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

ELLIOTT MORALES, and individual, on
behalf of himself and all others similarly
situated;

Plaintiff,

vs.

LOCKWOOD INDUSTRIES LLC
DBA FRALOCK, a California Limited
Liability Company, FRALOCK LLC, a
Delaware Limited Liability Company, and
DOES 1 through 50, inclusive;

Defendants.

Case Number: 23STCV27759

**Second Amended Class Action Complaint
For:**

1. Failure to Pay All Minimum Wages,
2. Failure to Pay All Overtime Wages,
3. Failure to Provide Rest Periods and Pay Missed Rest Period Premiums,
4. Failure to Provide Meal Periods and Pay Missed Meal Period Premiums,
5. Failure to Maintain Accurate Employment Records,
6. Failure to Pay Wages Timely during Employment,
7. Failure to Pay All Wages Earned and Unpaid at Separation,
8. Failure to Indemnify All Necessary Business Expenditures,
9. Failure to Furnish Accurate Itemized Wage Statements,
10. Failure to Pay all accrued and unused Vacation Pay,
11. Violations of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210), and

12. PAGA Penalties (Labor Code § 2699 *et seq.*).

Demand for Jury Trial

Plaintiff Elliott Morales (“Plaintiff”), on behalf of himself and all other similarly situated employees within the State of California, and the state of California, complains and alleges of defendants LOCKWOOD INDUSTRIES LLC DBA FRALOCK, a California Limited Liability Company, FRALOCK LLC, a Delaware Limited Liability Company, and Does 1 to 50 (collectively, “Defendants”), and each of them, as follows:

I. INTRODUCTION

1. This is a class action complaint brought pursuant to California Code of Civil Procedure section 382 on behalf of Plaintiff and the following class: *All individuals who are or were employed by Defendants as non-exempt employees in California during the Class Period* (the “Class Members”). (Code Civ. Proc., § 382.)

2. The “Class Period” as used herein, is defined as the period from four years prior to the filing of the initial Complaint and continuing into the present and ongoing. Defendants’ violations of California’s wage and hour laws and unfair competition laws as described more fully below have been ongoing throughout the Class Period and are still ongoing.

3. Plaintiff bring this action on behalf of himself and all others similarly situated, as a class action, against Defendants for:

- A. Failure to pay all minimum wages,
- B. Failure to pay all overtime wages,
- C. Failure to provide rest periods and pay missed rest period premiums,
- D. Failure to provide meal periods and pay missed meal period premiums,
- E. Failure to maintain accurate employment records,
- F. Failure to pay wages timely during employment,
- G. Failure to pay all wages earned and unpaid at separation,
- H. Failure to indemnify all necessary business expenditures,

- 1 I. Failure to furnish accurate itemized wage statements,
2 J. Failure to pay all vacation pay due and owing, and
3 K. Violations of California’s Unfair Competition Law (“UCL”) (Bus. & Prof.
4 Code, §§ 17200–17210).

5 4. Plaintiff on behalf of himself and all other similarly situated employees, pursuant
6 to California Business and Professions Code sections 17200 through 17208, also seeks all monies
7 owed but withheld and retained by Defendants to which Plaintiff and the Class are entitled.

8 5. This is also a PAGA representative action brought pursuant to Labor Code § 2698,
9 *et seq.*, on behalf of the State of California and all individuals who are or were employed as hourly,
10 non-exempt, employees by Defendants in California during the PAGA Period.

11 6. The “PAGA Period” as used herein is defined as the period from November 13,
12 2022, and continuing into the present and ongoing.

13 7. Plaintiff has exhausted administrative remedies by providing a letter identifying
14 wage and hour deficiencies pursuant to Labor Code § 2698, *et seq.* The LWDA did not notify
15 Plaintiff that it would intercede within 65 days of submission of the letter nor has it interceded
16 Plaintiff is informed and believes and thereon alleges that the California Industrial Welfare
17 Commission (“IWC”) Wage Order applicable to the facts of this case is IWC Wage Order 1-2001
18 (the “Applicable Wage Order”) and possibly others that may be applicable. (Cal. Code of Regs.,
19 tit. 8, § 11040.) Plaintiff reserves the right to amend or modify the definition of “Applicable Wage
20 Order” with greater specificity or add additional IWC Wage Orders if additional applicable wage
21 orders are discovered in litigation.

22 8. In addition, Plaintiff brings this action against Defendants for economic, non-
23 economic, and compensatory damages, penalties, pre-judgment interest and post-judgment
24 interest, and costs and reasonable attorneys’ fees pursuant to, *inter alia*, Code of Civil Procedure
25 section 1021.5.

26 **II. JURISDICTION & VENUE**

27 9. This court has subject matter jurisdiction over all causes of action asserted herein
28 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure

1 section 410.10 because this is a civil action in which the matter in controversy, exclusive of
2 interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the
3 State of California or is subject to adjudication in the courts of the State of California.

4 10. This court has personal jurisdiction over Defendants because Defendants have
5 caused injuries in the County of Los Angeles and the State of California through their acts, and by
6 their violation of the California Labor Code and California state common law. Defendants transact
7 millions of dollars of business within the State of California. Defendants own, maintain offices,
8 transact business, have an agent or agents within the County of Los Angeles, and/or otherwise are
9 found within the County of Los Angeles, and Defendants are within the jurisdiction of this court
10 for purposes of service of process.

11 11. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of
12 the Code of Civil Procedure. Defendants operate within California and do business within Los
13 Angeles County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and
14 all of Defendants' employees within Los Angeles County and surrounding counties where
15 Defendants may otherwise operate.

16 12. This matter is not appropriate for removal under the Class Action Fairness Act (28
17 U.S.C. § 1332) as the amount in controversy for Plaintiff' and the Class Members' claims, in
18 aggregate, is less than \$5 million. Additionally, all the allegations herein occurred in the State of
19 California. As such, even if the amount in controversy did exceed \$5 million this matter would
20 still not be appropriate for removal under the "local controversy" exception to the Class Action
21 Fairness Act. (28 U.S.C. § 1332, subd. (d)(4)(A).)

22 **III. THE PARTIES**

23 **A. PLAINTIFF**

24 13. At all relevant times, Plaintiff, who is over the age of 18, was and currently is a
25 citizen of California residing in the State of California. Defendants employed Plaintiff as a non-
26 exempt hourly employee in the County of Los Angeles.

27 14. Plaintiff brings this action on behalf of himself and the following class pursuant to
28 section 382 of the Code of Civil Procedure as follows: *All individuals who are or were employed*

1 *by Defendants as non-exempt employees in California during the Class Period* (the “Class
2 Members”).

3 15. The Class Members, at all times pertinent hereto, are or were employees of
4 Defendants during the relevant statutory period.

5 **B. DEFENDANTS**

6 16. Plaintiff is informed and believes and thereon alleges that Defendants were
7 authorized to and doing business in Los Angeles County and is and/or was the legal employer of
8 Plaintiff, and the other Class Members during the applicable statutory periods. Plaintiff and the
9 other Class Members were, and are, subject to Defendants’ policies and/or practices complained
10 of herein and have been deprived of the rights guaranteed to them by: California Labor Code
11 sections 201, 202, 203, 204, 210, 218, 218.5, 226, 226.3, 226.7, 227.3, 232, 232.5, 510, 512, 558,
12 558.1, 1102.5, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804,
13 and others that may be applicable; California Business and Professions Code sections 17200
14 through 17210 (“UCL”); and the Applicable Wage Order (Cal. Code of Regs., tit. 8, § 11040).

15 17. Plaintiff is informed and believes, and based thereon allege, that during the Class
16 Period, Defendants did (and continue to do) business in the State of California, County of Los
17 Angeles.

18 18. Plaintiff does not know the true names or capacities, whether individual, partner,
19 or corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said
20 defendants are sued under such fictitious names, and Plaintiff will seek leave from this court to
21 amend this complaint when such true names and capacities are discovered. Plaintiff is informed,
22 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
23 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
24 and proximately caused Plaintiff and the other Class Members to be subject to the unlawful
25 employment practices, wrongs, injuries, and damages complained of herein.

26 19. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
27 herein, Defendants were and/or are the employers of Plaintiff and the other Class Members. At all
28 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter

1 alleged to have been done by the named Defendants. Furthermore, the Defendants, and each of
2 them, were the agents, servants, and employees of each and every one of the other Defendants, as
3 well as the agents of all Defendants, and at all times herein mentioned were acting within the
4 course and scope of said agency and employment. Defendants, and each of them, approved of,
5 condoned, or otherwise ratified every one of the acts or omissions complained of herein.

6 20. At all relevant times, Defendants, and each of them, were members of and engaged
7 in a joint venture, partnership, and common enterprise, and acting within the course and scope of
8 and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff is
9 informed, and believes, and thereon alleges, that all Defendants were joint employers for all
10 purposes of Plaintiff and the other Class Members. Defendants, including the Doe Defendants, are
11 also liable under Labor Code §§ 558 and 558.1.

12 **IV. COMMON FACTS & ALLEGATIONS**

13 21. Plaintiff and the other Class Members (collectively, the “Class Members”) are, and
14 were at all relevant times, employed by the Defendants within the State of California.

15 22. The Class Members are, and were, at all relevant times, non-exempt employees for
16 the purposes of minimum wages, overtime, rest breaks, meal periods, and the other claims alleged
17 in this complaint.

18 23. Specifically, Plaintiff was employed by Defendants within the statutory Class
19 Period, working as an hourly employee for Defendants. Plaintiffs’ duties included providing
20 support for Defendants’ care for elderly and/or infirm patients, clients, and residents.

21 **A. MINIMUM WAGE VIOLATIONS**

22 24. Labor Code section 1197 requires employees to be paid at least the minimum wage
23 fixed by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor
24 Code section 1194 entitles “any employee receiving less than the legal minimum wage . . . to
25 recover in a civil action the unpaid balance of the full amount of this minimum wage.” Likewise,
26 the Applicable Wage Order also obligates employers to pay each employee minimum wages for
27 all hours worked. (Cal. Code of Regs., tit. 8, § 11040.) Labor Code section 1198 makes unlawful
28 the employment of an employee under conditions that the IWC Wage Orders prohibit.

1 25. These minimum wage standards apply to each hour that employees work.
2 Therefore, an employer's failure to pay for any particular time worked by an employee is unlawful,
3 even if averaging an employee's total pay over all hours worked, paid or not, results in an average
4 hourly wage above minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

5 26. Here, Defendants failed to fully conform their pay practices to the requirements of
6 the law during the relevant statutory periods. The Class Members were not compensated for all
7 hours worked including, but not limited to, all hours they were subject to the control of Defendants
8 and/or suffered or permitted to work under the California Labor Code and the Applicable Wage
9 Order. Among other violations, the Class Members were subject to the control of Defendants
10 while off-the-clock and did not receive minimum wage for each minute worked. Off the clock
11 work was incurred during the COVID pandemic when employees underwent COVID screening
12 before they clocked in. Also, employees were on-call on not paid for such on call time, resulting
13 in minimum wage violations.

14 27. Additionally, the Class Members were not paid all wages for all hours worked due
15 to Defendants' uniform payroll policies and practices that unfairly rounded employees' wages to
16 the detriment of the Class Members. This rounding policy routinely failed to capture the entirety
17 of the hours the Class Members worked and was structured in a way that in favored underpayment.
18 (See *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 907.) As a result,
19 the Class Members suffered periodic shortages in the hours for which they were compensated.
20 This uncompensated time violated California's requirement that employees be compensated for
21 all hours worked. As a result of this practice, the Class Members were not compensated their
22 minimum wages for all hours worked.

23 28. Defendants also had a stated policy and implemented practice of assigning "make-
24 up time" to those employees who missed regularly scheduled work and who were instructed to
25 complete such work on off hours and without pay.

26 29. Defendants also required employees to attend various meetings which were
27 uncompensated.
28

1 30. Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide
2 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
3 those employees the unpaid balance of the unpaid wages as well as liquidated damages in an
4 amount equal to the wages due and interest thereon.

5 31. When employees, such as the Class Members, are not paid for all hours worked
6 under Labor Code section 1194, they are entitled to recover minimum wages for the time which
7 they received no compensation. (See *Sillah v. Command International Security Services* (N.D.
8 Cal. 2015) 154 F.Supp.3d 891 [employees suing for failure to pay overtime could recover
9 liquidated damages under Labor Code section 1194.2 if they also showed they were paid less than
10 minimum wage].)

11 32. Labor Code section 1197.1 authorizes employees who are paid less than the
12 minimum wage fixed by an applicable state or local law, or by an order of the IWC, a civil penalty,
13 among other damages, as follows:

14 (1) “For any initial violation that is intentionally committed, one
15 hundred dollars (\$100) for each underpaid employee for each pay
16 period for which the employee is underpaid.”

17 (2) “For each subsequent violation for the same specific offense,
18 two hundred fifty dollars (\$250) for each underpaid employee for
19 each pay period for which the employee is underpaid regardless of
20 whether the initial violation is intentionally committed.” (Lab.
21 Code, § 1197.1, subd. (a).)

22 33. As set forth above, Defendants failed to fully compensate the Class Members for
23 all minimum wages. Accordingly, the Class Members are entitled to recover liquidated damages
24 for violations of Labor Code section 1197.1.

25 34. Based upon these same factual allegations, the Class Members are likewise entitled
26 to penalties under Labor Code sections 1199.
27
28

1 **B. OVERTIME VIOLATIONS**

2 35. Labor Code section 510 requires employers to compensate employees who work
3 more than eight hours in one workday, forty hours in a workweek, and for the first eight hours
4 worked on the seventh consecutive day no less than one and one-half times the regular rate of pay
5 for an employee. (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates
6 employers to compensate employees at no less than twice the regular rate of pay when an employee
7 works more than twelve hours in a day or more than eight hours on the seventh consecutive day
8 of work. (Lab. Code, § 510, subd. (a).) These rules are also reflected in the Applicable Wage
9 Order.

10 36. In accordance with Labor Code section 1194 and the Applicable Wage Order, the
11 Class Members could not then agree and cannot now agree to work for a lesser wage than the
12 amount provided by Labor Code sections 510 or the Applicable Wage Order.

13 37. Here, Defendants violated their duty to accurately and completely compensate the
14 Class Members for all overtime worked. The Class Members periodically worked hours that
15 entitled them to overtime compensation under the law but were not fully compensated for those
16 hours.

17 38. Defendants also had a policy and practice of denying the Class Members their meal
18 breaks, but nevertheless deducting meal break time from the Class Members' pay. As a result, the
19 Class Members' on-the-clock hours were unlawfully reduced below what was actually worked
20 and, by extension, their overtime hours were also reduced below what was actually worked. The
21 Class Members were thus periodically shorted the full amount of overtime pay they were lawfully
22 owed.

23 39. In addition, due to wage differentials and other non-discretionary forms of pay,
24 Class Members' regular rates of pay were variable, and overtime that was paid was not paid at the
25 correct regular rate of pay.

26 40. Unpaid overtime occurred during the COVID pandemic when employees underwent
27 COVID screening before they clocked in, resulting in uncompensated overtime. Also, employees
28 were on-call on not paid for such on call time, resulting in overtime violations.

1 41. Defendants also had a stated policy and implemented practice of assigning “make-
2 up time” to those employees who missed regularly scheduled work and who were instructed to
3 complete such work on off hours and without overtime pay.

4 42. These actions were and are in clear violation of California’s overtime laws as set
5 forth in Labor Code sections 510, 1194, 1199, and the Applicable Wage Order (Cal. Code of Regs.,
6 tit. 8, § 11040.) As a result of Defendants’ faulty policies and practices, the Class Members were
7 not compensated for all hours worked or paid accurate overtime compensation.

8 **C. REST BREAK VIOLATIONS**

9 43. Pursuant to Labor Code section 226.7 and the Applicable Wage Order, Defendants
10 were and are required to provide the Class Members with compensated, duty-free rest periods of
11 not less than ten minutes for every major fraction of four hours worked. Under the Applicable
12 Wage Order, an employer must authorize and permit all employees to take ten-minute duty-free
13 rest periods for every major fraction of four hours worked. (Cal. Code of Regs., tit. 8, § 11040.)

14 44. Likewise, Labor Code section 226.7 provides that “[a]n employer shall not require
15 an employee to work during a meal or rest or recovery period mandated pursuant to an applicable
16 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission”
17 (Lab. Code, § 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay
18 their employees one additional hour of pay at the employee’s regular rate for each workday that a
19 “meal or rest or recovery period is not provided.” (Lab. Code, § 226.7, subd. (c).) Thus, the Wage
20 Orders set when and for how long the rest period must take place and the Labor Code establishes
21 that violations of the IWC Wage Orders are unlawful and sets forth the premium pay employer
22 must pay their employees when employers fail to provide rest periods.

23 45. The California Supreme Court has held that, during required rest periods,
24 “employers must relieve their employees of all duties and relinquish any control over how
25 employees spend their break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th
26 257, 260.) Relinquishing control over employees during rest periods requires that employees be
27 “free to leave the employer’s premises” and be “permitted to attend to personal business.” (*Id.* at
28

1 p. 275.) The *Brinker* Court explained in the context of rest breaks that employer liability attaches
2 from adopting an unlawful policy:

3 “An employer is required to authorize and permit the amount of rest break time
4 called for under the wage order for its industry. If it does not—if, for example, it
5 adopts a uniform policy authorizing and permitting only one rest break for
6 employees working a seven-hour shift when two are required—it has violated the
7 wage order and is liable.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th
8 1004, 1033.)
9

10 46. Here, Defendants periodically did not permit the Class Members to take compliant
11 duty-free rest breaks, free from Defendants’ control as required by Labor Code section 226.7, the
12 Applicable Wage Order, and applicable precedent. (See *Augustus v. ABM Security Services, Inc.*
13 (2016) 2 Cal.5th 257, 269 [concluding that “during rest periods employers must relieve employees
14 of all duties and relinquish control over how employees spend their time.”].) At all relevant times,
15 the Class Members were periodically not provided with legally-complaint and timely rest periods
16 of at least ten minutes for each four-hour work period, or major fraction thereof due to Defendants’
17 unlawful rest period policies/practices. The Class Members were often expected and required to
18 continue working through rest periods to meet the expectations Defendants and finish the workday.
19 In some cases when the Class Members worked more than ten hours in a shift, Defendants failed
20 to authorize and/or permit a third mandated rest period. As a result, the Class Members were
21 periodically unable to take compliant rest periods.

22 47. In such cases where Defendants did not offer the Class Members the opportunity to
23 receive a compliant off-duty rest period, “the court may not conclude employees voluntarily chose
24 to skip those breaks.” (*Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal.App.4th 388,
25 410 (2015) [“If an employer fails to provide legally compliant meal or rest breaks, the court may
26 not conclude employees voluntarily chose to skip those breaks.”]; *Brinker Rest. Corp. v. Superior*
27 *Court, supra*, 53 Cal.4th at p. 1033 [“No issue of waiver ever arises for a rest break that was
28

1 required by law but never authorized; if a break is not authorized, an employee has no opportunity
2 to decline to take it.”].)

3 48. Class Members’ rest breaks were regularly interrupted, and Defendants required
4 Class Members to remain on premises and near the work area to handle work issues that might
5 arise, subjecting Class Members to control and rendering all such rest breaks on-duty.

6 49. In addition to failing to authorize and permit compliant rest periods, the Class
7 Members were not compensated with one hour’s worth of pay at his regular rate of compensation
8 when he were not provided with a compliant rest period in accordance with Labor Code section
9 226.7, subdivision (c). Thus, Defendants have violated Labor Code section 226.7 and the
10 Applicable Wage Order.

11 50. Based on the foregoing, Plaintiff seeks to recover, on behalf of himself and other
12 non-exempt employees, rest period premiums and penalties.

13 **D. MEAL BREAK VIOLATIONS**

14 51. Labor Code section 512 and the Applicable Wage Order require employers to
15 provide employees with a thirty-minute uninterrupted and duty-free meal period within the first
16 five hours of work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for
17 a work period of more than five hours per day without providing the employee with a meal period
18 of not less than 30 minutes”]; Cal. Code of Regs., tit. 8, § 11040 [“No employer shall employ
19 any person for a work period of more than five (5) hours without a meal period of not less than 30
20 minutes”].) Additionally, an employee who works more than ten hours per day is entitled to
21 receive a second thirty-minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd.
22 (a) [“An employer shall not employ an employee for a work period of more than 10 hours per day
23 without providing the employee with a second meal period of not less than 30 minutes”].)

24 52. “An on-duty meal period is permitted only when the nature of the work prevents an
25 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal
26 break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement
27 must include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the
28 California Department of Industrial Relations, Division of Labor Standards Enforcement

1 (“DLSE”) and courts have “found that the nature of the work exception applies: (1) where the
2 work has some particular external force that requires the employee to be on duty at all times, and
3 (2) where the employee is the sole employee of a particular employer.” (*Id.* at p. 945, internal
4 quotation marks omitted; *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952,
5 958–959.) “[I]t is the employer’s obligation to determine whether the nature of the work prevents
6 an employee from being relieved before requiring an employee to take an on-duty meal period.”
7 (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 946.)

8 53. Here, the Class Members were never asked to sign any enforceable document
9 agreeing to an on-duty meal period. Moreover, nothing in the nature of their work involved the
10 kind of “external force” that might justify on-duty meal breaks. (*Lubin v. The Wackenhut Corp.*,
11 *supra*, 5 Cal.App.5th at p. 945.) Nevertheless, Defendants periodically did not provide compliant
12 off-duty meal periods within the first five hours of work for the Class Members.

13 54. As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v.*
14 *Superior Court*, *supra*, 53 Cal.4th at p. 1035 [“The IWC’s wage orders have long made a meal
15 period’s duty-free nature its defining characteristic.”].) Relinquishing control over employees
16 during meal periods requires that employees be “free to leave the employer’s premises” and be
17 “permitted to attend to personal business.” (*Augustus v. ABM Security Services, Inc.*, *supra*, 2
18 Cal.5th at p. 275.) Under Labor Code section 512, if an employer maintains a uniform policy that
19 does not authorize and permit the amount of meal time called for under the law (as specified in the
20 Labor Code and/or applicable IWC Wage Order), “it has violated the wage order and is liable.”
21 (*Brinker Restaurant Corp. v. Superior Court*, *supra*, 53 Cal.4th at p. 1033.)

22 55. During the applicable statutory periods here, the Class Members were periodically
23 denied legally-complaint and timely off-duty meal periods of at least thirty (30) minutes due to
24 Defendants’ unlawful meal period policy and practices. As a result of Defendants’ uniform meal
25 period policies and practices, the Class Members were often not permitted to take complaint first
26 meal periods before the end of the fifth hour of work. The Class Members were also periodically
27 not permitted to take second meal periods for shifts in excess of ten hours. Defendants thus
28 violated Labor Code section 512 and the Applicable Wage Order by failing to advise, authorize,

1 or permit the Class Members to receive thirty-minute, off-duty meal periods within the first five
2 hours of their shifts.

3 56. Labor Code section 226.7 provides that “[a]n employer shall not require an
4 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
5 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab.
6 Code, § 226.7, subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage
7 Order further obligate employers to pay employees one additional hour of pay at the employee’s
8 regular rate of compensation for each workday that the meal period is not provided. (Lab. Code,
9 § 226.7, subd. (c); Cal. Code of Regs., tit. 8, § 11040 [“If an employer fails to provide an employee
10 a meal period in accordance with the applicable provisions of this order, the employer shall pay
11 the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday
12 that the meal period is not provided.”].)

13 57. Accordingly, for each day that the Class Members did not receive compliant meal
14 periods, they were and are entitled to receive meal period premiums pursuant to Labor Code
15 section 226.7 and the Applicable Wage Order. Defendants, however, failed to pay the Class
16 Members applicable meal period premiums for many workdays that the employees did not receive
17 a compliant meal period. Thus, Defendants have violated Labor Code section 226.7 and the
18 Applicable Wage Order.

19 58. Class Members’ meal breaks were regularly interrupted, and Defendants required
20 Class Members to remain on premises and near the work area to handle work issues that might
21 arise, subjecting Class Members to control and rendering all such breaks on-duty.

22 59. Based on the foregoing, Plaintiff seeks to recover, on behalf of himself and other
23 non-exempt employees, meal period premiums and penalties.

24 **E. UNTIMELY WAGES DURING EMPLOYMENT**

25 60. Labor Code section 204 expressly requires employers who pay employees on a
26 weekly, biweekly, or semimonthly basis to pay all wages “not more than seven calendar days
27 following the close of the payroll period.” Labor Code section 210, subdivision (a), makes
28 employers who violate Labor Code section 204 subject to a penalty of:

1 “(1) For any initial violation, one hundred dollars (\$100) for each
2 failure to pay each employee.

3 “(2) For each subsequent violation, or any willful or intentional
4 violation, two hundred dollars (\$200) for each failure to pay each
5 employee, plus 25 percent of the amount unlawfully withheld.”
6 (Lab. Code, § 210, subd. (a).)

7 61. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and
8 entirely independent and apart from, any other penalty provided in this article” (Lab. Code,
9 § 210, subd. (a).)

10 62. Due to Defendants’ failure to pay the Class Members the wages described above,
11 along with rest and meal break premiums, Defendants failed to timely pay the Class Members
12 within seven calendar days following the close of payroll in accordance with Labor Code section
13 204 on a regular and consistent basis. (See *Parson v. Golden State FC, LLC* (N.D. Cal., May 2,
14 2016, No. 16-CV-00405-JST) 2016 WL 1734010, at p. *3–5, 2016 U.S. Dist. LEXIS 58299
15 [finding that a failure to pay rest period premiums can support claims under Labor Code sections
16 203 and 204].)

17 **F. UNTIMELY WAGES AT SEPARATION**

18 63. Labor Code section 203 provides “if an employer willfully fails to pay . . . any
19 wages of an employee who is discharged or who quits, the wages of the employee shall continue
20 as a penalty” for up to 30 days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487,
21 492.) As a result of Defendants’ failure to pay the Class Members for the wages described above,
22 along with rest and meal break premiums, Defendants violated and continue to violate Labor Code
23 section 203.

24 64. Due to Defendants’ faulty pay policies, those former Class Members whose
25 employment with Defendants concluded were not compensated for each and every hour worked
26 at the appropriate rate. Defendants have failed to pay former Class Members whose sums were
27 certain at the time of termination within seventy-two hours of their resignation and have failed to
28 pay those sums for thirty days thereafter.

1 **G. FAILURE TO REIMBURSE BUSINESS EXPENSES**

2 65. At all relevant times herein, Defendants were subject to Labor Code section 2802,
3 which states that “an employer shall indemnify his or her employees for all necessary expenditures
4 or losses incurred by the employee in direct consequence of the discharge of his or her duties, or
5 of his or her obedience to the directions of the employer.” The purpose of this section is to “prevent
6 employers from passing along their operating expenses onto their employees.” (*Gattuso v. Harte-*
7 *Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 562.)

8 66. At all relevant times herein, Defendants were subject to Labor Code section 2804,
9 which states that “any contract or agreement, express or implied, made by any employee to waive
10 the benefits of this article or any part thereof, is null and void, and this article shall not deprive any
11 employee or his personal representative of any right or remedy to which he is entitled under the
12 laws of this State.”

13 67. Thus, the Class Members were and are entitled to reimbursement for the expenses
14 they incurred during the course of their duties. The duty to reimburse even extends to the use of
15 equipment the employee may already own and would be required to pay for anyway. (*Cochran v.*
16 *Schwan’s Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 [“The threshold question in this
17 case is this: Does an employer always have to reimburse an employee for the reasonable expense
18 of the mandatory use of a personal cell phone, or is the reimbursement obligation limited to the
19 situation in which the employee incurred an extra expense that he or she would not have otherwise
20 incurred absent the job? The answer is that reimbursement is always required. Otherwise, the
21 employer would receive a windfall because it would be passing its operating expenses on to the
22 employee.”].)

23 68. Here, Defendants failed to fully reimburse the Class Members for necessary
24 expenditures incurred as a direct consequence and requirement of performing their job duties,
25 including the costs associated with their personal cell phone, devices, internet, and other expenses
26 incurred as was necessary to perform their work. Consequently, Defendants failed to comply with
27 Labor Code section 2802.

1 **H. WAGE STATEMENT VIOLATIONS**

2 69. Defendants also failed to provide accurate itemized wage statements in accordance
3 with Labor Code sections 226, subdivisions (a)(1-9). Labor Code section 226, subdivision (a),
4 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
5 statement in writing showing:

- 6 (1) The gross wages earned;
- 7 (2) The total hours worked by the employee;
- 8 (3) The number of piece-rate units earned and any applicable
9 piece rate if the employee is paid on a piece rate basis;
- 10 (4) All deductions, provided that all deductions made on written
11 orders of the employee may be aggregated and shown as one item;
- 12 (5) The net wages earned;
- 13 (6) The inclusive dates of the period for which the employee is
14 paid;
- 15 (7) The name of the employee and only the last four digits of his
16 or her social security number or an employee identification number
17 other than a social security number;
- 18 (8) The name and address of the legal entity that is the employer;
19 and
- 20 (9) All applicable hourly rates in effect during the pay period
21 and the corresponding number of hours worked at each hourly rate
22 by the employee.

23 70. Due to Defendants' failure to pay the Class Members properly as described above,
24 the wage statements issued do not indicate all the required categories of information, which also
25 includes meal and rest period premiums which must be reflected on wage statements. Thus,
26 Defendants have violated Labor Code section 226, subdivisions (a)(1-9).

27 71. In addition to Labor Code section 226, subdivision (a), Defendants also knowingly
28 and intentionally failed to provide the Class Members with accurate itemized wage statements in

1 violation of Labor Code section 226, subdivision (e). Defendants knew that they were not
2 providing the Class Members with wage statements required by California law but nevertheless
3 failed to correct their unlawful practices and policies. (See *Garnett v. ADT LLC* (E.D. Cal. 2015)
4 139 F.Supp.3d 1121, 1134 [finding the defendant knowingly and intentionally violated Labor Code
5 section 226 because the “[d]efendant knew that it was not providing total hours worked to Plaintiff
6 or other employees paid on commission” even though it believed that employees paid solely on
7 commission or commission and salary “are exempt and therefore we do not record hours on a wage
8 statement.”].)

9 I. RECORDKEEPING VIOLATIONS

10 72. Labor Code section 226, subdivision (a), requires employers to keep an accurate
11 record of, among other things, all hours worked by employees. Labor Code section 226.3 provides,
12 in pertinent part, as follows:

13 “Any employer who violates subdivision (a) of Section 226 shall be subject to a
14 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per
15 violation in an initial citation and one thousand dollars (\$1,000) per employee for
16 each violation in a subsequent citation, for which the employer fails to provide the
17 employee a wage deduction statement or fails to keep the records required in
18 subdivision (a) of Section 226. The civil penalties provided for in this section are
19 in addition to any other penalty provided by law.” (Lab. Code, § 226.3, emphasis
20 added.)

21
22 73. Likewise, Labor Code section 1174, subdivision (d), requires every employer,
23 including Defendants, to:

24 “Keep, at a central location in the state or at the plants or establishments at which
25 employees are employed, payroll records showing the hours worked daily by and
26 the wages paid to, and the number of piece-rate units earned by and any applicable
27 piece rate paid to, employees employed at the respective plants or establishments.
28

1 These records shall be kept in accordance with rules established for this purpose by
2 the commission, but in any case shall be kept on file for not less than three years.
3 An employer shall not prohibit an employee from maintaining a personal record of
4 hours worked, or, if paid on a piece-rate basis, piece-rate units earned.” (Lab. Code,
5 § 1174, subd. (d), emphasis added.)

6
7 74. As explained in detail above, Defendants failed to provide the Class Members with
8 accurate itemized wage statements. Defendants did so, in part, because they failed to accurately
9 track hours worked by the Class Members. Defendants have thus failed to keep accurate records
10 of the “total hours worked by the employee[s]” in violation of Labor Code section 226, subdivision
11 (a), and are therefore subject to the penalties provided by Labor Code section 226.3. These
12 penalties are “in addition to any other penalty provided by law.” (Lab. Code, § 226.3.)

13 75. The failure to accurately track hours worked also resulted in a failure of Defendants
14 to keep a record of all “payroll records showing the hours worked daily by” Defendants’
15 employees, including Plaintiff and the other Class Members, in violation of Labor Code section
16 1174, subdivision (d). In addition, Defendants discarded and did not maintain time and payroll
17 records for the required period of time.

18 **J. VACATION PAY VIOLATIONS**

19 76. Labor Code § 227.3 requires that accrued vacation time be treated as vested
20 “wages” upon an employee’s separation of employment for any reason, which must be paid out at
21 the employee’s then regular rate of pay.

22 77. Plaintiff alleges that Defendants failed to pay all vacation pay due and owing at
23 separation of employment.

24 **V. CLASS ACTION ALLEGATIONS**

25 78. As mentioned above, Plaintiff brings this action on behalf of himself and the Class
26 Members pursuant to section 382 of the Code of Civil Procedure.

27 79. **Numerosity/Ascertainability:** The Class Members are so numerous that joinder of
28 all members would be unfeasible and not practicable. The membership of the class is unknown to

1 Plaintiff at this time; however, it is estimated that the number of Class Members is greater than
2 100 individuals. The identity of such membership is readily ascertainable via inspection of
3 Defendants' employment records.

4 **80. Common Questions of Law and Fact Predominate/Well Defined Community**
5 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
6 situated non-exempt employees, which predominate over questions affecting only individual
7 members including, without limitation to:

8 A. Whether Defendants' pay policies/practices resulted in a failure to pay the
9 Class Members for all hours worked, including all regular and minimum wages;

10 B. Whether Defendants' pay policies/practices resulted in a failure to pay the
11 Class Members for all required overtime wages at the Class Members' regular rate of pay;

12 C. Whether Defendants' rest period policies and practices afforded legally
13 compliant rest periods or compensation in lieu thereof;

14 D. Whether Defendants' meal period policies and practices afforded legally
15 compliant meal periods or compensation in lieu thereof;

16 E. Whether Defendants maintained accurate employment records;

17 F. Whether Defendants timely paid all wages during employment;

18 G. Whether Defendants timely paid all wages earned and unpaid at separation;

19 H. Whether Defendants indemnified their employees for all necessary business
20 expenditures;

21 I. Whether Defendants furnished legally-compliant wage statements to the
22 Class Members pursuant to Labor Code section 226;

23 J. Whether Defendants paid all vacation pay due and owing at separation of
24 employment;

25 K. Whether Defendants' violations of the Labor Code and the Applicable
26 Wage Order amounted to a violation of California's UCL.

27 **81. Predominance of Common Questions:** Common questions of law and fact
28 predominate over questions that affect only individual Class Members. The common questions of

1 law set forth above are numerous and substantial and stem from Defendants' uniform policies and
2 practices applicable to each individual class member, such as Defendants' uniform policy and
3 practice of failing to pay for all hours worked, Defendants' uniform policies and practices which
4 failed to provide complaint rest periods, Defendants' uniform policies and practices which failed
5 to provide complaint meal periods, Defendants' failure to provide accurate itemized wage
6 statements, and others. As such, the common questions predominate over individual questions
7 concerning each individual class member's showing as to his or her eligibility for recovery or as
8 to the amount of his or her damages.

9 **82. Typicality:** The claims of Plaintiff are typical of the claims of the Class Members
10 because Plaintiff were employed by Defendants as a non-exempt employee in California during
11 the statute(s) of limitation applicable to each cause of action pleaded in this complaint. As alleged
12 herein, Plaintiff, like the other Class Members, was deprived of minimum, regular, and overtime
13 wages because of Defendants' unlawful timekeeping policies and practices, was deprived of rest
14 periods and premium wages in lieu thereof, was deprived of meal periods and premium wages in
15 lieu thereof, was subject to Defendants' uniform rest period policies and practices, was subject to
16 Defendants' uniform meal period policies and practices, was not provided accurate itemized wage
17 statements, was not paid all wages in full and on time, and was subject to other similar policies
18 and practices to which the Class Members were subject.

19 **83. Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
20 to represent fairly and adequately the interests of the Class Members. Moreover, Plaintiff's
21 attorneys are ready, willing, and able to fully and adequately represent the Class Members and
22 Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class actions in state and
23 federal court in the past and are committed to vigorously prosecuting this action on behalf of the
24 Class Members.

25 **84. Superiority:** The California Labor Code is broadly remedial in nature and serves
26 an important public interest in establishing minimum working conditions and standards in
27 California. These laws and labor standards protect the average working employee from
28 exploitation by employers who have the responsibility to follow the laws and who may seek to

1 take advantage of superior economic and bargaining power in setting onerous terms and conditions
2 of employment. The nature of this action and the format of laws available to Plaintiff and the
3 Class Members make the class action format a particularly efficient and appropriate procedure to
4 redress the violations alleged herein. If each employee were required to file an individual lawsuit,
5 Defendants would necessarily gain an unconscionable advantage since they would be able to
6 exploit and overwhelm the limited resources of each individual Plaintiff with their vastly superior
7 financial and legal resources.

8 85. Moreover, requiring each Class Member to pursue an individual remedy would also
9 discourage the assertion of lawful claims by employees who would be disinclined to file an action
10 against their former or current employer for real and justifiable fear of retaliation and permanent
11 damages to their careers at subsequent employment. Further, the prosecution of separate actions
12 by the individual Class Members, even if possible, would create a substantial risk of inconsistent
13 or varying verdicts or adjudications with respect to the individual Class Members against
14 Defendants herein, and which would establish potentially incompatible standards of conduct for
15 Defendants or legal determinations with respect to individual Class Members which would, as a
16 practical matter, be dispositive of the interest of the other Class Members not parties to
17 adjudications or which would substantially impair or impede the ability of the Class Members to
18 protect their interests.

19 86. Further, the claims of the individual Class Members are not sufficiently large to
20 warrant vigorous individual prosecution considering the concomitant costs and expenses attending
21 thereto. As such, the Class Members identified above are maintainable as a class under section
22 382 of the Code of Civil Procedure.

23 **VI. CAUSES OF ACTION**

24 FIRST CAUSE OF ACTION

25 *Failure to Pay All Minimum Wages*

26 *(Against All Defendants)*

27 87. Plaintiff realleges and incorporates by reference all previous paragraphs.
28

1 88. Section 4 of the Applicable Wage Order and Labor Code section 1197 establish the
2 right of employees to be paid minimum wages for all hours worked, in amounts set by state law.
3 (Lab. Code, § 1197; Cal. Code of Regs., tit. 8, § 11040.) Labor Code sections 1194, subdivision
4 (a), and 1194.2, subdivision (a), provide that an employee who has not been paid the legal
5 minimum wage as required by Labor Code section 1197 may recover the unpaid balance, together
6 with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the
7 unpaid wages and interest accrued thereon.

8 89. Here, Defendants failed to fully conform their pay practices to the requirements of
9 the law during the relevant statutory periods. Plaintiff and the other Class Members were not
10 compensated for all hours worked including, but not limited to, all hours they were subject to the
11 control of Defendants and/or suffered or permitted to work under the Labor Code and the
12 Applicable Wage Order.

13 90. Labor Code section 1198 makes unlawful the employment of an employee under
14 conditions that the IWC Wage Orders prohibit. Labor Code sections 1194, subdivision (a), and
15 1194.2, subdivision (a), provide that an employer who has failed to pay its employees the legal
16 minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well
17 as liquidated damages in an amount equal to the wages due and interest thereon.

18 91. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
19 Plaintiff and the other Class Members have sustained economic damages, including but not limited
20 to unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to
21 recover economic and statutory damages and penalties and other appropriate relief because of
22 Defendants' violations of the Labor Code and Applicable Wage Order.

23 92. Defendants' practices and policies regarding illegal employee compensation are
24 unlawful and create an entitlement to recovery by Plaintiff and the other Class Members in a civil
25 action for the unpaid amount of minimum wages, liquidated damages, including interest thereon,
26 statutory penalties, attorney's fees, and costs of suit according to Labor Code sections 204, 218.5,
27 1194, 1194.2, 1197, and 1198, and Code of Civil Procedure section 1021.5.

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1 97. Section 12 of the Applicable Wage Order, and Labor Code section 226.7 establish
2 the right of employees to be provided with a rest period of at least ten minutes for each four hour
3 period worked, or major fraction thereof. (See Cal. Code of Regs., tit. 8, § 11040.)

4 98. Due to Defendants' unlawful rest period policies and practices described in detail
5 above, Defendants did not authorize and permit Plaintiff and the other Class Members to take all
6 rest periods to which they were legally entitled. Despite Defendants' violations, Defendants have
7 not paid an additional hour of pay to Plaintiff and the other Class Members at their respective
8 regular rates of pay for each violation, in accordance with California Labor Code section 226.7.

9 99. The foregoing violations create an entitlement to recovery by Plaintiff and the other
10 Class Members in a civil action for the unpaid amount of rest period premiums owing, including
11 interest thereon, statutory penalties, and costs of suit pursuant to the Applicable Wage Order, and
12 California Labor Code section 226.7.

13 FOURTH CAUSE OF ACTION

14 *Failure to Provide Meal Periods and Pay Missed Meal Period Premiums*

15 *(Against All Defendants)*

16 100. Plaintiff realleges and incorporates by reference all previous paragraphs.

17 101. Plaintiff is informed and believes and thereon alleges, that Defendants failed in
18 their affirmative obligation to provide their hourly non-exempt employees, including Plaintiff and
19 the other Class Members, with all required meal periods in accordance with the mandates of the
20 Labor Code and the Applicable Wage Order, for the reasons set forth herein above. Despite
21 Defendants' violations, Defendants have not paid an additional hour of pay to Plaintiff and the
22 other Class Members at their respective regular rates of pay for each violation, in accordance with
23 California Labor Code section 226.7.

24 102. As a result, Defendants are responsible for paying premium compensation for meal
25 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the
26 Applicable Wage Order and Labor Code sections 226.7 and 512, and Civil Code sections 3287,
27 subdivision (b), and 3289. (See Cal. Code of Regs., tit. 8, § 11040.)
28

1 FIFTH CAUSE OF ACTION

2 *Failure to Maintain Accurate Employment Records*

3 *(Against All Defendants)*

4 103. Plaintiff realleges and incorporates by reference all previous paragraphs.

5 104. Pursuant to California Labor Code section 1174, subdivision (d), an employer shall
6 keep at a central location in the state or at the plants or establishments at which employees are
7 employed, payroll records showing the hours worked daily by and wages paid to employees
8 employed at the respective plants or establishments. These records must be kept in accordance
9 with rules established for this purpose by the commission, but in any case shall be kept on file for
10 not less than two years.

11 105. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's
12 failure to maintain accurate and complete records.

13 106. Defendant has intentionally and willfully failed to keep accurate and complete
14 records showing the hours worked daily and wages paid to Plaintiff and the other Class Members.
15 Thus, Plaintiff and the other Class Members have been denied their legal right and protected
16 interest in having available at a central location at the plant or establishment where they are
17 employed, accurate and complete payroll records showing the hours worked daily by, and the
18 wages paid to, employees at those respective locations pursuant to Labor Code 1174.

19 SIXTH CAUSE OF ACTION

20 *Failure to Pay Wages Timely during Employment*

21 *(Against All Defendants)*

22 107. Plaintiff realleges and incorporates by reference all previous paragraphs.

23 108. Labor Code section 200 provides that "wages" include all amounts for labor
24 performed by employees of every description, whether the amount is fixed or ascertained by the
25 standard of time, task, pieces, commission basis, or other method of calculation. Labor Code
26 section 204 states that all wages earned by any person in any employment are payable twice during
27 the calendar month and must be paid not more than seven days following the close of the period
28 when the wages were earned. Labor Code section 210, subdivision (a), makes employers who

1 violate Labor Code section 204 subject to a penalty of \$100 for any initial failure to timely pay
2 each employee's full wages and \$200 for each subsequent violation, plus 25% of the amount
3 unlawfully withheld.

4 109. Labor Code section 216 establishes that it is a misdemeanor for any person, with
5 regards to wages due, to “falsely deny the amount or validity thereof, or that the same is due, with
6 intent to secure himself, his employer or other person, any discount upon such indebtedness, or
7 with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such
8 indebtedness is due.”

9 110. Defendants as a matter of established company policy and procedure in the State of
10 California, scheduled, required, suffered, and/or permitted Plaintiff and the other Class Members,
11 to work without full compensation, to work without legally-compliant off-duty meal periods, to
12 work without legally-compliant off-duty rest periods, and thereby failed to fully pay Plaintiff and
13 the other Class Members within seven days of the close of payroll, as required by law.

14 111. Defendants, as a matter of established company policy and procedure in the State
15 of California, falsely deny they owe Plaintiff and the other Class Members these wages, with the
16 intent of securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress,
17 hinder, delay, and/or defraud Plaintiff and the other Class Members.

18 112. Defendants’ pattern, practice, and uniform administration of its corporate policy of
19 illegally denying employees compensation, as described herein, is unlawful and entitles Plaintiff
20 and the other Class Members to recover, pursuant to Labor Code section 218, the unpaid balance
21 of the compensation owed to them in a civil action and any applicable penalties, attorney fees, and
22 interest owed to them pursuant to Labor Code sections 210 and 218.5.

23 SEVENTH CAUSE OF ACTION

24 *Failure to Pay All Wages Earned and Unpaid at Separation*

25 *(Against All Defendants)*

26 113. Plaintiff realleges and incorporates by reference all previous paragraphs.

27 114. The actionable period for this cause of action is three years prior to the filing of this
28 complaint through the present, and ongoing until the violations are corrected or the class is

1 certified. (*Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, 1395; *Murphy v. Kenneth*
2 *Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1109; Code Civ. Proc., § 338, subd. (a).) Labor
3 Code sections 201 and 202 of the California Labor Code require Defendants to pay all
4 compensation due and owing to its former employees (including the formerly-employed Class
5 Members) during the actionable period for this cause of action at or around the time that their
6 employment is or was terminated, or ended.

7 115. Section 203 of the Labor Code provides that if an employer willfully fails to pay
8 compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then
9 the employer is liable for penalties in the form of continued compensation up to thirty workdays.

10 116. Due to Defendants' faulty pay policies, those Class Members whose employment
11 with Defendants has concluded were not compensated for each and every hour worked at the
12 appropriate rate. Defendants have willfully failed to pay those formerly-employed Class Members
13 whose sums were certain at the time of termination within seventy-two hours of their resignation
14 and have failed to pay those sums for thirty days thereafter as required by Labor Code sections
15 201 through 203.

16 117. As a result, Defendants are liable to the formerly-employed Class Members for
17 waiting time penalties amounting to thirty days wages for the formerly-employed Class Members
18 pursuant to Labor Code section 203. (See, e.g., DLSE Manual, § 4.3.4 [failure to pay any sort of
19 wages due upon termination entitles an employee to recover waiting time penalties].)

20 EIGHTH CAUSE OF ACTION

21 *Failure to Indemnify All Necessary Business Expenditures*

22 *(Against All Defendants)*

23 118. Plaintiff realleges and incorporates by reference all previous paragraphs.

24 119. California Labor Code Section 2802 states that employers must "indemnify" an
25 employee for "all necessary expenditures or losses incurred by the employee in direct consequence
26 of the discharge of his or her duties, or of his or her obedience to the directions of the employer."
27 Likewise, Labor Code section 2804 states that "any contract or agreement, express or implied,
28 made by any employee to waive the benefits of this article or any part thereof, is null and void,

1 and this article shall not deprive any employee or his personal representative of any right or remedy
2 to which he is entitled under the laws of this State.”

3 120. Here, Plaintiff and the other Class Members paid out of pocket for necessary
4 business expenditures incurred as a direct consequence and requirement of performing their job
5 duties, including the costs associated with their personal cell phone they required to perform their
6 work. Despite knowing that Plaintiff and the other Class Members incurred these necessary
7 business expenses, and requiring Plaintiff and the other Class Members to use such items,
8 Defendants did not reimburse them.

9 121. Thus, Plaintiff and the other Class Members are entitled to recover the cost of such
10 necessary business expenses, plus interest from the date each incurred such business expenses,
11 plus fees and costs. (Lab. Code, § 2802, subds. (b), (c).)

12 NINTH CAUSE OF ACTION

13 *Failure to Furnish Accurate Itemized Wage Statements*

14 *(Against All Defendants)*

15 122. Plaintiff realleges and incorporates by reference all previous paragraphs.

16 123. Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at
17 the time of each payment to furnish an itemized wage statement in writing showing:

- 18 (1) The gross wages earned;
- 19 (2) The total hours worked by the employee;
- 20 (3) The number of piece-rate units earned and any applicable
21 piece rate if the employee is paid on a piece rate basis;
- 22 (4) All deductions, provided that all deductions made on written
23 orders of the employee may be aggregated and shown as one item;
- 24 (5) The net wages earned;
- 25 (6) The inclusive dates of the period for which the employee is
26 paid;
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1 (7) The name of the employee and only the last four digits of his
2 or her social security number or an employee identification number
3 other than a social security number;

4 (8) The name and address of the legal entity that is the employer;
5 and

6 (9) All applicable hourly rates in effect during the pay period
7 and the corresponding number of hours worked at each hourly rate
8 by the employee.

9 124. As set forth above, Defendants issued and continues to issue wage statements to its
10 non-exempt employees including Plaintiff and the other Class Members that are inadequate under
11 Labor Code section 226, subdivision (a). By failing to pay Plaintiff and the other Class Members
12 properly as described above, Defendants failed to include required information on their wage
13 statements, including, but not limited to, the gross wages earned, the net wages earned in violation
14 of Labor Code section 226, subdivision (a).

15 125. Defendants' failure to comply with Labor Code section 226, subdivision (a), of the
16 Labor Code was knowing and intentional. (Lab. Code, § 226, subd. (e)).

17 126. As a result of Defendants' issuance of inaccurate itemized wage statements to
18 Plaintiff and the other Class Members in violation of Labor Code section 226, subdivision (a),
19 Plaintiff and the other Class Members are each entitled to recover an initial penalty of \$50, and
20 subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per
21 Plaintiff and per each Class Member from Defendants pursuant to Labor Code section 226,
22 subdivision (e), along with costs and reasonable attorneys' fees.

23 TENTH CAUSE OF ACTION

24 Failure to Pay All Vacation Pay Due and Owing

25 (Against All Defendants)

26 127. Plaintiff realleges and incorporates by reference all previous paragraphs.

27 128. Unless otherwise provided by a collective-bargaining agreement, whenever a
28 contract of employment or employer policy provides for paid vacations, and an employee is

1 terminated without having taken off his vested vacation time, all vested vacation shall be paid to
2 him as wages at his final rate in accordance with such contract of employment or employer policy
3 respecting eligibility or time served; provided, however, that an employment contract or employer
4 policy shall not provide for forfeiture of vested vacation time upon termination. (Lab. Code §
5 227.3).

6 129. Here, Defendants failed to pay all vacation wages due and owing at separation of
7 Plaintiff and other Class Members like him.

8 130. As a result of Defendants' violations, Plaintiff, on behalf of himself and the Class
9 Members, seeks by this litigation, monetary damages, interest, attorney fees, costs, and applicable
10 penalties.

11 ELEVENTH CAUSE OF ACTION

12 *Violations of California's Unfair Competition Law*

13 *(Against All Defendants)*

14 131. Plaintiff realleges and incorporates by reference all previous paragraphs.

15 132. Defendants have engaged and continue to engage in unfair and/or unlawful business
16 practices in California in violation of California Business and Professions Code section 17200
17 through 17210, by committing the unlawful acts described above. Defendants' utilization of these
18 unfair and unlawful business practices deprived and continue to deprive Plaintiff and the other
19 Class Members of compensation to which they are legally entitled. These practices constitute
20 unfair and unlawful competition and provide an unfair advantage over Defendants' competitors
21 who have been and/or are currently employing workers and attempting to do so in honest
22 compliance with applicable wage and hour laws.

23 133. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct alleged
24 herein, Plaintiff for himself and on behalf of the Class Members, seeks full restitution of monies,
25 as necessary and according to proof, to restore any and all monies withheld, acquired and/or
26 converted by Defendants pursuant to Business and Professions Code sections 17203 and 17208.

27 134. The acts complained of herein occurred within the four years prior to the initiation
28 of this action and are continuing into the present and ongoing.

1 135. Plaintiff were compelled to retain the services of counsel to file this court action to
2 protect his interests and those of the Class Members, to obtain restitution and injunctive relief on
3 behalf of Defendants' current non-exempt employees and to enforce important rights affecting the
4 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
5 which Plaintiff is entitled to recover under Code of Civil Procedure section 1021.5.

6
7 TWELFTH CAUSE OF ACTION

8 *Plaintiffs And All Aggrieved Employees For Penalties Pursuant To Labor Code § 2699,*
9 *Et Seq. For Violations Of Labor Code §§ 201, 202, 203, 204, 210, 218, 218.5, 226, 226.3, 226.7,*
10 *227.3, 232, 232.5, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1,*
11 *1198, 1198.5, 1199, 2802, 2804, and others applicable, including Wage Order No. 1*

12 *(On Behalf of Plaintiff, the State of California, and the Aggrieved Employees Against All*
13 *Defendants)*

14 136. Plaintiff, on behalf of himself and all Aggrieved Employees, re-alleges and
15 incorporates by reference all previous paragraphs.

16 137. Based on the above allegations incorporated by reference, Defendants have violated
17 Labor Code §§ 201, 202, 203, 204, 210, 218, 218.5, 226, 226.3, 226.7, 227.3, 232, 232.5, 510,
18 512, 558, 558.1, 1102.5, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199,
19 2802, 2804, and others that may be applicable, including Wage Order No. 1.

20 138. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
21 § 2699, *et seq.*

22 139. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiffs and
23 all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial
24 subject to the following formula:

25 \$100 for the initial violation per employee per pay period; and

26 \$200 for each subsequent violation per employee per pay period.

27 These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce
28 Development Agency (LWDA) and twenty-five percent (25%) to the affected employees. These
penalties may be stacked separately for each of Defendants violations of the California Labor Code.

1 See e.g. *Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx) 2012 U.S. Dist. LEXIS
2 86975, at *59, fn. 77 (C.D. Cal. June 22, 2012) (holding that although the plaintiff did not seek
3 stacked PAGA penalties, that “PAGA penalties can be ‘stacked,’ i.e., multiple PAGA penalties can
4 be assessed for the same pay period for different Labor Code violations.”); See *Lopez v. Friant &*
5 *Assocs., LLC*, No. A148849, 2017 Cal. App. LEXIS 839, at *1 (Ct. App. Sep. 26, 2017) (“hold[ing]
6 a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does
7 not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section 226(e)(1) and
8 acknowledging that a Plaintiff could recover separately under PAGA for violations of Labor Code
9 §§ 226(a) and 226(e)).

10 140. In addition, to the extent permitted by law, Defendants failed to provide Plaintiff
11 and all aggrieved employees with accurate itemized wage statements in compliance with Labor
12 Code § 226(a). Plaintiff seeks separate PAGA penalties for Defendants’ violations of Labor Code
13 §§ 226(a) and 226(e). *Lopez v. Friant & Assocs., LLC*, 15 Cal.App⁵th 773, 788 (2017); *Bell v.*
14 *Home Depot U.S.A.* (E.D. Cal. Dec. 11, 2017) 2017 U.S. Dist. LEXIS 204493, at *5 [finding after
15 Friant that “[t]o the extent the Court’s Order [granting summary judgment to Home Depot] was
16 ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs’ derivative
17 claim for [PAGA] penalties under section 226(e)...the Court’s Order should not be read to grant
18 summary judgment on Plaintiffs’ claim for PAGA penalties based on violation of section
19 226(a).”].

20 141. For violations of Labor Code § 226(a), Plaintiff seeks the default penalty provided
21 by Labor Code § 226.3. Labor Code § 226.3 provides that “[a]ny employer who violates
22 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty
23 dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000)
24 per employee for each violation in a subsequent citation, for which the employer fails to provide
25 the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section
26 226.” Accordingly, through PAGA and to the extent permitted by law Plaintiff and the Aggrieved
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1 Employees are entitled to recover penalties for violations of Labor Code § 226.3 and seeks default
2 PAGA penalties for each of Defendants' numerous violations of Labor Code § 226(e).

3 142. Further, Plaintiff, as Aggrieved Employees, need not demonstrate or prove that
4 Defendants conduct in refusing to provide accurate and itemized wage statements was knowing,
5 intentional, or willful. *Lopez v. Friant & Assocs., LLC* (2017) 15 Cal. App. 5th 773,
6 788, (“Consistent with the PAGA statutory framework and the plain language and legislative
7 history of section 226(e), we hold a plaintiff seeking civil penalties under PAGA for a violation of
8 section 226(a) does not have to satisfy the “injury” and “knowing and intentional” requirements
9 of Section 226(e)(1).”); see *Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014)
10 (To obtain judgment on a PAGA claim, “all [plaintiff] needs to establish is a violation of section
11 226(a), which she has done, as discussed above.”); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d
12 1222, 1232 (C.D. Cal. 2011) (holding that “for the purposes of recovering PAGA penalties, one
13 need only prove a violation of Section 226(a), and need not establish a Section 226(e) injury.”);
14 *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013)
15 (“Plaintiff do not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under §
16 2699(f) of PAGA.”).

17 143. Labor Code § 210 provides that “in addition to, and entirely independent and apart
18 from, any other penalty provided in this article, every person who fails to pay the wages of each
19 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any
20 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
21 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
22 failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the
23 faulty compensation policies and practices described in detail above, Plaintiffs and the other
24 Aggrieved Employees are entitled to recover penalties under Labor Code § 210 through PAGA.

25 144. Plaintiff has fully and completely exhausted administrative remedies under PAGA
26 prior to proceeding with the PAGA claim. On November 13, 2023, Plaintiff filed a PAGA Notice
27 online with the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified
28 mail to Defendants setting forth the facts and theories of the violations alleged against Defendant,

as prescribed by Labor Code § 2698 *et seq.* As required by PAGA, Plaintiff submitted the \$75.00 filing fee with the LWDA by regular mail. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was and/or will have been received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of the postmark date of the PAGA notice. Plaintiffs are therefore entitled to commence and proceed with a civil action pursuant to Labor Code § 2699.

VII. DEMAND FOR JURY TRIAL

145. Plaintiff hereby demands trial by jury of Plaintiff's and the Class Members' claims against Defendants.

VIII. PRAYER FOR RELIEF

Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed class;
2. For an order appointing Plaintiff as representative of the class;
3. For an order appointing Plaintiff's counsel as counsel for the class;
4. For the failure to pay all regular and minimum wages, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code sections 1194, 1194.2, 1197, and others as may be applicable;
5. For the failure to pay all overtime wages, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code sections 204, 510, 1194, 1198, and others as may be applicable;
6. For the failure to provide rest periods and pay missed rest period premiums, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code section 226.7;
7. For the failure to provide meal periods and pay missed meal period premiums, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code sections 226.7 and 512;
8. For the failure to maintain accurate employment records, penalties pursuant to Labor Code sections 226.3, 1174.5, and others that may be applicable;

- 1 **9.** For the failure to pay wages timely during employment, the unpaid balance of the
2 compensation owed to Plaintiff and the other Class Members and any applicable
3 penalties owed to them pursuant to Labor Code section 210;
- 4 **10.** For the failure to pay all wages earned and unpaid at separation, statutory waiting
5 time penalties pursuant to Labor Code sections 201 through 203, for the Class
6 Members who quit or were fired in an amount equal to their daily wage multiplied
7 by thirty days, as may be proven;
- 8 **11.** For the failure to indemnify all necessary business expenditures, all unreimbursed
9 business expenses, and interest thereon, that are owed, pursuant to Labor Code
10 section 2802, and attorney fees, pursuant to Labor Code section 2802, subdivision
11 (c);
- 12 **12.** For the failure to pay all vacation pay earned and unpaid at separation, monetary
13 damages, interest, attorney fees, costs, and applicable penalties;
- 14 **13.** For the violations of California's Unfair Competition Law,
15 restitution/d disgorgement to Plaintiff and the other Class Members of all money
16 and/or property unlawfully acquired by Defendants by means of any acts or
17 practices declared by this court to be in violation of Business and Professions Code
18 sections 17200 through 17210;
- 19 **14.** For penalties, fees and costs pursuant to Labor Code § 2698 et seq.;
- 20 **15.** Prejudgment interest on all due and unpaid wages pursuant to Labor Code section
21 218.6 and Civil Code sections 3287 and 3289;
- 22 **16.** On all causes of action for which attorneys' fees may be available, for attorneys'
23 fees and costs as provided by Labor Code sections 218.5, 226, Code of Civil
24 Procedure section 1021.5, and others as may be applicable;
- 25 **17.** For an order enjoining Defendants, and each of them, and their agents, servants,
26 and employees, and all persons acting under, in concert with, or for them, from
27 acting in derogation of any rights or duties adumbrated in this complaint; and
28 **18.** For such other and further relief, the court may deem just and proper.

1 Dated: June 4, 2025

SULLIVAN EMPLOYMENT LAW P.C.

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6 **MARTIN SULLIVAN**

7 Attorney for Plaintiff and the Putative Class
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