 25 5. That counsel for Plaintiff be appointed Class Counsel;
- 26 6. For all applicable statutory penalties recoverable under the First through Ninth
27 Causes of Action to the extent permitted by law, including those pursuant to Labor Code and
28 Orders of the Industrial Welfare Commission;

1 7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by
2 law, including those pursuant to the Labor Code;

3 8. For injunctive relief and/or restitution as provided by the Labor Code and
4 Business and Professions Code § 17200, *et seq.*;

5 9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
6 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174,
7 1174.5, 1194, 1197, 1198, 1199, and 2802, among other sections inadvertently omitted;

8 10. For an award of damages in the amount of unpaid compensation including, but
9 not limited to, unpaid wages, benefits, and penalties according to proof, including interest
10 thereon;

11 11. For pre- and post-judgment interest; and

12 12. For such other relief as the Court deems just and proper.

13 **DEMAND FOR JURY TRIAL**

14 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, hereby
15 demands a jury trial as to the First through Ninth Causes of Action pled herein.

16 Dated: December 26, 2023

LAUBY, MANKIN & LAUBY LLP

17
18 BY:



19 Brian J. Mankin, Esq.
20 Peter J. Carlson, Esq.
21 Attorneys for Plaintiff
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