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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF LOS ANGELES**
15

16 **Alan Garibay**, individually and on behalf of all
similarly situated individuals,

17 Plaintiff,

18 vs.

19
20 **LA Taco Management, LLC**, a California
Limited Liability Company; **Bizhan**
21 **Nematzadeh**, an individual; and **Does 1-10**,
22 inclusive;

23 Defendants.
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CASE NO. **24STCV02792**

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 Provide Rest Periods;
- 5) Failure to Provide and Maintain Complete and Accurate Wage Statements;
- 6) Failure to Reimburse Necessary Business Expenses;
- 7) PAGA Penalties; and
- 8) Violation of California Business & Professions Code §§ 17200, et seq.

Jury Trial Requested

1 Plaintiff hereby brings this action on behalf of himself and all other similarly situated current and
2 former employees, by and through his counsel of record, alleges as follows:

3 PARTIES

4 1. At all relevant times for this Complaint, Plaintiff **Alan Garibay**, (“Plaintiff”) is a resident
5 of Los Angeles, California. Plaintiff began his employment in or around August 2023 to on or around
6 November 28, 2023 where he worked as a cashier. Plaintiff was subject to the policies and practices
7 described in this complaint at all times during his employment at Defendants.

8 2. Defendant **LA Taco Management, LLC** (“LA Taco Management, LLC”) is a California
9 limited liability company with a principal place of business of 4917 Genesta Avenue, Encino, CA 91316.
10 On information and belief, employs at least 50 hourly, non-exempt employees.

11 3. Defendant **Bizhan Nematzadeh** (“Nematzadeh” or hereinafter “Defendants” with
12 Defendant LA Taco Management, LLC) is the Managing Member at LA Taco Management, LLC. Upon
13 information and belief, he is a resident of the County of Los Angeles in the State of California. Upon
14 information and belief, as Mr. Nematzadeh is a managing agent, director, and/or officer of Defendants
15 and because he caused or directed the acts described herein, he is personally liable for the Labor Code
16 violations set forth in this Complaint under Labor Code section 558.1.

17 4. Plaintiff is not currently aware of the names and true identities of defendants Does 1-10.
18 Plaintiff reserves the right to amend this complaint to allege their true names and capacities when this
19 information is available. Each Doe defendant is responsible for the damages alleged pursuant to each of
20 the causes of action asserted, either through its own conduct, or vicariously through the conduct of others.
21 All further references in this complaint to any of the named Defendants includes the fictitiously named
22 defendants.

23 5. At all times alleged herein, each Defendant was an agent, servant, joint employer,
24 employee, partner, and/or joint venture of every other Defendant and was acting within the scope of the
25 Defendants’ relationship, and/or the conduct of every Defendant was ratified by each other Defendant.

26 VENUE AND JURISDICTION

27 6. The court has jurisdiction over all causes of action in this complaint pursuant to Article VI,
28 § 10 of the California Constitution. No federal question is at issue; Plaintiff relies solely on California

1 statutes and law, including the Labor Code and the Business & Professions Code. Because putative class
2 members were employed by Defendants, the policies and practices complained of herein were
3 implemented in Los Angeles, and Defendants transact business within Los Angeles County, Defendant is
4 within the jurisdiction of the court for service of process. Moreover, Business & Professions Code § 17204
5 provides that any person acting on their own behalf may bring an action in any court of competent
6 jurisdiction.

7 7. Venue as to Defendant is proper in this Superior Court pursuant to California Code of Civil
8 Procedure § 395. Defendants transact business and/or have offices in this county, employ putative class
9 members in this County, and the acts and omissions alleged herein took place in this county. Moreover,
10 this action is brought on behalf of the State of California as a private attorney general and has jurisdiction
11 in this venue.

12 **CLASS ACTION ALLEGATIONS**

13 8. As a matter of uniform and systemic policy, Defendants failed to authorize and/or permit
14 non-exempt employees to take bona fide meal and rest breaks pursuant to Labor Code § 226.7.

15 9. Defendants have consistently denied their non-exempt employees the opportunities to take
16 compliant 30-minute meal periods in accordance with California's Labor Code. Upon information and
17 belief, Class Members, including Plaintiff, were required to interrupt their meal periods to service
18 customers, otherwise interrupt or cut short their meal periods, or remain on duty and under Defendants'
19 control during their meal periods to perform other tasks at Defendants' directions due to Defendants'
20 policies and practices, including their scheduling and staffing practices and policies.

21 10. In the same manner, and as a matter of uniform and systemic policy, Defendant requires
22 non-exempt employees to continue working during their rest periods or otherwise interrupting or cut short
23 their rest periods, or remain on duty and under Defendants' control during their rest periods to perform
24 other tasks at Defendants' directions due to Defendants' policies and practices, including their scheduling
25 and staffing practices and policies. Accordingly, Defendants failed to authorize and permit compliant rest
26 periods as required by law.

27 11. In failing to authorize and/or permit meal and rest periods, Defendants have also
28 implemented a uniform policy of denying compensation in lieu of meal and rest periods to its non-exempt

employees, notwithstanding its actual knowledge that such employees were uniformly denied compliant meal and rest periods.

12. As a matter of uniform and systemic policy, Defendants required non-exempt employees to utilize their personal cell phones for work-related purposes, including answering texts and calls from their supervisors while at work or on a break, for purposes of scheduling and re-scheduling future work, being assigned tasks, general administrative matters, and required the use of various mobile phone applications, including Dayforce. Defendants further failed to compensate their non-exempt employees for reasonable costs associated with utilizing their personal cell phones for work-related purposes.

13. As a matter of uniform and systemic policy, Defendants failed to provide its non-exempt employees with accurate itemized wage statements in accordance with California's Labor Code. Upon information and belief, Defendants failed to furnish Plaintiff, or Class Members, either semimonthly or at the time of each payment of wages, either as a detachable part of the check or separately, an accurate, itemized statement in writing showing sick pay, gross wages earned, all deductions, and the net wages earned by Plaintiff for the inclusive dates for which the Plaintiff worked, including the unpaid premium payments owed to the Class for their missed meal and rest breaks.

14. Plaintiff therefore brings this action on behalf of himself and as a class action on behalf of the following defined Class:

Non-Exempt Employee Class:

All persons who worked at least one 3.5-hour shift as a non-exempt employee in the State of California from the period four years prior to the filing of the Action and the date of trial ("Class").

15. Common methods of proof exist for determining these issues on a class-wide basis, including but not limited to, Defendants' employment records, payroll records, timesheets, policies, and disciplinary records.

16. **Numerosity.** Plaintiff is informed and believes that, during the class period, at least 50 Class Members have been employed as non-exempt employees by Defendants within the state of California. The number of Class Members is sufficiently numerous such that joinder of all members is impossible or impracticable.

17. **Typicality.** Plaintiff's claims are typical of all Class Members. Plaintiff, like all other Class

Members, was subjected to the policies and practices set forth above. Plaintiff's job duties were typical of Class Members in all relevant respects.

18. **Adequacy.** There are no material conflicts between the claims of the representative Plaintiff and Class Members that would make class certification inappropriate. Plaintiff understands his obligation to inform the Court of any relationship, conflicts, or differences with any Class Member. Plaintiff will fairly and adequately protect the interests of the Class Members. Plaintiff is invested in redressing Defendants' illegal practices on behalf of all Class Members. Moreover, Plaintiff has retained competent counsel experienced in both class action and employment litigation. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement, and will vigorously assert the claims of all Class Members. Plaintiff has incurred, and will continue to incur, costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each Class Member.

19. **Existence and Predominance of Common Issues.** Common questions of law and fact exist as to all Class Members and predominate over issues affecting individual Class Members, including, but not limited to:

- a. Whether Defendants had a common policy and/or practice of depriving Plaintiff and Class Members of required minimum and overtime wages;
- b. Whether Defendants unlawfully and/or willfully failed to compensate Plaintiff and Class Members required minimum and overtime wages;
- c. Whether Defendants had a common policy and/or practice of depriving Plaintiff and Class Members of compliant, off-duty meal and/or rest periods;
- d. Whether Defendants unlawfully and/or willfully deprived Plaintiff and Class Members of compliant, off-duty meal and/or rest periods;
- e. Whether Defendants have a common policy and/or practice of failing to maintain accurate payroll records in the State of California;
- f. Whether Defendants unlawfully and/or willfully failed to maintain accurate payroll records in the State of California;
- g. Whether Defendants have a common policy and/or practice of failing to provide

accurate wage statements reflecting hours worked and wages earned to Plaintiff and Class Members;

h. Whether Defendants unlawfully and/or willfully failed to provide accurate wage statements reflecting hours worked and wages earned to Plaintiff and Class Members;

i. Whether Defendants have a common policy and/or practice of failing to reimburse Plaintiff and Class Members for reasonable business expenses;

j. Whether Defendants unlawfully and/or willfully failed to reimburse Plaintiff and Class Members for reasonable business expenses;

k. Whether Plaintiff and Class Members sustained damages as a result of any of the aforementioned violations, and, if so, the proper measure of those damages, including interest, penalties, costs, attorneys' fees, and equitable relief; and

l. Whether Defendants violated the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, et seq., by violating the above provisions of law.

20. **Superiority.** A class action is superior to other available means for the fair and efficient adjudication of this dispute. The damages suffered by individual Class Members, while substantial, are small compared to the burden and expense of individual prosecution of the complex and expensive litigation necessary to address Defendants' conduct. Even if Class Members themselves could afford individual litigation, the court system would be overwhelmed by individual lawsuits if all Class Members sought redress. In addition, individualized litigation increases the delay and expense to all parties and to the court system resulting from the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. By contrast, the class action device presents far fewer management difficulties; it allows the hearing of claims which might otherwise go unaddressed because of the relative expense of bringing individual lawsuits, and it provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. Plaintiff contemplates providing notice to members of the Class identified through Defendants' records.

1
2 **CAUSES OF ACTION**

3 **FIRST CAUSE OF ACTION**

4 ***California Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198***

5 ***Failure to Pay Minimum Wages for All Hours Worked***

6 **(Plaintiff and Class Against Defendants)**

7 21. Plaintiff repeats and incorporates by reference all allegations contained in the preceding
8 paragraphs as if fully set forth herein.

9 22. California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that payment
10 of a wage less than the minimum wage as set by statute, commission, or by the general prevailing rate is
11 unlawful. Compensable work time is defined in Wage Order No. 4 as “the time during which an employee
12 is subject to the control of an employer, and includes all the time the employee is suffered or permitted to
13 work, whether or not required to do so.” Code. Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

14 23. Defendants failed to compensate Plaintiff and the Class for all hours worked because
15 Defendants had a policy and/or practice whereby they required and/or pressured Class Members to work
16 under Defendants’ control while off-the-clock, including during their meal periods.

17 24. Defendants required its non-exempt employees to work through their legally mandated
18 meal period or remain on duty and under Defendants’ control during their meal periods to perform other
19 tasks at Defendants’ directions due to Defendants’ policies and practices. However, due to Defendants’
20 auto-deduct policy Class Members were recorded as taking a 30-minute meal period and had their
21 compensable hours reduced by 30 minutes regardless of their time spend on a compliant meal period,
22 resulting compensable time going unrecorded for payroll purposes.

23 25. Accordingly, Defendants failed to pay Plaintiff or Class Members for all hours worked
24 where they were under the control of Defendants.

25 26. Defendants further failed to pay Plaintiff and Class Members any wages for time engaged
26 in this off-the-clock work.

27 27. As a result of Defendants’ failure and refusal to comply with California law, Plaintiff and
28 Class Members are entitled to recover actual and liquidated damages for the unpaid time, plus injunctive

1 relief and reasonable attorney's fees and costs. Lab. Code §§ 1194, 1197.1.

2 **SECOND CAUSE OF ACTION**

3 ***California Labor Code §§ 510 and 1198***

4 ***Unpaid Overtime***

5 **(Plaintiff and Class Against Defendants)**

6 28. Plaintiff incorporates by reference every allegation in this complaint as if fully set forth
7 herein.

8 29. California Labor Code §§ 510 and 1198 provide that it is unlawful to employ persons
9 without compensating them at a rate of pay either time-and-one-half or two-times that person's regular
10 rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

11 30. Plaintiff and Class Members who work more than eight hours in a day or more than forty
12 hours in a workweek are to be paid at the rate of time and one-half (1½) for all hours worked in excess of
13 eight hours in a day or more than forty hours in a workweek. An employee's regular rate of pay includes
14 all remuneration for employment paid to, or on behalf of, the employee, including commissions, non-
15 discretionary bonuses and incentive pay. *Alvarado v. Dart Container Corp. of California*, 4 Cal. 5th 542, 573
16 (2018), as modified (Apr. 25, 2018).

17 31. Throughout the Class Period, Plaintiff and other Class Members were not paid overtime
18 premiums for all of the hours they worked in excess of eight hours in a day, in excess of twelve hours in a
19 day, in excess of eight hours on the seventh consecutive day of work in a workweek, and in excess of forty
20 hours in a week due to the off-the-clock work identified above.

21 32. As Class Members sometimes worked shifts of more than eight hours a day or forty hours
22 a week, this off the clock work should have been adequately compensated at their appropriate overtime
23 rate of pay.

24 33. Additionally, Defendants failed to pay out overtime at the correct rate of pay by failing to
25 include shift differential and other incentive-based pay as part of Class Member's regular rate of pay when
26 determining their overtime rate. *Alvarado v. Dart Container Corp. of California*, 4 Cal. 5th 542, 573 (2018),
27 as modified (Apr. 25, 2018) ("Significantly, an employee's 'regular rate of pay' for purposes of Labor Code
28 section 510 and the IWC wage orders is not the same as the employee's straight time rate (i.e., his or his

normal hourly wage rate). Regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, shift differentials and the per-hour value of any nonhourly compensation the employee has earned.”).

34. Defendants knew or should have known that Plaintiff and Class Members did not receive full overtime compensation.

35. Accordingly, Defendants’ failure to pay overtime compensation resulted in Plaintiff and Class Members being deprived of earned overtime wages. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys’ fees.

36. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys’ fees.

THIRD CAUSE OF ACTION

California Labor Code §§ 226.7, 512(a), and 1198

Meal Period Violations

(Plaintiff and Class Against Defendants)

37. Plaintiff incorporates by reference every allegation in this complaint as if fully set forth herein.

38. At all times relevant to this complaint, Defendants knew they were obligated to provide legally-compliant meal breaks to its non-exempt employees pursuant to Labor Code §§ 512 and 226.7. Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

39. Labor Code section 226.7, 512(a), and 1198 provide that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC. “An off-duty meal period, therefore, is one in which the employee is relieved of all duty during the 30-minute meal period . . . an employer’s obligation is to provide an off-duty meal period: an uninterrupted 30-minute period during which the employee is relieved of all duty.” *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1035

1 (2012).

2 40. Defendants' policies and practices served to deprive the Class of a full 30-minute break
3 period free of employer control or relieved of all duties. Upon information and belief, employees were
4 required to skip breaks, take breaks after the fifth hour of work, work through them or remain under
5 Defendant's control during breaks due to Defendants' policies and practices.

6 41. Accordingly, Plaintiff and Class Members were uniformly denied meal periods as a result
7 of Defendants' formal policies and practices. By failing to consistently provide uninterrupted, off-duty 30-
8 minute meal periods, Defendants violated the Labor Code as to Plaintiff and Class Members.

9 42. Pursuant to Labor Code § 226.7(b), Plaintiff and Class Members are entitled to recover
10 from Defendants an additional hour of pay at their regular rates of pay for each shift in which a required
11 meal period was not provided.

12 **FOURTH CAUSE OF ACTION**

13 ***Labor Code §§ 226.7 and 1198***

14 ***Failure to Provide Rest Periods or Premium Pay in Lieu Thereof***

15 **(Plaintiff and Class Against Defendants)**

16 43. Plaintiff incorporates by reference every allegation in this complaint as if fully set forth
17 herein.

18 44. At all times relevant to this complaint, Defendants knew they were obligated to provide
19 compliant rest breaks to its non-exempt employees pursuant to Labor Code § 226.7.

20 45. Labor Code § 226.7 provides:

21 (a) No employer shall require any employee to work during any meal or rest
22 period mandated by an applicable order of the Industrial Welfare Commission.

23 (b) If any employer fails to provide an employee a meal period or rest period
24 in accordance with an applicable order of the Industrial Welfare Commission, the
25 employer shall pay the employee one additional hour of pay at the employee's
26 regular rate of compensation for each work day that the meal or rest period is not
27 provided.

28 46. Labor Code § 226.7, 512(a), and 1198 provide that no employer shall require an employee
to work during any rest or meal period mandated by an applicable order of the IWC, including Wage Order

No. 1. Employers must authorize and permit employees to be relieved of all duty during their rest and meal periods: “A rest period, in short, must be a period of rest.”¹ *Augustus v. ABM Sec. Servs., Inc.*, 385 P.3d 823, 834 (2016).

47. Employees must also be free to leave the employer’s premises during their rest period. *See id.* at 270 (“In the context of a 10-minute break that employers must provide during the work period, a broad and intrusive degree of control exists when an employer requires employees to remain on call and respond during breaks. An employee on call cannot take a brief walk—five minutes out, five minutes back—if at the farthest extent of the walk he or he is not in a position to respond. Employees similarly cannot use their 10 minutes to take care of other personal matters that require truly uninterrupted time.”); *see also* Department of Industrial Relations, “Rest Periods,” *available at* https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm (“Q. Can my employer require that I stay on the work premises during my rest period? A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself.”).

48. Defendants failed to authorize or permit all required compliant paid rest periods for shifts between 3.5 and ten hours, or subjected employees to interrupted or shortened rest periods.

49. As a direct and proximate result of Defendants’ willful and unlawful conduct, Plaintiff and Class Members have sustained damages, including lost compensation resulting from missed or non-compliant rest periods, in an amount to be established at trial.

50. Pursuant to Wage Order No. 4 and Labor Code § 226.7(b), Plaintiff and Class Members are entitled to recover from Defendants an additional hour of pay at their regular rates of pay for each shift that a compliant rest period was not provided. Defendants were aware that their actions were a violation of applicable law but consistently refused to pay premium pay as required by law.

¹ Employees must also be free to leave the premises. *Augustus*, 2 Cal. 5th at 270; *see also* Department of Industrial Relations, “Rest Periods/Lactation Accommodations,” *available at* https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm (“Q. Can my employer require that I stay on the work premises during my rest period? A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself.”)

1 **FIFTH CAUSE OF ACTION**

2 ***Labor Code §§ 226, 226.3, and 1174***

3 ***Failure to Provide Complete and Accurate Wage Statements***

4 **(Plaintiff and Class Against Defendants)**

5 51. Plaintiff repeats and incorporates by reference all allegations contained in the preceding
6 paragraphs as if fully set forth herein.

7 52. Labor Code § 226 requires employers to furnish employees with an accurate, itemized
8 statement in writing showing, among other things, (1) gross wages earned; (2) total hours worked by the
9 employee (for hourly-paid, non-exempt employees); (3) all deductions; (4) net wages earned; (5) the
10 inclusive dates of the period for which the employee is paid; (6) the name of the employee and the last four
11 digits of his or his social security number; (7) the name and address of the legal entity that is the employer;
12 and (8) all applicable hourly rates in effect during the pay period and the corresponding number of hours
13 worked at each hourly rate by the employee.

14 53. At all times relevant to this complaint, Defendants' failure to pay premium wages for
15 missed meal and/or rest periods further ensured that Class Members' wage statements inaccurately
16 reflected gross and net wages earned. Defendants' failure to compensate all hours worked and/or pay all
17 required overtime rates further left the wage statements they provided to employees to be inaccurate.

18 54. Defendants have also failed to keep accurate payroll records for Plaintiff and Class
19 Members in accordance with Labor Code § 1174. Defendants' failure to keep and maintain accurate
20 payroll records reflecting hours worked and wages earned has impeded Plaintiff and Class Members'
21 ability to calculate unpaid wages earned.

22 55. Injury. Defendants knowingly and intentionally failed to comply with Labor Code § 226,
23 causing injury and damages to Plaintiff and Class Members. Plaintiff and all those similarly situated were
24 injured by these failures because, among other things, they were confused about whether they were paid
25 properly and/or they were misinformed about how much compensation was owed. These damages
26 include, but are not limited to, costs incurred calculating the correct net wages for each pay period and the
27 amount of employment taxes that were not paid to state and federal tax authorities.

28 56. Relief. Labor Code § 226(e)(1) provides that an employee suffering injury as a result of not

being provided with an accurate itemized wage statement is entitled to recover the greater of all actual damages suffered or fifty (\$50) dollars for the initial violation and one hundred (\$100) dollars for each subsequent violation, up to \$4,000. Pursuant to Labor Code §§ 226(e) and (g), Plaintiff and all others similarly situated are entitled to injunctive relief to ensure Defendant's compliance with Labor Code § 226, as well as attorney's fees and costs of suit.

SIXTH CAUSE OF ACTION

California Labor Code § 2802

Failure to Reimburse Necessary Business Expenses

(Plaintiff and Class Against Defendants)

57. Plaintiff repeats, repleads, and incorporates by reference, as though fully set forth in this paragraph, all the allegations of this Complaint.

58. Labor Code section 2802 provides that “[a]n employer shall indemnify his or his employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or his duties, or of his or his obedience to the directions of the employer.” Lab. Code § 2802. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014).

59. Defendants required non-exempt employees to utilize their personal cell phones for work-related purposes, including answering texts and calls from their supervisors while at work or on a break, scheduling and re-scheduling future work, being assigned tasks, and general administrative matters, and the use of various mobile phone applications including Dayforce.

60. Defendants further failed to compensate their non-exempt employees for reasonable costs associated with utilizing their personal cell phones for work-related purposes.

61. Defendants failed to reimburse a reasonable portion of the Class Members’ cellphone related expenses despite requiring the use of the device and/or applications that required a data plan. *See Cochran v. Schwan’s Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1144 (“We hold that when employees must use their personal cell phones for work related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes,

1 the reimbursement owed is a reasonable percentage of their cell phone bills.”). Defendant further failed
2 to reimburse Plaintiff and the Class Members for the purchase of work-related equipment.

3 62. By unlawfully failing to pay Plaintiff and Class Members, Defendants are liable for a
4 reasonable portion of the incurred expenses, to be determined upon trial, plus reasonable attorneys’ fees
5 and costs. Lab. Code § 2802.

6 **SEVENTH CAUSE OF ACTION**

7 ***Labor Code §§ 558, 2698, et seq.***

8 ***Private Attorneys General Act (“PAGA”) Penalties***

9 **(Plaintiff and Class Against Defendants)**

10 63. Plaintiff incorporates by reference all the allegations of this Complaint as though fully set
11 forth herein.

12 64. Entitlement to Penalties. Under the California Private Attorneys General Act (“PAGA”),
13 Labor Code § 2698, *et seq.*, an aggrieved employee may bring a representative action as a private attorney
14 general, on behalf of himself and other current or former employees as well as the general public, to recover
15 penalties for an employer’s violations of the Labor Code and IWC Wage Orders. These penalties are in
16 addition to any other relief available under the Labor Code and are allocated seventy-five percent to the
17 Labor and Workforce Development Agency and twenty-five percent to the affected employees.

18 65. These penalties may be “stacked” separately for each of Defendants’ violations of the
19 Labor Code. *See, e.g., Hernandez v. Towne Park, Ltd.*, No. CV 12-02972, 2012 WL 2373372, at *17 n.77
20 (C.D. Cal. June 22, 2012) (“[F]ederal courts applying California law have concluded that stacking is
21 appropriate.”); *see also O’Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, 2016 WL 3548370, at *7
22 (N.D. Cal. June 30, 2016) (“Finally, Plaintiff ignore the potential for stacking of PAGA penalties related
23 to wage-and-hour claims other than the gratuities and expense reimbursement claim, i.e., meal and rest
24 breaks, minimum wage and overtime, and workers’ compensation.”).

25 66. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by Defendants
26 during the applicable statutory period and suffered the Labor Code violations alleged herein. Accordingly,
27 he seeks to recover, on behalf of himself and all other current and former aggrieved employees of
28 Defendants, the civil penalties provided by PAGA, including civil penalties for Defendants’ violations of

1 Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1182.12, 1174, 1194, 1194.2, 1197, 1198,
2 1401, and 2802, plus reasonable attorneys' fees and costs.

3 67. Representative Action. Plaintiff seeks to recover the PAGA civil penalties through a
4 representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*,
5 46 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not required, but Plaintiff may
6 choose to seek certification of the PAGA claims.

7 68. Labor Code § 2699(a), which is part of PAGA, provides:

8
9 Notwithstanding any other provision of law, any provision of this code that
10 provides for a civil penalty to be assessed and collected by the Labor and
11 Workforce Development Agency or any of its departments, divisions,
12 commissions, boards, agencies, or employees, for a violation of this code, may, as
13 an alternative, be recovered through a civil action brought by an aggrieved
14 employee on behalf of themselves or themselves and other current or former
15 employees pursuant to the procedures specified in § 2699(a).

16 69. Penalties. Labor Code § 2699(f), which is part of PAGA, provides:

17
18 For all provisions of this code except those for which a civil penalty is specifically
19 provided, there is established a civil penalty for a violation of these provisions, as
20 follows: . . . (2) If, at the time of the alleged violation, the person employs one or
21 more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
22 employee per pay period for the initial violation and two hundred dollars (\$200)
23 for each aggrieved employee per pay period for each subsequent violation.

24 70. Based on the foregoing, Plaintiff and aggrieved employees are entitled to civil penalties, to
25 be paid by Defendants and allocated as required by PAGA in the following formula: (a) in an amount set
26 forth as a civil penalty in the underlying statute; or (b) \$100 per initial violation per employee per pay
27 period, and \$200 for each subsequent violation per employee per pay period. Plaintiff, the aggrieved
28 employees, and the State of California are entitled to recover the maximum civil penalties allowed by law
for the violations of the Labor Code and IWC Wage Orders as alleged in this Complaint.

71. Plaintiff is also entitled to recover for himself, other aggrieved employees, and the State of
California, civil penalties pursuant to Labor Code § 210 (entirely independent and apart from, any other
penalty provided in this article) in the amount of \$100 per employee per initial violation of the timely
payment requirements of Labor Code § 240 (semimonthly payments) and \$200 per employee for each
subsequent violation, plus 25% of the amount unlawfully withheld, and Labor Code § 558 in the amount

1 \$50 per underpaid employee for each pay period for which the employee was underpaid and for each
2 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for
3 which the employee was underpaid.

4 72. Procedural Requirements Met. Plaintiff electronically filed a notice of claims with the
5 LWDA contemporaneously with this Complaint and sent a copy to Defendants by certified mail. Plaintiff
6 has not received notice from the LWDA that it was exercising jurisdiction over the allegations set forth in
7 the notice. As of 65 days from date of electronic filing, all requirements for administrative exhaustion for
8 bringing these PAGA claims will have been met. Labor Code § 2699.3(a)(2).

9 **EIGHTH CAUSE OF ACTION**

10 ***California Business & Professions Code §§ 17200, et seq.***

11 ***Unlawful Business Practices***

12 **(Plaintiff and Class Against Defendants)**

13 73. Plaintiff repeats and incorporate by reference every allegation in this complaint as if fully
14 set forth herein.

15 74. Defendants LA Taco Management, LLC and Nematzadeh are “persons” as defined by
16 California Business & Professions Code § 17201, as they are a natural person, corporations, firms,
17 partnerships, joint stock companies, and/or associations.

18 75. Unlawful Business Practices. Defendants’ knowing violations of the Labor Code
19 constitutes an unlawful business practice as set forth in Business & Professions Code § 17200, et seq.

20 76. Defendants’ failure to abide by the laws discussed herein provided Defendants an unfair
21 advantage over their competitors at the expense of their workers. Instead, Defendants cuts corners in the
22 name of higher profits and at the expense of employee well-being. Defendants’ actions thereby constitute
23 an unfair, fraudulent, and/or unlawful business practice under Business & Professions Code § 17200, et
24 seq.

25 77. Relief. Plaintiff brings this cause of action seeking equitable and injunctive relief to stop
26 Defendant’s willful and ongoing misconduct, and to seek restitution of the amounts Defendants acquired
27 through the unfair, unlawful, and fraudulent business practices described herein. In addition, Plaintiff
28 seeks an award of costs and attorneys’ fees pursuant to California Code of Civil Procedure § 1021.5.

1 **DEMAND FOR JURY TRIAL**

2 Pursuant to California Code of Civil Procedure § 631, Plaintiff demands a trial by jury on all issues
3 so triable.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff respectfully prays judgment as follows:

- 6 A. For an Order:
- 7 a. Certifying the Class;
- 8 b. Appointing Plaintiff as representative of the Class;
- 9 c. Appointing Plaintiff's counsel as Class Counsel;
- 10 B. For actual and liquidated damages according to proof at trial;
- 11 C. For statutory and civil penalties and special damages, according to proof at trial;
- 12 D. For pre- and post-judgment interest on monetary damages;
- 13 E. For preliminary and permanent injunctive relief;
- 14 F. For reasonable attorney's fees and costs and expert fees and costs as allowed by law; and
- 15 G. For such other relief as this Court deems just and proper.
- 16
- 17

18 Dated: February 1, 2024

Respectfully submitted,

19 **KING & SIEGEL LLP**

20 By: Elliot J. Siegel
21 Elliot J. Siegel, Esq.
22 Attorneys for Plaintiffs

23

24 Dated: February 1, 2024

BARAHMAND LAW GROUP

25

26 By: /s/ Navid Barahmand
27 Navid Barahmand, Esq.
28 Attorneys for Plaintiffs