

Matthew Righetti, Esq. (SBN: 121012)
matt@righettilaw.com
John Glugoski, Esq. (SBN: 191551)
jglugoski@righettilaw.com
RIGHETTI GLUGOSKI, P.C.
2001 Union Street, Suite 400
San Francisco, CA 94123
Telephone: (415) 983-0900

Reuben D. Nathan, Esq. (SBN: 208436)
rnathan@nathanlawpractice.com
NATHAN & ASSOCIATES, APC
2901 W. Coast, Suite 200
Newport Beach, California 92663
TEL: (949) 270-2798
FAX: (949) 209-0303

Attorneys for Plaintiffs VIRGINIA BREW, TONY GROSBEIER, TIMOTHY MELLEN, COURTNEY TOLBERT, and D C SNYDER

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO**

VIRGINIA BREW, TONY GROSBEIER,
TIMOTHY MELLEN, COURTNEY TOLBERT,
and D C SNYDER, on behalf of themselves and
all similarly situated aggrieved employees, and
the general public,

Plaintiffs,

vs.

ROCKET MORTGAGE, LLC.; and DOES 1
through 25, inclusive,

Defendants.

Case No.: 24-CIV-00893

CLASS ACTION

FIRST AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

COME NOW PLAINTIFFS VIRGINIA BREW, TONY GROSBEIER, TIMOTHY MELLEN, COURTNEY TOLBERT, AND D C SNYDER AND HEREBY ALLEGE THE FOLLOWING:

1. Plaintiffs VIRGINIA BREW (“BREW”), TONY GROSBEIER (“GROSBEIER”), TIMOTHY MELLEN (“MELLEN”), COURTNEY TOLBERT (“TOLBERT”), and D C SNYDER (collectively referred to as “Plaintiffs”) hereby submit this First Amended Complaint (“FAC”) against Defendants ROCKET MORTGAGE, LLC and DOES 1–50, inclusive (hereafter referred to as “ROCKET” or “Defendants”), on behalf of themselves and other current and former similarly situated employees of Defendants for damages as follows:

2. Plaintiff is informed and believes and thereon alleges Defendants jointly and severally acted intentionally and with deliberate indifference and conscious disregard to the rights of all employees. This action is brought based on the Defendants' wrongful actions and includes the following causes of action: (1) Failure to Pay Minimum Wage; (2) Failure to Pay Overtime and Double Time; (3) Improper Meal Periods; (4) Improper Rest Periods; (5) Unlawful Deductions; (6) Improper Wage Statements; (7) Wages Not Paid Upon Separation; (8) Failure to Reimburse Expenses; (9) Unfair Business Practices, (10) Private Attorney General Act (PAGA), and (11) Failure to Pay Minimum Wage and Overtime under the Fair Labor Standards Act (FLSA).

THE PARTIES

5. Defendants employed Plaintiffs BREW, GROSBEIER, TIMOTHY MELLEN, COURTNEY TOLBERT, and D C SNYDER within 12 months preceding the filing of the PAGA notice with the LWDA.

6. Plaintiffs are informed and believe and thereon allege that Defendant Rocket Mortgage, LLC (“Defendant” or “ROCKET”) is a Michigan limited liability company licensed to do business and doing business in the State of California, including the County of San Mateo. Defendants employ employees throughout the State of California who are the subject of this representative action lawsuit.

7. The true names and capacities, whether individual, corporate, associate or otherwise of each of the Defendants designated herein as a DOE are unknown to Plaintiffs at this time, who therefore,

1 sue said Defendants by fictitious names, and will ask leave of this Court for permission to amend this
2 Complaint to show their names and capacities when the same have been ascertained. Plaintiffs are
3 informed and believe, and thereon allege that each of the Defendants designated as a DOE is legally
4 responsible in some manner for the events and happenings herein referred to, and caused injuries and
5 damages thereby to these Plaintiffs as alleged herein.

6 8. Plaintiffs are informed and believe, and thereon allege, that each of said Defendants is in
7 some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences,
8 and transactions alleged herein.

9 9. Plaintiffs are informed and believe, and thereon allege, that each of Defendants knowingly
10 and willfully acted in concert, conspired together, and agreed among themselves to enter into a
11 combination and systemized campaign of activity to cause the injuries and damages hereinafter alleged,
12 and to otherwise consciously and or recklessly act in derogation of Plaintiffs' rights, and the trust reposed
13 by Plaintiffs in each of said Defendants, said acts being negligently and or intentionally inflicted. Said
14 conspiracy, and Defendants' concerted actions, were such that, to Plaintiffs' information and belief, and
15 to all appearances, Defendants represented a unified body so that the actions of one defendant was
16 accomplished in concert with, and with knowledge, ratification, authorization, and approval of each other
17 Defendant.

18 10. Plaintiffs are informed and believe, and thereon allege, that each Defendant in this
19 complaint, is, and at all times mentioned was, the agent, servant, alter ego, and or joint employer along
20 with each of the other Defendants, and each Defendant acted within the course or scope of his, her, or its
21 authority as the agent, servant, and or employee of each other Defendant. Consequently, each Defendant
22 is jointly and severally liable to Plaintiffs and Class Members for the damages incurred as a proximate
23 result of each Defendant's conduct.

24 11. At all times herein mentioned, Defendants, and each of them, were agents, partners, joint
25 venturers, representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each
26 of the other, and at all times relevant hereto were acting within the course and scope of their authority as
27 such agents, partners, joint venturers, representatives, servants, employees, successors, co-conspirators
28

1 and assigns, and that all acts or omissions alleged herein were duly committed with ratification,
2 knowledge, permission, encouragement, authorization, and consent of each Defendant designated herein.

3 12. As such and based upon all the facts and circumstances incident to Defendants' business
4 in California, Defendants are subject to PAGA and Labor Code §§ 2698 et seq., for Defendants'
5 violations of California Labor Code §§ 510, 558, 1194, 1198 and the applicable IWC Wage Order which
6 Clients contend is 4-2001, and Labor Code §§ 200, 201, 202, 203, 204, 210, 212, 216, 218.5, 221-224,
7 225.5, 2751, 226, 226.3, 226.6, 226.7, 233, 234, 245-248.5, 256, 432, 432.5, 432.7, 500-508, 510, 512,
8 515, 558, 558.1, 976, 1024.5, 1194, 1197.1, 1198.3, 1198.5, 1199, 2699, 2699.3, 2751, 2800, 2802,
9 2804, 2810.5, 1174, 1174.5, 1197 and 1198.

10 **JURISDICTION AND VENUE**

11 13. This Court has jurisdiction over this action under the California Constitution, Article VI,
12 section 10, which grants the Superior Court, "Original Jurisdiction in all causes except those given by
13 statute to other courts." The statutes under which Plaintiffs bring this action do not specify any other
14 basis for jurisdiction.

15 14. This Court has jurisdiction over all Defendants because upon information and belief, each
16 is either a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally
17 avails itself to the California market so as to render the exercise of jurisdiction over it by the California
18 courts consistent with traditional notions of fair play and substantial justice.

19 15. Venue as to each Defendant is proper in this judicial district under California Code of
20 Civil Procedure sections 395(a) and 395.5. Defendants own, maintain offices, transact business, have an
21 agent or agents within the County of San Mateo or Defendants have transacted business within the
22 County. Venue in this County is also proper pursuant to *Crestwood Behavioral Health, Inc. v. Superior*
23 *Court*, 60 Cal.App.5th 1069 (2021).

24 **INTRODUCTION**

25 16. Plaintiffs, upon information and belief and based upon such basis, allege that Defendant
26 ROCKET employed more than 100 non-exempt employees including, mortgage bankers, associate
27 bankers and loan processors doing work throughout California, including in this County.
28

1 17. Plaintiffs allege they and other similarly situated aggrieved employees are non-exempt
2 employees, who were not compensated for all wages earned, including minimum wages and overtime
3 wages, were not provided off duty meal breaks pursuant to California law nor paid one hour of time, were
4 not authorized and permitted to take off duty paid rest breaks pursuant to California law (or compensation
5 in lieu thereof) nor paid one hour of time, did not receive accurate wage statements, were not furnished
6 with written wage statements and/or presented with an election as to whether they could be furnished
7 written wage statements, did not provide employees each pay period with the amount of available paid
8 sick leave (or paid time off an employer provides in lieu of sick leave) on the designated pay date with
9 the employee's payment of wages, did not receive all wages upon separation, were subjected to illegal
10 deductions, and were not reimbursed for business expenses as required by LC 2802.

11 18. Upon information and belief, to date, the Defendants' illegal practices set forth herein this
12 complaint are present and continuing.

13 19. Plaintiffs, upon information and belief and based upon such basis, allege that Defendants
14 did not regularly provide Plaintiffs and other similarly situated employees what they were legally entitled
15 to receive under the Wage Order and Labor Code provisions applicable to Defendants'
16 industry/business/employees.

17 **FACTUAL ALLEGATIONS AND LEGAL THEORY**

18 20. At all times set for herein, Defendants employed Plaintiffs and all other similarly situated
19 aggrieved employees throughout the state of California.

20 21. On information and belief, Plaintiffs are informed and believe, and thereon allege, that
21 Defendants are and were advised by skilled lawyers and other professionals, employees, and advisors
22 with knowledge of the requirements of California's wage and employment laws. Defendants had the
23 authority to hire and terminate Plaintiffs and other similarly situated aggrieved employees, to set work
24 rules and conditions, and to supervise their daily employment activities.

25 22. During the relevant time frame, Defendants compensated Plaintiffs and other similarly
26 situated aggrieved employees with wages and often times with a non-discretionary commission and/or
27 flat sum bonus.

28 23. During the relevant time frame, Plaintiffs and other similarly situated aggrieved

1 employees worked over eight (8) hours per day and forty (40) hours per workweek. Defendants required
2 Plaintiffs and the other similarly situated aggrieved employees to work but did not pay Plaintiffs and
3 the other similarly situated aggrieved employees for all hours worked on any given day or in any given
4 workweek at the appropriate regular rate and/or overtime compensation rate as required by law.

5 24. During the relevant time frame, Plaintiffs and other similarly situated aggrieved
6 employees frequently worked a minimum of ten (10) hours in a single day and often worked over twelve
7 (12) or more hours in a single day.

8 25. With the knowledge and expectation of Defendants, Plaintiffs and other similarly situated
9 aggrieved non-exempt employees worked off-the-clock, had their wages deducted, had their wages
10 miscalculated, suffered meal and rest period violations (or not be paid for their rest breaks). These policies
11 and practices give rise to violations of the aforementioned California Labor Code statutes and regulations.

12 26. Defendants failed and refused to compensate Plaintiffs and other similarly situated
13 aggrieved employees an additional hour of pay at their regular rate as required by California law when
14 meal and rest periods were not timely provided or authorized and permitted, respectively.

15 27. Defendants failed to furnish Plaintiffs and all other similarly situated aggrieved employees
16 paper wage statements and failed to afford such employees an election to receive paper wage statements
17 as required by law. The wage statements themselves lack accurate information required under Labor
18 Code 226(a). Defendants have made it difficult to account for wages owed to Plaintiffs and all other
19 similarly situated aggrieved employees without an examination of all records during the liability period.
20 As well, Defendants failed to implement and on information and belief failed to preserve a lawful record-
21 keeping method to record all time worked and wages owed to Plaintiffs and other similarly situated
22 aggrieved employees, as required by the California Labor Code.

23 28. Defendant failed to provide to Plaintiffs and all other similarly situated aggrieved
24 employees on the employee's wage statement described in Section 226 or separate writing on the
25 designated pay date with the employee's payment of wages, each pay period, the amount of available
26 paid sick leave (or paid time off an employer provides in lieu of sick leave) in violation of Labor Code
27 Section 246, et seq. Defendants have made it difficult to account for available sick leave and/or PTO
28 available to Plaintiffs and all other similarly situated aggrieved employees without an examination of all

1 records during the liability period. As well, Defendants failed to implement and on information and belief
2 failed to preserve a lawful record-keeping method to record all sick leave or PTO accrued, accumulated
3 and available to Plaintiffs and other similarly situated aggrieved employees, as required by the California
4 Labor Code.

5 29. Plaintiffs are informed and believe, and thereon allege, that at all times herein mentioned,
6 Defendants knew they had a duty to accurately compensate Plaintiffs and the aggrieved employees for
7 all hours worked including regular and overtime wages at the appropriate rates as well as pay Plaintiffs
8 and the aggrieved employees' meal and rest period premiums, and that Defendants had the financial
9 ability to pay such compensation, but willfully, knowingly, and/or intentionally failed to do so.

10 30. Plaintiffs are informed and believe, and based thereon allege, that Plaintiffs and all the
11 aggrieved employees, were entitled to reimbursement for necessary business-related expenses pursuant
12 to Labor Code 2802. At all material times set forth herein, Defendants failed to reimburse Plaintiffs and
13 the aggrieved non-exempt employees for necessary business-related expenses and costs including for at
14 home office expenses for such items such as internet, cell phone, supplies, electricity, water, office space,
15 etc. At all material times set forth herein, Defendants failed to properly reimburse Plaintiffs and the
16 aggrieved exempt and non-exempt employees pursuant to California law to increase Defendants' profits.

17 31. Such actions and policies, as described above and further herein, were and continue to be
18 in violation of the Private Attorney Generals Act 2698 seq. As a result of predicate statutes, including
19 IWC and Cal. Labor Code. Plaintiffs, on behalf of themselves and other similarly situated aggrieved
20 employees (past and current) seek penalties under the PAGA.

21 **CLASS ACTION ALLEGATIONS**

22 32. Plaintiffs bring this action on their own behalf, as well as on behalf of each and all other
23 persons similarly situated and thus, seeks class certification.

24 33. All claims alleged herein arise under California law for which Plaintiff seeks relief
25 authorized by California law.

26 34. Plaintiff proposes the following class (hereinafter "Class") be created:

27 All individuals who have been employed or are currently employed by Defendant, as non-
28 exempt employees in California dating back four years from June 21, 2019 to the present

1 date. Excluded from the Class are the defendants in this action, any entity in which the
2 defendants have a controlling interest, any officers, directors, and shareholders of the
3 defendants, and any legal representatives, heirs, successors, and assigns of the defendants.

4 35. Members of the Class will be referred to as “Class Members.”

5 36. There is a well-defined community of interest in this litigation and the Class is easily
6 ascertainable:

7 a. Numerosity: The members of the Class are so numerous that joinder of all
8 members would be unfeasible and impractical. The membership of the Class is
9 unknown to Plaintiff at this time. However, the Class is estimated to be greater
10 than fifty (50) individuals and the identity of such membership is readily
11 ascertainable by inspection of Defendants’ employment records.

12 b. Typicality: Plaintiff is qualified to and will fairly and adequately protect the
13 interests of each Class Member with whom they have a well-defined
14 community of interest, and Plaintiff’s claims (or defenses, if any), are typical
15 of all Class Members as demonstrated herein.

16 c. Adequacy: Plaintiff is qualified to, and will fairly and adequately protect the
17 interests of each Class Member with whom they have a well-defined
18 community of interest and typicality of claims, as alleged herein. Plaintiff
19 acknowledges that they have an obligation to the Court to make known any
20 relationship, conflict, or differences with any Class Member. Plaintiff’
21 attorneys and proposed Class counsel are well-versed in the rules governing
22 class action discovery, certification, and settlement. Plaintiff has incurred, and,
23 throughout the duration of this action, will continue to incur costs and attorneys’
24 fees that have been, are, and will be necessarily expended for the prosecution
25 of this action for the substantial benefit of each Class Member.

26 d. Superiority: The nature of this action makes the use of class action adjudication
27 superior to other methods. Class action will achieve economies of time, effort,
28 and expense as compared with separate lawsuits, and will avoid inconsistent

1 outcomes because the same issues can be adjudicated in the same manner and
2 at the same time for the entire class.

3 37. There are common questions of law and fact as to the Class that predominate over
4 questions affecting only individual members, including but not limited to:

- 5 e. Whether Defendants failed to pay Plaintiff and Class minimum wage and
6 overtime;
- 7 f. Whether Defendants failed to pay minimum wage;
- 8 g. Whether Defendants' failure to pay wages, without abatement or reduction, in
9 accordance with the California Labor Code, was willful;
- 10 h. Whether Defendants complied with wage reporting as required by the
11 California Labor Code; including but not limited to Section 226;
- 12 i. Whether Defendants had a policy or practice of not providing meal periods to
13 its non-exempt employees or providing compensation for missed meal periods;
- 14 j. Whether Defendants engaged in unlawful wage deductions;
- 15 k. Whether Defendants had a policy or practice of not paying or providing rest
16 periods to its non-exempt employees compensation for missed rest periods;
- 17 l. Whether Defendants reimbursed business expenses;
- 18 m. Whether Defendants provided itemized accurate wage statements;
- 19 n. Whether Defendants paid all wages due and owing upon separation of
20 employment;
- 21 o. Whether Defendants violated Labor Code section 2698, et seq.; and
- 22 p. The appropriate amount of damages, restitution, or monetary penalties resulting
23 from Defendant's violations of California law.

24 **FIRST CAUSE OF ACTION**

25 **Violation of Labor Code sections 1194, 1197, and 1197.1 – Minimum Wage**

26 *(Plaintiffs and Class Members against all Defendants)*

27 38. Plaintiffs re-allege and incorporate by reference, as though fully set forth herein, all
28 preceding paragraphs of this Complaint.

39. California Labor Code sections 1194, 1197, and 1197.1 provide that minimum wage must be paid to employees in the state of California and the any lesser wage is a violation.

40. Defendants failed to pay Plaintiff and Class Members minimum wage at the rates required by the state of California.

41. Defendants' failure to pay Plaintiff, the Class Members and Aggrieved Employees the minimum wage required violates California Labor Code sections 1194, 1197, and 1197.1. Defendants failed to track all hours worked including hours worked by Plaintiff, the Class Members and Aggrieved Employees. Plaintiff and Class Members are entitled to recover the balance of any minimum wage compensation.

SECOND CAUSE OF ACTION

Violation of Labor Code sections 510, 1198 & Industrial Welfare Commission Wage Order 4-

2001, §3(A) – Unpaid Overtime and Double Time

(Plaintiffs and Class Members against all Defendants)

42. Plaintiffs re-allege and incorporate by reference, as though fully set forth herein, all preceding paragraphs of this Complaint.

43. At all times herein set forth, California Labor Code section 218 authorizes employees to sue directly for any wages or penalties due to them under this article of the California Labor Code.

44. At all times herein set forth, California Labor Code section 1198 provides that it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission (hereinafter "IWC").

45. At all times herein set forth, IWC Wage Order section 4-2001(3)(A), which is applicable to Plaintiff, the Class Members and Aggrieved Employees' employment by Defendants, has provided that employees working for more than eight (8) hours in one (1) day, and/or more than forty (40) hours in one (1) workweek, are entitled to payment at the rate of one-and-one-half (1 ½) his or her regular rate of pay for all hours worked in excess of eight (8) hours in one (1) day or more than forty (40) hours in one (1) work week. An employee who works more than twelve (12) hours in one (1) day is entitled to overtime compensation at a rate of twice his or her regular rate of pay. During this liability period, Plaintiff and other similarly situated employees received commissions as well as an hourly rate.

1 Plaintiff, the Class Members and Aggrieved Employees worked in excess of forty (40) hours per
2 workweek for each workweek while employed by Defendants throughout the course of employment with
3 Defendants, subject to any workweeks wherein Plaintiff, the Class Members and Aggrieved
4 Employees' missed workdays as a result of sick days, personal emergencies, or anything else that would
5 otherwise interfere with workweek schedules. Defendants required Plaintiff, the Class Members and
6 Aggrieved Employees to work but did not pay Plaintiff, the Class Members and Aggrieved Employees
7 for all hours worked on any given day or in any of the given workweeks herein mentioned through
8 commissions, off the clock or as a result of Defendants manipulating its time records. Defendants
9 failed to compensate pay Plaintiff, the Class Members and Aggrieved Employees for work performed
10 in excess of eight (8) hours a day or forty (40) hours per workweek while employed by Defendants, which
11 occurred throughout pay Plaintiff, the Class Members and Aggrieved Employees course of employment
12 with Defendants.

13 46. California Labor Code section 510 codifies the right to overtime compensation at one-
14 and-one-half ($1\frac{1}{2}$) the regular hourly rate for hours worked in excess of eight (8) hours in one (1) day or
15 forty (40) hours in one (1) week or for the first eight (8) hours worked on the seventh day of work, and
16 at twice the regular hourly rate for hours worked in excess of twelve (12) hours in one (1) day or in excess
17 of eight (8) hours on the seventh day of work.

18 47. During the relevant time period, more specifically, three years dating back from the filing
19 of this Complaint, Plaintiff, the Class Members and Aggrieved Employees worked in excess of eight
20 (8) hours in one (1) work day and forty (40) hours in one (1) work week. During the relevant time period,
21 more specifically, dating back three years from the filing of this Complaint, Plaintiff, the Class Members
22 and Aggrieved Employees frequently worked in excess of ten (10) hours and often times worked in
23 excess of twelve (12) hours in one (1) work day.

24 48. During the relevant time period, Defendants failed to pay all premium overtime wages.
25 Defendants failed to track all hours worked including overtime hours and failed to include the
26 discretionary bonuses into the regular rate. Defendants failed to pay double time wages owed to Plaintiff,
27 the Class Members and Aggrieved Employees for worked performed in excess of twelve (12) hours.
28

49. Defendants' failure to pay Plaintiff, the Class Members and Aggrieved Employees the unpaid balance of premium overtime compensation, as required by California state law, violates the provisions of Labor Code section 510 and is therefore unlawful.

50. Defendants' failure to pay Plaintiff, the Class Members and Aggrieved Employees the unpaid balance of premium overtime compensation, as required by California state law, violates the provisions of Labor Code section 510 and 1198 and is therefore unlawful.

51. Pursuant to Labor Code section 1194, Plaintiff and Class Members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorney's fees.

52. Pursuant to Labor Code section 558, Plaintiff, the Class Members and Aggrieved Employees are entitled to fifty dollars (\$50.00) for each pay period for which the employee was underpaid.

53. This is in addition to an amount sufficient to recover underpaid wages and for each subsequent violation, one hundred dollars (\$100.00) for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

THIRD CAUSE OF ACTION

Violation of Labor Code sections 226.7, 512(a), and Industrial Welfare Commission Wage Order

4-2001, § 11 – Improper Meal Periods

(Plaintiffs and Class Members against all Defendants)

54. Plaintiffs re-allege and incorporate by reference, as though fully set forth herein, all preceding paragraphs of this Complaint.

55. At all times herein, Labor Code section 226.7(a) provides that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC.

56. At all times herein, Labor Code section 512(a) provides that an employer may not employ an employee for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

1 57. The language of IWC Order No. 4-2001 § 11(B) relating to meal periods tracks the
2 language of the California Labor Code.

3 58. During the relevant time period, Plaintiff and all other similarly situated employees, who
4 were scheduled to work in excess of five (5) hours, but not longer than six (6) hours, and who did not
5 waive their legally-mandated meal periods by mutual consent, were required to work in excess of five
6 (5) hours without receiving a meal period of not less than thirty (30) minutes. During the relevant time
7 period, Plaintiff and all other similarly situated employees, who were scheduled to work for a period of
8 time in excess of six (6) hours, were required to work in excess of five (5) hours, without receiving a
9 meal period of not less than thirty (30) minutes. An employer may not employ an employee for a work
10 period of more than ten (10) hours per day without providing the employee with a second meal period of
11 not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours,
12 the second meal period may be waived by mutual consent of the employer and the employee only if the
13 first meal period was not waived.

14 59. Plaintiff, the Class Members and Aggrieved Employees were forced to work in excess
15 of five (5) hours per day on a regular basis without being provided a daily thirty (30) minute restrictive-
16 free meal period. Plaintiff, the Class Members and Aggrieved Employees did not receive meal periods;
17 in addition, Defendants' work demands and pressure from Defendants' management, with specific
18 knowledge and/or at the instruction of Defendants, as a result of an implemented policy, regularly
19 required Plaintiff, the Class Members and Aggrieved Employees to return to work before completing
20 (constitutes a missed meal period) an uninterrupted meal period of thirty (30) minutes. Upon information
21 and belief, during the relevant time frame, Plaintiff, the Class Members and Aggrieved Employees often
22 worked shifts in excess of then (10) hours, yet were never provided a second, uninterrupted meal period
23 of thirty (30) minutes for those shifts. During all relevant periods, Defendants illegally and unlawfully
24 required Plaintiff, the Class Members and Aggrieved Employees to work through meal periods. Wage
25 orders required that Plaintiff, the Class Members and Aggrieved Employees be compensated for the
26 meal periods for which Defendants required Plaintiff and Class Members to work. Defendants did not
27 provide Plaintiff and Class Members with a meal break(s) during each workweek throughout the course
28 of employment with Defendants. Defendants failed to compensate Plaintiff, the Class Members and

Aggrieved Employees for these meal periods worked on any given day or during any given workweek. Despite the above-mentioned meal period violations, Defendants never compensated Plaintiff, the Class Members and Aggrieved Employees on additional hour of pay at their regular rate as required by California law when meal periods were not provided.

60. Pursuant to Labor Code section 226.7(b) and Industrial Welfare Commission Wage Order 4-2001, section 11(B), Plaintiff and Class Members are entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a meal period was not provided, for a three-year statutory period dating back from the date of the commencement of this action.

FOURTH CAUSE OF ACTION

Violation of Labor Code section 226.7(a) – Improper Rest Periods

(Plaintiffs and Class Members against all Defendants)

61. Plaintiffs re-allege and incorporate by reference, as though fully set forth herein, all preceding paragraphs of this Complaint.

62. At all times herein, Labor Code section 218 authorizes employees to sue directly for any wages or penalty due to them under this article of the California Labor Code. Labor Code section 226.7(a) provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the IWC.

63. IWC Order No. 4-2001 § 12, which covers rest periods, provides “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.” Plaintiff allege that Defendants did not provide Plaintiff, the Class Members and Aggrieved Employees proper uninterrupted rest periods that they were legally entitled to. Upon information and belief, during the relevant time frame, Defendants maintained and enforced a schedule and policies that due to business demands often required Plaintiff, the Class Members and Aggrieved

1 Employees to shorten (constitutes a missed rest break) or forego their lawful rest periods of ten (10)
2 minutes for every four (4) hours worked or major fraction thereof. Defendants instituted a company-
3 wide policy that demanded Plaintiff, the Class Members and Aggrieved Employees to work through
4 their rest periods. Defendants illegally and unlawfully required Plaintiff and members of the Class to
5 work through rest periods. Wage orders required that Plaintiff, the Class Members and Aggrieved
6 Employees be compensated for the rest periods for which Defendants required Plaintiff, the Class
7 Members and Aggrieved Employees to work. Defendants did not provide Plaintiff, the Class Members
8 and Aggrieved Employees with a rest break(s) during each workweek throughout the course of
9 employment with Defendants. Defendants failed to compensate Plaintiff, the Class Members and
10 Aggrieved Employees for these rest periods worked on any given day or in any given workweek by
11 either forcing them to miss their rest breaks or failing to pay Plaintiff, the Class Members and Aggrieved
12 Employees the time during their rest breaks.

13 64. “[A]ll hours must be paid at the statutory or agreed rate and no part of this rate may be
14 used as a credit against a minimum wage obligation.” (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th
15 314, 324.) “Under the California minimum wage law, employees must be compensated for each hour
16 worked at either the legal minimum wage or the contractual hourly rate, and *compliance cannot be*
17 *determined by averaging hourly compensation.*” (*Bluford v. Safeway Stores, Inc.* (2013) 216 Cal.App.4th
18 864, 872 (emphasis added); *see also Sheppard v. North Orange County Regional Occupational Program*
19 (2010) 191 Cal.App.4th 289, 297 n.5 (“Compliance with the minimum wage law is determined by
20 analyzing the compensation paid for each hour worked; *averaging hourly compensation is not permitted*
21 *under California law.*”) (emphasis added).) “[A]ny employee receiving less than the legal minimum
22 wage ... is entitled to recover in a civil action the unpaid balance of the full amount of this minimum
23 wage” (*Cal. Lab. Code* § 1194(a).) “[A]ll hours must be paid at the statutory or agreed rate and no
24 part of this rate may be used as a credit against a minimum wage obligation.” (*Armenta v. Osmose, Inc.*
25 (2005) 135 Cal.App.4th 314, 324.) “An employer is required to authorize and permit the amount of rest
26 break time called for under the wage order for its industry.” (*Brinker*, 53 Cal.4th at 1033; *see also*
27 *Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220, 236 (“An employer has a duty to
28 authorize and permit rest breaks.”).) “No employer shall require any employee to work during any ...

rest period mandated by an applicable order of the Industrial Welfare Commission.” (*Cal. Labor Code* § 226.7(a).) “Under Industrial Welfare Commission wage orders, employers are required to ‘authorize and permit all employees to take rest periods’ at the rate of at least 10 minutes for every four hours worked.” (*Bluford*, 216 Cal.App.4th at 871 (*quoting* 8 C.C.R. § 11070, § 12); *see also* *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1104 (Employees are entitled to “a paid 10–minute rest period per four hours of work.”).) “The wage order’s requirement not to deduct wages for rest periods presumes [employees] are paid for their rest periods.” (*Bluford*, 216 Cal.App.4th at 871.) “Rest periods are considered hours worked and must be compensated.” (*Id.* at 872.). Also see, *Vaquero v. Stoneledge Furniture LLC* (2017) 9 Cal.App.5th 98; also see, LC 226.7. Defendants failed to compensate Plaintiff and non-exempt employees by deducting commissions from their hourly pay.

65. Pursuant to Labor Code section 226.7(b) and Code of Civil Procedure section 338, Plaintiff and Class Members are entitled to recover from Defendants one (1) additional hour of pay at the employee's ‘regular rate’ of compensation for each rest period (a) that was not authorized and permitted, and/or (b) that was not paid time for a three-year statutory period dating back from the date of the commencement of this action. Plaintiff, the Class Members and Aggrieved Employees were systematically not permitted and/or authorized and/or paid to take one (1) ten (10) minute rest period (off duty for ten consecutive minutes) for every four (4) hours worked or major fraction thereof, which is a violation of the Labor Code and IWC wage order 4-2001, section 12. Plaintiff, the Class Members and Aggrieved Employees were not compensated for rest breaks and were not paid for rest break time. Defendants willfully violated the provisions of Labor Code sections 226.7, 512 and IWC Wage Order No. 4-2001.

66. Defendants’ conduct, as alleged herein, violates Labor Code section 226.7(a) and 226.2, which authorizes that no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the IWC.

67. Pursuant to Labor Code section 226.7(b) and Code of Civil Procedure section 338, Plaintiff and Class Members are entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a rest period was not provided, for a three-year statutory period dating back from the date of the commencement of this action. Plaintiff, the

1 Class Members and Aggrieved Employees systematically not permitted or authorized to take one (1)
2 ten (10) minute rest period for every four (4) hours worked or major fraction thereof, which is a violation
3 of the Labor Code and IWC wage order 4-2001, section 12. On shifts where Plaintiff worked in excess
4 of three and half hours, they were routinely not permitted and authorized to take lawful rest periods.
5 Plaintiff, the Class Members and Aggrieved Employees were not compensated with one hour of wages
6 for every day in which a rest period was missed or untimely as a result of Defendants' policies, practices,
7 or work demands. By failing to authorize and permit a ten-minute rest period for every four (4) hours or
8 major fraction thereof worked per day by its non-exempt employees, and by failing to provide
9 compensation for such non-provided or shortened rest periods, as alleged above, Defendants willfully
10 violated the provisions of Labor Code sections 226.7, 512 and IWC Wage Order No. 4-2001.

11 **FIFTH CAUSE OF ACTION**

12 **Violation of Labor Code section 223 – Unlawful Deductions**

13 *(Plaintiffs and Class Members against all Defendants)*

14 68. Plaintiffs re-allege and incorporate by reference, as though fully set forth herein, all
15 preceding paragraphs of this Complaint.

16 69. Labor Code §204 provides that all earned wages are due and payable twice during each
17 calendar month. Labor Code §221 provides that it shall be unlawful for any employer to collect or receive
18 from an employee any part of wages theretofore paid by said employer to said employee. Defendants
19 unlawfully deducted wages from Plaintiff, the Class Members and Aggrieved Employees. Defendants
20 created a system whereby Plaintiff, the Class Members and Aggrieved Employees were not paid meal
21 and rest break premiums and had their stock options illegal taken from them, and therefore, suffered
22 unlawful deductions. Labor Code §223 provides that where a contract requires an employer to maintain
23 the designated scale, it is unlawful to pay a lower wage while purporting to pay the wage designed by the
24 contract. Labor Code §224 prohibits employers from making deductions from an employee's wages not
25 authorized by the employee in writing or permitted by law. Labor Code §2751 provides that: Whenever
26 an employer enters into a contract of employment with an employee for services to be rendered within
27 this state and the contemplated method of payment of the employee involves commissions, the contract
28 shall be in writing and shall set forth the method by which the commissions shall be computed and paid.

1 70. Under California law, an employer can lawfully withhold amounts from an employee's
2 wages only in the following circumstances:

3 a) When required or empowered to do so by state or federal law;

4 b) When a deduction is expressly authorized in writing by the employee to cover
5 insurance premiums, benefit plan contributions or other deductions not amounting to a
6 rebate on the employee's wages; and

7 c) When a deduction to cover health, welfare or pension contributions is expressly
8 authorized by a wage or collective bargaining agreement (Labor Code Sections 221 and
9 224).

10 71. None of the exceptions outlined by the Labor Code apply to Plaintiff, the Class Members
11 and Aggrieved Employees. Defendants' failure to pay premiums to Plaintiff, the Class Members and
12 Aggrieved Employees constitutes an unlawful deduction. Defendants have maintained a policy of failing
13 to inform Plaintiff, the Class Members and Aggrieved Employees of the illegal deductions and have
14 willfully failed to compensate Plaintiff and class members for illegal deductions.

15 72. Plaintiff and all similarly situated employees are entitled to compensation for the illegal
16 deductions from Defendants i.e. meal and rest break premium compensation, damages, and waiting time
17 penalties associated with the deductions and according to proof at trial.

18 **SIXTH CAUSE OF ACTION**

19 **Violation of Labor Code section 226(a) – Improper Wage Statements**

20 *(Plaintiffs and Class Members against all Defendants)*

21 73. Plaintiffs re-allege and incorporate by reference, as though fully set forth herein, all
22 preceding paragraphs of this Complaint.

23 74. Labor Code section 226(a) mandates that employers provide their employees, along with
24 the employees' paychecks, "an accurate itemized statement in writing showing (1) gross wages earned,
25 (2) total hours worked by the employee, except for any employee whose compensation is solely based
26 on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any
27 applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any
28 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all

1 deductions made on written orders of the employee may be aggregated and shown as one item, (5) net
2 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
3 employee and his or her social security number, except that by January 1, 2008, only the last four digits
4 of his or her social security number or an employee identification number other than a social security
5 number may be shown on the itemized statement, (8) the name and address of the legal entity that is the
6 employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number
7 of hours worked at each hourly rate by the employee.”

8 75. Plaintiff, on information and belief and based upon such basis, alleges that Plaintiff, the
9 Class Members and Aggrieved Employees were intentionally not provided accurate wage statements,
10 pursuant to Labor Code section 226(a) by Defendants, because it was Defendants’ intent to avoid paying
11 Plaintiff and all other similarly situated Class Member and Aggrieved employees, the correct wages that
12 Plaintiff, the Class Members and Aggrieved Employees legally entitled to in order for Defendants to
13 generate greater profits at the expenses of Plaintiff and all similarly situated employees Class Members
14 and Aggrieved Employees.

15 76. Defendants also violated California Labor Code section 226, which requires wage
16 statements to list “all applicable hourly rates in effect during the pay period and the corresponding number
17 of hours worked at each hourly rate by the employee.” Defendants have knowingly and intentionally
18 failed to comply with Labor Code § 226(a) on wage statements which should have been properly provided
19 to Plaintiff and all other similarly situated Class Members and Aggrieved Employees employees, and
20 such violations flow from Defendants’ improper policies and practices, their implementation and
21 enforcement by Defendants, and the violations alleged in the preceding causes of action and herein. More
22 specifically, rates, hours worked, the miscalculation of the overtime rate based on the commission rate
23 and hourly rate, off-the-clock hours worked, and premium wage payments for missed meal and rest
24 breaks should have been itemized on the wage statements issued by Defendants to Plaintiff, the Class
25 Members and Aggrieved Employees and constitutes a violation of California Labor Code section 226.
26 In addition, Defendants failed to provide Plaintiff, the Class Members and Aggrieved Employees with
27 the option to receive paper wage statements. Defendants’ intentional conduct by failing to provide
28 Plaintiff, the Class Members and Aggrieved Employees with accurate wage statements have caused

1 Plaintiff and Class Members to suffer injury in fact by depriving them of their wage records. In order to
2 determine if they had been paid the correct amount and rate for all hours worked, Plaintiff and all other
3 similarly situated Class Members and Aggrieved employees have been, would have been, and are
4 compelled to discover for accuracy, the required information missing from their wage statements and to
5 perform calculations in light of the inaccuracies and incompleteness of the wage statements Defendants
6 provided to them. Given the violations addressed above and the resulting inaccuracies in the wage
7 statements provided by Defendants to Plaintiff and all other similarly situated Class Members and
8 Aggrieved Employees, Defendants have made it very difficult, to determine from the wage statements
9 themselves such important items of information as the appropriate pay rate to apply to their hours worked.
10 Defendants' Labor Code section 226 violations further injured aggrieved employees by rendering them
11 unaware of the full compensation to which there were entitled under applicable provisions of the
12 California Labor Code and applicable IWC Wage Orders, and Defendants' aggrieved employees have
13 been accordingly rendered unaware of how to calculate such compensation. Pursuant to California Labor
14 Code §226(c), Plaintiff issued a written request to copy, inspect, and/or receive copies of Plaintiff
15 employment file, including, but not limited to all documents supporting employment with Defendants,
16 however Defendants intentionally failed to respond to the request.

17 77. Plaintiff, on information and belief and based upon such basis, alleges that Plaintiff, the
18 Class Members and Aggrieved Employees are entitled to recover from Defendants the greater of their
19 actual damages caused by Defendants' failure to comply with Labor Code Section 226(a) or an aggregate
20 penalty not exceeding \$4,000, and an award of costs and reasonable attorneys' fees pursuant to Labor
21 Code Section 226(e).

22 **SEVENTH CAUSE OF ACTION**

23 **Violation of Labor Code sections 201-203 – Wages Not Paid Upon Separation**

24 *(Plaintiffs and Class Members, against all Defendants)*

25 78. Plaintiffs re-allege and incorporate by reference, as though fully set forth herein, all
26 preceding paragraphs of this Complaint.

27 79. At all times herein set forth, Labor Code section 218 authorizes employees to sue directly
28 for any wages or penalties due to them under this article of the California Labor Code.

1 80. At all times herein set forth, Labor Code sections 201-203 provide that if an employer
2 discharges an employee, the wages earned and unpaid at the time of discharge are due and payable
3 immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall
4 become due and payable not later than seventy-two (72) hours thereafter; unless the employee has given
5 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is
6 entitled to his or her wages at the time of quitting.

7 81. During the relevant time period, Defendants failed to pay Plaintiff, the Class Members
8 and Aggrieved Employees who are no longer employed by Defendants, all their wages, earned and
9 unpaid, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants'
10 employ.

11 82. Defendants also willfully violated Labor Code sections 201-203 by failing to provide all
12 owed wages at separation from employment. Labor Code sections 201 and 202 require Defendants to
13 pay their employees all wages due either at the time of firing or within seventy-two (72) hours of
14 voluntary separation, if not sooner. Section 203 of the Labor Code provides that if an employer willfully
15 fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject employee's
16 wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed thirty
17 (30) days of wages. Plaintiff, the Class Members and Aggrieved Employees who were separated from
18 employment are entitled to compensation for all forms of wages earned, including but not limited to
19 unpaid overtime compensation and premium payments for non-provided meal and rest periods, but to
20 date have not received such compensation, and are therefore entitled to wages.

21 83. Defendants' failure to pay Plaintiff, the Class Members and Aggrieved Employees, who
22 are no longer employed by Defendants, all wages earned at the time of their discharge, or within seventy-
23 two (72) hours of their leaving Defendant's employ, is in violation of Labor Code sections 201-203.

24 84. Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in
25 accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from
26 the due date, and at the same rate until paid or until an action is commenced; but the wages shall not
27 continue for more than thirty (30) days. Plaintiff and Class Members who are no longer employed by
28

Defendants, are entitled to recover from Defendants the statutory penalty for each day they were not paid at their regular hourly rate of pay, up to a thirty (30) day maximum, pursuant to Labor Code section 203.

EIGHTH CAUSE OF ACTION

Violation of California Labor Code section 2800, et seq.

(Plaintiffs and Reimbursement Class against all Defendants)

85. Plaintiffs re-allege and incorporate by reference, as though fully set forth herein, all preceding paragraphs of this Complaint.

86. Plaintiff, Reimbursement Class Members and Aggrieved Employees allege this cause of action against Defendants.

87. “An employer shall in all cases indemnify his employee for losses caused by the employer’s want of ordinary care.” (Cal. Labor Code § 2800.)

88. “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” (Cal. Labor Code § 2802(a).)

89. “All awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.” (Cal. Labor Code § 2802(b).)

90. California Labor Code section 2802(c) provides: “For purposes of this section, the term “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

91. Defendants owe a duty to Plaintiff, Reimbursement Class Members and Aggrieved Employees to indemnify them for all necessary expenditures, losses, and damages suffered and incurred in direct consequence of the discharge of their duties, or of their obedience to the directions of their employer. Defendants continue to refuse to reimburse and indemnify Plaintiff, Reimbursement Class Members and Aggrieved Employees for all necessary expenditures and losses incurred by them, including but not limited cell phones, Internet, home office, utilities, and computers while performing

1 work for Defendants.

2 92. Plaintiff, Reimbursement Class Members and Aggrieved Employees have incurred, and
3 are continuing to incur, necessary expenditures and losses in direct consequence of the discharge of
4 duties, or of obedience to Defendants' directions as an employer, which at the time of obeying the
5 directions, Plaintiff, Reimbursement Class Members and Aggrieved Employees believed to be lawful.

6 93. The acts and omissions herein violated California Labor Code section 2802(a) and violates
7 California Labor Code sections 221 through 224. Plaintiff and Reimbursement Class Members are
8 entitled to attorney's fees under to California Labor Code section 2802(c).

9 94. Plaintiff seeks reimbursement and indemnification for himself and all other class members
10 similarly situated for all necessary expenditures or losses incurred by them in direct consequence of the
11 discharge of their duties, or obedience to the directions of the Defendants as an employer.

12 95. During the relevant time period, Defendants intentionally and improperly failed to
13 reimburse necessary expenditures Plaintiff, Reimbursement Class Members and Aggrieved Employees
14 incurred.

15 96. Under the California Labor Code sections cited herein, Plaintiff and Class Members are
16 entitled to recover the necessary expenditures they incurred for the March 1, 2020 through preliminary
17 approval, plus reasonable attorney's fees and costs under California Labor Code section 2802.

18 97. By virtue of Defendants' unlawful failure to reimburse necessary expenditures Plaintiff
19 and Class Members incurred, Plaintiff, Reimbursement Class Members and Aggrieved Employees have
20 incurred damages in amounts presently unknown to Plaintiff, Reimbursement Class Members and
21 Aggrieved Employees.

22 98. Plaintiff is informed and believes, and based upon that information and belief alleges, that
23 Defendants, and each of them, knew or should have known Plaintiff, Reimbursement Class Members and
24 Aggrieved Employees were not being reimbursed for all necessary business expenditures they incurred.

25 99. As a direct and legal (proximate) result of Defendants' violation of the California Labor
26 Code, Plaintiff, Reimbursement Class Members and Aggrieved Employees have been damaged. Under
27 California Labor Code section 2802, Plaintiff and Reimbursement Class Members are entitled to, and
28 request reimbursement of all necessary expenditures they incurred, interest, penalties, reasonable

1 attorney's fees, and costs, incurred in this action in an amount to be proven at or following trial of this
2 matter.

3 **NINTH CAUSE OF ACTION**

4 **Violation of Business and Professions Code section 17200, et seq.**

5 *(Plaintiffs, the Class, and Reimbursement Class, against all Defendants)*

6 100. Plaintiffs re-allege and incorporate by reference, as though fully set forth herein, all
7 preceding paragraphs of this Complaint.

8 101. Defendants' conduct, as alleged herein, including not paying Plaintiff and others similarly
9 situated for all wages owed, including overtime wages and minimum wages, wages for missed meal
10 periods and missed rest periods, not reimbursing business expenses, not providing Plaintiff and all other
11 similarly situated employees with accurate wage statements, unlawfully deducting wages, and not paying
12 Plaintiff and all other similarly situated employees all wages due upon separation from Defendants, has
13 been, and continues to be unlawful and unfair, and harmful to Plaintiff and all other similarly situated
14 employees, and the general public.

15 102. Defendants' activities as alleged herein are in violation of California law, and constitute
16 unlawful and unfair business practices in violation of Business and Professions Code section 17200, et
17 seq., which justify the issuance of an injunction, restitution, and other equitable relief pursuant to
18 California Business and Professions Code §17203.

19 103. Plaintiff and all other similarly situated employees have been personally aggrieved by
20 Defendants' unlawful and unfair business practices as alleged herein, including, but not necessarily
21 limited to, the loss of money or property.

22 104. Defendants have failed and refused to pay Plaintiff and Class Members minimum and
23 overtime wages, commissions, and meal/rest period violations at the regular rate. More specifically,
24 Defendants' conduct violated laws by failing to pay overtime wages to Plaintiff and Class Members, who
25 regularly worked in excess of forty (40) hours per workweek. Defendants have failed and refused to
26 provide Plaintiff and Class Members with meal and rest breaks in violation of the California Labor Code
27 §§226.7(a) and 512. Defendants have failed to reimburse Plaintiff and the Reimbursement Class
28 Members business expenses pursuant California Labor Code §2800 and 2802. Defendants have failed

1 to provide Plaintiff and similarly situated employees with accurate wage statements pursuant to
2 California Labor Code section 226 as a result of failing to lawfully compensate Plaintiff and similarly
3 situated employees and failed to provide Plaintiff and similarly situated employees with the wages owed
4 upon separation pursuant to California Labor Code section 201-203. Defendants have failed to keep
5 accurate payroll records, have unlawfully deducted wages, and failed to pay minimum wages.
6 Defendants violated California Business and Professions Code §17200, et seq. as a result of violating
7 these statutory provisions, where Plaintiff and Class Members suffered an economic hardship in order
8 for Defendants to pursue monetary gain.

9 105. Plaintiff, Class Members, and Reimbursement Class Members seek restitution for
10 Defendants knowingly and willfully (or should have known) violating California law and the Labor Code
11 in order for Defendants to financially benefit from its illegal and unfair practices at the expense and work
12 of Plaintiff and all similarly situated employees.

13 106. A violation of Business and Professions Code section 17200, et seq. may be predicated on
14 the violation of any state and/or federal law.

15 107. Pursuant to Business and Professions Code section 17200, et seq., Plaintiff and Class
16 Members are entitled to restitution of the minimum wages and overtime wages, unlawfully deducted
17 wages, and premium pay for improper meal and rest periods withheld and retained by Defendants during
18 a period that commences four (4) years prior to the filing of this Complaint; waiting time penalties;
19 reimbursement (Plaintiff and Reimbursement Class Members); a declaration that the above business
20 practices are unlawful and unfair; a permanent injunction requiring Defendants to pay all outstanding
21 wages due to Plaintiff and all other similarly situated employees. Plaintiff, individually, on behalf of all
22 similarly situated employees, and on behalf of the general public through his respective attorneys are
23 serving to enforce an important right of the prompt payment of wages due to employees that affects the
24 affecting a significant public interest.

25 108. Plaintiff through this action is conferring a substantial benefit on the general public by
26 ensuring the prompt payment of wages due to employees and a large class of persons (at this time believed
27 to exceed 100 class members), there exists a necessity (Defendants have maintained this illegal practice
28 for at least four years) and financial burden of private enforcement makes an award of attorney's fees

appropriate, which should not in the interest of justice be taken out of any award since these any disgorgement or restitution to Plaintiff and class members are owed to them as wages for time worked while employed by Defendants.

TENTH CAUSE OF ACTION VIOLATION OF PAGA
(By Plaintiffs Against Defendants)

109. Plaintiffs re-allege and incorporate by reference, as though fully set forth herein, all preceding paragraphs of this Complaint.

110. Plaintiffs are seeking to represent:

- all aggrieved and similarly situated non-exempt similarly situated aggrieved employees of Defendants in the State of California, at any time from June 20, 2022 to the present date based on violations of California Labor Code and the applicable IWC Wage Order which Clients contend is 4-2001, and Labor Code §§ 200, 201, 202, 203, 204, 210, 212, 216, 218.5, 221-224, 225.5, 226, 226.3, 226.6, 226.7, 233, 234, 245-248.5, 256, 432, 432.5, 432.7, 500-508, 510, 512, 515, 558, 558.1, 976, 1024.5, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.3, 1198.5, 1199, 2699, 2699.3, 2751, 2800, 2802, 2804, and 2810.5 .
- This cause of action under the Private Attorneys General Act (“PAGA”) is a representative action and not a class action.

111. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

112. On December 1, 2023, Plaintiffs Grosbeier and Mellen and on December 5, 2023, Plaintiff Brew provided written notice to the LWDA and Defendants of the specific provisions of the Labor Codes they contend were violated, and the theories supporting their contentions. Plaintiffs believe that on or about, February 5 and February 9, 2024, the sixty-five (65) day notice period expired and the LWDA did not take any action to investigate or prosecute this matter. Additionally, on June 20, 2023 Plaintiff Tolbert and on April 14, 2022 Plaintiff Snyder provided written notices to the LWDA and Defendants of the

specific provisions of the Labor Codes they contend were violated, and the theories supporting their contentions. The LWDA did not provide notice of its intention to investigate Defendants' violations after expiration of the 65-day waiting time period for Plaintiffs Tolbert or Snyder. Therefore, Plaintiffs have exhausted the statutory time to bring this action.

113. Plaintiffs and the other similarly situated non-exempt employees of Defendants in the State of California are "aggrieved employees" as defined by California Labor Code § 2699(c) in that they are all current or former non-exempt employees of Defendants, and one or more of the alleged violations was committed against them.

ELEVENTH CAUSE OF ACTION VIOLATION OF FLSA
(By Plaintiffs Against Defendants)

114. Plaintiffs re-allege and incorporate by reference, as though fully set forth herein, all preceding paragraphs of this Complaint.

115. At all relevant times, Plaintiffs and similarly situated individuals were employed by Defendant, regularly and/or consistently worked more than 40 hours in a workweek, received nondiscretionary bonus/sales incentive pay and further performed work off the clock.

116. At all relevant times, Plaintiffs and similarly situated individuals were not paid all minimum wage and overtime wages owed for all hours worked over 40 in a week. Defendant knew and/or suffered and permitted Plaintiff and similarly situated individuals did not receive minimum wage or worked in excess of forty (40) hours in a workweek and knew Plaintiffs and other similarly situated individuals were not being paid overtime compensation owed and for all hours worked as required by the FLSA.

117. Plaintiffs bring this claim under the FLSA on behalf of themselves, and all other similarly situated individuals employed by Defendant as non-exempt employees in California at any time within the three years prior to the filing of the initial complaint.

118. As the direct and proximate result of Defendant's unlawful conduct, Plaintiff and similarly situated individuals suffered loss of income and other damages and are entitled to recover back wages, liquidated damages in an equal amount, attorneys' fees and costs, and such other legal and equitable relief as the Court deems proper.

PRAYER FOR RELIEF

Plaintiffs pray for relief and judgment against Defendants, jointly and severally as follows:

1. That this action be certified as a class action;
2. That Plaintiffs be appointed as the representatives of the Class;
3. That counsel for Plaintiffs be appointed as Class Counsel;
4. Enter a declaratory judgment declaring that the Defendants have willfully and wrongfully violated their statutory and legal obligations and deprived Plaintiffs and all others who are similarly situated of their rights, privileges, protections, compensation, benefits and entitlements under the law, as alleged herein;
5. Order a complete and accurate accounting of all the compensation to which the Plaintiffs and all others who are similarly situated are entitled;
6. For an order requiring Defendants to pay restitution for its unlawful conduct in the State of California; and
7. For injunctive relief including, but not limited to, an Order enjoining Defendants from continuing to engage in the State of California in the unlawful business practices alleged herein;
8. Wages and commissions that were unlawfully deducted;
9. For general and special damages;
10. Restitution and disgorgement;
11. Statutory damages, civil and statutory penalties including pursuant to PAGA;
12. Pre-judgment interest;
13. For an order certifying this case as a collective action under the FLSA;
14. For reasonable attorneys' fees and costs; and
15. For such other and further relief as the Court deems proper.

DATED: June 11, 2024

RIGHETTI GLUGOSKI, P.C.

BY: _____

Matthew Righetti, Esq.

Attorneys for VIRGINIA BREW, TONY
GROSBEIER, TIMOTHY MELLEN,
COURTNEY TOLBERT, and D C SNYDER

Matthew Righetti, Esq. (SBN: 121012)
matt@righettilaw.com

John Glugoski, Esq. (SBN: 191551)
jglugoski@righettilaw.com

RIGHETTI GLUGOSKI, P.C.

2001 Union Street, Suite 400

San Francisco, CA 94123

Telephone: (415) 983-0900

Reuben D. Nathan, Esq. (SBN: 208436)

rnathan@nathanlawpractice.com

NATHAN & ASSOCIATES, APC

2901 W. Coast, Suite 200

Newport Beach, California 92663

TEL: (949) 270-2798

FAX: (949) 209-0303

Michael Crosner (SBN 41299)

mike@crosnerlegal.com

Zachary Crosner (SBN 272295)

zach@crosnerlegal.com

Jamie Serb (SBN 289601)

jamie@crosnerlegal.com

Brandon Brouillette (SBN 273156)

bbrouillette@crosnerlegal.com

CROSNER LEGAL, P.C.

9440 Santa Monica Blvd. Suite 301

Beverly Hills, CA 90210

Tel. (310) 496-5818

Fac. (310) 510-6429