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situated*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MONTEREY**

JOSE A HUERTA CERVANTES,
individually, and on behalf of all others
similarly situated,

Plaintiff,

v.

JANEBOY, INC., a California corporation;
and DOES 1 through 50, inclusive,

Defendants.

CASE NUMBER:24CV001741

CLASS ACTION COMPLAINT

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Breaks
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wages
5. Failure to Pay Timely Wages
6. Failure to Pay All Wages Due to Discharged and Quitting Employees
7. Failure to Furnish Accurate Itemized Statements
8. Failure to Maintain Required Records
9. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties
10. Failure to Pay and Include COVID-19 Supplemental Sick Pay on Wage Statements
11. Unfair and Unlawful Business Practices

DEMAND FOR JURY TRIAL

REPRESENTATIVE ACTION

12. Penalties Under the Labor Code Private Attorneys General Act ("PAGA")

1 This is a Class and Representative Action brought by Jose A. Huerta Cervantes,
2 individually and on behalf of all others similarly situated (“Plaintiff”), relating to systemic
3 violations of California wage and hour laws by his former employer, Janeboy, Inc. (hereinafter
4 referred to as “Janeboy” or “Defendant”). Plaintiff makes the following allegations on information
5 and belief, except as to allegations pertaining to Plaintiff individually, which are based on her
6 personal knowledge.

7 **INTRODUCTION**

8 1. As private, for-profit businesses, Defendant has implemented common policies and
9 practices that have resulted in systemic violations of California’s wage and hour laws.

10 2. Plaintiff was hired by Defendant as a dish washer and food preparer at Defendant’s
11 restaurant and bar.

12 3. Defendant maximized and its related entities maximized profits by cutting labor
13 costs, grossly understaffing, denying meal and rest breaks, systematically requiring off-the-clock
14 work, and cheating employees out of minimum and overtime wages and premium payments.

15 4. Defendant has implemented unlawful written policies with respect to meal and
16 rest breaks. Defendants also require their non-exempt employees, who are informed that the
17 needs of the businesses take top priority, to work through meal and rest breaks, to take untimely
18 meal periods and to remain on call during such breaks. As a result, Plaintiff and other aggrieved
19 employees have been denied the ability to take the meal and rest breaks that they were and are
20 legally entitled to take.

21 5. Defendant also failed to compensate non-exempt employees at their regular rate
22 of pay for meal and rest period premium payments, to the extent any are paid, and non-
23 discretionary bonus payments are not calculated into the regular rate of pay for non-exempt
24 employees which results in the systematic underpayment of wages to Plaintiff and other non-
25 exempt employees. Defendant willfully turns a blind eye to off-the-clock work that Plaintiff and
26 other non-exempt employees perform as a direct consequence of Defendant’s inadequate staffing
27 and imposition of an unreasonable workload. Moreover, Defendant uniformly failed to pay
28 Plaintiff and other non-exempt, hourly employees proper overtime wages due the fact that it has

1 willfully turn a blind eye to off-the-clock work that Plaintiff and other non-exempt, hourly
2 employees perform as a direct consequence of Defendant's understaffing and imposition of an
3 unreasonable workload. Finally, Defendant has failed to pay final wages to Plaintiff and other
4 on-exempt, hourly employees who were employed by Defendant.

5 6. Plaintiff seeks declaratory, compensatory and other statutorily available relief for
6 himself and a Class of all current and former non-exempt employees of Defendant during the
7 applicable limitations period to compensate these workers for the wages Defendant has stolen
8 from them and to protect current and future workers from being subjected to similar unlawful
9 working conditions perpetrated by Defendant.

10 **JURISDICTION AND VENUE**

11 7. The Superior Court of the State of California has jurisdiction in this matter
12 because Plaintiff is a resident of the State of California, and Defendant is licensed to do business
13 under the laws of the State of California.

14 8. Venue is proper in this judicial district and the County of Monterey because
15 Defendant maintains its office and operates a restaurant and bar in Monterey, California, a city
16 located in the County of Monterey.

17 9. Venue is also proper in this judicial district and the County of Monterey because
18 Plaintiff was assigned to work for Defendant as a dishwasher in the County of Monterey. Many
19 non-exempt, hourly employees also worked for Defendant in the County of Monterey.

20 10. Defendant employed Plaintiff and other non-exempt, hourly employees within the
21 State of California and the unlawful acts alleged herein have a direct effect on Plaintiff and other
22 non-exempt, hourly employees.

23 **THE PARTIES**

24 11. Plaintiff is a citizen of the State of California and currently resides in Monterey
25 County. During the relevant time period, Plaintiff was employed by Defendant as a dish washer
26 and food preparer, a nonexempt, hourly position.

27 12. Plaintiff is informed and believes, and thereon alleges, that Defendant at all times
28 relevant hereto was, a corporation organized and existing under the laws of the State of California.

1 Defendant is authorized to conduct business and does conduct business in the State of California.

2 13. At all relevant times herein, Defendant and each of its affiliated entities were the
3 joint employer of Plaintiff and the other non-exempt, hourly employees. Defendant and each of
4 its affiliated entities were the alter egos, divisions, affiliates, integrated enterprises, joint
5 employers, subsidiaries, parents, principals, related entities, co-conspirators, authorized agents,
6 partners, joint venturers, and/or guarantors, actual or ostensible, of each other. Each Defendant
7 was completely dominated by his, her or its co-Defendant, and each was the alter ego of the other.
8 Moreover, at all material times there has been extensive interrelation of operations, common
9 management, centralized control of labor relations with respect to Plaintiff and the other non-
10 exempt, hourly employees, and common ownership or financial control between all Defendant.

11 14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
12 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy.
13 Managing agent, and/or principal of the co-Defendants, and in performing the acts mentioned
14 below was acting, at least in part, within the course and scope of that authority as such agent,
15 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
16 the permission and consent of the co-Defendants. Plaintiff also alleges that the acts of each
17 Defendant are legally attributable to the other Defendants.

18 15. Plaintiff is informed and believes, and based thereon alleges, that each of the
19 Defendants sued herein was, at all relevant times, the employer, owner, shareholder, principal,
20 joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the remaining
21 Defendants, and was acting, at least in part, within the course and scope of such employment and
22 agency, with the express and implied permission, consent and knowledge, approval and/or
23 ratification of the other Defendants. The above co-Defendant, managing agents, and supervisors,
24 aided, abetted, condoned, permitted, approved, authorized, and/or ratified the unlawful acts
25 described herein.

26 **CLASS ACTION ALLEGATIONS**

27 16. Plaintiff brings this action on behalf of himself, and the following similarly
28 situated Class of individuals ("Class members"):

1 All hourly and nonexempt employees who were employed by Defendant at
2 any time in the state of California during the relevant statute of limitations
3 period.

4 17. Plaintiff reserves the right to name additional Class representatives as may be
5 necessary and appropriate. Plaintiff also reserves the right to modify or amend the definition of
6 the proposed Class and/or add subclasses before the Court determines whether certification is
7 appropriate.

8 18. This action is appropriately suited for a class action because:

9 A. The proposed Class is a significant number. Plaintiff is informed and
10 believes that the proposed Class consists of at least one hundred (100) current and former non-
11 exempt employees, rendering joinder impractical.

12 B. This action involves common questions of law and fact to the proposed
13 Class because the action focuses on Defendant's systematic course of illegal payroll practices
14 and policies, which was applied to all non-exempt employees in uniform violation of the
15 California Labor Code, IWC Wage Orders, and the California Business and Professions Code,
16 which prohibits unfair business practices arising from such violations. Here are a few common
17 questions of law and fact that will drive resolution of this action:

- 18 1. Whether Defendant failed to provide non-exempt employees with legally
19 compliant meal periods and rest breaks, and whether Defendant properly
20 paid premium pay at the appropriate regular rate as a result of missed and
21 non-compliant meal periods and rest breaks;
- 22 2. Whether Defendant failed to timely pay wages to non-exempt employees
23 in compliance with California law;
- 24 3. Whether Defendant's time rounding policy and practice is in violation of
25 California law;
- 26 4. Whether Defendant failed to pay overtime and minimum wages to non-
27 exempt employees in compliance with California law;
- 28 5. Whether Defendant failed to maintain required records and accurate wage

statements for non-exempt employees;

6. Whether Defendant failed to pay non-exempt employees all wages due, for all hours worked, including for off-the-clock work, travel time, pre-shift and post-shift work and COVID screening;
7. Whether Defendant failed to pay COVID-19 supplemental sick pay and include it on wage statements;
8. Whether Defendant engaged in unfair and/or unlawful business practices.

C. Plaintiff's claims are typical of the proposed Class because Defendant subjected all of its non-exempt employees to the similar and overlapping violations of the California Labor Code, the applicable IWC wage order, and the California Business and Professions Code.

D. Plaintiff is able to fairly and adequately protect the interests of all members of the proposed Class because it is in her best interests to prosecute the claims alleged herein to obtain full compensation due to the proposed Class for all services rendered and hours worked. Plaintiff has also retained counsel that is experienced in wage and hour class action litigation.

FIRST CAUSE OF ACTION

Failure to Provide Required Meal Periods [Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197; and All Applicable IWC Wage Orders and Applicable Sections] (On Behalf of Plaintiff and the Class Against all Defendants)

19. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 18 (A) – (D).

20. During the statute of limitations period, as part of Defendant's unlawful policies and practices to deprive their non-exempt employees of all wages earned and due, Defendant required, permitted or otherwise suffered Plaintiff and Class members to perform work during their meal periods, to completely skip their meal periods, to take late and short meal periods, working during meal periods, and Defendant has otherwise failed to provide the required meal

1 periods to Plaintiff and Class members as required under California Labor Code §§ 226.7, 512,
2 and § 11 of the applicable IWC Order.

3 21. Moreover, Defendant interfered with and restricted the ability of Plaintiff and
4 Class members to take meal periods by not permitting Plaintiff and the other Class members to
5 leave their work areas when taking meal periods.

6 22. Defendant has implemented several common policies and practices that have
7 caused Plaintiff and Class members to systematically miss and otherwise take non-compliant
8 meal periods.

9 23. Defendant grossly understaffs its restaurant and bar such that non-exempt
10 employees are given so much work to complete that they regularly miss or take non-compliant
11 meal periods. As a direct consequence of this understaffing, Plaintiff and Class members have
12 so much work to complete within their scheduled shifts that they are forced to skip their meal
13 periods altogether, to take them after working longer than five (5) hours, to perform work during
14 their meal periods, or return to work after taking less than a thirty (30) minute meal period.
15 Further, Defendant failed to implement a meal period policy for work shifts longer than ten (10)
16 hours or more.

17 24. Moreover, Defendant failed to implement adequate policies or procedures to
18 provide meal periods to their non-exempt employees. Among other things, Defendant
19 overworked Plaintiff and Class members and did not adequately advise them of their rights to
20 take meal periods, and systematically denied them the opportunity to take meal periods,
21 including second meal periods during shifts of ten hours or longer.

22 25. Defendant has also violated California Labor Code §§ 226.7, all applicable wage
23 orders and applicable sections, and the California Unfair Competition Law, Cal. Bus. & Prof.
24 Code §§ 17200 *et. seq.*, by failing to compensate Plaintiff and Class members who were not
25 authorized and permitted to take a complete, timely, uninterrupted meal period, in accordance
26 with the applicable wage order, one additional hour of compensation at the proper regular rate of
27 pay for each workday that such a meal period was not authorized or permitted.
28

1 26. Defendant further violated California Labor Code sections 226.7, 510, 1194,
2 1197, IWC Wage Order No. 5-2001, and all applicable IWC Wage Orders, by failing to
3 compensate Plaintiff and Class members for all hours worked during their meal periods.

4 27. As a proximate result of the aforementioned violations, Plaintiff and Class
5 members have been damaged in an amount according to proof at trial, and seek all wages earned
6 and due, interest, penalties, expenses, and costs of suit.

7 **SECOND CAUSE OF ACTION**
8 **Failure to Provide Required Rest Breaks**
9 **[Cal. Lab. Code §§ 226.7, 512; and All Applicable IWC Wage Orders**
 and Applicable Sections]
10 **(On Behalf of Plaintiff and the Class Against all Defendants)**

11 28. Plaintiff incorporates herein by specific reference, as though fully set forth, the
12 allegations in paragraphs 1 through 27.

13 29. At all times relevant herein, as part of Defendant's illegal policies and practices to
14 deprive its non-exempt employees of all wages earned and due, Defendant failed to permit
15 Plaintiff and Class members to take rest breaks as required under California Labor Code §§
16 226.7 and 512, and § 12 of the applicable IWC Wage Order.

17 30. As with meal periods, Defendant's policies and practices caused Plaintiff and
18 Class members to miss or otherwise take non-compliant rest periods by, among other things,
19 giving them unreasonable amounts of work that had to be completed within their shift such that
20 rest periods simply could not be taken. This was the result of systematic understaffing of its
21 restaurant and bar. Further, as set forth above, Defendant implemented skeletal staffing policies,
22 which resulted in the inability of Plaintiff and Class members to take compliant rest periods. In
23 addition, Defendant did not adequately notify Plaintiff and Class members of their rights to take
24 rest periods, and systematically denied them the opportunity to take rest periods, including all
25 rest periods required during long shifts, which at times exceeded twelve (12) consecutive hours.

26 31. Defendant further violated California Labor Code § 226.7, IWC Wage Order No.
27 5-2001, § 12, all other applicable IWC Wage Orders and the California Unfair Competition Law,
28 Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by failing to pay Plaintiff and Class members who

1 were not provided with a rest break, in accordance with the applicable wage order, one additional
2 hour of compensation at the proper regular rate of pay for each workday that a rest break was not
3 provided.

4 32. As a proximate result of the aforementioned violations, Plaintiff and Class
5 members have been damaged in an amount according to proof at trial, and seek all wages earned
6 and due, interest, penalties, expenses, and costs of suit.

7 **THIRD CAUSE OF ACTION**
8 **Failure to Pay Overtime Wages**
9 **[Cal. Lab. Code §§ 510, 1194, 1198; and All Applicable IWC Wage Orders**
10 **and Applicable Sections]**
11 **(On Behalf of Plaintiff and the Class against all Defendants)**

12 33. Plaintiff incorporates herein by specific reference, as though fully set forth, the
13 allegations in paragraphs 1 through 32.

14 34. Pursuant to California Labor Code §§ 510, 1194, and all applicable wage orders
15 and applicable sections, Defendant is required to compensate Plaintiff and Class members for all
16 overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours
17 worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first
18 eight (8) hours on the seventh consecutive workday, with double time for all hours worked in
19 excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours
20 on the seventh consecutive day of work in any workweek.

21 35. Plaintiff and Class members are current and former direct and temporary hourly
22 paid employees entitled to the protections of California Labor Code §§ 510, 1194, and all
23 applicable IWC Wage Orders. During the statute of limitations period, Defendant failed to
24 compensate Plaintiff and Class members for all overtime hours worked as required under the
25 foregoing provisions of the California Labor Code and IWC Wage Order by, among other
26 methods: failing to pay any overtime compensation; failing to properly calculate the regular rate
27 of pay for the purposes of calculating overtime pay owed and due; requiring, permitting or
28 suffering Plaintiff and Class members to work off-the-clock; illegally rounding time worked so
as to deprive Plaintiff and the Class members of wages; requiring, suffering, or permitting

1 Plaintiff and Class members to work through meal and rest periods but not compensating them
2 for this time, failing to include this time in all hours worked; failing to pay the highest regular
3 rate of pay based upon nondiscretionary bonus/commission payments; failing to pay for training
4 time; editing or otherwise manipulating the overtime hours worked, failing to pay for pre-and
5 post-shift work (including COVID screenings and donning and doffing uniforms); and other
6 methods to be discovered.

7 36. In a short-sighted attempt to maximize profits, Defendant understaffs its
8 restaurant and bar. Not only has this practice resulted in widespread missed meal and rest
9 breaks, but it has also caused Plaintiff and Class members to perform significant amounts of
10 work while off-the-clock. Defendant knows and is well aware that Plaintiff and Class members
11 performed this work off-the-clock work because managers see them doing this work well before
12 the beginning of the start and end of their scheduled shifts.

13 37. Defendant has also engaged in an unlawful time rounding practice, where the time
14 worked by Plaintiff and Class members is systematically rounded down, resulting in unpaid
15 regular and overtime wages. Defendant implemented a rounding practice wherein it rounds the
16 time worked by non-exempt employees unfavorable to the Class members. Defendant pays
17 Plaintiff and Class members based on rounded time despite the fact that it maintains records of
18 all hours worked.

19 38. In violation of California law, Defendant has knowingly and willfully refused to
20 perform its obligations to compensate Plaintiff and Class members for all wages earned and all
21 hours worked at the legally required rates of pay. As a proximate result, Plaintiff and Class
22 members have suffered, and continue to suffer, substantial losses related to the use and
23 enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in
24 seeking to compel Defendant to fully perform its obligations under state law, all to their
25 respective damages in amounts according to proof at time of trial, and within the jurisdiction of
26 this Court.

27 39. Defendant's conduct described herein violates California Labor Code §§ 510,
28 1194, 1198 and all applicable IWC Wage Orders and applicable sections. Therefore, pursuant to

1 California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions
2 under the California Labor Code and IWC Wage Orders, Plaintiff and Class members are
3 entitled to recover the unpaid balance of wages owed to them by Defendant, plus interest,
4 penalties, attorneys' fees, expenses, and costs of suit.

5 **FOURTH CAUSE OF ACTION**

6 **Failure to Pay Minimum Wages**

7 **[Cal. Lab. Code §§ 1194, 1197; All Applicable IWC Wage Orders and Applicable Sections]**
8 **(On Behalf of Plaintiff and the Class against all Defendants)**

9 40. Plaintiff incorporates herein by specific reference, as though fully set forth, the
10 allegations in paragraphs 1 through 39.

11 41. Pursuant to Cal. Lab. Code §§ 1194, 1197, and all applicable IWC Wage Orders
12 and applicable sections, payment to an employee of less than the applicable minimum wage for
13 all hours worked in a payroll period is unlawful.

14 42. During the statute of limitations period, the hourly rates for Plaintiff and Class
15 members were precisely at minimum wage. Based on this common practice, Defendant failed to
16 actually pay Plaintiff and Class members minimum wages for all hours worked by requiring,
17 permitting or suffering them to work off-the-clock, such as requiring them to work through meal,
18 rest breaks, but not compensating them for this time, and failing to include this time in all hours
19 worked, engaging in illegal and unlawful rounding and time entry manipulation practices, failing
20 to pay for travel time, failing to pay for pre-shift work and post-shift work (including COVID
21 screenings and donning and doffing uniforms); and other methods to be discovered.

22 43. Defendant's conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and
23 all applicable IWC Wage Orders and applicable sections. As a proximate result of the
24 aforementioned violations, Plaintiff and other Class members have been damaged in an amount
25 according to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558,
26 1194, 1197.1, and any other applicable law, Plaintiff and other aggrieved employees are entitled
27 to recover the unpaid balance of wages owed to them by Defendant, plus interest, penalties,
28 attorneys' fees, expenses, and costs of suit.

FIFTH CAUSE OF ACTION**Failure to Pay Timely Wages****[Cal. Lab. Code §§ 204, 210]*****(On Behalf of Plaintiff and the Class against all Defendants)***

44. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 43.

45. California Labor Code § 204 provides that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and 26th day of the month during which the labor was performed. California Labor Code § 204 further provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code § 204 further provides that all wages eared for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

46. During the statute of limitations period, Defendant, among other things, willfully failed to pay Plaintiff and Class members all wages earned and due to them, including but not limited to, meal and rest break premiums, and payment for work performed off-the-clock, within any time period permissible under Labor Code § 204.

47. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and Class members are entitled to all available statutory penalties, including but not limited to, civil penalties pursuant to California Labor Code §§ 200, 210, 558, 1194, 1197.1, 2699(a), and other applicable provisions under the California Labor Code and IWC Wage Orders, and an award of costs, expenses, and reasonable attorneys' fees.

SIXTH CAUSE OF ACTION**Failure to Pay All Wages Due to Discharged and Quitting Employees****[Cal. Lab. Code §§ 201, 202, 203]*****(On Behalf of Plaintiff and the Class against all Defendants)***

48. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 47.

1 49. Pursuant to California Labor Code §§ 200, 201, 202, and 203, Defendant is
2 required to pay all earned and unpaid wages to an employee who is discharged. California Labor
3 Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued
4 and unpaid at the time of discharge are due and payable immediately.

5 50. Furthermore, pursuant to California Labor Code § 202, Defendant is required to
6 pay all accrued wages due to an employee no later than seventy-two (72) hours after the
7 employee quits his or her employment, unless the employee provided seventy-two (72) hours
8 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
9 wages at the time of quitting.

10 51. California Labor Code § 203 provides that if an employer willfully fails to pay, in
11 accordance with California Labor Code §§ 201 and 202, any wages of an employee who is
12 discharged or who quits, the employer is liable for waiting time penalties in the form of
13 continued compensation to the employee at the same rate for up to thirty (30) workdays.

14 52. During the statute of limitations period, Defendant has willfully failed to pay
15 accrued wages and other compensation to Plaintiff and Class members in accordance with
16 California Labor Code §§ 201 and 202. Defendant does not have a sufficient policy to provide
17 Plaintiff and Class members with their final paychecks within the timeframes required under
18 California law. In addition, because Defendant has failed and continue to fail to properly
19 compensate Plaintiff and Class members for all hours worked when due, overtime wages, and
20 compensation for non-compliant meal and rest breaks, Defendant has also willfully failed and
21 continues to fail to pay accrued wages and other compensation to Plaintiff and Class members in
22 accordance with California Labor Code §§ 201 and 202.

23 53. As a result, Plaintiff and Class members are entitled to all available statutory
24 penalties, including the waiting time penalties provided in California Labor Code § 203, together
25 with interest thereon, as well as other available remedies.

26 54. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff
27 and Class members have been deprived of compensation in an amount according to proof at the
28 time of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery of such

1 amounts, plus interest thereon, and attorneys' fees and costs, pursuant to California Labor Code
2 § 1194.

3 **SEVENTH CAUSE OF ACTION**

4 **Failure to Furnish Accurate Itemized Wage Statements**
5 **[Cal. Lab. Code §§ 226, 246, 248.1, 248.2 and 248.6; and All Applicable**
6 **IWC Wage Orders and Applicable Sections]**
7 **(On Behalf of Plaintiff and the Class against all Defendants)**

8 55. Plaintiff incorporates herein by specific reference, as though fully set forth, the
9 allegations in paragraphs 1 through 54.

10 56. During the statute of limitations period, Defendant routinely failed to provide
11 Plaintiff and Class members with timely, accurate, and itemized wage statements in writing
12 showing each employee's gross wages earned, total hours worked, all deductions made, net
13 wages earned, and all applicable hourly rates in effect during each pay period and the
14 corresponding number of hours worked at each hourly rate, in violation of California Labor Code
15 § 226 and all applicable IWC Wage Orders and applicable sections.

16 57. Defendant's pay stubs violate Labor Code § 226 on their face by, failing to list the
17 applicable rates of pay for regular and overtime hours worked by Plaintiff and aggrieved
18 employees, and in violation of Labor Code §§246, 248.1, 248.2 and 248.6 based upon Defendant
19 failure to include information related to sick pay and COVID-19 supplemental sick pay. Further,
20 Defendant was and is not providing Plaintiff and other Class members with proper meal periods
21 and rest breaks but intentionally fails to include in their wage statements one (1) additional hour
22 of compensation at their regular rates of pay for each non-compliant meal period or rest break
23 which include but not limited to, shift differentials, nondiscretionary bonuses, etc., and failing to
24 pay all wages due based upon Defendant's illegal and unlawful rounding policy which favored
25 Defendant. These are violations of Labor Code §226.

26 58. Defendant knowingly and intentionally failed to provide Plaintiff and Class
27 members with timely, accurate, and itemized wage statements in accordance with California
28 Labor Code § 226(a) so as to prevent Plaintiff and Class members from being able to determine

1 whether they were being paid for, among other things, all of the hours they worked and at the
2 proper rates of pay.

3 59. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff
4 and Class members have been damaged in an amount according to proof at trial, and seek all
5 wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are
6 entitled to all available penalties, including but not limited to penalties pursuant to California
7 Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable
8 attorneys' fees, including but not limited to those provided in California Labor Code § 226(e), as
9 well as other available remedies.

10 **EIGHTH CAUSE OF ACTION**

11 **Failure to Maintain Required Records**

12 **[Cal. Lab. Code §§ 226, 247.5, 1174; and All Applicable IWC Wage Orders
and Applicable Sections]**

13 **(On Behalf of Plaintiff and the Class against all Defendants)**

14 60. Plaintiff incorporates herein by specific reference, as though fully set forth, the
15 allegations in paragraphs 1 through 59.

16 61. During the statute of limitations period, as part of Defendant's illegal payroll
17 policies and practices to deprive Plaintiff and Class members of all wages earned and due,
18 Defendant knowingly and intentionally failed to maintain records as required under California
19 Labor Code §§ 226, 247.5, 1174, and all applicable IWC Wage Orders and applicable sections,
20 including but not limited to, the following records: total daily hours worked by each non-exempt
21 employee; applicable rates of pay; all deductions; meal periods; time records showing when each
22 non-exempt employee begins and ends each workday; applicable sick pay, and accurate itemized
23 wage statements.

24 62. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff
25 and Class members have been damaged in an amount according to proof at trial, and are entitled
26 to all wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are
27 entitled to all available statutory penalties, including but not limited to civil penalties pursuant to
28 California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and

reasonable attorneys' fees, including but not limited to those provided in California Labor Code § 226(e), as well as other available remedies.

NINTH CAUSE OF ACTION

**Failure to Indemnify for Necessary Expenditures Incurred in Discharge of Duties
[Cal. Lab. Code § 2802]
(On Behalf of Plaintiff and the Class against Defendants)**

63. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 64.

64. California Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of her his or her duties, or of his or her obedience to the directions of the employer.

65. During the Class period, Defendant knowingly and willfully failed to indemnify Plaintiff and Class members for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of Defendants, including but not limited to, the costs and expenses related to their uniforms and uniform maintenance, cellular phones, personal protective equipment ("PPE's) during the COVID-19 pandemic, mileage reimbursements, all in violation of California Labor Code § 2802.

66. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and Class members have been damaged in an amount according to proof at trial, and seek reimbursement of all necessary expenditures, plus interest thereon pursuant to California Labor Code § 2802(b). Additionally, Plaintiff and Class members are entitled to all available statutory penalties and an award of costs, expenses, and reasonable attorneys' fees, including those provided in California Labor Code § 2802(c), as well as other available remedies.

TENTH CAUSE OF ACTION

**Failure to Provide Sick Pay and Supplemental COVID-19 Sick Pay
[Cal. Lab. Code §§246, 248.1, 248.2 and 248.6]
(On Behalf of Plaintiff and the Class against Defendants)**

67. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 66.

1 68. Plaintiff is informed and believes Defendant knowingly and intentionally failed in
2 its affirmative obligation to provide and pay paid sick leave and COVID-19 Supplemental Sick
3 Leave to Plaintiff and Class Members in violation of Labor Code section 246. 81. Labor Code
4 section 246(b)(1) requires that employees accrue sick leave at the commencement of
5 employment at a rate of 1 hour for every thirty hours worked. Section 246(c) entitles employees
6 to use any accrued sick leave beginning on their 90th day of employment.

7 69. Defendant failed to pay Plaintiff and Class Members paid sick leave at the lawful
8 rates set forth in the statute because Defendant failed to include in their calculation the
9 commissions and additional remuneration received by Plaintiff and the Class Members.

10 70. Furthermore, Defendant knowingly and intentionally failed its affirmative
11 obligation to provide and pay sick pay and COVID-19 supplemental sick pay to Class Members
12 in violation of Labor Code Sections 246, 247.5, 248.1, 248.2, and 248.6.

13 71. Labor Code Section 248.1 requires employers to provide up to 80 hours of
14 COVID19 Supplemental Paid Sick Leave to employees for the period of April 16, 2020 to
15 December 31, 2020. Labor Code 248.2 requires employers to provide up to 80 hours of COVID-
16 19 Supplemental Paid Sick Leave for the period of January 1, 2021 through September 30, 2021.
17 Labor Code section 248.6 extended COVID sick leave protections and requires employers to
18 provide up to 80 hours of COVID-19 Supplemental Paid Sick Leave for the period of January 1,
19 2022 to September 30, 2022, and may be extended thereafter. 85. Under Labor Code section
20 248.1, employees must be paid for COVID-19 Supplemental Paid Sick Leave at the highest of
21 the following: (1) the regular rate of pay for the last pay period, (2) state minimum wage, (3)
22 local minimum wage.

23 72. Under Labor Code Section 248.2, non-exempt employees must be paid COVID-
24 19 supplemental paid sick leave according to the highest of the following four methods: (1) the
25 regular rate of pay for the workweek in which the employee uses COVID-19 supplemental paid
26 sick leave, (2) the employee's total wages in a 90-day period divided by total hours worked, (3)
27 the state minimum wage, or (4) the local minimum wage.

73. Labor Code Section 248.6 requires employers to pay COVID-19 supplemental sick leave under either one of the following methods: (1) regular rate of pay or (2) the employee's total wages in a 90-day period divided by total hours worked.

74. Defendant failed to provide and pay COVID-19 supplemental paid sick leave in the manner described above because Defendant failed to pay Plaintiff and the Class Members such sick leave at one of the rates authorized by statute.

75. As a result, Defendant violated the Labor Code and are liable to Plaintiff and the Class for underpaid sick leave earnings, in addition to interest, attorneys' fees, and costs.

ELEVENTH CAUSE OF ACTION

Unfair and Unlawful Business Practices

[Cal. Bus. & Prof. Code § 17200 *et. seq.*]

(On Behalf of Plaintiff and the Class against all Defendants)

76. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 75.

77. Each and every one of Defendant's acts and omissions in violation of the California Labor Code and/or the applicable IWC Wage Orders as alleged herein, including but not limited to, Defendant's failure to provide required meal and rest breaks, failure to pay proper overtime compensation, unlawful rounding and requiring off-the-clock work, failure to pay all wages due to discharged or quitting employees or to pay timely wages, failure to furnish accurate itemized wage statements, failure to maintain required records, and failure to provide sick leave and supplemental COVID-19 sick leave, all constitute an unfair and unlawful business practice under California Business and Professions Code § 17200 *et seq.*

78. Defendant's violations of California wage and hour laws constitute an unfair business practices because the aforementioned acts and omissions were done repeatedly over a significant period of time, and in a systematic manner, to the detriment of Plaintiff and Class members.

79. Among other practices, Defendant has avoided payment of wages, overtime wages, the provision of meal and rest breaks, and other benefits as required by the California Labor Code, the California Code of Regulations, and the applicable IWC Wage Orders. Further,

1 Defendant has failed to record, report, and pay the correct sums of assessment to the state
2 authorities under the California Labor Code and other applicable regulations.

3 80. As a result of these unfair and unlawful business practices, Defendant and its
4 affiliated business have reaped unfair and illegal profits during the Class period at the expense of
5 Plaintiff and Class members, and members of the public. Defendant should be made to disgorge
6 its ill-gotten gains and to restore them to Plaintiff and Class members.

7 81. Defendant's unfair and unlawful business practices entitle Plaintiff and Class
8 members to seek preliminary and permanent injunctive relief, including but not limited to orders
9 that Defendant account for, disgorge, and restore to Plaintiff and Class members the wages and
10 other compensation unlawfully withheld from them. Plaintiff and Class members are entitled to
11 restitution of all monies to be disgorged from Defendant in an amount according to proof at the
12 time of trial.

13 **TWELFTH CAUSE OF ACTION**
14 **Representative Action for Civil Penalties**
15 **[Cal. Lab. Code §§ 2698- 2699.5]**

16 **(On Behalf of Plaintiff and all Other Aggrieved Employees against all Defendants)**

17 82. Plaintiff incorporates herein by specific reference as though fully set forth the
18 allegations in paragraphs 1 through 81, with exception of the allegations in Paragraphs 16
19 through 18 (A)-(D).

20 83. Pursuant to the PAGA, California Labor Code §§ 2698-2699.5, Plaintiff brings
21 this action on behalf of the State of California, and all other aggrieved employees (e.g., current
22 and former direct and temporary, hourly-paid employees who worked for Defendant in the State
23 of California at any time within the period beginning one (1) year prior and sixty-five (65) days
24 prior to the February 16, 2024 notice Plaintiff provided to the LWDA and Defendant, and ending
25 at the time this action proceeds to final judgment ("statute of limitations period").

26 84. Plaintiff is an "aggrieved employee" within the meaning of California Labor Code
27 § 2699(c), and is a proper representative to bring a civil action on behalf of himself and other
28 current and former direct and hourly-paid employees working for Defendant in California
pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff was

1 employed by Defendant and the alleged violations of the California Labor Code were committed
2 against Plaintiff.

3 85. As set forth fully in the above paragraphs incorporated herein, Defendant failed to
4 pay overtime wages, failed to provide the requisite meal periods and rest breaks (an any
5 associated premium pay at the regular rate), failed to pay minimum wages, failed to provide
6 accurate wage statements, failure to pay all wages owed at the time of termination, failed to
7 maintain accurate employment records, and failed to indemnify the aggrieved employees for
8 reasonable business expenses in violation of California Labor Code sections 201, 202, 203, 204,
9 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1198 and 2802.

10 86. Moreover, Defendants failed to provide 80 hours of COVID-19 Supplemental
11 Paid Sick leave and compensate aggrieved employees at their regular rate of pay for
12 supplemental sick leave, i.e., their highest regular rate of pay, taking into consideration non-
13 discretionary bonuses, etc., in violation of California Labor Code § 248.1(b)(3)(A) and §248.6.
14 Defendants also failed to provide COVID-19 Supplemental Sick Leave to aggrieved employees
15 in addition to regular sick leave, in violation of California Labor Code § 248.1(b)(2)(D).
16 Defendants also failed to accurately reflect any offset and/or the current amount of COVID-19
17 supplemental Sick Leave available to aggrieved employees on their wage statements, in violation
18 of California Labor Code §§ 246, 248.1(b)(2)(D), 248.2, 248.6 and for the reasons provided
19 herein.

20 87. Defendants were required to provide notice to aggrieved employees when they
21 were exposed to COVID-19. See, Labor Code §§6409.6 and 6432. Here, Defendants failed to
22 notice the aggrieved employees when they were exposed to COVID-19.

23 88. Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"),
24 Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil penalties, including but not limited
25 to penalties under California Labor Code §§ 2699, 210, 225.5, 226.3, 558, 1174.5, 1197.1, 1199,
26 1400 and IWC Wage Order No. 5-2001, § 20, from Defendant in a representative action for the
27 violations set forth above, including but not limited to violations of California Labor Code §§
28 200, 201, 202, 203, 204, 226, 226.7, 210, 218.6, 226, 226.7, 246, 248.1, 248.6, 432, 510, 512,

558, 1174, 1194, 1194.2, 1197, 1198, 1198.5, 1199, and 2802. Plaintiff is also entitled to an award of reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1).

89. Pursuant to California Labor Code §§ 2699.3, on February 16, 2024, Plaintiff gave written notice by certified mail to the California Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the California Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories to support the alleged violations. Within sixty-five (65) calendar of the postmark date of Plaintiff's notice letter, the LWDA did not provide notice to Plaintiff that it intends to investigate the alleged violations. Therefore, Plaintiff has complied with all of the requirements set forth in California Labor Code § 2699.3 to commence a representative action under PAGA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other persons similarly situated, respectfully prays for relief against Defendants and DOES 1 through 50, inclusive, and each of them, as follows:

1. For compensatory damages in an amount to be ascertained at trial;
2. For restitution of all monies due to Plaintiff and Class members, as well as disgorged profits from the unfair and unlawful business practices of Defendants;
3. For meal and rest break compensation pursuant to California Labor Code § 226.7 and IWC Wage Order No. 5-2001 and all applicable IWC Wage Orders and pertinent sections;
4. For liquidated damages pursuant to California Labor Code § 1194.2;
5. For preliminary and permanent injunctive relief enjoining Defendant from violating the relevant provisions of the California Labor Code and the IWC Wager Orders, and from engaging in the unlawful business practices complained of herein;
6. For waiting time penalties pursuant to California Labor Code § 203;
7. For statutory penalties according to proof, including but not limited to all penalties authorized by the California Labor Code §§ 210, 225.5, 226(e), 226.3, 558, 1174.5, 1775, 1197.1, 2699.3;

1 8. An award of actual, statutory, and/or punitive damages to Plaintiff and the Class
2 pursuant to California Civil Code §§ 1785.31 and 1786.50, in an amount subject to proof at trial;

3 9. For interest on the unpaid wages at 10 percent per annum pursuant to California
4 Labor Code §§ 218.6, 1194, 2802 and California Civil Code §§ 3287, 3288, and/or any other
5 applicable provision providing for pre-judgment interest;

6 10. For reasonable attorneys' fees and costs pursuant to California Labor Code §§
7 218.5, 226, 1194, 2802, 2699.3, et seq. and California Code of Civil Procedure § 1021.5,
8 California Civil Code § 1786.50(a)(2), California Civil Code § 1785.31(a), and/or any other
9 applicable provisions providing for attorneys' fees and costs;

10 11. For declaratory relief;

11 12. For an order requiring and certifying the First through Eleventh Causes of Action
12 as a class action;

13 13. For an order appointing Plaintiff as Class representative and Plaintiff's counsel as
14 Class counsel; and

15 14. For such further relief that the Court may deem just and proper.

16 DATED: April 23, 2024

LAW OFFICE OF SCOTT ERNEST WHEELER



17
18 By: _____
19 SCOTT ERNEST WHEELER
 JUSTIN A. WHEELER

20 *Attorney for Plaintiff and all others similarly*
21 *situated*

DEMAND FOR JURY TRIAL

Plaintiff on behalf of himself and all others similarly situated, hereby demands a jury trial with respect to all issues triable of right by jury.

DATED: April 23, 2024

LAW OFFICE OF SCOTT ERNEST WHEELER



By: _____

SCOTT ERNEST WHEELER
JUSTIN A. WHEELER

*Attorney for Plaintiff and all others similarly
situated*