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

CHRISTIAN TELLEZ, an individual, on behalf  
of himself and all others similarly situated, and  
on behalf of the State of California and other  
aggrieved employees,

Plaintiff,

v.

TFORCE LOGISTICS WEST, LLC, a  
Delaware Limited Liability Company; UNITED  
LOGISTIC SERVICES, INC., a California  
corporation; SUBCONTRACTING  
CONCEPTS (CT), LLC, a Delaware  
corporation; and DOES 1 to 50, inclusive,

Defendants.

Case No.: 26STCV22827

**FIRST AMENDED CLASS AND  
REPRESENTATIVE ACTION  
COMPLAINT FOR DAMAGES AND  
CIVIL PENALTIES**

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. Violations of California's Unfair  
Competition Law (Bus. & Prof. Code,  
§§ 17200–17210), and

11. Civil Penalties Under the Private Attorneys General Act (Lab. Code, § 2698, *et seq.*)

**DEMAND FOR JURY TRIAL**

Plaintiff CHRISTIAN TELLEZ ("Plaintiff"), on behalf of himself and all other similarly situated employees within the State of California, and on behalf of the State of California and other aggrieved employees,, complains and alleges of defendants TForce Logistics West, LLC, United Logistic Services, Inc., Subcontracting Concepts (CT), LLC; and DOES 1 to 50 (collectively, "Defendants"), and each of them, as follows:

**INTRODUCTION**

1. This is a class and representative action complaint brought pursuant to California Code of Civil Procedure section 382 and the Private Attorneys General Act of 2004, Labor Code section 2698, *et seq.* ("PAGA").

2. The "Class Period" as used herein, is defined as the period from four years prior to the filing of this action and continuing into the present and ongoing. Defendants' violations of California's laws as described more fully below have been ongoing throughout the Class Period and are still ongoing.

3. Plaintiff brings this class action on behalf of himself and the following class: all individuals who worked for Defendants in California during the Class Period (the "Class Members").

4. Plaintiff also brings this action as a representative action under PAGA, on behalf of himself, the State of California, and the following group of aggrieved employees: all individuals who worked for Defendant(s) in California, from one year prior to the mailing of the PAGA notice described below through the date of trial (the "Aggrieved Employees"). The period from July 21, 2025 through the date of trial is referred to herein as the "PAGA Period."

5. Plaintiff brings this action on behalf of himself and the Class Members, 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,
- I. Failure to furnish accurate itemized wage statements,
- J. Violations of California's Unfair Competition Law ("UCL") (Bus. & Prof.

Code, §§ 17200–17210).

6. Plaintiff brings this action on behalf of himself, the State of California, and the Aggrieved Employees, as a representative action, against Defendants for: Civil penalties under PAGA (Lab. Code, § 2698, *et seq.*) for the violations described in items A through I above and for willful misclassification of employees as independent contractors in violation of Labor Code section 226.8. Plaintiff brings the First through Tenth Causes of Action individually and as a class action on behalf of himself and the Class Members. Plaintiff brings the Eleventh Cause of Action as a representative action under PAGA to recover civil penalties owed to Plaintiff, the State of California, and the Aggrieved Employees.

7. Plaintiff is informed and believes and thereon alleges that the California Industrial Welfare Commission ("IWC") Wage Order applicable to the facts of this case is IWC Wage Order 4-2001 (the "Applicable Wage Order") and possibly others that may be applicable. (Cal. Code of Regs., tit. 8, § 11040.) Plaintiff reserves the right to amend or modify the definition of "Applicable Wage Order" with greater specificity or add additional IWC Wage Orders if additional applicable wage orders are discovered in litigation.

### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction over all causes of action asserted herein 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. Plaintiff's  
4 PAGA claim is brought pursuant to Labor Code section 2699, subdivision (a), which authorizes  
5 an aggrieved employee to recover civil penalties in a civil action.

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

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

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

24 **PAGA STANDING, NOTICE, AND EXHAUSTION OF ADMINISTRATIVE**

25 **REMEDIES**

26 12. Plaintiff is, and at all relevant times was, an "aggrieved employee" within the  
27 meaning of Labor Code section 2699, subdivision (c), in that Plaintiff was employed by  
28 Defendants in California from approximately March 6, 2026 through May 8, 2026, and

1 Defendants committed each of the Labor Code violations alleged herein against him during the  
2 PAGA Period.

3 13. On July 21, 2026, Plaintiff, through counsel, provided written notice by online  
4 electronic submission to the Labor and Workforce Development Agency ("LWDA"), and by  
5 U.S. Certified Mail, Return Receipt Requested, to Defendants TForce Logistics West, LLC,  
6 United Logistic Services, Inc., and Subcontracting Concepts (CT), LLC, and to their respective  
7 agents for service of process, of the specific provisions of the California Labor Code alleged to  
8 have been violated, together with the facts and theories supporting the alleged violations, in  
9 compliance with Labor Code section 2699.3, subdivision (a)(1) (the "PAGA Notice").

10 14. The PAGA Notice identified the Aggrieved Employees as all individuals who  
11 worked for Defendant(s) in California from one year prior to the mailing of the notice through  
12 the date of trial, and gave notice that Defendants violated Labor Code sections 201, 202, 203,  
13 204, 210, 226, 226.3, 226.7, 226.8, 510, 512, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1,  
14 1198, 1198.5, 1199, 2775, 2802, and 2804, and IWC Wage Order 4-2001 (Cal. Code of Regs.,  
15 tit. 8, § 11040), and others that may be applicable, by, among other things: willfully engaging  
16 in a pattern and practice of misclassifying employees as independent contractors; failing to pay  
17 minimum wages for all hours worked; failing to pay all overtime wages earned; failing to  
18 provide lawful rest periods and pay missed rest period premiums; failing to provide lawful meal  
19 periods and pay missed meal period premiums; failing to maintain accurate records; failing to  
20 reimburse all necessary business expenses; failing to provide accurate and complete wage  
21 statements; failing to pay all wages in full and on time during employment; and failing to pay  
22 all wages due upon termination.

23 15. More than sixty-five (65) calendar days have passed since the postmark date of  
24 the PAGA Notice, and the LWDA has not provided notice of its intent to investigate the alleged  
25 violations within that period. Accordingly, pursuant to Labor Code section 2699.3, subdivision  
26 (a)(2)(A), Plaintiff has exhausted his administrative remedies and may commence this civil  
27 action to recover civil penalties under Labor Code section 2699 for the violations described in  
28 this First Amended Complaint.

## **THE PARTIES**

### **A. PLAINTIFF**

16. At all relevant times, Plaintiff, who is over the age of 18, was and currently is a citizen of California residing in the State of California. Defendants engaged Plaintiff as an independent contractor in the County of Los Angeles, but should have been classified as a non-exempt, hourly employee. Plaintiff is an "aggrieved employee" within the meaning of Labor Code section 2699, subdivision (c), as alleged above.

17. Plaintiff brings this action on behalf of himself and the following class pursuant to section 382 of the Code of Civil Procedure as follows: All individuals who worked for Defendants in California during the Class Period (the "Class Members"). Plaintiff also brings the Eleventh Cause of Action on behalf of himself, the State of California, and the Aggrieved Employees, as defined above, pursuant to PAGA.

18. The Class Members and the Aggrieved Employees, at all times pertinent hereto, are or were employees of Defendants during the relevant statutory period, regardless of the independent contractor label Defendants applied to them.

### **B. DEFENDANTS**

19. Plaintiff is informed and believes and thereon alleges that Defendants were authorized to and doing business in Los Angeles County and is and/or was the legal employer of Plaintiff, the Class Members, and the Aggrieved Employees during the applicable statutory periods. Plaintiff, the Class Members, and the Aggrieved Employees were, and are, subject to Defendants' policies and/or practices complained of herein and have been deprived of the rights guaranteed to them by: California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 226.8, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2775, 2802, 2804, and others that may be applicable; California Business and Professions Code sections 17200 through 17210 ("UCL"); and the Applicable Wage Order (Cal. Code of Regs., tit. 8, § 11040).

20. Plaintiff is informed and believes, and based thereon alleges, that during the Class Period and the PAGA Period, Defendants did (and continue to do) business in the State of

1 California County of Los Angeles and the Class Members, and the Aggrieved Employees to be  
2 subject to the unlawful employment practices, wrongs, injuries, and damages complained of  
3 herein.

4 21. Plaintiff does not know the true names or capacities, whether individual, partner,  
5 or corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said  
6 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to  
7 amend this complaint when such true names and capacities are discovered. Plaintiff is informed,  
8 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,  
9 partners, or corporate, were responsible in some manner for the acts and omissions alleged  
10 herein, and proximately caused Plaintiff, the Class Members, and the Aggrieved Employees to  
11 be subject to the unlawful employment practices, wrongs, injuries, and damages complained of  
12 herein.

13 22. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned  
14 herein, Defendants were and/or are the employers of Plaintiff, the Class Members, and the  
15 Aggrieved Employees. At all times herein mentioned, each of said Defendants participated in  
16 the doing of the acts hereinafter alleged to have been done by the named Defendants.  
17 Furthermore, the Defendants, and each of them, were the agents, representatives, and employees  
18 of each and every one of the other Defendants, and at all times herein mentioned were acting  
19 within the course and scope of said agency, representation, and employment. Defendants, and  
20 each of them, approved of, condoned, or otherwise ratified every one of the acts or omissions  
21 complained of herein.

22 23. Plaintiff is further informed, and believes, and thereon alleges, that at all times  
23 mentioned herein, that Defendants, and each of them, are the alter egos of one another and that  
24 there existed and now exists a unity of interest and ownership between them such that the  
25 individuality and separateness of each of them has ceased. Plaintiff is further informed, and  
26 believes, and thereon alleges, that at all times mentioned herein, that Defendants, and each of  
27 them, have been and now are mere shells and naked frameworks that their principal uses for the  
28 conduct of that Defendant's own business, property, and affairs, for which Defendants, and each

1 of them, have concealed and misrepresented their identities as the entities responsible for their  
2 ownership, management, and financial interests.

3 24. Plaintiff is further informed, and believes, and thereon alleges, that at all times  
4 mentioned herein, Defendants, and each of them, were members of and engaged in a joint  
5 venture, partnership, and common enterprise, and acting within the course and scope of and in  
6 pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff is  
7 informed, and believes, and thereon alleges, that all Defendants were joint employers for all  
8 purposes of Plaintiff, the Class Members, and the Aggrieved Employees.

### 9 **GENERAL ALLEGATIONS**

10 25. Plaintiff, the Class Members, and the Aggrieved Employees are, and were at all  
11 relevant times, employed by the Defendants within the State of California.

12 26. The Class Members and the Aggrieved Employees are, and were, at all relevant  
13 times, non-exempt employees for the purposes of minimum wages, overtime, rest breaks, meal  
14 periods, and the other claims alleged in this complaint.

15 27. Specifically, Plaintiff was employed by Defendants from March 6, 2026 through  
16 May 8, 2026, working as a delivery driver and warehouse worker for Defendants. Defendants  
17 instructed Plaintiff, the Class Members, and the Aggrieved Employees to set up corporations or  
18 sole proprietorships so they could classify them as independent contractors. However,  
19 Defendants controlled all aspects of Plaintiff, the Class Members' the Aggrieved Employees'  
20 jobs including their working hours and how to delivery the items.

#### 21 **A. WILLFUL MISCLASSIFICATION**

22 28. Labor Code section 2775, subdivision (b), provides the test for determining  
23 whether an individual performing work for another is an independent contractor or an employee.  
24 It states as follows:

25 “[A] person providing labor or services for remuneration shall be  
26 considered an employee rather than an independent contractor  
27 unless the hiring entity demonstrates that all of the following  
28 conditions are satisfied:

1           “(A) The person is free from the control and direction of the hiring  
2           entity in connection with the performance of the work, both  
3           under the contract for the performance of the work and in  
4           fact.

5           “(B) The person performs work that is outside the usual course of  
6           the hiring entity’s business.

7           “(C) The person is customarily engaged in an independently  
8           established trade, occupation, or business of the same nature  
9           as that involved in the work performed.”

10           29. This standard is commonly referred to as the “ABC Test.” Under the ABC Test,  
11           the alleged employer, rather than the worker, has the burden of establishing that the worker is  
12           an independent contractor and not intended to be included within the relevant wage order’s  
13           coverage. “The focus is not on the label attached to a worker’s position, but on how that  
14           individual’s job may reasonably be viewed.” (*Gonzales v. San Gabriel Transit, Inc.*, 40  
15           Cal.App.5th 1131, 1154–1155 (2019).) Further, the alleged employer must establish that the  
16           worker meets all three factors of the ABC Test or falls within an exception to the ABC Test. (*Id.*  
17           at p. 1154 [“The ABC test is conjunctive, and the hiring entity’s failure to establish any of the  
18           following three factors precludes a finding that the worker is an independent contractor . . . .”].)  
19           Otherwise, Labor Code section 2775’s default presumption applies and the worker must be  
20           treated as an employee. (See *Dynamex Operations W. v. Superior Court*, 4 Cal.5th 903, 955  
21           (2018) [“The ABC test presumptively considers all workers to be employees, and permits  
22           workers to be classified as independent contractors only if the hiring business demonstrates that  
23           the worker in question satisfies each of three conditions . . . .”].)

24           30. Here, at all times during the Class Period and the PAGA Period, Defendants  
25           treated the Class Members and the Aggrieved Employees as independent contractors despite the  
26           fact that Defendants failed to meet any of the prongs of the ABC Test, let alone all three. First,  
27           Defendants retained the right to control the manner and method of how the Class Members and  
28           the Aggrieved Employees performed their job duties, and Defendants retained all necessary

1 control over the Class Members and the Aggrieved Employees during their employment. Among  
2 other things, the Class Members and the Aggrieved Employees were required to follow detailed  
3 requirements imposed by Defendants governing the performance of their job. Further,  
4 Defendants set their compensation.

5 31. Second, the job duties performed by the Class Members and the Aggrieved  
6 Employees fell within Defendants' usual course of business. Specifically, the roles performed  
7 by the Class Members and the Aggrieved Employees are clearly comparable to those of  
8 Defendants' employees whose services are provided within the usual course of Defendants'  
9 business. Thus, the work of the Class Members and the Aggrieved Employees was not merely  
10 incidental to Defendants' business, but rather, was an integral and ordinary part of that business.

11 32. Finally, the Class Members and the Aggrieved Employees were not engaged in an  
12 independently established trade, occupation, or business of the same nature as the work  
13 performed for Defendants. They did not, for example, take any of the usual steps to establish  
14 and promote their businesses. Nor did they, through incorporation, licensure, advertisements, or  
15 routine offerings to provide services to the public or to a number of potential customers  
16 independently choose the burdens and benefits of self-employment by engaging in an  
17 independently established trade, occupation, or business. To the extent any Class Member or  
18 Aggrieved Employee formed a corporation or sole proprietorship, he or she did so at Defendants'  
19 instruction, in order to facilitate Defendants' classification of the worker as an independent  
20 contractor, and not as an independent choice to engage in self-employment. Critically, this last  
21 prong of the ABC Test requires that Defendants show the Class Members and the Aggrieved  
22 Employees "actually . . . engaged in an independent business, not merely that [they] could be."  
23 (*Gonzales v. San Gabriel Transit, Inc.*, 40 Cal. App. 5th 1131, 1155 (2019) (emphasis in  
24 original).) That simply did not happen here: the Class Members and the Aggrieved Employees  
25 did not actually engage in independent businesses. "A company that labels as independent  
26 contractors a class of workers who are not engaged in an independently established business in  
27 order to enable the company to obtain the economic advantages that flow from avoiding the  
28 financial obligations that a wage order imposes on employers unquestionably violates the

1 fundamental purposes of the wage order.” (*Dynamex Operations W. v. Superior Court*, 4 Cal.5th  
2 903, 962 (2018).) Here, Defendants violated California law by attempting to do so.

3 33. Labor Code section 226.8 provides, in pertinent part, as follows:

4 “(a) It is unlawful for any person or employer to engage in any of  
5 the following activities:

6 “(1) Willful misclassification of an individual as an independent  
7 contractor.

8 “(2) Charging an individual who has been willfully misclassified as  
9 an independent contractor a fee, or making any deductions from  
10 compensation, for any purpose, including for goods, materials,  
11 space rental, services, government licenses, repairs, equipment  
12 maintenance, or fines arising from the individual's employment  
13 where any of the acts described in this paragraph would have  
14 violated the law if the individual had not been misclassified.

15 “(b) If the Labor and Workforce Development Agency or a court  
16 issues a determination that a person or employer has engaged in any  
17 of the enumerated violations of subdivision (a), the person or  
18 employer shall be subject to a civil penalty of not less than five  
19 thousand dollars (\$5,000) and not more than fifteen thousand dollars  
20 (\$15,000) for each violation, in addition to any other penalties or  
21 fines permitted by law.

22 “(c) If the Labor and Workforce Development Agency or a court  
23 issues a determination that a person or employer has engaged in any  
24 of the enumerated violations of subdivision (a) and the person or  
25 employer has engaged in or is engaging in a pattern or practice of  
26 these violations, the person or employer shall be subject to a civil  
27 penalty of not less than ten thousand dollars (\$10,000) and not more  
28 than twenty-five thousand dollars (\$25,000) for each violation, in

1 addition to any other penalties or fines permitted by law.”

2 34. As explained above, Defendants’ treatment of the Class Members and the  
3 Aggrieved Employees cannot meet any part of the ABC Test and Defendants knew it.  
4 Defendants thus intentionally and willfully misclassified the Class Members as independent  
5 contractors in violation of Labor Code section 226.8, subdivision (a). Moreover, this treatment  
6 was not merely occasional, but reflected Defendants’ pattern and practice of willfully  
7 misclassifying Defendants’ employees as independent contractors. Plaintiff, on behalf of  
8 himself, the State of California, and the Aggrieved Employees, seeks civil penalties for these  
9 violations under Labor Code section 226.8, subdivisions (b) and (c), pursuant to PAGA, as set  
10 forth in the Eleventh Cause of Action.

11 **B. MINIMUM WAGE VIOLATIONS**

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

19 36. These minimum wage standards apply to each hour that employees work.  
20 Therefore, an employer’s failure to pay for any particular time worked by an employee is  
21 unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results  
22 in an average hourly wage above minimum wage. (*Armenta v. Osmose, Inc.*, 135 Cal.App.4th  
23 314, 324 (2005).)

24 37. Here, Defendants failed to fully conform their pay practices to the requirements  
25 of the law during the relevant statutory periods. The Class Members and the Aggrieved  
26 Employees were not compensated for all hours worked including, but not limited to, all hours  
27 they were subject to the control of Defendants and/or suffered or permitted to work under the  
28 California Labor Code and the Applicable Wage Order. Class Members and the Aggrieved

1 Employees were compensated a flat amount rather than on an hourly basis. Among other  
2 violations, the Class Members were subject to the control of Defendants while off-the-clock and  
3 did not receive minimum wage for each hour worked.

4 38. Additionally, the Class Members and the Aggrieved Employees were not paid all  
5 wages for all hours worked due to Defendants' uniform payroll policies and practices that  
6 unfairly rounded employees' wages to the detriment of the Class Members and the Aggrieved  
7 Employees. This rounding policy routinely failed to capture the entirety of the hours the Class  
8 Members and the Aggrieved Employees worked and was structured in a way that favored  
9 underpayment. (See *See's Candy Shops, Inc. v. Superior Court*, 210 Cal.App.4th 889, 907  
10 (2012).) As a result, the Class Members and the Aggrieved Employees suffered periodic  
11 shortages in the hours for which they were compensated. This uncompensated time violated  
12 California's requirement that employees be compensated for all hours worked. As a result of  
13 this practice, the Class Members were not compensated their minimum wages for all hours  
14 worked.

15 39. Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide  
16 that an employer who has failed to pay its employees the legal minimum wage is liable to pay  
17 those employees the unpaid wages as well as liquidated damages in an amount equal to the  
18 wages due and interest thereon.

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

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

28 (1) "For any initial violation that is intentionally committed, one hundred

dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid.”

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

42. As set forth above, Defendants failed to fully compensate the Class Members and the Aggrieved Employees for all minimum wages. Accordingly, the Class Members are entitled to recover the unpaid minimum wages and liquidated damages under Labor Code sections 1194 and 1194.2. In addition, Plaintiff, on behalf of himself, the State of California, and the Aggrieved Employees, seeks civil penalties for these violations under Labor Code section 1197.1 pursuant to PAGA, as set forth in the Eleventh Cause of Action.

43. Based upon these same factual allegations, Defendants' conduct also violates Labor Code section 1199, and Plaintiff, on behalf of himself, the State of California, and the Aggrieved Employees, seeks civil penalties for these violations pursuant to PAGA, as set forth in the Eleventh Cause of Action.

### C. OVERTIME VIOLATIONS

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

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

1 Wage Order.

2 46. Here, Defendants violated their duty to accurately and completely compensate the  
3 Class Members and the Aggrieved Employees for all overtime worked. The Class Members and  
4 the Aggrieved Employees periodically worked hours that entitled them to overtime  
5 compensation under the law but were not fully compensated for those hours.

6 47. Defendants also had a policy and practice of denying the Class Members and the  
7 Aggrieved Employees their meal breaks but nevertheless deducting meal break time from the  
8 Class Members and the Aggrieved Employees' pay. As a result, the Class Members and the  
9 Aggrieved Employees' on-the-clock hours were unlawfully reduced below what was actually  
10 worked and, by extension, their overtime hours were also reduced below what was actually  
11 worked. The Class Members and the Aggrieved Employees were thus periodically shorted the  
12 full amount of overtime pay they were lawfully owed.

13 48. Moreover, during the relevant statutory periods, Defendants had a policy and  
14 practice of failing to pay overtime wages at the proper rate when it actually paid overtime.  
15 Specifically, when Defendants paid overtime wages to the Class Members and the Aggrieved  
16 Employees, Defendants failed to include all compensation when calculating the regular rate of  
17 pay used in overtime calculations and when paying overtime.

18 49. For instance, the Class Members and the Aggrieved Employees would often  
19 receive, along with their hourly rates of pay for their working hours, additional remuneration  
20 and/or non-discretionary bonus pay. Defendants, however, calculated the regular rate of pay for  
21 the Class Members and the Aggrieved Employees without factoring rate of pay all other non-  
22 hourly pay earnings received during the pay period. As a result, the Class Members and the  
23 Aggrieved Employees were underpaid overtime wages when they worked in excess of eight  
24 hours in any workday and/or forty hours in a workweek when such additional forms of  
25 remuneration were earned. By its practice of periodically requiring the Class Members and the  
26 Aggrieved Employees to work in excess of eight hours in a workday and/or forty hours in a  
27 workweek without compensating them at the rate of one and one-half (1½) times their regular  
28 rate of pay, Defendants willfully violated the provisions of Labor Code sections 510, 1194, and

1 1199.

2 50. These actions were and are in clear violation of California's overtime laws as set  
3 forth in Labor Code sections 510, 1194, 1198, 1199, and the Applicable Wage Order. (Cal. Code  
4 of Regs., tit. 8, §11040.) As a result of Defendants' faulty policies and practices, the Class  
5 Members and the Aggrieved Employees were not compensated for all hours worked or paid  
6 accurate overtime compensation.

7 51. Plaintiff, on behalf of himself, the State of California, and the Aggrieved  
8 Employees, seeks civil penalties for these violations of Labor Code sections 510 and 1198  
9 pursuant to PAGA, including under Labor Code section 2699, subdivisions (a) and (f), as set  
10 forth in the Eleventh Cause of Action.

11 **D. REST BREAK VIOLATIONS**

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

18 53. Likewise, Labor Code section 226.7 provides that "[a]n employer shall not require  
19 an employee to work during a meal or rest or recovery period mandated pursuant to an applicable  
20 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission..."  
21 (Lab. Code, §226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay  
22 their employees one additional hour of pay at the employee's regular rate for each workday that  
23 a "meal or rest or recovery period is not provided." (Lab. Code, § 226.7, subd. (c).) The "regular  
24 rate" for these purposes must factor in all nondiscretionary payments for work performed by the  
25 employee, including non-discretionary bonuses, commissions, and other forms of wage  
26 payments exceeding the employees' base hourly rate. (Ferra v. Loews Hollywood Hotel, LLC,  
27 11 Cal.5th 858, 878 (2021).) Thus, the Wage Orders set when and for how long the rest period  
28 must take place and the Labor Code establishes that violations of the IWC Wage Orders are

1 unlawful and sets forth the premium pay employer must pay their employees when employers  
2 fail to provide rest periods.

3 54. The California Supreme Court has held that, during required rest periods,  
4 “employers must relieve their employees of all duties and relinquish any control over how  
5 employees spend their break time.” (*Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257,  
6 260 (2016).) Relinquishing control over employees during rest periods requires that employees  
7 be “free to leave the employer’s premises” and be “permitted to attend to personal business.”  
8 (*Id.* at p. 275.) The Brinker Court explained in the context of rest breaks that employer liability  
9 attaches from adopting an unlawful policy:

10 “An employer is required to authorize and permit the amount of rest  
11 break time called for under the wage order for its industry. If it does  
12 not—if, for example, it adopts a uniform policy authorizing and  
13 permitting only one rest break for employees working a seven-hour  
14 shift when two are required—it has violated the wage order and is  
15 liable.” (*Brinker Rest. Corp. v. Superior Court*, 53 Cal.4th 1004,  
16 1033 (2012).)

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

1 a third mandated rest period. As a result, the Class Members and the Aggrieved Employees were  
2 periodically unable to take compliant rest periods.

3 56. In such cases where Defendants did not offer the Class Members and the  
4 Aggrieved Employees the opportunity to receive a compliant off-duty rest period, “the court  
5 may not conclude employees voluntarily chose to skip those breaks.” (*Alberts v. Aurora*  
6 *Behavioral Health Care*, 241 Cal.App.4th 388, 410 (2015) [“If an employer fails to provide  
7 legally compliant meal or rest breaks, the court may not conclude employees voluntarily chose  
8 to skip those breaks.”]; *Brinker, supra*, 53 Cal.4th at 1033 [“No issue of waiver ever arises for  
9 a rest break that was required by law but never authorized; if a break is not authorized, an  
10 employee has no opportunity to decline to take it.”].)

11 57. In addition to failing to authorize and permit compliant rest periods, the Class  
12 Members and the Aggrieved Employees were not compensated with one hour’s worth of pay at  
13 their regular rate of compensation when they were not provided with a compliant rest period in  
14 accordance with Labor Code section 226.7, subdivision (c). Thus, Defendants have violated  
15 Labor Code section 226.7 and the Applicable Wage Order.

16 58. Based on the foregoing, Plaintiff seeks to recover, on behalf of himself and other  
17 non-exempt employees, rest period premiums and penalties.

18 59. Plaintiff, on behalf of himself, the State of California, and the Aggrieved  
19 Employees, seeks civil penalties for these violations of Labor Code section 226.7 and the  
20 Applicable Wage Order pursuant to PAGA, including under Labor Code section 2699,  
21 subdivisions (a) and (f), as set forth in the Eleventh Cause of Action.

#### 22 **E. MEAL BREAK VIOLATIONS**

23 60. Labor Code section 512 and the Applicable Wage Order require employers to  
24 provide employees with a thirty-minute uninterrupted and duty-free meal period within the first  
25 five hours of work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee  
26 for a work period of more than five hours per day without providing the employee with a meal  
27 period of not less than 30 minutes . . . .”]; Cal. Code of Regs., tit. 8, § 11040 [“No employer  
28 shall employ any person for a work period of more than five (5) hours without a meal period of

not less than 30 minutes . . .”].) Additionally, an employee who works more than ten hours per day is entitled to receive a second thirty-minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes . . .”].)

61. “An on-duty meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal break.” (*Lubin v. The Wackenhut Corp.*, 5 Cal.App.5th 926, 932 (2016).) The written agreement must include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the California Department of Industrial Relations, Division of Labor Standards Enforcement (“DLSE”) and courts have “found that the nature of the work exception applies: (1) where the work has some particular external force that requires the employee to be on duty at all times, and (2) where the employee is the sole employee of a particular employer.” (*Id.* at p. 945, internal quotation marks omitted; *Abdullah v. U.S. Security Associates, Inc.*, 731 F.3d 952, 958–959 (9th Cir. 2013).) “[I]t is the employer’s obligation to determine whether the nature of the work prevents an employee from being relieved before requiring an employee to take an on-duty meal period.” (*Lubin, supra*, 5 Cal.App.5th at 946.)

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

63. As with rest breaks, meal breaks must be duty-free. (*Brinker, supra*, 53 Cal.4th at 1035 [“The IWC’s wage orders have long made a meal period’s duty-free nature its defining characteristic.”].) Relinquishing control over employees during meal periods requires that employees be “free to leave the employer’s premises” and be “permitted to attend to personal business.” (*Augustus, supra*, 2 Cal.5th at 275.) Under Labor Code section 512, if an employer

1 maintains a uniform policy that does not authorize and permit the amount of meal time called  
2 for under the law (as specified in the Labor Code and/or applicable IWC Wage Order), “it has  
3 violated the wage order and is liable.” (*Brinker, supra*, 53 Cal.4th at 1033.)

4 64. During the applicable statutory periods here, the Class Members and the  
5 Aggrieved Employees were periodically denied legally-compliant and timely off-duty meal  
6 periods of at least thirty minutes due to Defendants’ unlawful meal period policy and practices.  
7 As a result of Defendants’ uniform meal period policies and practices, the Class Members and  
8 the Aggrieved Employees were often not permitted to take compliant first meal periods before  
9 the end of the fifth hour of work. The Class Members and the Aggrieved Employees were also  
10 periodically not permitted to take second meal periods for shifts in excess of ten hours.  
11 Defendants thus violated Labor Code section 512 and the Applicable Wage Order by failing to  
12 advise, authorize, or permit the Class Members and the Aggrieved Employees to receive thirty-  
13 minute, off-duty meal periods within the first five hours of their shifts.

14 65. Labor Code section 226.7 provides that “[a]n employer shall not require an  
15 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.” (Lab.  
17 Code, § 226.7, subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage  
18 Order further obligate employers to pay employees one additional hour of pay at the employee’s  
19 regular compensation for each workday that the meal period is not provided. (Lab. Code, §  
20 226.7, subd. (c); Cal. Code of Regs., tit. 8, § 11040 [“If an employer fails to provide an employee  
21 a meal period in accordance with the applicable provisions of this order, the employer shall pay  
22 the employee one (1) hour of pay at the employee’s regular rate of compensation for each  
23 workday that the meal period is not provided.”].) The “regular rate” for these purposes must  
24 factor in all nondiscretionary payments for work performed by the employee, including non-  
25 discretionary bonuses, commissions, and other forms of wage payments exceeding the  
26 employees’ base hourly rate. (*Ferra, supra*, 11 Cal.5th at 878.)

27 66. Accordingly, for each day that the Class Members and the Aggrieved Employees  
28 did not receive compliant meal periods, they were and are entitled to receive meal period

1 premiums pursuant to Labor Code section 226.7 and the Applicable Wage Order. Defendants,  
2 however, failed to pay the Class Members and the Aggrieved Employees applicable meal period  
3 premiums for many workdays that the employees did not receive a compliant meal period. Thus,  
4 Defendants have violated Labor Code section 226.7 and the Applicable Wage Order.

5 67. Based on the foregoing, Plaintiff seeks to recover, on behalf of himself, the Class  
6 Members, and the Aggrieved Employees,, meal period premiums and penalties.

7 68. Plaintiff, on behalf of himself, the State of California, and the Aggrieved  
8 Employees, seeks civil penalties for these violations of Labor Code sections 226.7 and 512 and  
9 the Applicable Wage Order pursuant to PAGA, including under Labor Code section 2699,  
10 subdivisions (a) and (f), as set forth in the Eleventh Cause of Action.

11 **F. UNTIMELY WAGES DURING EMPLOYMENT**

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

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

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

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

24 71. Due to Defendants’ failure to pay the Class Members and the Aggrieved  
25 Employees the wages described above, along with rest and meal break premiums, Defendants  
26 failed to timely pay the Class Members and the Aggrieved Employees within seven calendar  
27 days following the close of payroll in accordance with Labor Code section 204 on a regular and  
28 consistent basis. (See *Parson v. Golden State FC, LLC*, No. 16-CV-00405-JST 2016 WL

1 1734010, at p. \*3–5 (N.D. Cal., May 2, 2016) [finding that a failure to pay rest period premiums  
2 can support claims under Labor Code sections 203 and 204].)

3 72. Plaintiff, on behalf of himself, the State of California, and the Aggrieved  
4 Employees, seeks civil penalties for these violations of Labor Code section 204 pursuant to  
5 PAGA, including under Labor Code sections 210 and 2699, subdivisions (a) and (f), as set forth  
6 in the Eleventh Cause of Action.

7 **G. UNTIMELY WAGES AT SEPARATION**

8 73. Labor Code section 203 provides “if an employer willfully fails to pay . . . any  
9 wages of an employee who is discharged or who quits, the wages of the employee shall continue  
10 as a penalty” for up to thirty days. (Lab. Code § 203; *Mamika v. Barca*, 68 Cal.App.4th 487,  
11 492 (1998).) As a result of Defendants’ failure to pay the Class Members and the Aggrieved  
12 Employees for the wages described above, along with rest and meal break premiums,  
13 Defendants violated and continued to violate Labor Code section 203.

14 74. Due to Defendants’ faulty pay policies, those Class Members and the Aggrieved  
15 Employees whose employment with Defendants concluded were not compensated for each and  
16 every hour worked at the appropriate rate. Defendants have failed to pay formerly employed  
17 Class Members and the Aggrieved Employees whose sums were certain at the time of  
18 termination within at least seventy-two hours of their resignation and have failed to pay those  
19 sums for thirty days thereafter.

20 75. Plaintiff, on behalf of himself, the State of California, and the Aggrieved  
21 Employees, seeks civil penalties for violations of Labor Code sections 201 and 202 pursuant to  
22 PAGA, as set forth in the Eleventh Cause of Action.

23 **H. FAILURE TO REIMBURSE BUSINESS EXPENSES**

24 76. At all relevant times herein, Defendants were subject to Labor Code section 2802,  
25 which states that “an employer shall indemnify his or her employees for all necessary  
26 expenditures or losses incurred by the employee in direct consequence of the discharge of his or  
27 her duties, or of his or her obedience to the directions of the employer.” The purpose of this  
28 section is to “prevent employers from passing along their operating expenses onto their

employees.” (*Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562 (2007).)

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

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

79. Here, Defendants failed to fully reimburse the Class Members and the Aggrieved Employees for necessary expenditures incurred as a direct consequence and requirement of performing their job duties, including the costs associated with their personal cell phone and mileage they required to perform their work. Consequently, Defendants failed to comply with Labor Code section 2802.

80. Plaintiff, on behalf of himself, the State of California, and the Aggrieved Employees, seeks civil penalties for these violations of Labor Code sections 2802 and 2804 pursuant to PAGA, including under Labor Code section 2699, subdivisions (a) and (f), as set forth in the Eleventh Cause of Action.

#### **I. WAGE STATEMENT VIOLATIONS**

81. Defendants also failed to provide the Class Members and the Aggrieved Employees with accurate itemized wage statements in accordance with Labor Code sections

226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing, showing:

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

82. Due to Defendants' failure to pay the Class Members and the Aggrieved Employees properly as described above, the wage statements issued do not indicate the correct amount of gross wages earned, total hours worked or the net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Thus, Defendants have violated Labor Code section 226, subdivisions (a)(1), (2), (5), and (9).

83. To the extent Defendants issued no itemized wage statements at all to Plaintiff, the Class Members, and the Aggrieved Employees because Defendants classified them as independent contractors, Defendants failed to furnish any wage statement as required by Labor Code section 226, subdivision (a).

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

85. Plaintiff, on behalf of himself, the State of California, and the Aggrieved Employees, seeks civil penalties for these violations under Labor Code section 226.3 pursuant to PAGA, as set forth in the Eleventh Cause of Action.

#### **J. RECORDKEEPING VIOLATIONS**

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

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

87. Likewise, Labor Code section 1174, subdivision (d), requires every employer, including Defendants, to:

1 “Keep, at a central location in the state or at the plants or  
2 establishments at which employees are employed, payroll records  
3 showing the hours worked daily by and the wages paid to, and the  
4 number of piece-rate units earned by and any applicable piece rate  
5 paid to, employees employed at the respective plants or  
6 establishments. These records shall be kept in accordance with rules  
7 established for this purpose by the commission, but in any case, shall  
8 be kept on file for not less than three years. An employer shall not  
9 prohibit an employee from maintaining a personal record of hours  
10 worked, or, if paid on a piece-rate basis piece-rate units earned.”  
11 (Lab. Code, § 1174(d)).

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

19 89. The failure to accurately track hours worked also resulted in a failure of  
20 Defendants to keep a record of all “payroll records showing the hours worked daily by”  
21 Defendants’ employees, including Plaintiff and the Class Members and the Aggrieved  
22 Employees with, in violation of Labor Code section 1174, subdivision (d).

23 90. Plaintiff, on behalf of himself, the State of California, and the Aggrieved  
24 Employees, seeks civil penalties for these violations of Labor Code section 1174, subdivision  
25 (d), pursuant to PAGA, including under Labor Code sections 1174.5 and 2699, subdivisions (a)  
26 and (f), as set forth in the Eleventh Cause of Action.

**CLASS ACTION ALLEGATIONS**

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

92. Numerosity/Ascertainability: The Class Members are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the class is unknown to Plaintiff at this time; however, it is estimated that the number of Class Members is greater than 100 individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

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

- A. Whether Defendants' pay policies/practices resulted in a failure to pay the Class Members for all hours worked, including all minimum wages.
- B. Whether Defendants' pay policies/practices resulted in a failure to pay the Class Members for all required overtime wages at the Class Members' regular rate of pay;
- C. Whether Defendants' rest period policies and practice afforded legally compliant rest periods or compensation in lieu thereof;
- D. Whether Defendants' meal period policies and practices afforded legally compliant meal periods or compensation in lieu thereof;
- E. Whether Defendants maintained accurate employment records;
- F. Whether Defendants timely paid all wages during employment;
- G. Whether Defendants timely paid all wages earned and unpaid at separation;
- H. Whether Defendants indemnified their employees for all necessary business expenditures;
- I. Whether Defendants furnished legally-compliant wage statements to the

1 Class Members pursuant to Labor Code section 226;

2 J. Whether Defendants' violations of the Labor Code and the Applicable  
3 Wage Order amounted to a violation of California's UCL.

4 94. *Predominance of Common Questions*: Common questions of law and fact  
5 predominate over questions that affect only individual Class Members. The common questions  
6 of law set forth above are numerous and substantial and stem from Defendants' uniform policies  
7 and practices applicable to each individual class member, such as Defendants' uniform policy  
8 and practice of failing to pay for all hours worked, Defendants' uniform policies and practices  
9 which failed to provide compliant rest periods, Defendants' uniform policies and practices  
10 which failed to provide compliant meal periods, Defendants' failure to provide accurate itemized  
11 wage statements, and others. As such, the common questions predominate over individual  
12 questions concerning each individual class member's showing as to his or her eligibility for  
13 recovery or as to the amount of his or her damages.

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

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

1 of the Class Members.

2 97. *Superiority*: The California Labor Code is broadly remedial in nature and serves  
3 an important public interest in establishing minimum working conditions and standards in  
4 California. These laws and labor standards protect the average working employee from  
5 exploitation by employers who have the responsibility to follow the laws and who may seek to  
6 take advantage of superior economic and bargaining power in setting onerous terms and  
7 conditions of employment. The nature of this action and the format of laws available to Plaintiff  
8 and the Class Members make the class action format a particularly efficient and appropriate  
9 procedure to redress the violations alleged herein. If each employee were required to file an  
10 individual lawsuit, Defendant would necessarily gain an unconscionable advantage since they  
11 would be able to exploit and overwhelm the limited resources of each individual plaintiff with  
12 their vastly superior financial and legal resources.

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

24 99. Further, the claims of the individual Class Members are not sufficiently large to  
25 warrant vigorous individual prosecution considering the concomitant costs and expenses  
26 attending thereto. As such, the Class Members identified above are maintainable as a class under  
27 section 382 of the Code of Civil Procedure.

1                                    **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

2            100. Plaintiff brings the Eleventh Cause of Action as a representative action pursuant  
3 to PAGA on behalf of himself, the State of California, and the Aggrieved Employees, as defined  
4 above. A PAGA claim is a representative enforcement action brought on behalf of the State, and  
5 Plaintiff is not required to satisfy the class action requirements of Code of Civil Procedure  
6 section 382 to pursue it. (See *Arias v. Superior Court* (2009) 46 Cal.4th 969, 975.) Plaintiff was  
7 employed by Defendants during the PAGA Period, was subject to the same policies and  
8 practices as the Aggrieved Employees, and personally suffered each of the violations alleged in  
9 the Eleventh Cause of Action. The Aggrieved Employees are readily identifiable from  
10 Defendants' records. Plaintiff's claims are typical of the claims of the Aggrieved Employees,  
11 and Plaintiff and his counsel will fairly and adequately represent the interests of the Aggrieved  
12 Employees and the State of California.

13                                    **FIRST CAUSE OF ACTION**

14                                    **Failure to Pay All Minimum Wages**

15                                    **(Against All Defendants)**

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

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

24            103. Here, Defendants failed to fully conform their pay practices to the requirements  
25 of the law during the relevant statutory periods. Plaintiff and the Class Members were not  
26 compensated for all hours worked were not compensated for all hours worked including, but not  
27 limited to, all hours they were subject to the control of Defendants and/or suffered or permitted  
28 to work under the Labor Code and the Applicable Wage Order.

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

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

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

## **SECOND CAUSE OF ACTION**

### **Failure to Pay All Overtime Wages**

#### **(Against All Defendants)**

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

108. This cause of action is brought pursuant to Labor Code sections 204, 510, 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked and provide a private right of action for the failure to pay all overtime compensation for overtime work performed. At all times relevant herein, Defendants were required to properly pay Plaintiff and the Class Members for all overtime wages earned pursuant to Labor Code section 1194 and the Applicable Wage Order. Defendants caused Plaintiff and the Class Members to work overtime hours but did not compensate them at one and one-half times their regular rate of pay for such hours in accordance with California law. Likewise, Defendants caused Plaintiff and the Class Members to work double-time hours but did not

1 compensate them at twice their regular rate of pay for such hours in accordance with California  
2 law.

3 109. Defendants failed to fully conform their pay practices to the requirements of  
4 California law. This unlawful conduct includes but is not limited to Defendants' uniform and  
5 unlawful pay policies and practices of failing to accurately record all the time that non-exempt  
6 employees were under the supervision and control of Defendants. The foregoing policies and  
7 practices are unlawful and allow Plaintiff and the Class Members to recover in a civil action the  
8 unpaid amount of overtime premiums owing, including interest thereon, statutory penalties,  
9 attorneys' fees, and costs of suit according to Labor Code sections 204, 510, 1194, and 1198,  
10 the Applicable Wage Order, and Code of Civil Procedure section 1021.5.

### 11 **THIRD CAUSE OF ACTION**

#### 12 **Failure to Provide Rest Periods and Pay Missed Rest Period Premiums**

#### 13 **(Against All Defendants)**

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

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

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

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

**FOURTH CAUSE OF ACTION**

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

**(Against All Defendants)**

114. Plaintiff realleges and incorporates by reference all previous paragraphs.

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

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

**FIFTH CAUSE OF ACTION**

**Failure to Maintain Accurate Employment Records**

**(Against All Defendants)**

117. Plaintiff realleges and incorporates by reference all previous paragraphs.

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

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

120. Defendant has intentionally and willfully failed to keep accurate and complete

1 records showing the hours worked daily and wages paid to Plaintiff and the Class Members.  
2 Thus, Plaintiff and the Class Members have been denied their legal right and protected interest  
3 in having available at a central location at the plant or establishment where they are employed,  
4 accurate and complete payroll records showing the hours worked daily by, and the wages paid  
5 to, employees at those respective locations pursuant to Labor Code 1174.

6 121. Plaintiff, on behalf of himself, the State of California, and the Aggrieved  
7 Employees, also seeks civil penalties for these violations under Labor Code section 1174.5  
8 pursuant to PAGA, as set forth in the Eleventh Cause of Action.

### 9 **SIXTH CAUSE OF ACTION**

#### 10 **Failure to Pay Wages Timely during Employment**

#### 11 **(Against All Defendants)**

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

13 123. Labor Code section 200 provides that “wages” include all amounts for labor  
14 performed by employees of every description, whether the amount is fixed or ascertained by the  
15 standard of time, task, pieces, commission basis, or other method of calculation. Labor Code  
16 section 204 states that all wages earned by any person in any employment are payable twice  
17 during the calendar month and must be paid not more than seven days following the close of the  
18 period when the wages were earned. Labor Code section 210, subdivision (a), makes employers  
19 who violate Labor Code section 204 subject to a penalty of \$100 for any initial failure to timely  
20 pay each employee’s full wages and \$200 for each subsequent violation, plus 25% of the amount  
21 unlawfully withheld.

22 124. Labor Code section 216 establishes that it is a misdemeanor for any person, with  
23 regards to wages due, to “falsely deny the amount or validity thereof, or that the same is due,  
24 with intent to secure himself, his employer or other person, any discount upon such  
25 indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to  
26 whom such indebtedness is due.”

27 125. Defendants as a matter of established company policy and procedure in the State  
28 of California, scheduled, required, suffered, and/or permitted Plaintiff and the Class Members,

1 to work without full compensation, to work without legally-compliant off-duty meal periods, to  
 2 work without legally-compliant off-duty rest periods, and thereby failed to fully pay Plaintiff  
 3 and the Class Members within seven days of the close of payroll, as required by law.

4 126. Defendants, as a matter of established company policy and procedure in the State  
 5 of California, falsely deny they owe Plaintiff and the Class Members these wages, with the intent  
 6 of securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress, hinder,  
 7 delay, and/or defraud Plaintiff and the Class Members.

8 127. Defendants' pattern, practice, and uniform administration of its corporate policy  
 9 of illegally denying employees compensation, as described herein, is unlawful and entitles  
 10 Plaintiff and the Class Members to recover, pursuant to Labor Code section 218, the unpaid  
 11 balance of the compensation owed to them in a civil action and any applicable penalties, attorney  
 12 fees, and interest owed to them pursuant to Labor Code sections 210 and 218.5.

13 128. Plaintiff, on behalf of himself, the State of California, and the Aggrieved  
 14 Employees, also seeks civil penalties for these violations under Labor Code section 210 pursuant  
 15 to PAGA, as set forth in the Eleventh Cause of Action.

## 16 **SEVENTH CAUSE OF ACTION**

### 17 **Failure to Pay All Wages Earned and Unpaid at Separation**

#### 18 **(Against All Defendants)**

19 129. Plaintiff realleges and incorporates by reference all previous paragraphs.

20 130. The actionable period for this cause of action is three years prior to the filing of  
 21 this complaint through the present, and ongoing until the violations are corrected or the class is  
 22 certified. (*Pineda v. Bank of America, N.A.*, 50 Cal.4th 1389, 1395 (2010); *Murphy v. Kenneth*  
 23 *Cole Productions, Inc.*, 40 Cal.4th 1094, 1109 (2007); Code Civ. Proc., § 338, subd. (a).) Labor  
 24 Code sections 201 and 202 of the California Labor Code require Defendants to pay all  
 25 compensation due and owing to its former employees (including the formerly employed Class  
 26 Members) during the actionable period for this cause of action at or around the time that their  
 27 employment is or was terminated, or ended.

28 131. Section 203 of the Labor Code provides that if an employer willfully fails to pay

1 compensation promptly upon discharge or resignation, as required by Sections 201 and 202,  
2 then the employer is liable for penalties in the form of continued compensation up to thirty  
3 workdays.

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

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

#### 14 **EIGHTH CAUSE OF ACTION**

##### 15 **Failure to Indemnify All Necessary Business Expenditures**

##### 16 **(Against All Defendants)**

17 134. Plaintiff realleges and incorporates by reference all previous paragraphs.

18 135. California Labor Code Section 2802 states that employers must "indemnify" an  
19 employee for "all necessary expenditures or losses incurred by the employee in direct  
20 consequence of the discharge of his or her duties, or of his or her obedience to the directions of  
21 the employer." Likewise, Labor Code section 2804 states that "any contract or agreement,  
22 express or implied, made by any employee to waive the benefits of this article or any part  
23 thereof, is null and void, and this article shall not deprive any employee or his personal  
24 representative of any right or remedy to which he is entitled under the laws of this State."

25 136. Here, Plaintiff and the Class Members paid out of pocket for necessary business  
26 expenditures incurred as a direct consequence and requirement of performing their job duties,  
27 including the costs associated with their personal cell phone and mileage they required to  
28 perform their work. Despite knowing that Plaintiff and the Class Members incurred these

1 necessary business expenses, and requiring Plaintiff and the Class Members to use such items,  
2 Defendants did not reimburse them.

3 137. Thus, Plaintiff and the Class Members are entitled to recover the cost of such  
4 necessary business expenses, plus interest from the date each incurred such business expenses,  
5 plus fees and costs. (Lab. Code, § 2802, subds. (b), (c).)

## 6 **NINTH CAUSE OF ACTION**

### 7 **Failure to Furnish Accurate Itemized Wage Statements**

#### 8 **(Against All Defendants)**

9 138. Plaintiff realleges and incorporates by reference all previous paragraphs.

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

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

27 140. As set forth above, Defendants issued and continues to issue wage statements to  
28 its non-exempt employees including Plaintiff and the Class Members that are inadequate under

1 Labor Code section 226, subdivision (a). By failing to pay Plaintiff and the Class Members  
2 properly as described above, Defendants failed to include required information on their wage  
3 statements, including, but not limited to, the gross wages earned, the net wages earned in  
4 violation of Labor Code section 226, subdivision (a).

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

7 142. As a result, Plaintiff and the Class Members suffered injury within the meaning  
8 of Labor Code section 226, subdivision (e). Among other things, Plaintiff and the Class  
9 Members could not promptly and easily determine from the wage statements alone the gross  
10 and net wages paid, the total hours worked, and the applicable hourly rates in effect and the  
11 corresponding number of hours worked at each rate, without reference to other documents or  
12 information. (Lab. Code, § 226, subd. (e)(2)(B).)

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

### 19 **TENTH CAUSE OF ACTION**

#### 20 **Violations of California's Unfair Competition Law**

#### 21 **(Against All Defendants)**

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

23 145. Defendants have engaged and continue to engage in unfair and/or unlawful  
24 business practices in California in violation of California Business and Professions Code section  
25 17200 through 17210, by committing the unlawful acts described above, including willfully  
26 misclassifying Plaintiff and the Class Members as independent contractors in violation of Labor  
27 Code sections 226.8 and 2775, and violating the Labor Code provisions and the Applicable  
28 Wage Order alleged in the First through Ninth Causes of Action.. Defendants' utilization of

1 these unfair and unlawful business practices deprived and continue to deprive Plaintiff and the  
2 Class Members of compensation to which they are legally entitled. These practices constitute  
3 unfair and unlawful competition and provide an unfair advantage over Defendants' competitors  
4 who have been and/or are currently employing workers and attempting to do so in honest  
5 compliance with applicable wage and hour laws.

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

10 147. The acts complained of herein occurred within the four years prior to the initiation  
11 of this action and are continuing into the present and ongoing.

12 148. Plaintiff was compelled to retain the services of counsel to file this Court action  
13 to protect his interests and those of the Class Members, to obtain restitution and injunctive relief  
14 on behalf of Defendants' current non-exempt Employees and to enforce important rights  
15 affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees  
16 and costs, which Plaintiff is entitled to recover under Code of Civil Procedure section 1021.5.

## 17 **ELEVENTH CAUSE OF ACTION**

### 18 **Civil Penalties Under the Private Attorneys General Act**

#### 19 **(Against All Defendants)**

20 149. Plaintiff realleges and incorporates by reference all previous paragraphs.

21 150. Labor Code section 2699, subdivision (a), provides that any provision of the Labor  
22 Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce  
23 Development Agency ("LWDA") for a violation of the Labor Code may, as an alternative, be  
24 recovered through a civil action brought by an aggrieved employee on behalf of himself or  
25 herself and other current or former employees, pursuant to the procedures specified in Labor  
26 Code section 2699.3.

27 151. Plaintiff brings this cause of action as a representative action on behalf of himself,  
28 the State of California, and the Aggrieved Employees, defined above as all individuals who

1 worked for Defendant(s) in California, from one year prior to the mailing of the PAGA Notice  
2 through the date of trial. Plaintiff is an "aggrieved employee" within the meaning of Labor Code  
3 section 2699, subdivision (c), in that Plaintiff was employed by Defendants during the PAGA  
4 Period and personally suffered each of the violations alleged in this cause of action, as alleged  
5 above.

6 152. As alleged above, on July 21, 2026, Plaintiff, through counsel, gave written notice  
7 by online submission to the LWDA and by U.S. Certified Mail, Return Receipt Requested, to  
8 Defendants of the specific provisions of the Labor Code alleged to have been violated, including  
9 the facts and theories supporting the alleged violations, in compliance with Labor Code section  
10 2699.3, subdivision (a)(1). More than sixty-five (65) calendar days have passed since the  
11 postmark date of the PAGA Notice, and the LWDA has not provided notice of its intent to  
12 investigate the alleged violations within that period. Plaintiff has therefore exhausted his  
13 administrative remedies and may commence this civil action to recover civil penalties under  
14 Labor Code section 2699, pursuant to Labor Code section 2699.3, subdivision (a)(2)(A).

#### 15 **Willful Misclassification as Independent Contractors**

16 153. Defendants' classification of Plaintiff and the Aggrieved Employees as  
17 independent contractors, as alleged above, violates Labor Code sections 226.8 and 2775.  
18 Defendants failed to satisfy any prong of the ABC Test, knew that they could not do so, and  
19 nevertheless willfully misclassified Plaintiff and the Aggrieved Employees as independent  
20 contractors. Defendants' misclassification was not occasional but was part of a pattern and  
21 practice applied to Plaintiff and the Aggrieved Employees.

22 154. Pursuant to Labor Code section 226.8, subdivisions (b) and (c), and Labor Code  
23 section 2699, subdivision (a), Plaintiff, on behalf of himself, the State of California, and the  
24 Aggrieved Employees, is entitled to recover a civil penalty of not less than five thousand dollars  
25 (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation of Labor Code  
26 section 226.8, subdivision (a), and, because Defendants have engaged in a pattern and practice  
27 of such violations, a civil penalty of not less than ten thousand dollars (\$10,000) and not more  
28 than twenty-five thousand dollars (\$25,000) for each violation.

**Failure to Pay Minimum Wages**

155. Defendants' failure to pay legally required minimum wages for all hours worked to Plaintiff and the Aggrieved Employees, as alleged above, violates Labor Code sections 1194, 1197, 1197.1, 1198, and 1199 and the Applicable Wage Order.

**Failure to Pay Overtime**

156. Defendants' failure to pay legally required overtime wages to Plaintiff and the Aggrieved Employees, as alleged above, violates Labor Code sections 510, 1194, and 1198 and the Applicable Wage Order.

**Failure to Provide Rest Periods**

157. Defendants' failure to authorize and permit legally required rest periods to Plaintiff and the Aggrieved Employees, and to pay rest period premiums, as alleged above, violates Labor Code section 226.7 and the Applicable Wage Order.

**Failure to Provide Meal Periods**

158. Defendants' failure to provide legally required meal periods to Plaintiff and the Aggrieved Employees, and to pay meal period premiums, as alleged above, violates Labor Code sections 226.7 and 512 and the Applicable Wage Order.

**Failure to Timely Pay Wages During Employment**

159. Defendants' failure to timely pay all wages due to Plaintiff and the Aggrieved Employees during their employment, as alleged above, violates Labor Code section 204, for which a civil penalty is provided under Labor Code section 210.

**Failure to Timely Pay Wages Upon Separation**

160. Defendants' failure to timely pay all wages due to Plaintiff and the Aggrieved Employees upon discharge or resignation, as alleged above, violates Labor Code sections 201 and 202.

**Failure to Furnish Accurate Itemized Wage Statements**

161. Defendants' failure to furnish Plaintiff and the Aggrieved Employees with complete and accurate itemized wage statements, as alleged above, violates Labor Code section 226, subdivision (a), for which a civil penalty is provided under Labor Code section 226.3.

### **Failure to Keep Requisite Payroll Records**

162. Defendants' failure to keep complete and accurate payroll records for Plaintiff and the Aggrieved Employees, as alleged above, violates Labor Code sections 226, subdivision (a), and 1174, subdivision (d), for which civil penalties are provided under Labor Code sections 226.3 and 1174.5.

### **Failure to Reimburse Business Expenses**

163. Defendants' failure to reimburse Plaintiff and the Aggrieved Employees for all necessary business expenses, including the costs of their personal cell phones and mileage, as alleged above, violates Labor Code sections 2802 and 2804.

### **Civil Penalties and Relief**

164. Plaintiff, individually and on behalf of the State of California and the Aggrieved Employees, is entitled to recover civil penalties pursuant to Labor Code section 2699, subdivisions (a) and (f), including but not limited to penalties under Labor Code sections 210, 226.3, 226.8, 1174.5, and 1197.1, and any other applicable Labor Code penalty provisions, for each of the violations described above, in an amount to be shown according to proof at trial.

165. Plaintiff is informed and believes, and based thereon alleges, that Defendants did not take all reasonable steps to be in compliance with the Labor Code before receiving the PAGA Notice, and have not done so since, and that Defendants' violations were willful, knowing, and intentional. Accordingly, Plaintiff is informed and believes that any statutory limitation on penalties available to employers that take reasonable steps to comply with the Labor Code does not apply.

166. Pursuant to Labor Code section 2699, subdivision (m), any civil penalties recovered in this action shall be distributed as follows: sixty-five percent (65%) to the LWDA for the enforcement of labor laws and education of employers and employees about their rights and responsibilities, and thirty-five percent (35%) to the Aggrieved Employees.

167. Pursuant to Labor Code section 2699, subdivision (g)(1), Plaintiff, as the prevailing party, is entitled to an award of reasonable attorneys' fees and costs.

168. Plaintiff reserves the right to amend this complaint to allege additional violations

1 of the Labor Code after providing any further notice to the LWDA and Defendants required by  
2 Labor Code section 2699.3.

3 **DEMAND FOR JURY TRIAL**

4 Plaintiff hereby demands trial by jury of Plaintiff's and the Class Members' claims  
5 against Defendants and, to the extent permitted by law, of the claims of the State of California  
6 and the Aggrieved Employees under PAGA.

7 **PRAYER FOR RELIEF**

8 Plaintiff prays for judgment for himself, on behalf of the Class Members, on behalf of  
9 the State of California and the Aggrieved Employees, and for all others on whose behalf this  
10 suit is brought, against Defendants, jointly and severally, as follows:

- 11 1. For an order certifying the proposed class;
- 12 2. For an order appointing Plaintiff as representative of the class;
- 13 3. For an order appointing Plaintiff's counsel as counsel for the class;
- 14 4. For the failure to pay all minimum wages, liquidated damages, compensatory,  
15 consequential, general, and special damages according to proof pursuant to Labor Code sections  
16 1194, 1194.2, 1197, and others as may be applicable;
- 17 5. For the failure to pay all overtime wages, compensatory, consequential, general,  
18 and special damages according to proof pursuant to Labor Code sections 204, 510, 1194, 1198,  
19 and others as may be applicable;
- 20 6. For the failure to provide rest periods and pay missed rest period premiums,  
21 compensatory, consequential, general, and special damages according to proof pursuant to  
22 Labor Code section 226.7;
- 23 7. For the failure to provide meal periods and pay missed meal period premiums,  
24 compensatory, consequential, general, and special damages according to proof pursuant to  
25 Labor Code sections 226.7 and 512;
- 26 8. For the failure to maintain accurate employment records, penalties pursuant to  
27 Labor Code sections 226.3, 1174.5, and others that may be applicable;
- 28 9. For the failure to pay wages timely during employment, the unpaid balance of the

1 compensation owed to Plaintiff and the Class Members and any applicable penalties owed to  
2 them pursuant to Labor Code section 210;

3 10. For the failure to pay all wages earned and unpaid at separation, statutory waiting  
4 time penalties pursuant to Labor Code sections 201 through 203, for the Class Members who  
5 quit or were fired in an amount equal to their daily wage multiplied by thirty days, as may be  
6 proven;

7 11. For the failure to indemnify all necessary business expenditures, all unreimbursed  
8 business expenses, and interest thereon, that are owed, pursuant to Labor Code section 2802,  
9 and attorney fees, pursuant to Labor Code section 2802, subdivision (c);

10 12. For the failure to furnish accurate itemized wage statements, the greater of actual  
11 damages or statutory penalties of up to \$4,000 for Plaintiff and each Class Member, together  
12 with reasonable attorneys' fees and costs, pursuant to Labor Code section 226, subdivision (e);

13 13. For the violations of California's Unfair Competition Law, restitution to Plaintiff  
14 and the Class Members of all money and/or property unlawfully acquired by Defendants by  
15 means of any acts or practices declared by this Court to be in violation of Business and  
16 Professions Code sections 17200 through 17210;

17 14. That the Court declare, adjudge, and decree that Defendants violated the  
18 California Labor Code by willfully misclassifying Plaintiff and the Aggrieved Employees as  
19 independent contractors, failing to pay minimum wages, failing to pay overtime wages, failing  
20 to provide meal periods and pay meal period premiums, failing to authorize and permit rest  
21 periods and pay rest period premiums, failing to timely pay wages during employment, failing  
22 to timely pay wages upon separation, failing to furnish accurate itemized wage statements,  
23 failing to keep requisite payroll records, and failing to reimburse necessary business expenses;

24 15. For civil penalties pursuant to Labor Code sections 2699, subdivisions (a) and (f),  
25 210, 226.3, 226.8, 1174.5, and 1197.1, and all other applicable Labor Code penalty provisions,  
26 according to proof;

27 16. For the statutory distribution of any civil penalties recovered, with sixty-five  
28 percent (65%) payable to the LWDA and thirty-five percent (35%) payable to the Aggrieved

1 Employees, pursuant to Labor Code section 2699, subdivision (m);

2 17. For reasonable attorneys' fees and costs of suit pursuant to Labor Code section  
3 2699, subdivision (g)(1);

4 18. Prejudgment interest on all due and unpaid wages pursuant to Labor Code section  
5 218.6 and Civil Code sections 3287 and 3289;

6 19. On all causes of action for which attorneys' fees may be available, for attorneys'  
7 fees and costs as provided by Labor Code sections 218.5, 226, Code of Civil Procedure section  
8 1021.5, and others as may be applicable;

9 20. For an order enjoining Defendants, and each of them, and their agents, servants,  
10 and employees, and all persons acting under, in concert with, or for them, from acting in  
11 derogation of any rights or duties adumbrated in this complaint; and

12 21. For such other and further relief as this Court may deem just and proper.

13  
14 Dated: September 24, 2026

**MORGAN & MORGAN CALIFORNIA LLP**

15  
16 By: 

17 Michael A. Sigall  
18 Attorneys for Plaintiff, the Putative Class, and  
19 Aggrieved Employees  
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