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and on behalf of all others similarly situated.

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Kern County Superior Court
By Julia Barrera, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN

JONATHAN FOREMAN, ANTONIO
SALAS, and MYRA ACEVES,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

NERO EXPRESS INC.; and DOES 1
through 20, inclusive,

Defendants.

Case No. BCV-24-100548

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Failure to Reimburse Business Expenses;
6. Failure to Pay All Wages to Piece-Rate Workers;
7. Failure to Provide Accurate Itemized Wage Statements;
8. Failure to Pay All Wages Due Upon Separation of Employment;
9. Violation of Business and Professions Code §§ 17200, *et seq.*; and
10. Enforcement of Labor Code § 2698 *et seq.* ("PAGA")

1 Plaintiffs Jonathan Foreman, Antonio Salas, and Myra Aceves, individually, and on
2 behalf of others similarly situated, allege as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiffs Jonathan Foreman, Antonio Salas, and Myra Aceves (“Plaintiffs”) bring
5 this putative class action and representative action pursuant to the Private Attorneys General Act
6 of 2004, Cal. Lab. Code. § 2698 *et seq.*, against defendant Nero Express, Inc., and DOES 1
7 through 20, inclusive (collectively, “Defendants”), on Plaintiffs’ own behalf and on behalf of
8 California citizens who are and were employed by Defendants as misclassified independent
9 contractors or non-exempt employees throughout California.

10 2. Defendants provide goods or services throughout California.

11 3. Through this action, Plaintiffs allege that Defendants engaged in a systematic
12 pattern of wage and hour violations under the California Labor Code and Industrial Welfare
13 Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate unfair
14 competition.

15 4. Plaintiffs are informed and believe, and thereon allege, that Defendants have
16 increased their profits by violating state wage and hour laws by, among other things:

- 17 (a) failing to pay all wages (including minimum wages and overtime wages);
- 18 (b) failing to provide lawful meal periods or compensation in lieu thereof;
- 19 (c) failing to authorize or permit lawful rest breaks or provide compensation
20 in lieu thereof;
- 21 (d) failing to reimburse necessary business-related costs;
- 22 (e) failing to pay wages to piece-rate workers for non-productive time or time
23 spent in rest breaks and/or recovery periods;
- 24 (f) failing to provide accurate itemized wage statements; and
- 25 (g) failing to pay all wages due upon separation of employment.

26 5. Plaintiffs seek monetary relief against Defendants on behalf of themselves and all
27 others similarly situated in California to recover, among other things, unpaid wages, un-
28 reimbursed business expenses, benefits, interest, attorneys’ fees, costs and expenses, and

1 penalties pursuant to Labor Code §§ 201, 202, 203, 204, 210, 226, 226.2, 226.3, 246, 226.7,
2 226.8, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802,
3 2698, *et seq.*, and Code of California Civil Procedure § 1021.5.

4 **JURISDICTION AND VENUE**

5 6. This is a class action pursuant to California Code of Civil Procedure § 382. The
6 monetary damages and restitution sought by Plaintiffs exceed the minimal jurisdictional limits of
7 the Superior Court and will be established according to proof at trial.

8 7. This Court has jurisdiction over this action pursuant to the California
9 Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes
10 except those given by statutes to other courts. The statutes under which this action is brought do
11 not specify any other basis for jurisdiction.

12 8. This Court has jurisdiction over all Defendants because, upon information and
13 belief, they are citizens of California, have sufficient minimum contacts in California, or
14 otherwise intentionally avail themselves of the California market so as to render the exercise of
15 jurisdiction over them by the California courts consistent with traditional notions of fair play and
16 substantial justice.

17 9. Venue is proper in this Court because, upon information and belief, Defendants
18 reside, transact business, or have offices in this county, and the acts and omissions alleged herein
19 took place in this county.

20 **THE PARTIES**

21 10. Plaintiffs are residents of California and worked for Defendants during the
22 relevant time periods as alleged herein.

23 11. Plaintiffs are informed and believe, and thereon allege, that at all times hereinafter
24 mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as
25 employers, whose employees were and are engaged throughout this county and the State of
26 California.

27 12. Plaintiffs are unaware of the true names or capacities of the defendants sued
28 herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend

1 this Complaint and serve such fictitiously named defendants once their names and capacities
2 become known.

3 13. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 20
4 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants at
5 all relevant times.

6 14. Plaintiffs are informed and believe, and thereon allege, that each defendant acted
7 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
8 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
9 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the
10 employer and/or joint employer of Plaintiffs and the class members.

11 15. Plaintiffs are informed and believe, and thereon allege that each and all of the acts
12 and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES
13 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the
14 other's behalf. The acts of any and all Defendants were in accordance with, and represent, the
15 official policy of Defendants.

16 16. At all relevant times, Defendants, and each of them, acted within the scope of
17 such agency or employment, or ratified each and every act or omission complained of herein. At
18 all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
19 each and all the other Defendants in proximately causing the damages herein alleged.

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

23 **CLASS ACTION ALLEGATIONS**

24 18. Plaintiffs bring this action under Code of Civil Procedure § 382 on Plaintiffs' own
25 behalf and on behalf of all others similarly situated who were affected by Defendants' Labor
26 Code, Business and Professions Code §§ 17200, and IWC Wage Order violations.

27 19. All claims alleged herein arise under California law for which Plaintiffs seek
28 relief authorized by California law.

1 20. Plaintiffs’ proposed class consists of and is defined as follows:

2 Class

3 All California citizens currently or formerly employed by Defendants in the State
4 of California as misclassified independent contractors or non-exempt employees
5 at any time between August 22, 2019¹ and the date of class certification (“Class”).

6 21. Plaintiffs also seek to certify the following subclasses of employees:

7 Waiting Time Subclass

8 All members of the Class who separated their employment with Defendants at any
9 time between August 22, 2020 and the date of class certification (“Waiting Time
10 Subclass”).

11 22. Plaintiffs reserve the right to modify or re-define the Class, establish additional
12 subclasses, or modify or re-define any class or subclass definition as appropriate based on
13 investigation, discovery, and specific theories of liability.

14 23. Members of the Class and the Waiting Time Subclass described above will be
15 collectively referred to as “Class Members.”

16 24. There are common questions of law and fact as to the Class Members that
17 predominate over any questions affecting only individual members including, but not limited to,
18 the following:

19 (a) Whether Defendants misclassified Plaintiffs and Class Members all
20 independent contractors.

21 (b) Whether Defendants failed to pay Plaintiffs and Class Members all wages
22 (including minimum wages and overtime wages) for all hours worked by
23 Plaintiffs and Class Members.

24 (c) Whether Defendants required Plaintiffs and Class Members to work over
25 eight (8) hours per day, over twelve (12) hours per day, and/or over forty

26
27 ¹ The statute of limitations for this matter was tolled between April 6, 2020 and October 1, 2020
28 pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

(40) hours per week and failed to pay them overtime compensation for all overtime hours worked.

(d) Whether Defendants deprived Plaintiffs and Class Members of timely meal periods or required Plaintiffs and Class Members to work through meal periods without legal compensation.

(e) Whether Defendants deprived Plaintiffs and Class Members of rest breaks or required Plaintiffs and Class Members to work through rest breaks.

(f) Whether Defendants failed to reimburse Plaintiffs and Class Members for necessary business-related costs expended for the benefit of Defendants.

(g) Whether Defendants failed to pay all wages to piece-rate employees for non-productive time, including time spent in rest breaks.

(h) Whether Defendants failed to provide Plaintiffs and Class Members accurate itemized wage statements.

(i) Whether Defendants failed to timely pay the Waiting Time Subclass all wages due upon termination or within seventy-two (72) hours of resignation.

(j) Whether Defendants' conduct was willful or reckless.

(k) Whether Defendants engaged in unfair business practices in violation of Business and Professions Code §§ 17200, *et seq.*

25. There is a well-defined community of interest in this litigation and the proposed Class and subclasses are readily ascertainable:

(a) Numerosity: The Class Members are so numerous that joinder of all members is impractical. Although the members of the Class are unknown to Plaintiffs at this time, on information and belief, the Class is estimated to be greater than fifty (50) individuals. The identities of the Class Members are readily ascertainable by inspection of Defendants' employment and payroll records.

(b) Typicality: Plaintiffs' claims (or defenses, if any) are typical of the claims (or defenses, if any) of the Class Members because Defendants' failure to comply with the

1 provisions of California's wage and hour laws entitled each Class Member to similar pay,
2 benefits, and other relief. The injuries sustained by Plaintiffs are also typical of the injuries
3 sustained by the Class Members, because they arise out of and are caused by Defendants'
4 common course of conduct as alleged herein.

5 (c) Adequacy: Plaintiffs will fairly and adequately represent and protect the
6 interests of all Class Members because it is in Plaintiffs' best interest to prosecute the claims
7 alleged herein to obtain full compensation and penalties due. Plaintiffs' attorneys, as proposed
8 class counsel, are competent and experienced in litigating large employment class actions and
9 versed in the rules governing class action discovery, certification, and settlement. Plaintiffs have
10 incurred and, throughout the duration of this action, will continue to incur attorneys' fees and
11 costs that have been and will be necessarily expended for the prosecution of this action for the
12 substantial benefit of the Class Members.

13 (d) Superiority: The nature of this action makes use of class action
14 adjudication superior to other methods. A class action will achieve economies of time, effort, and
15 expense as compared with separate lawsuits and will avoid inconsistent outcomes because the
16 same issues can be adjudicated in the same manner for the entire Class and Waiting Time
17 Subclass at the same time. If appropriate, this Court can, and is empowered to, fashion methods
18 to efficiently manage this case as a class action.

19 (e) Public Policy Considerations: Employers in the State of California violate
20 employment and labor laws every day. Current employees are often afraid to assert their rights
21 out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
22 because they believe their former employers might damage their future endeavors through
23 negative references and/or other means. Class actions provide class members who are not named
24 in the complaint with a type of anonymity that allows for the vindication of their rights while
25 affording them privacy protections.

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GENERAL ALLEGATIONS

26. At all relevant times mentioned herein, Defendants employed Plaintiffs and other California citizens as misclassified independent contractors or non-exempt employees throughout California at Defendants' California business location(s).

27. Defendants continue to employ misclassified independent contractors and non-exempt employees within California.

28. Plaintiffs are informed and believe, and thereon allege, that at all times herein mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who were knowledgeable about California's wage and hour laws, employment and personnel practices, and the requirements of California law.

29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and Class Members were entitled to receive wages for all time worked (including minimum wages and overtime wages) and that they were not receiving all wages earned for work that was required to be performed. In violation of the Labor Code and IWC Wage Orders, Plaintiffs and Class Members were not paid all wages (including minimum wages and overtime wages) for all hours worked.

30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and Class Members were entitled to receive all required meal periods or payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the Labor Code and IWC Wage Orders, Plaintiffs and Class Members did not receive all meal periods or payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular rate of pay when they did not receive a timely, uninterrupted meal period.

31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and Class Members were entitled to receive all rest breaks or payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular rate of pay when a rest break was late, missed, or interrupted. In violation of the Labor Code and IWC Wage Orders, Plaintiffs and Class Members did not receive all rest breaks or payment of one (1)

1 additional hour of pay at Plaintiffs' and Class Members' regular rate of pay when a rest break
2 was missed, late, or interrupted.

3 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
4 should have known that Plaintiffs and Class Members were entitled to reimbursement and/or
5 indemnification for all necessary business expenditures or losses as a direct consequence of the
6 discharge of their duties, or of their obedience to the directions of Defendants. In violation of the
7 Labor Code and IWC Wage Orders, Plaintiffs and Class Members incurred necessary business
8 expenses or losses, but were not reimbursed nor indemnified of such expenses or losses that were
9 incurred as a direct consequence of the discharge of their duties, or of their obedience to the
10 directions of Defendants.

11 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
12 should have known they had a duty to separately compensate Plaintiffs and Class Members who
13 were piece-rate workers for time spent on non-productive tasks and during rest breaks. In
14 violation of the Labor Code, Defendants did not pay piece-rate workers separately for time spent
15 on non-productive tasks and during rest breaks.

16 34. Plaintiffs is informed and believe, and thereon allege, that Defendants knew or
17 should have known that Plaintiffs and Class Members were entitled to receive itemized wage
18 statements that accurately showed the following information pursuant to the Labor Code: (1)
19 gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units
20 earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
21 deductions, provided that all deductions made on written orders of the employee may be
22 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for
23 which the employee is paid; (7) the name of the employee and only the last four digits of his or
24 her social security number or an employee identification number other than a social security
25 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
26 hourly rates in effect during the pay period and the corresponding number of hours worked at
27 each hourly rate by the employee. In violation of the Labor Code, Plaintiffs and Class Members
28 were not provided with accurate itemized wage statements.

1 35. Defendants knew or should have known that the Waiting Time Subclass was
2 entitled to timely payment of wages due upon separation of employment. In violation of the
3 Labor Code, the Waiting Time Subclass did not receive payment of all wages within the
4 permissible time periods.

5 36. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
6 should have known they had a duty to compensate Plaintiffs and Class Members, and Defendants
7 had the financial ability to pay such compensation but willfully, knowingly, and intentionally
8 failed to do so in order to increase Defendants' profits.

9 37. Therefore, Plaintiffs bring this lawsuit seeking monetary and injunctive relief
10 against Defendants on Plaintiffs' own behalf and on behalf of all Class Members to recover,
11 among other things, unpaid wages (including minimum wages and overtime wages), unpaid meal
12 period premium payments, unpaid rest period premium payments, un-reimbursed business
13 expenditures, interest, attorneys' fees, penalties, costs, and expenses.

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO PAY MINIMUM WAGES**

16 (Violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197; Violation of IWC Wage Order)

17 38. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
18 though fully set forth herein.

19 39. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
20 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
21 wage than the minimum so fixed is unlawful.

22 40. Plaintiffs and Class Members were employees entitled to the protections of Labor
23 Code §§ 1194 and 1197.

24 41. During the relevant time period, Defendants failed to pay Plaintiffs and Class
25 Members all wages owed when Defendants did not pay for all hours worked at the correct rate of
26 pay.

27 42. During the relevant time period, Defendants failed to pay at least minimum wage
28 to Plaintiffs and Class Members for all hours worked pursuant to Labor Code §§ 1194 and 1197.

43. Defendants' failure to pay Plaintiffs and Class Members the required minimum wage violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiffs and Class Members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorneys' fees.

44. Pursuant to Labor Code § 1194.2, Plaintiffs and Class Members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued interest thereon.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME

(Violation of Labor Code §§ 510, 1194, and 1198; Violation of IWC Wage Order)

45. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as though fully set forth herein.

46. Labor Code § 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either one and one-half (1½) or two (2) times the person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

47. Specifically, the applicable IWC Wage Orders provide that Defendants are and were required to pay overtime compensation to Plaintiffs and Class Members at the rate of one and one-half times (1½) their regular rate of pay when working and for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first eight (8) hours of work on the seventh day of work in a workweek.

48. The applicable IWC Wage Orders further provide that Defendants are and were required to pay overtime compensation to Plaintiffs and Class Members at a rate of two times their regular rate of pay when working and for all hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours on the seventh day of work in a workweek.

49. California Labor Code § 510 codifies the right to overtime compensation at one and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh

1 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
2 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
3 seventh day of work in a workweek.

4 50. Labor Code § 510 and the applicable IWC Wage Orders provide that employment
5 of more than six days in a workweek is only permissible if the employer pays proper overtime
6 compensation as set forth herein.

7 51. Plaintiffs and Class Members were employees entitled to the protections of
8 California Labor Code §§ 510 and 1194.

9 52. During the relevant time period, Defendants required Plaintiffs and Class
10 Members to work in excess of eight (8) hours in a day, forty (40) hours in a week, and/or on a
11 seventh consecutive day of work, entitling them to overtime wages.

12 53. During the relevant time period, Defendants failed to pay Plaintiffs and Class
13 Members overtime wages for all overtime hours worked at the correct rate of pay. To the extent
14 these hours qualify for the payment of overtime wages, Plaintiffs and Class Members were not
15 paid proper overtime wages.

16 54. In violation of California law, Defendants knowingly and willfully refused to
17 perform their obligations and compensate Plaintiffs and Class Members for all wages earned and
18 all hours worked.

19 55. Defendants' failure to pay Plaintiffs and Class Members the unpaid balance of
20 overtime compensation, as required by California law, violates the provisions of Labor Code §§
21 510 and 1198, and is therefore unlawful.

22 56. Pursuant to Labor Code § 1194, Plaintiffs and Class Members are entitled to
23 recover their unpaid overtime and double time compensation as well as interest, costs, and
24 attorneys' fees.

25 **THIRD CAUSE OF ACTION**

26 **FAILURE TO PROVIDE MEAL PERIODS**

27 (Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)
28

1 57. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
2 though fully set forth herein.

3 58. Labor Code § 226.7 provides that no employer shall require an employee to work
4 during any meal period mandated by the IWC Wage Orders.

5 59. Section 11 of the applicable IWC Wage Order states, “[n]o employer shall
6 employ any person for a work period of more than five (5) hours without a meal period of not
7 less than 30 minutes, except that when a work period of not more than six (6) hours will
8 complete the day’s work the meal period may be waived by mutual consent of the employer and
9 the employee.”

10 60. Labor Code § 512(a) provides that an employer may not require, cause, or permit
11 an employee to work for a period of more than five (5) hours per day without providing the
12 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if
13 the total work period per day of the employee is not more than six (6) hours, the meal period may
14 be waived by mutual consent of both the employer and the employee.

15 61. Labor Code § 512(a) also provides that an employer may not employ an employee
16 for a work period of more than ten (10) hours per day without providing the employee with a
17 second meal period of not less than thirty (30) minutes, except that if the total hours worked is no
18 more than twelve (12) hours, the second meal period may be waived by mutual consent of the
19 employer and the employee only if the first meal period was not waived.

20 62. During the relevant time period, Plaintiffs and Class Members did not receive
21 compliant meal periods for working more than five (5) and ten (10) hours per day because their
22 meal periods were missed, late, short, interrupted, and/or they were not permitted to take a
23 second meal period.

24 63. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
25 an employer to pay an employee one (1) additional hour of pay at the employee’s regular rate of
26 compensation for each work day that a compliant meal period is not provided.

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1 64. At all relevant times, Defendants failed to pay Plaintiffs and Class Members meal
2 period premiums for missed, late, and/or short meal periods pursuant to Labor Code § 226.7(b)
3 and section 11 of the applicable IWC Wage Order.

4 65. As a result of Defendants' failure to pay Plaintiffs and Class Members an
5 additional hour of pay for each day a compliant meal period was not provided, Plaintiffs and
6 Class Members suffered and continue to suffer a loss of wages and compensation.

7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO PERMIT REST BREAKS**

9 (Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12)

10 66. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
11 though fully set forth herein.

12 67. Labor Code § 226.7(a) provides that no employer shall require an employee to
13 work during any rest period mandated by the IWC Wage Orders.

14 68. Section 12 of the applicable IWC Wage Order states “[e]very employer shall
15 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
16 the middle of each work period[,]” and the “[a]uthorized rest period time shall be based on the
17 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
18 fraction thereof[,]” unless the total daily work time is less than three and one-half (3½) hours.

19 69. During the relevant time period, Plaintiffs and Class Members did not receive a
20 ten (10) minute rest period for every four (4) hours or major fraction thereof worked, including
21 working in excess of ten (10) hours in a day, because they were required to work through their
22 rest periods and/or were not authorized to take their rest periods.

23 70. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires
24 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of
25 compensation for each work day that a compliant rest period is not provided.

26 71. At all relevant times, Defendants failed to pay Plaintiffs and Class Members rest
27 period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code §
28 226.7(b) and section 12 of the applicable IWC Wage Order.

1 72. As a result of Defendants' failure to pay Plaintiffs and Class Members an
2 additional hour of pay for each day a compliant rest period was not provided, Plaintiffs and Class
3 Members suffered and continue to suffer a loss of wages and compensation.

4 **FIFTH CAUSE OF ACTION**

5 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

6 (Violation of Labor Code §§ 2800, 2802)

7 73. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
8 though fully set forth herein.

9 74. Labor Code § 2800 states that "[a]n employer shall in all cases indemnify his
10 employee for losses caused by the employer's want of ordinary care."

11 75. Labor Code § 2802(a) states that "[a]n employer shall indemnify his or her
12 employee for all necessary expenditures or losses incurred by the employee in direct
13 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
14 the employer"

15 76. Labor Code § 2802(b) states that "[a]ll awards made by a court . . . for
16 reimbursement of necessary expenditures under this section shall carry interest at the same rate
17 as judgments in civil actions. Interest shall accrue from the date on which the employee incurred
18 the necessary expenditure or loss."

19 77. Labor Code § 2802(c) states that "[f]or purposes of this section, the term
20 "necessary expenditures or losses" shall include all reasonable costs, including, but not limited
21 to, attorney's fees incurred by the employee enforcing the rights granted by this section."

22 78. During the relevant time period, Plaintiffs and Class Members incurred necessary
23 business-related costs that were not fully reimbursed by Defendants.

24 79. In violation of Labor Code §§ 2800 and 2802, Defendants failed to reimburse or
25 indemnify Plaintiffs and Class Members for their expenses due to Defendants' knowing and
26 intentional failure to reimburse necessary business expenditures in connection with Plaintiffs'
27 and Class Members' work and job duties.

80. As a direct result, Plaintiffs and Class Members have suffered and continue to suffer losses, and therefore seek complete reimbursement and indemnification of necessary business expenditures or losses, interest thereon at the required rate, and all reasonable costs in enforcing the rights under Labor Code § 2802, including, but not limited to attorneys' fees.

SIXTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES TO PIECE RATE WORKERS

(Violation of Labor Code § 226.2)

81. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as though fully set forth herein.

82. Labor Code § 226.2 requires employees who are paid on a piece-rate basis to be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

83. Labor Code § 226.2(a) provides that employees compensated on a piece-rate basis shall be compensated for rest and recovery periods, and other nonproductive time separate from any piece-rate compensation. Employees shall be compensated at a regular hourly rate that is no less than the higher of: (a) An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods. (b) The applicable minimum wage.

84. During the relevant time period, Plaintiffs and Class Members who were paid on a piece-rate basis were not compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

85. At all relevant times, Defendants knowingly and intentionally failed to comply with Labor Code § 226.2 denying compensated rest and recovery periods to employees paid on a piece-rate basis.

86. As a result of Defendants' failure to pay Plaintiffs and Class Members compensated rest and recovery periods, Plaintiffs and Class Members suffered and continue to suffer a loss of wages and compensation.

1 **SEVENTH CAUSE OF ACTION**

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

3 (Violation of Labor Code § 226)

4 87. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
5 though fully set forth herein.

6 88. Labor Code § 226(a) requires Defendants to provide each employee with an
7 accurate wage statement in writing showing nine pieces of information, including, the following:
8 (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate
9 units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
10 deductions, provided that all deductions made on written orders of the employee may be
11 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
12 which the employee is paid, (7) the name of the employee and the last four digits of his or her
13 social security number or an employee identification number other than a social security number,
14 (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly
15 rates in effect during the pay period and the corresponding number of hours worked at each
16 hourly rate by the employee.

17 89. During the relevant time period, Defendants have knowingly and intentionally
18 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiffs
19 and Class Members. The deficiencies include, among other things, the failure to correctly state
20 the gross and net wages earned, total hours worked, all applicable hourly rates in effect, and the
21 number of hours worked at each hourly rate by Plaintiffs and Class Members.

22 90. As a result of Defendants' knowing and intentional failure to comply with Labor
23 Code § 226(a), Plaintiffs and Class Members have suffered injury and damage to their
24 statutorily-protected rights. Specifically, Plaintiffs and Class Members are deemed to suffer an
25 injury pursuant to Labor Code § 226(e) where, as here, Defendants intentionally violated Labor
26 Code § 226(a). Plaintiffs and Class Members were denied both their legal right to receive, and
27 their protected interest in receiving, accurate itemized wage statements under Labor Code
28 § 226(a). In addition, because Defendants failed to provide the accurate rates of pay on wage

1 statements, Defendants prevented Plaintiffs and Class Members from determining if all hours
2 worked were paid at the appropriate rate and the extent of the underpayment. Plaintiffs had to
3 file this lawsuit in order to analyze the extent of the underpayment, thereby causing Plaintiffs to
4 incur expenses and lost time. Plaintiffs would not have had to engage in these efforts and incur
5 these costs had Defendants provided the accurate hours worked, wages earned, and rates of pay.
6 This has also delayed Plaintiffs' ability to demand and recover the underpayment of wages from
7 Defendants.

8 91. Plaintiffs and Class Members are entitled to recover from Defendants the greater
9 of all actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty
10 dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars
11 (\$100.00) per employee for each violation in subsequent pay periods in an amount not exceeding
12 four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

13 92. Defendants' violations of California Labor Code § 226(a) prevented Plaintiffs and
14 Class Members from knowing, understanding, and disputing the wages paid to them and resulted
15 in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
16 intentional failure to comply with California Labor Code § 226(a), Plaintiffs and Class Members
17 have suffered an injury, in the exact amount of damages and/or penalties to be shown according
18 to proof at trial.

19 EIGHTH CAUSE OF ACTION

20 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

21 (Violation of Labor Code §§ 201, 202, and 203)

22 93. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
23 though fully set forth herein.

24 94. Labor Code §§ 201 and 202 provide that if an employer discharges an employee,
25 the wages earned and unpaid at the time of discharge are due and payable immediately, and that
26 if an employee voluntarily leaves his or her employment, his or her wages shall become due and
27 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
28

1 two (72) hours previous notice of an intention to quit, in which case the employee is entitled to
2 his or her wages at the time of quitting.

3 95. During the relevant time period, Defendants willfully failed to pay the Waiting
4 Time Subclass all their earned wages upon termination, including, but not limited to, proper
5 minimum wage and overtime compensation, meal period premiums, and rest period premiums
6 either at the time of discharge or within seventy-two (72) hours of their leaving Defendants'
7 employ.

8 96. Defendants' failure to pay the Waiting Time Subclass all their earned wages at the
9 time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is in
10 violation of Labor Code §§ 201 and 202.

11 97. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
12 immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202, then
13 the wages of the employee shall continue as a penalty from the due date at the same rate until
14 paid or until an action is commenced; but the wages shall not continue for more than thirty (30)
15 days.

16 98. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover
17 from Defendants the statutory penalty, which is defined as the Waiting Time Subclass members'
18 regular daily wages at their regular hourly rate of pay for each day they were not paid, up to a
19 maximum of thirty (30) days.

20 NINTH CAUSE OF ACTION

21 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**

22 (Violation of Business and Professions Code §§ 17200, *et seq.*)

23 99. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
24 though fully set forth herein.

25 100. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of
26 unfair competition, which includes any "unlawful, unfair or fraudulent business act or practice . .
27 . ."

1 101. A violation of California Business and Professions Code §§ 17200, *et seq.*, may
2 be predicated on a violation of any state or federal law. In the instant case, Defendants' policies
3 and practices violated state law, causing Plaintiffs and Class Members to suffer and continue to
4 suffer injuries-in-fact.

5 102. Defendants' policies and practices violated state law in at least the following
6 respects:

- 7 (a) Failing to pay all wages earned (including minimum wage and overtime
8 wages) to Plaintiffs and Class Members at the proper rate in violation of
9 Labor Code §§ 204, 510, 1182.12, 1194, 1194.2, 1197, and 1198.
- 10 (b) Failing to provide compliant meal periods without paying Plaintiffs and
11 Class Members premium wages for every day said meal periods were not
12 provided in violation of Labor Code §§ 226.7 and 512.
- 13 (c) Failing to authorize or permit compliant rest breaks without paying
14 Plaintiffs and Class Members premium wages for every day said rest
15 breaks were not authorized or permitted in violation of Labor Code §
16 226.7.
- 17 (d) Failing to reimburse Plaintiffs and Class Members for necessary business-
18 related expenses in violation of Labor Code §§ 2800 and 2802.
- 19 (e) Failing to provide Plaintiffs and Class Members with accurate itemized
20 wage statements in violation of Labor Code § 226.
- 21 (f) Failing to timely pay all earned wages to the members of the Waiting
22 Time Subclass upon separation of employment in violation of Labor Code
23 §§ 201, 202, and 203.

24 103. As alleged herein, Defendants systematically engaged in unlawful conduct in
25 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages
26 (minimum and overtime wages), failing to provide meal periods and rest breaks or
27 compensation in lieu thereof, failing to reimburse necessary business-related costs and
28 expenses, failing to furnish accurate wage statements, and failing to pay all wages due and

owing upon separation of employment in a timely manner to the Waiting Time Subclass, all in order to decrease their costs of doing business and increase their profits.

104. At all relevant times herein, Defendants held themselves out to Plaintiffs and Class Members as being knowledgeable concerning the labor and employment laws of California.

105. At all times relevant herein, Defendants intentionally avoided paying Plaintiffs and Class Members wages and monies, thereby creating for Defendants an artificially lower cost of doing business in order to undercut their competitors and establish and/or gain a greater foothold in the marketplace.

106. By violating the foregoing statutes and regulations as herein alleged, Defendants' acts constitute unfair and unlawful business practices under California Business and Professions Code §§ 17200, *et seq.*

107. As a result of the unfair and unlawful business practices of Defendants as alleged herein, Plaintiffs and Class Members are entitled to injunctive relief, disgorgement, and restitution in an amount to be shown according to proof at trial.

108. Plaintiffs seek to enforce important rights affecting the public interest within the meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged herein, has been and continues to be unfair, unlawful, and harmful to Plaintiffs, Class Members, and the general public. Based on Defendants' conduct as alleged herein, Plaintiffs and Class Members are entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

TENTH CAUSE OF ACTION

ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")

109. Plaintiffs hereby re-allege and incorporate by reference the previous paragraphs as though fully set forth herein.

110. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or

1 employees for violation of the Labor Code may, as an alternative, be recovered through a civil
2 action brought by an aggrieved employee on behalf of himself or herself and other current or
3 former employees pursuant to the procedures specified in Labor Code § 2699.3.

4 111. For all provisions of the Labor Code except those for which a civil penalty is
5 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
6 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
7 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
8 period in which Defendants violated these provisions of the Labor Code.

9 112. Defendants' conduct violates numerous Wage Order and Labor Code sections,
10 including, but not limited to, the following:

- 11 a. violation of Labor Code §§ 201, 202, 203, 204, 210, 246, 510, 1182.12,
12 1194, 1197, and 1198 for failure to timely pay all earned wages
13 (including minimum wage and overtime wages) owed to aggrieved
14 employees during employment and upon separation of employment as
15 herein alleged;
- 16 b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal
17 periods to aggrieved employees and failure to pay premium wages for
18 missed meal periods as herein alleged;
- 19 c. violation of Labor Code § 226.7 for failure to permit rest breaks to
20 aggrieved employees and failure to pay premium wages for missed rest
21 periods as herein alleged;
- 22 d. violation of Labor Code § 226 for failure to provide accurate itemized
23 wage statements to aggrieved employees as herein alleged;
- 24 e. violation of Labor Code § 226.8 for misclassification of aggrieved
25 employees as independent contractors as herein alleged;
- 26 f. violation of Labor Code § 226.2 for failure to pay aggrieved employees
27 paid on a piece-rate basis for rest and recovery periods and other
28 nonproductive time separate from any piece-rate compensation;

- 1 7. For liquidated damages pursuant to Labor Code § 1194.2;
- 2 8. For statutory penalties to the extent permitted by law, including those pursuant to
- 3 the Labor Code and IWC Wage Orders;
- 4 9. For injunctive relief as provided by the California Labor Code and California
- 5 Business and Professions Code §§ 17200, *et seq.*;
- 6 10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
- 7 11. For an order requiring Defendants to restore and disgorge all funds to each
- 8 employee acquired by means of any act or practice declared by this Court to be unlawful, unfair,
- 9 or fraudulent and, therefore, constituting unfair competition under Business and Professions
- 10 Code §§ 17200, *et seq.*;
- 11 12. For pre-judgment interest;
- 12 13. For civil penalties;
- 13 14. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted
- 14 by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§
- 15 226(e), 1194, and 2698 *et seq.*; and
- 16 15. For such other relief as the Court deems just and proper.

17
18 Dated: May 30, 2024

AEGIS LAW FIRM, PC

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20 By: 

21 Jessica L. Campbell
22 Attorneys for Plaintiffs
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