

1 ANTHONY J. ORSHANSKY (SBN 199364)
anthony@counselonegroup.com
2 DEMETRIUS X. LAMBRINOS (SBN 246027)
demetrius@counselonegroup.com
3 **COUNSELONE, PC**
9301 Wilshire Boulevard, Suite 650
4 Beverly Hills, California 90210
Telephone: (310) 277-9945
5 Facsimile: (424) 277-3727

6 Attorneys for Plaintiff Vincent Piazza, on behalf of
himself, the State of California, and all others similarly
7 situated

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

02/28/2024
Clerk of the Court
BY: SHENEQUA GLADNEY
Deputy Clerk

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN FRANCISCO**
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13 VINCENT PIAZZA, an individual, on behalf
of himself, the State of California as a private
14 attorney general, and all others similarly
15 situated,

16 Plaintiff,

17 v.

18 COMPASS GROUP USA, INC., a Delaware
corporation; FLIK INTERNATIONAL CORP.,
19 a New York corporation; and DOES 1 through
20 50, inclusive,

21 Defendants.
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Case No.: **CGC-24-612731**

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT FOR:**

- (1) **FAILURE TO PAY MINIMUM WAGES;**
- (2) **FAILURE TO PAY OVERTIME WAGES;**
- (3) **MEAL PERIOD LIABILITY (LAB. CODE, § 226.7);**
- (4) **REST BREAK LIABILITY (LAB. CODE, § 226.7);**
- (5) **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;**
- (6) **FAILURE TO PAY ALL WAGES OWED TIMELY AND UPON SEPARATION OF EMPLOYMENT;**
- (7) **VIOLATION OF LAB. CODE, § 1174(d);**
- (8) **VIOLATION OF BUS. & PROF. CODE, §§ 17200, ET SEQ.; AND**
- (9) **PENALTIES PURSUANT TO PAGA, (LAB. CODE, §§ 2698, ET SEQ.)**

DEMAND FOR JURY TRIAL

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CLASS AND REPRESENTATIVE ACTION COMPLAINT

1 Plaintiff Vincent Piazza (“Plaintiff”), on behalf of himself, the State of California, and all
2 others similarly situated, alleges and complains of Defendants Compass Group USA, Inc.
3 (“Compass”), Flik International Corp. (“Flik”), and DOES 1 through 50, inclusive (collectively,
4 “Defendants”), and each of them, as follows:

5 **I. INTRODUCTION**

6 1. This is a class action pursuant to Code of Civil Procedure section 382 on behalf of
7 Plaintiff and the following class: *all current and former hourly paid or non-exempt employees who*
8 *worked for Defendants, and/or their predecessor or merged entities, in the State of California within*
9 *the longest applicable limitations period* (the “Class” or “Class Members”).

10 2. The Judicial Council of California (JCC)’s amended Emergency Rule 9 (effective
11 May 29, 2020) provides: “[n]otwithstanding any other law, the statutes of limitations and repose for
12 civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.”
13 The Advisory Committee Comment notes that: “Emergency rule 9 is intended to apply broadly to
14 toll any statute of limitations on the filing of a pleading in court asserting a civil cause of action.
15 The term ‘civil causes of action’ includes special proceedings. (See Code Civ. Proc., §§ 312, 363
16 [‘action,’ as used in title 2 of the code (Of the Time of Commencing Civil Actions), is construed ‘as
17 including a special proceeding of a civil nature’)] . . . The rule also applies to statutes of
18 limitations on filing of causes of action in court found in codes other than the Code of Civil
19 Procedure.” Accordingly, the relevant time period for claims under the PAGA discussed herein is
20 one year prior to the date Plaintiff filed his PAGA Notice online with the California Labor and
21 Workforce Development Agency (“LWDA”) and sent a letter by certified mail to Defendants, plus
22 the additional time during which the statute of limitations was tolled (pursuant to Emergency Rule
23 9 of the California Rules of Court) and ongoing.

24 3. Throughout the time period involved in this case, Defendants willfully maintained a
25 policy and/or practice of failing to pay all wages, including minimum and overtime wages, for all
26 hours worked; failing to provide compliant duty-free meal periods; failing to authorize and permit
27 compliant duty-free rest breaks; failing to maintain and provide accurate itemized wage statements;
28 and failing to pay all wages owed timely and upon separation of employment. Defendants’ illegal

1 conduct has also given rise to derivative claims for unfair business practices and violation of the
2 Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* (“PAGA”).

3 4. Plaintiff, on behalf of himself and all other similarly situated employees, also seeks
4 all monies owed but withheld and retained by Defendants to which Plaintiff and Class Members are
5 entitled, pursuant to Business and Professions Code sections 17200 through 17208. Plaintiff seeks
6 an order by the Court awarding restitution, injunctive relief, and all other legal and equitable relief
7 allowed, plus interest, attorneys’ fees and costs.

8 5. Plaintiff, on behalf of himself and all other similarly situated aggrieved employees
9 (the “Aggrieved Employees”), also brings this representative action against Defendants to recover
10 wages and penalties owed pursuant to Labor Code section 2699. Plaintiff was compelled to retain
11 the services of counsel to file this action to protect his interests and those of Aggrieved Employees,
12 and has thereby incurred attorneys’ fees and costs, which he is entitled to recover under Labor Code
13 section 2699.

14 6. For purposes of the allegations set forth herein, Class Members, along with
15 Aggrieved Employees comprising the PAGA representative action, are collectively referred to as
16 “Employees” except as otherwise specified.

17 **II. JURISDICTION AND VENUE**

18 7. This Court has jurisdiction over this action pursuant to article VI, section 10 of the
19 California Constitution, which grants the superior court “original jurisdiction in all other causes”
20 except those given by statute to other courts. The statutes under which this action is brought do not
21 specify any other basis for jurisdiction. Further, the aggregate amount in controversy for the
22 proposed class action, including monetary damages, restitution, penalties, injunctive relief, and
23 attorneys’ fees, is less than five million dollars (\$5,000,000), exclusive of interest and costs. Plaintiff
24 reserves the right to seek a larger amount based upon new and different information resulting from
25 investigation and discovery.

26 8. This Court has personal jurisdiction over Defendants because they do business in
27 California, have sufficient minimum contacts in California, or otherwise intentionally avail
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1 themselves of the California market so as to render the exercise of jurisdiction over them by
2 California courts consistent with traditional notions of fair play and substantial justice.

3 9. Venue as to Defendants is proper in this judicial district pursuant to Code of Civil
4 Procedure section 395.5 because Defendants transact business in the State of California, County of
5 San Francisco.

6 10. This case should be classified as complex according to California Rules of Court,
7 Rule 3.400, and assigned to a complex litigation judge and department, because it is a class action,
8 will involve substantial documentary evidence and a large number of witnesses, is likely to involve
9 extensive motion practice raising difficult or novel issues that will be time-consuming to resolve,
10 and will require substantial post-judgment judicial supervision.

11 **III. PARTIES**

12 11. Defendant Compass is a Delaware corporation, with its principal place of business
13 at 2400 Yorkmont Road, Charlotte, NC 28217. At all times relevant herein, Compass operated,
14 transacted, and conducted business in San Francisco County, California. Moreover, during the
15 relevant period, Compass employed Plaintiff and Employees within San Francisco County and the
16 State of California.

17 12. Defendant Flik is a New York corporation, with its principal place of business at 2
18 International Drive, Suite 200, Rye Brook, NY 10573. At all times relevant herein, Flik likewise
19 operated, transacted, and conducted business in San Francisco County, California.

20 13. Defendants employed Plaintiff as a non-exempt, hourly employee in California and
21 subjected him to the same employment policies and/or practices that affected Employees.

22 14. Defendants do business in the State of California and, at all times hereinafter
23 mentioned, were and are employers as defined in and subject to the Labor Code and Industrial
24 Welfare Commission ("IWC") Occupational Wage Orders. During the relevant period, Defendants
25 employed Plaintiff and Employees within the State of California.

26 15. The true names and capacities, whether individual, corporate, associate, or otherwise,
27 of defendants sued herein as DOES 1 through 50, inclusive, are currently unknown to Plaintiff, who
28 therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.

1 Plaintiff is informed and believes, and based thereon alleges, that each of the defendants designated
2 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
3 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
4 the defendants designated hereinafter as DOES when such identities become known.

5 16. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
6 include DOES 1 through 50 identified herein.

7 17. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
8 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
9 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
10 legally attributable to other Defendants. Plaintiff is further informed and believes, and based thereon
11 alleges, that Defendants are joint employers in that they employed Plaintiff and Employees at the
12 same time and were operating as a joint enterprise and single entity during the relevant time periods.

13 18. California courts have recognized that the definition of “employer” for purposes of
14 enforcement of the California Labor Code goes beyond the concept of traditional employment to
15 reach irregular working arrangements for the purpose of preventing evasion and subterfuge of
16 California’s labor laws. (*Martinez v. Combs* (2010) 49 Cal.4th 35, 65.) As such, anyone who directly
17 or indirectly, or through an agent or any other person, engages, suffers, or permits any person to
18 work or exercises control over the wages, hours, or working conditions of any person may be liable
19 for violations of the California Labor Code as to that person.

20 19. California law also permits and recognizes the piercing of a corporate veil between
21 sister companies under the single enterprise rule. (*Hasso v. Hapke* (2014) 227 Cal.App.4th 107, 155;
22 *Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 512.) The single enterprise rule applies
23 where “there are two or more personalities, there is but one enterprise; and that this enterprise has
24 been so handled that it should respond, as a whole, for the debts of certain component elements of
25 it.” (*Hasso, supra*, 227 Cal.App.4th at p. 155; *Greenspan, supra*, 191 Cal.App.4th at p. 512.)

26 20. At all times throughout their employment, Plaintiff and Employees were regularly
27 and consistently subject to the common policies and/or practices utilized by Defendants.

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21. Accordingly, all Defendants engaged, suffered, and permitted Plaintiff and Employees to perform services from which they benefitted. Moreover, the aforementioned entities had the right to exercise control over the wages, hours, and/or working conditions over Plaintiff and Employees at all relevant times herein, so as to be considered joint employers.

IV. FACTUAL BACKGROUND

Defendants Systematically Violated State Wage and Hour Laws

22. While the precise number of Class Members has not been determined at this time, Plaintiff is informed and believes that there are more than 100 Class Members employed by Defendants within the State of California during the relevant period. On information and belief, Defendants own and operate a food services, support services, hospitality, and environmental services operation in various locations, including but not limited to the United Polaris Lounge at the San Francisco International airport.

23. Upon information and belief, Plaintiff and Employees are covered by IWC Wage Order No. 5-2001.¹

24. Throughout the applicable period of time, Defendants did not pay Plaintiff and Employees at least the California minimum wage for all hours worked. Defendants did not fully compensate Plaintiff and Employees because they were required to perform pre- and post-shift activities, including but not limited to security checks, that were off the clock.

25. Labor Code section 223 makes it unlawful for employers to pay their employees wages lower than required by contract or statute while purporting to pay them legal wages.

26. Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code section 1194 entitles “any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage Order No. 5-2001 also obligates employers to pay each employee minimum wages for all hours worked.

¹ Upon information and belief, Plaintiffs allege that IWC Wage Order No. 5-2001 is applicable. However, Plaintiffs reserve the right to amend and/or allege any other applicable Wage Order(s).

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

6 28. Labor Code section 1194.2 authorizes employees to recover liquidated damages for
7 violations of Labor Code section 1194. Where an employee, like Plaintiff and Employees, is not
8 paid for all hours worked under Labor Code section 1194, the employee may recover minimum
9 wages and liquidated damages. (*Sillah v. Command Int'l Sec. Servs.* (N.D.Cal. 2015) 154 F.Supp.3d
10 891 [holding that employees suing for failure to pay overtime could recover liquidated damages
11 under section 1194.2 if they also showed they were paid less than minimum wage]; accord, *Andrade*
12 *v. Arby's Rest. Grp., Inc.* (N.D.Cal. Dec. 12, 2016; No. 15-cv-03175 NC) 2016 U.S.Dist.LEXIS
13 172319, at *20-21.)

14 29. Labor Code section 1197.1 authorizes employees who are paid less than the
15 minimum wage fixed by an applicable state or local law, or by an order of the commission a civil
16 penalty, restitution of wages, and liquidated damages as follows: "(1) [f]or any initial violation that
17 is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
18 period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the same
19 specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period
20 for which the employee is underpaid regardless of whether the initial violation is intentionally
21 committed."

22 30. Labor Code section 510 requires an employer to compensate an employee who works
23 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8)
24 hours worked on the seventh consecutive day no less than one and one-half times the employee's
25 regular rate of pay. Further, Labor Code section 510 obligates an employer to compensate an
26 employee at no less than twice the regular rate of pay when the employee works more than twelve
27 (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.

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1 31. Throughout the applicable period of time, Defendants had a policy and/or practice of
2 failing to pay overtime wages to Plaintiff and Employees for all overtime hours they worked. The
3 work times of Plaintiff and Employees have been, and continue to be, greater than eight (8) hours
4 per day and/or forty (40) hours per week. Yet, because Defendants did not pay Plaintiff and
5 Employees wages for, *inter alia*, hours that were worked off the clock, Plaintiff and Employees
6 were deprived wages at overtime premium amounts attributable to overtime hours. Moreover, the
7 overtime that was paid was short because Defendants incorrectly calculated the regular rate for
8 purposes of calculating overtime; Defendants failed to include non-discretionary forms of pay in the
9 regular rate calculations for Plaintiff and Employees.

10 32. By their common policy and/or practice of requiring Plaintiff and Employees to work
11 in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
12 compensating them at the applicable overtime rate of pay, Defendants willfully violated the
13 provisions of Labor Code sections 510 and 1198, as well as the relevant IWC Wage Order(s).

14 33. Defendants failed to provide Plaintiff and Employees with timely, duty-free meal
15 periods. Labor Code sections 226.7, 512, and IWC Wage Order No. 5-2001 require employers to
16 provide employees with a thirty (30) minute uninterrupted and duty-free meal period within the first
17 five (5) hours of work. (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1042
18 [“Accordingly, first meal periods must start after no more than five hours.”].) Moreover, an
19 employee who works more than ten (10) hours per day is entitled to receive a second thirty (30)
20 minute uninterrupted and duty-free meal period. (*See* Lab. Code, § 512.)

21 34. Defendants denied Plaintiff and Employees meal periods that comply with Labor
22 Code sections 226.7 and 512, and IWC Wage Order No. 5-2001. Plaintiff and Employees suffered
23 late, short, interrupted, and/or missed first and second meal periods. (*See Donohue v. AMN Services,*
24 *LLC* (2021) 11 Cal.5th 58 [the California Supreme Court reversed the Fourth Appellate District and
25 set forth two clear rules: (1) employers are not permitted to round time records when determining if
26 employees are entitled to meal premium pay, and (2) it is the employer’s burden to show that
27 compliant meal periods were provided to employees if the time records show otherwise].) Plaintiff
28 and Employees did not receive compliant meal periods within the first five (5) hours of their work,

1 and did not receive compliant second meal periods when working shifts of ten (10) hours or more.
2 Instead, Plaintiff and Employees often worked during what should have been their meal periods.
3 Plaintiff and Employees were pressured to work during their meal periods. Those few meal periods
4 where Plaintiff and Employees were free from the pressures of work (*i.e.*, “duty-free”) were often
5 late, short, interrupted or otherwise not code-compliant due to Defendants’ policies or lack thereof.

6 35. Defendants were also obligated but failed to provide Plaintiff and Employees with
7 ten (10) minute rest breaks for work shifts exceeding four (4) hours or a major fraction thereof
8 worked as required by Labor Code section 226.7 and IWC Wage Order No. 5-2001. The California
9 Supreme Court held in *Augustus v. ABM Security Services Inc.*, (2016) 2 Cal.5th 257, that employees
10 must be relieved of all duties during rest breaks pursuant to Labor Code section 226.7 and
11 subdivision 12(A) of IWC Wage Order No. 4-2001. The Court found that the Wage Orders and the
12 Labor Code require employers to “relinquish control over how employees spend their time” and
13 “relieve employees of all duties” during employees’ ten-minute rest periods. Plaintiff and
14 Employees did not receive compliant rest breaks.

15 36. Defendants failed to permit or authorize Plaintiff and Employees to stop working in
16 order to take rest breaks, and lacked a legally compliant policy that would authorize and permit
17 Plaintiff and Employees duty-free rest breaks, off premises, and otherwise outside of Defendants’
18 control.

19 37. In addition to failing to authorize and permit compliant meal and rest breaks, Plaintiff
20 and Employees were not compensated with one (1) hour’s worth of pay at their regular rates of pay
21 when they were not provided with compliant meal and rest breaks in accordance with Labor Code
22 section 226.7, subdivision (b). (*See Ferra v. Loews Hollywood Hotel* (2021) 11 Cal.5th 858.)

23 38. Defendants also failed to properly compute bonuses, commission wages, and other
24 non-base wages earned by Plaintiff and the Class into their regular rate of pay for purposes of paying
25 meal period premiums as required by Labor Code sections 226.7, 510, 512, 558, and 1194 and IWC
26 Wage Order No. 5-2001.

27 39. Due to Defendants’ non-compliant policies and/or practices described herein,
28 Plaintiff and Employees whose employment with Defendants concluded were not compensated for,

1 *inter alia*, minimum and overtime wages for all hours worked, and were not paid all meal and rest
2 break premiums owed at their regular rates of pay. Thus, Defendants have failed to pay Plaintiff
3 and Employees all wages, whose sums were certain, at the time of termination or within seventy-
4 two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter
5 in violation of Labor Code section 203.

6 40. Labor Code section 203 provides “if an employer willfully fails to pay...any wages
7 of an employee who is discharged or who quits, the wages of the employee shall continue as a
8 penalty...” for up to 30 days. (Lab. Code, § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.)

9 41. Labor Code section 204 expressly requires that “[a]ll wages...earned by any person
10 in any employment are due and payable twice during each calendar month, on days designated in
11 advance by the employer as the regular paydays.” Pursuant to Labor Code section 204, subdivision
12 (d), these requirements are “deemed satisfied by the payment of wages for weekly, biweekly or
13 semimonthly payroll if the wages are paid not more than seven calendar days following the close of
14 the payroll period.” Due to Defendants’ failure to pay Plaintiff and Employees for all hours worked
15 at the legal minimum and overtime rates, Defendants failed to timely pay Plaintiff and Employees
16 within seven (7) days of the close of the payroll period in accordance with Labor Code section 204
17 on a regular and consistent basis.

18 42. Through Labor Code section 210 and the PAGA, and to the extent permitted by law,
19 Plaintiff and Employees are entitled to recover civil penalties for violations of Labor Code section
20 204.

21 43. Further, Plaintiff and Employees were not furnished with accurate itemized wage
22 statements that accurately showed their gross wages earned, net wages earned, premium payments
23 at their regular rates of pay for non-compliant meal and rest breaks, the number of hours worked,
24 all applicable hourly rates and corresponding number of hours worked at each hourly rate in effect
25 during each pay period, and other information required by Labor Code section 226, subdivision (a).
26 As a result of Defendants’ policies and practices such as requiring Plaintiff and Employees to work
27 off-the-clock, and Defendants’ failure to pay meal period and rest break premiums, the wage
28 statements that were provided were inevitably inaccurate.

1 44. During the relevant period, Defendants knowingly and intentionally failed to provide
2 Plaintiff and Employees with the above-described writing through actions alleged herein in violation
3 of Labor Code section 226. Plaintiff and Employees have been injured by Defendants' intentional
4 violation of Labor Code section 226, subdivision (a), because they were denied both their legal right
5 to receive, and their protected interest in receiving, accurate itemized wage statements.

6 45. In addition, because Defendants failed to provide the accurate and mandated
7 information on the itemized wage statements, Plaintiff and Employees were prevented by
8 Defendants from determining if all hours worked were paid and the extent of the underpayment.
9 Plaintiff had to file this lawsuit and perform computations in order to analyze whether, and to what
10 extent, Plaintiff and Employees suffered underpayment, thereby causing Plaintiff to incur expenses
11 and time lost. Thus, Plaintiff and Employees are owed the greater of all actual damages or fifty
12 dollars (\$50.00) for the initial pay period in which a violation occurs, and one hundred dollars
13 (\$100.00) per employee for each violation in a subsequent pay period, not exceeding an aggregate
14 penalty of four thousand dollars (\$4,000.00), as provided for in Labor Code section 226, subdivision
15 (e).

16 46. Moreover, for the violations described above, Plaintiff and Employees may also
17 recover civil penalties pursuant to Labor Code section 226.3 and the PAGA for Defendants'
18 violations of Labor Code section 226, subdivision (a).

19 47. Plaintiff and Employees have also been denied their legal right and protected interest
20 in having available at a central location at the establishment where they are employed accurate and
21 complete payroll records showing the hours worked daily by, and the wages paid to, Plaintiff and
22 Employees at those respective locations pursuant to Labor Code section 1174. Pursuant to Labor
23 Code section 1174.5 and the PAGA, Plaintiff and Employees may also recover civil penalties for
24 violation of Labor Code section 1174, subdivision (d).

25 48. Based on the foregoing, Defendants have also engaged in unlawful and unfair
26 business practices in violation of Business and Professions Code sections 17200, *et seq.*, thereby
27 entitling Plaintiff and Class Members to restitution, disgorgement of profits, or other equitable
28 remedies.

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1 c. Whether Defendants failed to pay at least the minimum wage to Class
2 Members for all hours worked;

3 d. Whether Defendants required Class Members to work over eight (8) hours
4 per day and/or over forty (40) hours per week and failed to pay the legally required overtime
5 compensation to Class Members;

6 e. Whether Defendants deprived Class Members of legally compliant meal
7 periods and rest breaks;

8 f. Whether Defendants had a corporate policy and/or practice of failing to pay
9 Class Members required premium payments for non-compliant (*e.g.*, short, late, interrupted, and/or
10 missed altogether) meal periods and rest breaks in violation of California law;

11 g. Whether Defendants failed to timely pay all wages due to Class Members
12 during their employment;

13 h. Whether Defendants failed to pay all wages due to Class Members within the
14 required time upon their discharge or resignation;

15 i. Whether Defendants complied with wage reporting as required by the Labor
16 Code, including, *inter alia*, section 226;

17 j. Whether Defendants kept complete and accurate payroll records as required
18 by the Labor Code, including, *inter alia*, section 1174, subdivision (d);

19 k. Whether Defendants' conduct was willful or reckless;

20 l. Whether Defendants engaged in unfair business practices in violation of the
21 Unfair Competition Law, Business and Professions Code sections 17200, *et seq.*;

22 m. Whether Class Members are entitled to compensatory damages pursuant to
23 the Labor Code;

24 n. The appropriate amount of damages, restitution, and/or monetary penalties
25 resulting from Defendants' violation of California law;

26 o. Whether Class Members are entitled to attorneys' fees and costs; and

27 p. Whether Class Members are entitled to interest.

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1 **C. Typicality**

2 55. The claims of Plaintiff are typical of the claims of the Class. Plaintiff and Class
3 Members sustained injuries and damages arising out of and caused by Defendants' common course
4 of conduct in violation of laws and regulations that have the force and effect of law and statutes, as
5 alleged herein.

6 **D. Adequacy of Representation**

7 56. Plaintiff will fairly and adequately represent and protect the interests of the Class.
8 Counsel who represent Plaintiff and Class Members are competent and experienced in litigating
9 wage and hour class and representative actions, and have the financial resources to litigate the claims
10 at issue.

11 **E. Superiority of Class Action**

12 57. A class action is superior to other available means for the fair and efficient
13 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
14 questions of law and fact common to the Class predominate over any questions affecting only
15 individual members of the Class. Each member of the Class has been damaged and is entitled to
16 recovery by reason of Defendants' policy and/or practice of failing to pay minimum and overtime
17 wages, failing to provide compliant duty-free meal periods and/or pay premiums owed thereon,
18 failing to authorize and permit compliant duty-free rest breaks and/or pay premiums owed thereon,
19 failing to pay vested vacation time as wages upon separation of employment, failing to pay sick pay,
20 failing to maintain and provide accurate itemized wage statements, failing to reimburse necessary
21 business expenses incurred, failing to pay all wages owed in a timely manner, failing to pay all
22 wages due upon termination and/or resignation, and engaging in unfair business practices.

23 58. Class action treatment will allow those similarly situated persons to litigate their
24 claims in a manner that is most efficient and economical for the parties and the judicial system.
25 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
26 action that would preclude its maintenance as a class action.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

3 **(Lab. Code, §§ 1182.12, 1194, 1194.2, 1197, 1197.1, and the Relevant IWC Wage Orders)**

4 **[On Behalf of Plaintiff and the Class against All Defendants]**

5 59. Plaintiff, on behalf of himself and the Class, realleges and incorporates by reference
6 all of the allegations contained in the preceding paragraphs of this Complaint as though fully set
7 forth herein.

8 60. Throughout the period of time applicable to this cause of action, Defendants did not
9 pay Plaintiff and Class Members at least the California minimum wage for all hours worked, thereby
10 violating Labor Code section 1194 and the relevant IWC Wage Order(s), as a result of, but not
11 limited to, Defendants' failure to pay for work performed off the clock, including, *inter alia*, pre-
12 and post-shift work such as security checks, along with work performed during meal and rest
13 periods.

14 61. Defendants' failure to pay Plaintiff and Class Members the minimum wage as
15 required is unlawful and violates Labor Code sections 1182.12, 1194, 1194.2, 1197, and 1197.1. As
16 a result, Plaintiff and Class Members are entitled to recover the unpaid balance of their minimum
17 wage compensation, as well as interest, costs, and attorney's fees, and liquidated damages in an
18 amount equal to the wages unlawfully unpaid and interest thereon.

19 **SECOND CAUSE OF ACTION**

20 **FAILURE TO PAY OVERTIME WAGES**

21 **(Lab. Code, §§ 223, 510, and 1198 and the Relevant IWC Wage Orders)**

22 **[On Behalf of Plaintiff and the Class against All Defendants]**

23 62. Plaintiff, on behalf of himself and the Class, realleges and incorporates by reference
24 all of the allegations contained in the preceding paragraphs of this Complaint as though fully set
25 forth herein.

26 63. At all times relevant to this Complaint, Labor Code section 510, subdivision (a), was
27 in effect, and provided: "[e]ight hours of labor constitutes a day's work. Any work in excess of eight
28 hours in one workday and any work in excess of forty hours in any one workweek ... shall be

1 compensated at the rate of no less than one and one-half times the regular rate of pay for an
2 employee.”

3 64. At all times relevant to this Complaint, Labor Code section 223 was in effect, and
4 makes it unlawful for employers to pay their employees wages lower than required by contract or
5 statute while purporting to pay them legal wages.

6 65. Pursuant to the relevant IWC Wage Order(s), an employee shall not be employed
7 more than eight (8) hours in any workday and/or more than forty (40) hours in any workweek unless
8 the employee receives one and one-half (1½) times such employee’s regular rate of pay for all hours
9 worked over eight (8) hours in any workday and/or more than forty (40) hours in any workweek.
10 Further, an employer must compensate an employee at no less than twice the employee’s regular
11 rate of pay when the employee works more than twelve (12) hours in a day or more than eight (8)
12 hours on the seventh consecutive day of work.

13 66. At all times mentioned, Plaintiff and the Class regularly worked shifts that consisted
14 of more than eight (8) hours in a workday and/or more than forty (40) hours in a workweek and
15 were not paid proper overtime wages for all overtime hours worked as a result of, but not limited
16 to, Defendants’ failure to pay for work performed off the clock, such as pre- and post-shift activity,
17 including but not limited to security checks. Further, the overtime that was paid to Plaintiff and
18 Class Members was short, as Defendants incorrectly calculated the regular rate of pay for purposes
19 of calculating overtime because Defendants failed to include non-discretionary forms of pay in
20 regular-rate calculations.

21 67. Accordingly, by requiring Plaintiff and the Class to work in excess of eight (8) hours
22 per day and/or forty (40) hours per week without properly compensating them overtime wages, as
23 described above, Defendants willfully violated the provisions of Labor Code section 1194.

24 68. As a result of the unlawful acts of Defendants, Plaintiff and the Class have been
25 deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery of such
26 amounts, plus interest and penalties thereon, costs, and attorneys’ fees.

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL PERIODS**

3 **(Lab. Code, §§ 226.7, 512, and the Relevant IWC Wage Orders)**

4 **[On Behalf of Plaintiff and the Class against All Defendants]**

5 69. Plaintiff, on behalf of himself and the Class, realleges and incorporates by reference
6 all of the allegations contained in the preceding paragraphs of this Complaint as though fully set
7 forth herein.

8 70. Labor Code section 226.7 provides “an employer shall not require an employee to
9 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
10 applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”).” Similarly,
11 Labor Code section 512 and the IWC Wage Orders require employers to provide employees with
12 thirty (30) minute uninterrupted and duty-free meal periods within the first five (5) hours of work.
13 (*See Brinker, supra*, 53 Cal.4th at p. 1042 [“Accordingly, first meal periods must start after no more
14 than five hours.”].) Moreover, an employee who works more than ten (10) hours per day is entitled
15 to receive a second thirty (30) minute uninterrupted and duty-free meal period. (*See* Lab. Code, §
16 512.)

17 71. Despite these legal requirements, Defendants failed to always provide meal periods
18 that comply with Labor Code sections 226.7 and 512, and IWC Wage Order No. 5-2001. Plaintiff
19 and Class Members experienced short, untimely, and interrupted meal periods, and frequently the
20 demands of employee job duties were such that they were prevented from taking a meal period
21 altogether. Having been thus subjected to late, short, interrupted, and missed meal periods, Plaintiff
22 and Class Members did not receive their statutorily mandated meal periods.

23 72. Under Labor Code section 226.7 and the relevant IWC Wage Order(s), Plaintiff and
24 Class Members are entitled to be paid one (1) hour of additional wages at their regular rates of pay
25 for each day they were not provided with all required meal periods. (*See Ferra, supra*, 11 Cal.5th at
26 p. 858.) Defendants failed to pay Plaintiff and Class Members the additional wages to which they
27 were entitled for non-compliant meal periods.

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73. As a result, Defendants are liable to Plaintiff and each Class Member for one (1) hour of additional wages at their regular rates of pay for each workday a compliant meal period was not provided, in a sum to be proven at trial.

FOURTH CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST BREAKS

(Lab. Code, § 226.7 and the Relevant IWC Wage Orders)

[On Behalf of Plaintiff and the Class against All Defendants]

74. Plaintiff, on behalf of himself and the Class, realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

75. Under the applicable IWC Wage Order(s), an employer must authorize and permit all employees to take ten (10) minute duty free rest breaks for every major fraction of four hours worked. Labor Code section 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.”

76. Defendants are required by California law to authorize and permit breaks of ten (10) uninterrupted minutes for each four hours of work or major fraction thereof (*i.e.*, more than two hours). That is, the required number of rest breaks is equal to the number of work hours divided by four, and if the work time is not evenly divisible by four, any remainder of two hours or less is rounded down and that which exceeds two hours is rounded up. For example, if a Class Member's work time is six hours and ten minutes, he or she is entitled to two rest breaks. If the work time is nine hours, the employee is still entitled to only two rest breaks. (There is an exception: if the shift is under three and one-half hours, no rest break is required.) Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

77. Despite these legal requirements, Defendants failed to authorize and permit Plaintiff and the Class to take timely, duty-free rest breaks. Plaintiff and the Class were subject to policies and/or practices that prevented them from taking legally compliant rest breaks. Defendants did not relieve Plaintiff and the Class of all duties during their rest breaks and required them to be available

1 to continue working—or, in fact, interrupted them—during their rest breaks. Defendants also
2 pressured Plaintiff and the Class to perform their duties in a way that made taking duty-free rest
3 breaks difficult, including, but not limited to, scheduling a heavy workload, maintaining an informal
4 anti-rest break policy enforced through ridicule or reprimand, creating incentives to forego breaks,
5 and exerting other forms of coercion deterring Plaintiff and the Class from taking their legally
6 protected rest breaks. Here, as a companywide practice and in fact, Defendants did not offer Plaintiff
7 and the Class the opportunity to receive compliant off-duty rest breaks and, thus, “the court may not
8 conclude employees voluntarily chose to skip...breaks.” (*Alberts v. Aurora Behavioral Health Care*
9 (2015) 241 Cal.App.4th 388, 410 [“[i]f an employer fails to provide legally compliant meal or rest
10 breaks, the court may not conclude employees voluntarily chose to skip those breaks.”]; accord,
11 *Brinker, supra*, 53 Cal.4th at p. 1033 [“No issue of waiver ever arises for a rest break that was
12 required by law but never authorized; if a break is not authorized, an employee has no opportunity
13 to decline to take it.”].)

14 78. In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, the court expressly
15 rejected the employer’s assertion that it could provide an on-duty rest break to employees who
16 worked as security guards and further explained “that employers [must] relinquish any control over
17 how employees spend their break time, and relieve their employees of all duties.” (*Id.* at p. 273.)
18 However, Defendants did not relieve Plaintiff and Class Members of all duties and relinquish control
19 over how Plaintiff and Class Members spend their time.

20 79. Plaintiff and Class Members were not compensated with one (1) hour’s worth of pay
21 at their regular rates of pay when they were not provided with compliant rest breaks in accordance
22 with Labor Code section 226.7, subdivision (b). (*See Ferra, supra*, 11 Cal.5th at p. 858.)

23 80. As a result, Defendants are liable to Plaintiff and Class Members for one (1) hour of
24 additional pay at their regular rates of pay for each workday when a compliant rest break was not
25 provided, in a sum to be proven at trial.

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

3 **(Lab. Code, §§ 226 and 226.3)**

4 **[On Behalf of Plaintiff and the Class against All Defendants]**

5 81. Plaintiff, on behalf of himself and the Class, realleges and incorporates by reference
6 all of the allegations contained in the preceding paragraphs of this Complaint as though fully set
7 forth herein.

8 82. Labor Code section 226, subdivision (a), requires employers, semi-monthly or at the
9 time of each payment of wages, to furnish employees an accurate itemized statement in writing
10 showing:

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

24 83. During the relevant time period, due to Defendants' failure to pay Plaintiff and Class
25 Members meal and rest break premiums at the regular rates of pay thereon, and failure to pay
26 minimum and overtime wages, the wage statements issued by Defendants, at a minimum, do not
27 indicate the correct amount of gross wages earned, the correct total hours worked, the correct net
28 wages earned, and the applicable and/or correct hourly rates in effect and the corresponding number

1 of hours worked at each hourly rate in violation of Labor Code section 226, subdivisions (a)(1), (2),
2 (3), (5), and (9).

3 84. An employee suffering injury as a result of a knowing and intentional failure by an
4 employer to comply with Labor Code section 226, subdivision (a), is entitled to recover the greater
5 of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs
6 and one hundred dollars (\$100.00) per employee for each violation in a subsequent pay period, not
7 exceeding an aggregate penalty of four thousand dollars (\$4,000.00), and is entitled to an award of
8 costs and reasonable attorneys' fees.

9 85. The absence of accurate information on their wage statements has delayed challenge
10 to Defendants' unlawful pay practices, requires discovery and mathematical computations to
11 determine the amount of wages owed, causes difficulty and expense in attempting to reconstruct
12 time and pay records, and led to submission of inaccurate information about wages and amounts
13 deducted from wages to state and federal governmental agencies. Plaintiff would not have had to
14 engage in these efforts and incur these costs had Defendants provided accurate wage statements.
15 This also delayed Plaintiff's ability to demand and recover the underpayment of wages from
16 Defendants.

17 86. Thus, Plaintiff and Class Members have been injured by Defendants' violation of
18 Labor Code section 226, subdivision (a), because they were denied both their legal right to receive,
19 and their protected interest in receiving, accurate itemized wage statements.

20 87. Plaintiff and Class Members are thus entitled to recover from Defendants the greater
21 of their actual damages caused by Defendants' failure to comply with Labor Code section 226,
22 subdivision (a), or an aggregate penalty not exceeding four thousand dollars (\$4,000.00) per
23 employee pursuant to Labor Code section 226, subdivision (e), and any other allowable penalties
24 including those pursuant to Labor Code section 226.3.

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1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO PAY ALL WAGES WITHIN A TIMELY MANNER**

3 **AND UPON SEPARATION OF EMPLOYMENT**

4 **(Lab. Code, §§ 201, 202, 203, 204, and 210)**

5 **[On Behalf of Plaintiff and the Class against All Defendants]**

6 88. Plaintiff, on behalf of himself and the Class, realleges and incorporates by reference
7 all of the allegations contained in the preceding paragraphs of this Complaint as though fully set
8 forth herein.

9 89. Labor Code sections 201 and 202 provide that if an employer discharges an
10 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,
11 and that if an employee voluntarily leaves his or her employment, his or her wages shall become
12 due and payable not later than seventy-two (72) hours thereafter, unless the employee has given
13 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is
14 entitled to his or her wages at the time of quitting.

15 90. Labor Code section 203 provides that if an employer willfully fails to pay
16 compensation promptly upon discharge or resignation, as required by sections 201 and 202, then the
17 employer is liable for penalties in the form of continued compensation up to thirty (30) days.

18 91. As alleged herein and above, Defendants' failure to pay wages was willful in that
19 Defendants knew wages were owed to Plaintiff and Class Members, but failed to pay said wages, at
20 the time of termination, or within 72 hours of resignation, thus entitling Plaintiff and Class Members
21 to penalties under Labor Code section 203, which provides that an employee's wages shall continue
22 as a penalty until paid for a period of up to thirty (30) days from the time they were due.

23 92. Labor Code section 204 requires that all wages earned by any person in any
24 employment between the 1st and 15th day, inclusive, of any calendar month, other than those wages
25 due upon termination of an employee, are due and payable between the 16th and the 26th day of the
26 month during which the labor was performed, and that all wages earned by any person in any
27 employment between the 16th and the last day, inclusive, of any calendar month, other than those
28 wages due upon termination of an employee, are due and payable between the 1st and 10th day of

1 the following month. Section 204 also requires that all wages earned for labor in excess of the normal
2 work period shall be paid no later than the payday for the next regular payroll period.

3 93. The requirements of Labor Code section 204 shall be deemed satisfied by the
4 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
5 seven calendar days following the close of the payroll period when the wages were earned.

6 94. During the relevant time period, Defendants failed to pay Plaintiff and Class
7 Members all wages due to them within the time period specified by Labor Code section 204,
8 including but not limited to minimum and overtime wages, along with meal and rest break
9 premiums.

10 95. Labor Code section 210 imposes upon Defendants a penalty of \$100.00 for each
11 violation of failing to pay the wages of each employee. Furthermore, Labor Code section 210
12 imposes upon Defendants for each subsequent violation, or any willful or intentional violation, of
13 failure to pay the wages of each employee a penalty of \$200.00, plus 25 percent of the amount
14 unlawfully withheld.

15 96. Pursuant to Labor Code sections 218.5 and 218.6, along with Civil Code sections
16 3287, subdivision (b), and 3289, Plaintiff requests that the Court award reasonable attorneys' fees
17 and the costs incurred by them in this action, along with pre-judgment interest on all amounts
18 recovered herein, as well as any statutory penalties Defendants may owe under the California Labor
19 Code and/or any other statute.

20 **SEVENTH CAUSE OF ACTION**

21 **VIOLATION OF LAB. CODE, § 1174, SUBDIVISION (d)**

22 **[On Behalf of Plaintiff and the Class against All Defendants]**

23 97. Plaintiff, on behalf of himself and the Class, realleges and incorporates by reference
24 all of the allegations contained in the preceding paragraphs of this Complaint as though fully set
25 forth herein.

26 98. Pursuant to Labor Code section 1174, subdivision (d), an employer shall keep at a
27 central location in the state or at the plants or establishments at which employees are employed,
28 payroll records showing the hours worked daily by, and the wages paid to employees employed

1 at, the respective plants or establishments. These records shall be kept in accordance with rules
2 established for this purpose by the Commission, but in any case, shall be kept on file for not less
3 than three years.

4 99. Defendants have intentionally and willfully failed to keep accurate and complete
5 payroll records showing the hours worked daily by, and the wages paid to, Plaintiff and Class
6 Members.

7 100. As a result of Defendants' violation of Labor Code section 1174, subdivision (d),
8 Plaintiff and Class Members have suffered injury and damage to their statutorily protected rights.

9 101. More specifically, Plaintiff and Class Members have been injured by Defendants'
10 intentional and willful violation of Labor Code section 1174, subdivision (d), because they were
11 denied both their legal right and protected interest in having available, accurate, and complete
12 payroll records pursuant to Labor Code section 1174, subdivision (d).

13 **EIGHTH CAUSE OF ACTION**

14 **UNFAIR COMPETITION LAW VIOLATIONS**

15 **(Bus. & Prof. Code, §§ 17200, *et seq.*)**

16 **[On Behalf of Plaintiff and the Class against All Defendants]**

17 102. Plaintiff, on behalf of himself and the Class, realleges and incorporates by reference
18 all of the allegations contained in the preceding paragraphs of this Complaint as though fully set
19 forth herein.

20 103. California's Unfair Competition Law ("UCL"), Business and Professions Code
21 sections 17200, *et seq.*, prohibits any unlawful, unfair, or fraudulent business practices. Business
22 and Professions Code section 17204 allows "any person who has suffered injury in fact and has lost
23 money or property" to prosecute a civil action for violation of the UCL. Such a person may bring
24 such an action on behalf of himself or herself and others similarly situated who are affected by the
25 unlawful, unfair, or fraudulent business practice.

26 104. Labor Code section 90.5, subdivision (a), states that it is the public policy of
27 California to vigorously enforce minimum labor standards in order to ensure employees are not
28 required to work under substandard and unlawful conditions, and to protect employers who comply

1 with the law from those who attempt to gain competitive advantage at the expense of their workers
2 by failing to comply with minimum labor standards.

3 105. A violation of Business and Professions Code sections 17200, *et seq.*, may be
4 predicated upon the violation of any state or federal law. Defendants' policies and/or practices have
5 violated state law in at least the following respects:

6 (a) Requiring Plaintiff and Class Members to work without paying them the
7 minimum wage for all hours worked in violation of Labor Code sections 1182.12, 1194, 1194.2,
8 1197, and 1197.1, and applicable IWC Wage Order(s);

9 (b) Requiring Plaintiff and Class Members to work overtime without paying
10 them the proper compensation in violation of Labor Code sections 510 and 1198, and applicable
11 IWC Wage Order(s);

12 (c) Failing to provide compliant duty-free meal periods to Plaintiff and Class
13 Members and failing to authorize and permit compliant duty-free rest breaks to Plaintiff and Class
14 Members in violation of Labor Code sections 226.7 and 512, and applicable IWC Wage Order(s);

15 (d) Failing to timely pay all wages to Plaintiff and Class Members during their
16 employment and upon separation of employment, in violation of Labor Code sections 201, 202, 203,
17 204, and 210;

18 (e) Failing to maintain and provide Plaintiff and Class Members with accurate
19 itemized wage statements, in violation of Labor Code sections 226, subdivision (a), and 1174.

20 Thus, Defendants engaged in unlawful competition in violation of Business and Professions Code
21 sections 17200, *et seq.*, by violating, *inter alia*, Labor Code sections 201, 202, 203, 204, 210, 218.5,
22 218.6, 223, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197,
23 1197.1, and 1198, and applicable IWC Wage Order(s).

24 106. As a direct and proximate result of Defendants' unlawful business practices, Plaintiff
25 and Class Members have suffered economic injuries because Defendants' conduct has damaged
26 Plaintiff and Class Members by, *inter alia*, wrongfully denying them all wages, including minimum
27 and overtime wages, and failing to pay all meal and rest breaks premiums at the regular rate of pay,
28 along with the corresponding interest, in a timely manner and upon separation, and while supplying

1 them inaccurate and misleading wage statements. Such conduct is substantially injurious to Plaintiff
2 and Class Members.

3 107. Additionally, Defendants intentionally avoided paying Plaintiff and Class Members
4 wages and monies, thereby creating for Defendants an artificially lower cost of doing business in
5 order to undercut their competitors and establish a greater foothold in the marketplace. Through
6 their actions alleged herein, Defendants have engaged in unfair competition within the meaning of
7 section 17200 of the Business and Professions Code.

8 108. Defendants have profited from their unlawful, unfair, and/or fraudulent acts and
9 practices. Plaintiff and Class Members are entitled to monetary relief pursuant to Business and
10 Professions Code sections 17203 and 17208. Defendants should be required to disgorge all the
11 profits and gains they have reaped and restore such profits and gains to Plaintiff and Class Members,
12 from whom they were unlawfully taken.

13 109. Defendants' course of conduct, acts, and practices in violation of California laws
14 mentioned above constitute independent violations of Business and Professions Code sections
15 17200, *et seq.*

16 110. Plaintiff and Class Members are entitled to enforce all applicable penalty provisions
17 of the Labor Code pursuant to Business and Professions Code section 17202.

18 111. Plaintiff has assumed the responsibility of enforcement of the laws and public
19 policies specified herein by suing on behalf of himself and Class Members previously or presently
20 employed by Defendants in California. Plaintiff's success in this action will enforce important rights
21 affecting the public interest. Plaintiff will incur a financial burden in pursuing this action in the
22 public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is appropriate pursuant
23 to Code of Civil Procedure section 1021.5.

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1 **NINTH CAUSE OF ACTION**

2 **PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

3 **(Lab. Code, §§ 2698, *et seq.*)**

4 **[On Behalf of Plaintiff and Aggrieved Employees against All Defendants]**

5 112. Plaintiff, on behalf of himself and Aggrieved Employees, realleges and incorporates
6 by reference all of the allegations contained in the preceding paragraphs of this Complaint as though
7 fully set forth herein.

8 113. Plaintiff, on behalf of himself and Aggrieved Employees, brings this representative
9 action against Defendants to recover wages and penalties pursuant to the PAGA, Labor Code
10 sections 2698, *et seq.*

11 114. Based on the above allegations, incorporated herein by reference, Defendants have
12 violated Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 223, 226, 226.3, 226.7, 510,
13 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198, as well as applicable
14 IWC Wage Order(s).

15 115. Under Labor Code sections 2699, subdivision (f)(2), and 2699.5, Plaintiff and
16 Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject
17 to the following formula:

- 18
 - \$100 for the initial violation per employee per pay period; and
 - \$200 for each subsequent violation per employee per pay period.

20 These penalties shall be allocated seventy-five percent (75%) to the LWDA and twenty-five percent
21 (25%) to the affected employees.

22 116. Defendants failed to provide Plaintiff and Aggrieved Employees with accurate
23 itemized wage statements in compliance with Labor Code section 226, subdivision (a). Plaintiff
24 seeks separate PAGA penalties for Defendants' violations of Labor Code section 226, subdivisions
25 (a) and (e). (*Lopez v. Friant & Assocs., LLC* (2017) 15 Cal.App.5th 773, 788; *Bell v. Home Depot*
26 *U.S.A.* (E.D.Cal. Dec. 11, 2017; No. 2:12-cv-02499 JAM-CKD) 2017 U.S.Dist.LEXIS 204493, at
27 *5 [finding after *Friant* that "[t]o the extent the Court's Order [granting summary judgment to *Home*
28 *Depot*] was ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs'

1 derivative claim for [PAGA] penalties under section 226(e)...the Court's Order should not be read
2 to grant summary judgment on Plaintiffs' claim for PAGA penalties based on violation of section
3 226(a).") For violations of Labor Code section 226, subdivision (a), Plaintiff seeks the default
4 penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that "[a]ny
5 employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount
6 of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one
7 thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the
8 employer fails to provide the employee a wage deduction statement or fails to keep the required
9 records in subdivision (a) of Section 226." Accordingly, through the PAGA and to the extent
10 permitted by law, Plaintiff and Aggrieved Employees are entitled to recover penalties for violations
11 of Labor Code section 226.3 and seek the default PAGA penalties for each of Defendants' numerous
12 violations of Labor Code section 226, subdivision (a).

13 117. Labor Code section 210 provides that "[i]n addition to, and entirely independent and
14 apart from, any other penalty provided in this article, every person who fails to pay the wages of
15 each employee as provided in Sections ... 204 ... shall be subject to a civil penalty as follows: (1)
16 [f]or any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2)
17 [f]or each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
18 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld." As a
19 result of the faulty compensation policies and/or practices, Plaintiff and Aggrieved Employees are
20 also entitled to recover penalties under Labor Code section 210 through the PAGA.

21 118. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
22 liquidated damages, in the amount of: "(1) [f]or any initial violation that is intentionally committed,
23 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
24 is underpaid...[and] (2) [f]or each subsequent violation for the same specific offense, two hundred
25 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
26 underpaid regardless of whether the initial violation is intentionally committed." Accordingly,
27 through the PAGA and to the extent permitted by law, Plaintiff and Aggrieved Employees are
28 entitled to recover pursuant to Labor Code section 1197.1.

119. On December 11, 2023, Plaintiff filed his PAGA Notice with the LWDA, paid the filing fee, and sent a letter by certified mail to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code sections 2698, *et seq.* Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), no notice was received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of the postmark date of the PAGA Notice. Plaintiff is therefore entitled to commence and proceed with a civil action pursuant to Labor Code section 2699.

120. Plaintiff, as a personal representative of the general public, on behalf of Aggrieved Employees and the State of California, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the PAGA period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with 75 percent of the penalties recovered being reimbursed to the State of California and the LWDA.

121. Plaintiff was compelled to retain the services of counsel to file this action to protect his interests and those of Aggrieved Employees, and to assess and collect the wages and penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to recover under Labor Code section 2699, subdivision (g)(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wage and overtime compensation for work performed by Plaintiff and Class Members, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, as may be proven;
4. For compensatory damages in the amount of the regular rate of pay for Plaintiff and Class Members for each non-compliant meal period for which premium pay was deficient, as may be proven;

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1 5. For compensatory damages in the amount of the regular rate of pay for Plaintiff and
2 Class Members for each day of non-compliant rest breaks for which premium pay was deficient, as
3 may be proven;

4 6. For penalties pursuant to Labor Code section 203 for Plaintiff and Class Members
5 who quit or were fired, in an amount equal to their daily wage multiplied by thirty (30) days, as may
6 be proven;

7 7. For actual damages and/or penalties pursuant to Labor Code section 226, subdivision
8 (e) for Plaintiff and Class Members, as may be proven;

9 8. For restitution for unfair competition pursuant to the Business and Professions Code
10 sections 17200, *et seq.*, including disgorgement of profits, as may be proven;

11 9. For a civil penalty in the amount of \$100.00 for the initial violation and \$200.00 for
12 each subsequent violation as specified in Labor Code section 2699, subdivision (f)(2), in the
13 representative action brought on behalf of Plaintiff and Aggrieved Employees pursuant to the
14 PAGA;

15 10. For all civil penalties available under Labor Code section 210 and the PAGA;

16 11. For all civil penalties available under Labor Code section 226.3 and the PAGA;

17 12. For all civil penalties available under Labor Code section 1174.5 and the PAGA;

18 13. For all civil penalties available under Labor Code section 1197.1 and the PAGA;

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

22 15. For an award of pre-judgment and post-judgment interest;

23 16. For an award providing for the payment of the costs of this suit;

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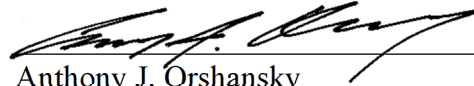
17. For an award of attorneys' fees, to the extent provided by law; and
18. For such other and further relief as the Court may deem proper and just.

Dated: February 28, 2024

Respectfully submitted,

COUNSELONE, PC

By:



Anthony J. Orshansky
Demetrius X. Lambrinos

Attorneys for Plaintiff, putative Class
Members and Aggrieved Employees