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

ALFREDO MIJARES, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

MY SMART HOUSE LLC, a New York
LLC; CARL VIZZI, an individual; and DOES
1 through 20, inclusive;

Defendants.

Case No.: CVRI2401590
*[Assigned to Hon. Harold Hopp, Dept 1, for
all purposes]*

FIRST AMENDED COMPLAINT

CLASS ACTION COMPLAINT

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Meal Periods;
- (4) Failure to Provide Rest Breaks;
- (5) Failure to Reimburse Bus. Expenses;
- (6) Failure to Timely Pay Final Wages;
- (7) Failure to Provide Accurate Itemized Wage Statements; and
- (8) Unfair and Unlawful Competition

PAGA CLAIMS

- (9) Failure to Pay Minimum Wages;
- (10) Failure to Pay Overtime Wages;
- (11) Failure to Provide Meal Periods;
- (12) Failure to Provide Rest Breaks;
- (13) Failure to Reimburse Bus. Expenses;
- (14) Failure to Timely Pay Wages Each Period;
- (15) Failure to Timely Pay Final Wages;
- (16) Failure to Provide Accurate Itemized Wage Statements; and

1 Plaintiff Alfredo Mijares (“Plaintiff”) on behalf of himself, on a representative basis, and
2 on behalf of others similarly situated, complains and alleges as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against his former employer(s), My Smart House, LLC,
5 Carl Vizzi, and DOES 1 through 20, inclusive, (collectively, “Defendants”) on behalf of all
6 current and former nonexempt employees employed by Defendants in California (the “Class” or
7 “Represented Employees”), for Labor Code violations stemming from Defendants’ failure to pay
8 all wages owed, including minimum, regular, and overtime wages, failure to provide meal
9 periods, failure to provide rest breaks, failure to reimburse business expenses, failure to timely
10 pay wages each period and upon separation of employment, and failure to provide accurate
11 itemized wage statements.

12 2. Plaintiff was employed by Defendants from approximately February 2022
13 through October 2023.

14 3. Plaintiff alleges on information and belief that the Represented Employees were
15 subjected to the same policies, working conditions, and corresponding wage and hour violations
16 to which Plaintiff was subjected during employment.

17 4. Plaintiff and the Represented Employees were not provided all minimum, regular,
18 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
19 worked. As one specific example, Plaintiff and the Represented Employees were frequently
20 pressured to work overtime hours off-the-clock so that Defendants could avoid paying overtime
21 premiums. This had an added effect of decreasing overtime premiums that should have been paid
22 on commissions earned during weeks where the overtime was actually worked. Moreover,
23 Plaintiff and the Represented Employees were required to perform off-the-clock work during
24 meal periods and at the beginning and end of shifts without compensation. Because this time
25 was spent under Defendants’ control without compensation, this violates California law and led
26 to minimum and overtime wage violations. See *Troester v. Starbucks Corporation* (2018) 5
27 Cal.5th 829 (California law “do[es] not allow employers to require employees to routinely work
28 for minutes off the clock without compensation”). Additionally, wages that were earned and

1 reflected on wage statements were not what was direct deposited into Plaintiff's and Represented
2 Employee's accounts. For example, Plaintiff's October 13, 2023 wage statement indicates that
3 Plaintiff earned \$2,241.66, but only \$1,500 was deposited into his account.

4 5. Plaintiff and the Represented Employees were also denied 30-minute off-duty
5 meal periods, as mandated by California law. As a result of Defendants' policies and practices,
6 the Represented Employees were subjected to meal period violations when they were: (1) unable
7 to take a meal period due to workload, (2) forced to take an on-duty meal period while under the
8 control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal
9 period after the 5th hour of work, and (5) not provided mandated second meal periods for shifts
10 in excess of 10 hours.

11 6. Defendants also failed to provide Plaintiff and the Represented Employees with
12 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
13 mandated by California law. Defendants did not schedule rest breaks for Plaintiff and the
14 Represented Employees and the Represented Employees were often not authorized and/or
15 permitted to take mandated rest breaks due to being overwhelmed by their hectic workload.
16 Furthermore, on occasions when Plaintiff and the Represented Employees worked longer shifts,
17 Defendants failed to authorize and/or permit mandated third or fourth rest breaks.

18 7. Also, Defendants required Plaintiff and the Represented Employees to incur
19 substantial business-related expenses and costs without reimbursement. For example,
20 Defendants required Plaintiff and the Represented Employees to use personal cell phones to
21 carry out their duties for Defendants without reimbursement.

22 8. Plaintiff also alleges that he and the Represented Employees were not paid all
23 wages due and owing each pay period (Labor Code § 204) and upon separation of employment
24 within the time required by Labor Code §§ 201 – 203. Plaintiff further alleges that Defendants
25 engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Represented
26 Employees at the time their employment ended with Defendants, including, but not limited to
27 minimum, regular, and overtime wages, sick pay wages, wage premiums, among others.
28

1 9. Plaintiff further alleges that Defendants failed to provide accurate itemized wage
2 statements that fully complied with the requirements of Labor Code § 226(a).

3 10. Plaintiff alleges that Defendants' violations of the wage and hour components of
4 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their
5 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
6 its competitors.

7 11. At all material times, Defendants and DOES 1 through 20 were and/or are the
8 Represented Employees' employers or persons acting on behalf of the Represented Employees'
9 employer, within the meaning of California Labor Code § 558, who violated or caused to be
10 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
11 hours and days of work in an IWC Wage Order and, as such, are subject to penalties for each
12 underpaid employee as set forth in Labor Code § 558 and under California law.

13 12. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
14 monetary relief against Defendants and each of them, on behalf of himself and the Represented
15 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
16 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
17 210, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199,
18 among possibly other sections inadvertently omitted. Plaintiff also reserves the right to name
19 additional representatives throughout the State of California.

20 **II. JURISDICTION**

21 13. This Court has jurisdiction over the claims for relief of Plaintiff and the
22 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

23 **III. VENUE**

24 14. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
25 Procedure § 395(a). Defendants transact business in Riverside County and the unlawful acts
26 alleged herein have a direct effect on Plaintiff and the Represented Employees in Riverside
27 County. Furthermore, Defendants employed or employ Plaintiff and Represented Employees in
28 Riverside County.

1 **IV. PARTIES**

2 **Plaintiff**

3 15. Plaintiff and Class Representative Alfredo Mijeres was employed by Defendants
4 from approximately February 2022 through October 2023 and performed work for Defendants in
5 Riverside County.

6 **Defendants**

7 16. Plaintiff is informed and believes and thereon alleges that Defendant My Smart
8 House LLC (a) is a New York limited liability company with its principal executive office in
9 Murrieta, California, (b) is authorized to and doing business in Riverside County, California, and
10 (c) is and/or was the legal employer of Plaintiff and the Represented Employees during the
11 applicable statutory periods.

12 17. Plaintiff is informed and believes and thereon alleges that Defendant Carl Vizzi
13 (a) is the President to My Smart House LLC with his principal executive office in Murrieta,
14 California, (b) is authorized to and doing business in Riverside County, California, and (c) is
15 and/or was the legal employer of Plaintiff and the Represented Employees during the applicable
16 statutory periods.

17 18. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
18 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
19 inclusive, but on information and belief alleges that those Defendants are legally responsible for
20 the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of
21 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
22 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
23 Defendants when ascertained.

24 19. Plaintiff is informed and believes and thereon alleges that she and the Represented
25 Employees worked under the joint direction and control of Defendants and that Defendants, and
26 each of them, acted in all respects pertinent to this action as the agent of the other Defendants,
27 carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of
28 each Defendant are legally attributable to the other Defendants. On information and belief, a

1 unity of interest and ownership between each Defendant exists such that all Defendants acted as
2 a single employer of Plaintiff and other Represented Employees.

3 20. Furthermore, Plaintiff is informed and believes and thereon alleges that
4 Defendants, and each of them, are an integrated enterprise and should be treated as a single
5 employer because these entities share an interrelation of operations, with common human
6 resources and personnel policies and shared common offices and facilities. Additionally,
7 Defendants also have a shared website, common management, a centralized control of labor
8 operations, and common ownership or financial control.

9 21. Plaintiff is informed and believes and thereon alleges that, in conducting
10 themselves in the manner described herein, Defendants, and each of them, were acting in active
11 concert with one another such that the acts of each were and are fully attributable to the others in
12 all material respects. Plaintiff is further informed and believes that at all relevant times
13 Defendants and each of them are now, and at all material times herein mentioned were, the
14 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining
15 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and
16 purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of
17 their remaining co-Defendants.

18 22. Plaintiff is further informed and believes that at all relevant times, Defendants
19 have been inadequately capitalized to conduct business, have failed to follow appropriate
20 corporate formalities, and have simply been a shell and instrumentality through which
21 Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly,
22 the corporate veil should be pierced, and any liability attached to Defendants should be imposed
23 jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the
24 separate existence of these corporate entities would permit abuse of the corporate privilege,
25 thereby sanctioning fraud and promoting injustice.

26 **V. CLASS ACTION ALLEGATIONS**

27 23. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
28 alleged herein.

1 24. Plaintiff brings this action on behalf of himself and all others similarly situated as
2 a class action, pursuant to Code of Civil Procedure § 382.

3 25. The relevant time period for this class action is defined as the period beginning
4 four years prior to the filing of this action until class certification (the “Relevant Time Period”).

5 26. The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to
6 represent is defined as follows:

7 All current and former nonexempt employees employed by
8 Defendants in California during the Relevant Time Period.

9 27. Plaintiff also seeks to represent the following subclasses:

10 **Meal Break Subclass**

11 All Represented Employees who worked a shift in excess of
12 5 hours during the Relevant Time Period.

13 **Rest Break Subclass**

14 All Represented Employees who worked a shift of at least
15 3.5 hours during the Relevant Time Period.

16 **Unreimbursed Expense Subclass**

17 All Represented Employees who were required to incur
18 expenses to discharge their duties for Defendants without
19 reimbursement during the Relevant Time Period.

20 **Waiting Time Penalties Subclass**

21 All Represented Employees who separated from their
22 employment with Defendants during the period three years
23 before the filing of this action and ending when final
24 judgment is entered.

25 **Wage Statement Penalties Subclass**

26 All Represented Employees during the period one year
27 before the filing of this action and ending when final
28 judgment is entered.

1 28. Plaintiff reserves the right to amend or modify the class description with greater
2 specificity or further division into subclasses or limitation to particular issues as appropriate.

3 29. Plaintiff, as Class Representative, is a member of the class and subclasses that he
4 seeks to represent.

5 30. This action has been brought and may properly be maintained as a class action
6 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
7 litigation and the proposed class is easily ascertainable from Defendants' records.

8 31. **Numerosity:** The potential members of the Class as defined are so numerous that
9 a joinder of all Represented Employees is impracticable. Although the exact number is currently
10 unknown to Plaintiff, this information is easily ascertainable from Defendants' records.

11 32. **Commonality:** There are questions of law and fact common to the class which
12 predominate over any questions affecting only individual members of the class, including
13 without limitation:

14 i. Whether Defendants violated the Labor Code and IWC Wage Order by
15 failing to pay wages to Plaintiff and the Represented Employees for all minimum, regular, and
16 contract wages owed;

17 ii. Whether Defendants violated the Labor Code and IWC Wage Order by
18 failing to pay proper overtime to Plaintiff and the Represented Employees for hours above 8
19 and/or 12 per day and/or 40 per week worked;

20 iii. Whether Defendants violated the Labor Code and IWC Wage Order by
21 failing to provide compliant meal periods to Plaintiff and the Meal Break Subclass and whether
22 Defendants failed to compensate Plaintiff and the Meal Break Subclass with one additional hour
23 of wages at the regular rate of pay for each instance when a compliant meal period was not
24 provided;

25 iv. Whether Defendants violated the Labor Code and IWC Wage Order by
26 failing to provide compliant rest breaks to Plaintiff and the Rest Break Subclass and whether
27 Defendants failed to compensate Plaintiff and the Rest Break Subclass with one additional hour
28 of wages at the regular rate of pay for each instance when a paid rest break was not provided;

1 v. Whether Defendants violated the Labor Code and applicable IWC Wage
2 Order by failing to reimburse Plaintiff and the Unreimbursed Expense Subclass for business
3 expenses incurred discharging their duties or in obedience to the directions of their employer;

4 vi. Whether Defendants violated the Labor Code by failing to timely pay all
5 wages due upon separation of employment between Defendants and Plaintiff and the Waiting
6 Time Penalties Subclass, whether such separation was voluntary or involuntary;

7 vii. Whether Defendants violated the Labor Code by failing to provide
8 Plaintiff and the Wage Statement Penalties Subclass with complete, accurate, itemized wage
9 statements;

10 viii. Whether Defendants violated California Business & Professions Code §§
11 17200 *et seq.* due to the: failure to pay all minimum wages, failure to pay all overtime wages,
12 failure to provide mandated paid rest breaks, failure to provide mandated meal periods, failure to
13 reimburse business expenses, and failure to timely pay final wages; and

14 ix. Whether Plaintiff and Represented Employees are entitled to equitable
15 relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

16 33. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the
17 claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants'
18 ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all
19 wages owed, failure to provide mandated meal periods, failure to provide mandated paid rest
20 breaks, failure to reimburse business expenses, failure to timely pay wages upon separation of
21 employment, and failure to provide accurate itemized wage statements.

22 34. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly
23 and adequately represent and protect the interests of the Class. Plaintiff's interests are not in
24 conflict with those of the Class. Class Representative's counsel are competent and experienced in
25 litigating large employment class actions and other complex litigation matters, including cases
26 like this case.

27 35. **Superiority of Class Action.** Class certification is appropriate because a class
28 action is superior to other available means for the fair and efficient adjudication of this

1 controversy. Individual joinder of all Represented Employees is not practicable, and questions of
2 law and fact common to the Class predominate over any questions affecting only individual
3 members of the Class. Each Represented Employee has been damaged and is entitled to
4 recovery by reason of Defendants' illegal policies and practices set forth above. Class action
5 treatment will allow those similarly situated persons to litigate their claims in the manner that is
6 most efficient and economical for the parties and the judicial system.

7 **FIRST CAUSE OF ACTION**

8 **FAILURE TO PAY MINIMUM WAGES**

9 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

10 *Plaintiff and the Represented Employees Against All Defendants*

11 36. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
12 alleged herein.

13 37. Plaintiff and the Represented Employees were not exempt from the requirement
14 to be paid at least the applicable California minimum wage throughout the statutory period for
15 each hour worked.

16 38. Plaintiff and the Represented Employees were not provided proper minimum
17 wages due to Defendants' failure to accurately record and compensate for all hours worked.

18 39. As a result of this policy and practice, Plaintiff and the Represented Employees
19 were required to perform off-the-clock work that Defendants either knew or should have known
20 they were performing.

21 40. Consequently, Defendants violated California Labor Code laws and minimum
22 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
23 Cal. Code Regs., tit. 8, section 11090, subs. 1 and 4(B).

24 41. Plaintiff is informed and believes and thereon alleges that Defendants
25 intentionally, willfully, and improperly failed to pay minimum wages the Represented
26 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

27 42. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
28 Represented Employees were entitled to be paid minimum wages throughout the statutory period

1 for each hour worked, yet Defendants chose not to pay them in accordance thereto.

2 43. At all material times, Defendants DOES 1 through 20 were and/or are the
3 employer of Plaintiff and the Represented Employees or were persons acting on behalf of said
4 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be
5 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
6 Labor Code regulating hours and days of work respectively.

7 44. During employment of Plaintiff and the Represented Employees, Defendants
8 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

9 45. As a result of the Defendants' wrongful conduct, Plaintiff and the Represented
10 Employees have been damaged in amounts to be proven at trial.

11 46. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of
12 all unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs,
13 pursuant to Lab. Code §§ 1194 and 1194.2, against Defendants in an amount to be proven at
14 trial.

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PAY OVERTIME WAGES**

17 (Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

18 *Plaintiff and the Represented Employees Against All Defendants*

19 47. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
20 alleged herein.

21 48. Plaintiff and the Represented Employees were employees of Defendants who did
22 not receive proper protections and benefits of the laws governing payment of overtime wages.

23 49. Labor Code § 204 requires that the employer timely pay all overtime wages to its
24 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
25 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in
26 any one workweek shall be compensated at the rate of no less than one and one-half times the
27 regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12)
28 in one workday shall be compensated at twice the regular rate of pay for an employee.

1 50. At all relevant times, Plaintiff and the Represented Employees were required by
2 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
3 Defendants' failure to accurately record and compensate for all hours worked Plaintiff and the
4 Represented Employees did not receive proper overtime compensation.

5 51. Additionally, Defendants frequently required Plaintiff and the Represented
6 Employees to work in excess of 8 and/or 12 hours per day and/or 40 hours per workweek
7 without paying proper overtime and doubletime compensation.

8 52. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
9 Represented Employees for all overtime hours worked.

10 53. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
11 Order § 3(A) every pay period with respect to Plaintiff and the Represented Employees because
12 Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per
13 week without proper overtime compensation.

14 54. Plaintiff is informed and believes and thereon alleges that Defendants
15 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the
16 Represented Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

17 55. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
18 Represented Employees were entitled to be paid proper overtime wages throughout the statutory
19 period, yet Defendants chose not to pay them in accordance thereto.

20 56. At all material times, Defendants DOES 1 through 20 were and/or are the
21 employer of Plaintiff and the Represented Employees or were persons acting on behalf of said
22 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be
23 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
24 Labor Code regulating hours and days of work respectively.

25 57. During the employment of Plaintiff and the Represented Employees, Defendants
26 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

27 58. As a result of Defendants' wrongful conduct, Plaintiff and the Represented
28 Employees have been damaged in amounts to be proven at trial.

1 59. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of
2 all unpaid overtime wages, penalties, interest, attorneys' fees, and costs of suit against
3 Defendants in an amount to be proven at trial.

4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO PROVIDE MEAL PERIODS**

6 (Labor Code §§ 226.7 and 512; IWC Wage Order § 11, 12)

7 *Plaintiff and the Meal Break Subclass Against All Defendants*

8 60. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
9 alleged herein.

10 61. Plaintiff and the Meal Break Subclass are and/or were employees of Defendants
11 who did not receive proper protections and benefits of the laws governing mandatory meal
12 periods.

13 62. Labor Code § 226.7 requires employers, including Defendants, to provide
14 employees with meal periods as mandated by the Industrial Welfare Commission.

15 63. Labor Code § 512(a), in part, provides that employers, including Defendants, may
16 not employ an employee for a work period of more than five hours per day without providing an
17 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
18 except that if the total work period per day of the employee is no more than six hours, the meal
19 period may be waived by mutual consent of both the employer and the employee. Employers
20 may not employ an employee for a work period more than 10 hours per day without providing
21 the employee with a second meal period of not less than 30 minutes.

22 64. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
23 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
24 pay for each meal period that is missed.

25 65. At all relevant times herein, Plaintiff and the Meal Break Subclass were denied
26 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
27 practices, Plaintiff and the Represented Employees were subjected to meal period violations
28 when they were: (1) unable to take a meal period due to workload, (2) forced to take an on-duty

meal period while under the control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal period after the 5th hour of work, and (5) not provided mandated second meal periods for shifts in excess of 10 hours.

66. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order every pay period because Plaintiff and the Meal Break Subclass were not provided with all mandatory meal periods and Defendants failed to pay Plaintiff and the Meal Break Subclass one additional hour of compensation at the regular rate of pay in lieu thereof.

67. At all relevant times herein, Defendants failed to provide Plaintiff and the Meal Break Subclass all mandated meal periods and failed to pay wage premiums in lieu of mandated meal or rest periods, thereby receiving an economic benefit.

68. On information and belief, Plaintiff and the Meal Break Subclass did not voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers obtained from Plaintiff and the Meal Break Subclass were not willfully obtained, were not voluntarily agreed to, were a condition of employment, or were a part of a contract of an unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Meal Break Subclass to take meal periods in accordance with California law.

69. By their failure to provide Plaintiff and the Meal Break Subclass with meal periods as required by California law, and failing to pay one hour of additional wages in lieu of each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage Order § 11. Accordingly, Defendants are liable for one hour of additional wages at the employee's regular rate of compensation for each work day that a meal period was not lawfully provided in an amount to be proven at time of trial.

70. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512, and IWC Wage Order § 11, Defendants, and each of them, are liable to Plaintiff and the Meal Break Subclass for unpaid wage premiums, penalties, costs, and interest.

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE REST BREAKS**

3 (Labor Code §§ 226.7 and 512; IWC Wage Order § 12)

4 *Plaintiff and the Rest Break Subclass Against All Defendants*

5 71. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
6 alleged herein.

7 72. Plaintiff and the Rest Break Subclass are and/or were employees of Defendants
8 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

9 73. Labor Code § 226.7 requires employers, including Defendants, to provide rest
10 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

11 74. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
12 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
13 each work period. Employees shall receive a 10-minute rest period every four hours or major
14 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
15 hours worked, for which there shall be no deduction from wages.

16 75. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
17 Order, Defendants shall pay Plaintiff and the Represented Employees one additional hour of pay
18 at his regular rate of compensation for each day that the rest period is not provided.

19 76. At all relevant times, Defendants also failed to provide Plaintiff and the Rest
20 Break Subclass with 10 minutes of net rest break time for every 4 hours worked, or major
21 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks for the
22 Rest Break Subclass, the Rest Break Subclass were unable to leave the premises for breaks, and
23 the Rest Break Subclass were often not authorized and/or permitted to take mandated rest breaks
24 due to being overwhelmed by their hectic workload. Furthermore, on occasions when the Rest
25 Break Subclass worked longer shifts, Defendants failed to authorize and/or permit mandated
26 third rest breaks.

27 77. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
28 Order every pay period because Plaintiff and the Rest Break Subclass were not provided with all

1 mandatory rest periods and Defendants failed to pay Plaintiff and the Represented Employees
2 one additional hour of compensation in lieu thereof.

3 78. At all relevant times herein, Defendants failed to provide Plaintiff and the Rest
4 Break Subclass all mandated rest breaks and failed to pay wage premiums in lieu of mandated
5 rest periods, thereby receiving an economic benefit.

6 79. By their failure to provide Plaintiff and the Rest Break Subclass with rest breaks
7 as required by California law, and failing to pay one hour of additional wages in lieu of each rest
8 break not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage
9 Order § 12. Accordingly, Defendants are liable for one hour of additional wages at the
10 employee's regular rate of compensation for each workday that a paid rest break was not
11 lawfully provided in an amount to be proven at time of trial.

12 80. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
13 and IWC Wage Order § 12, Defendants, and each of them, are liable to Plaintiff and the Rest
14 Break Subclass for unpaid wage premiums, penalties, costs, and interest.

15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

17 (Labor Code § 2802)

18 *Plaintiff and the Unreimbursed Expense Subclass Against All Defendants*

19 81. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
20 alleged herein.

21 82. Plaintiff and the Unreimbursed Expense Subclass are and/or were employees of
22 Defendants who did not receive proper protections and benefits of the laws governing
23 reimbursement of business expenses.

24 83. Labor Code § 2802(a) requires that the employer indemnify its employees for
25 expenses and losses incurred while discharging their duties or in obedience to the directions of
26 their employer.

27 84. At all relevant times herein mentioned, as a condition of employment, Defendants
28 required Plaintiff and the Unreimbursed Expense Subclass to incur necessary business-related

1 expenses and costs without reimbursement, including, but not limited to, acquiring and
2 maintaining a smart phone and related monthly data plan to communicate with Defendants via
3 phone and text message.

4 85. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
5 failed to reimburse Plaintiff and the Unreimbursed Expense Subclass for expenses incurred as a
6 direct consequence of employment with Defendants and/or under the direction of Defendants.

7 86. At all relevant times herein, Defendants failed to reimburse the Unreimbursed
8 Expense Subclass, including Plaintiff, for expenses incurred while discharging duties to
9 Defendants, thereby receiving an economic benefit.

10 87. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage
11 Order § 9(B), Plaintiff and the Unreimbursed Expense Subclass have suffered, and continue to
12 suffer, substantial losses related to such incurred expenses, expenses, and attorney's fees in
13 seeking to compel Defendants to fully perform their obligations under the law, all in an amount
14 to be proved at time of trial.

15 88. Labor Code § 2802(b) states that "[a]ll awards made by a Court for
16 reimbursement of necessary expenditures" shall carry interest, at the same rate as judgments in
17 civil actions, and said interest will accrue from the date on which the employee incurred the
18 necessary expenditure or loss including, but not limited to, reasonable costs and attorney's fees
19 incurred by the employee enforcing the rights granted pursuant to Labor Code § 2802. The exact
20 amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

21 89. Furthermore, Labor Code § 2802(c) states that "[f]or the purposes of this section,
22 the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not
23 limited to, attorney's fees incurred by the employee in enforcing the rights granted by this
24 section." Therefore, Plaintiff and the Unreimbursed Expense Subclass seek to recover the
25 unreimbursed expenses, interest on the unreimbursed expenses, and the costs and attorney's fees
26 necessarily incurred in pursuing same. The exact amount of reimbursements, interest, costs, and
27 attorney's fees will be in an amount to be proved at the time of trial.

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Time Penalties Subclass the above-described waiting time penalty, all in an amount to be shown according to proof at trial and within the jurisdiction of this Court.

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226)

Plaintiff and the Wage Statement Penalties Subclass against All Defendants

98. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

99. Plaintiff and the Wage Statement Penalties Subclass are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing the provision of accurate itemized wage statements.

100. Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, all deductions, net wages earned, the inclusive dates of the pay period, the employee's name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

101. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff and the Wage Statement Penalties Subclass because Defendants failed to provide any document that could constitute a wage statement within the meaning of Labor Code § 226.

102. Furthermore, Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff and the Wage Statement Penalties Subclass due to violations including: failure to accurately state total hours worked (for example, the wage statements failed to accurately reflect total compensable hours); failure to accurately state gross wages earned, all deductions, and net wages earned (due to, for example, the failure to pay all required minimum and overtime wages); failure to state the start and end dates of the pay period; failure to state the applicable hourly rates (including the accurate overtime rate of pay); failure to state the inclusive dates of the pay period; failure to accurately state the name and address of the legal entity of the

1 employer; and failure to accurately state the corresponding number of hours worked at each
2 hourly rate.

3 103. Additionally, Defendants' wage statements directly violated Labor Code § 226(a)
4 each period due to the failure to pay and report premium wages for denied meal periods and rest
5 breaks under § 226.7.

6 104. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
7 to Plaintiff and the Wage Statement Penalties Subclass because Defendants failed to provide a
8 wage statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
9 requirements of Labor Code § 226(a).

10 105. Defendants' failure to provide the required writing deprived Plaintiff and the
11 Wage Statement Penalties Subclass of the ability to know, understand, and question the
12 calculation and rate of pay and hours used to calculate the wages paid by Defendants. Therefore,
13 Plaintiff and the Wage Statement Penalties Subclass had no way to dispute the resulting
14 miscalculation of wages, all of which resulted in an unjustified economic enrichment to said
15 Defendants. As a direct result, Plaintiff and the Wage Statement Penalties Subclass have suffered
16 and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost
17 interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully
18 perform its obligation under state law, all in amounts according to proof at trial.

19 106. As a result of Defendants' knowing and intentional failure to comply with Labor
20 Code § 226(a), Plaintiff and the Wage Statement Penalties Subclass have suffered an injury in
21 that each was prevented from knowing, understanding and disputing the wage payments paid to
22 them. Furthermore, Plaintiff and the Wage Statement Penalties Subclass have each suffered an
23 injury in that the failure to show all wages earned on the itemized wage statements resulted in
24 Plaintiff and the Represented Employees being denied all necessary deductions, payments, and
25 withholdings owed by the employer, including, but not limited to, the failure to make all
26 necessary contributions for unemployment benefits, social security benefits, proper payment of
27 taxes and withholdings, and other mandated state and federal benefits.
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107. Plaintiff has also been injured as a result of having to bring this action to attempt to obtain correct wage information following Defendants' refusal to comply with many of the mandates of California's Labor Code and related laws and regulations.

108. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus attorney's fees and costs, to Plaintiff and the Wage Statement Penalties Subclass who were injured by Defendants' failure to comply with Labor Code § 226(a). The exact amount of the applicable penalty is all in an amount to be shown according to proof at trial.

EIGHTH CAUSE OF ACTION

UNFAIR AND UNLAWFUL COMPETITION

(Business and Professions Code § 17200 *et seq.*)

Plaintiff and the Represented Employees against All Defendants

109. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

110. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice.” The Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact, due to the unfair and unlawful business practices of Defendants as alleged herein.

111. Defendants, and each of them, are “persons” as defined under Business & Professions Code § 17021.

112. As alleged herein, Defendants engaged in conduct that violated California's wage and hour laws, including failure to pay all wages owed, including minimum wages, overtime wages, sick wages, failure to provide mandated meal periods and rest breaks, failure to reimburse business expenses, and failure to timely pay wages upon separation of employment, all to decrease their costs and increase profits.

113. At all times relevant herein, Defendants did not pay Plaintiff and the Represented Employees wages and monies and other financial obligations to which they were entitled.

1 114. As a result of Defendants' failure to comply with the Labor Code and IWC
2 Orders, Represented Employees, including Plaintiff, suffered a loss of wages and monies, all in
3 an amount to be shown according to proof at trial. Defendants' ongoing violations of the
4 foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

5 115. Defendants' violations of the California Labor Code and IWC Wage Orders and
6 its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business
7 practices because it was done in a systematic manner over a period of time to the detriment of the
8 Plaintiff and all others similarly situated.

9 116. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
10 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
11 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of
12 Code of Civil Procedure § 1021.5.

13 117. A violation of California Business & Professions Code § 17200, *et seq.* may be
14 predicated on the violation of any state or federal law. All of the acts described herein as
15 violations of, among other things, the California Labor Code and IWC Wage Orders, are
16 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,
17 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
18 practices in violation of California Business and Professions Code §§ 17200, *et seq.*

19 118. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
20 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
21 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
22 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
23 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
24 harm unless Defendants, and each of them, are restrained from continuing to engage in said
25 unfair, unlawful and/or fraudulent business practices.

26 119. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
27 and does, seek such relief as may be necessary to disgorge the profits which Defendants have
28 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the

1 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
2 Represented Employees are not obligated to establish individual knowledge of the unfair
3 practices of Defendants in order to recover restitution.

4 120. Plaintiff, individually, and on behalf of the Represented Employees, is further
5 entitled to and do seek a declaration that the above described business practices are unfair,
6 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
7 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
8 the future.

9 121. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and
10 Represented Employees are entitled to restitution of the wages withheld and retained by
11 Defendants during a period that commences four years prior to the filing of this complaint; a
12 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
13 Represented Employees; an award of attorneys' fees pursuant to California Code of Civil
14 Procedure § 1021.5 and other applicable laws; and an award of costs.

15 **VI. PAGA CAUSES OF ACTION (Cal. Lab. Code. §§ 2698 – 2699.5)**

16 122. Plaintiff is an “aggrieved employee” under the PAGA as he was employed by
17 Defendants during the applicable statutory period and suffered one or more of the Labor Code
18 violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil
19 action filed on behalf of himself and all other similarly situated current and former aggrieved
20 employees in California against whom one or more of the alleged violations was committed
21 (hereinafter the “Aggrieved Employees”).

22 123. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to
23 Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by
24 PAGA through a representative action pursuant to the PAGA and the California Supreme Court
25 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor
26 does he, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

27 124. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing
28 to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to

Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. More than sixty-five (65) days have elapsed since the date Plaintiff provided the written notice of the claims alleged herein without the LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiff has fully satisfied the administrative prerequisites to suit under the PAGA.

NINTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES

(Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

Plaintiff and the Aggrieved Employees against All Defendants

125. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

126. Plaintiff and the Aggrieved Employees were not exempt from the requirement to be paid at least the applicable California minimum wage throughout the statutory period for each hour worked.

127. As a result of the Defendants' policies and practices alleged herein, Plaintiff and the Aggrieved Employees were not provided proper minimum and regular wages. Thus, Plaintiff and the Aggrieved Employees were required to perform off-the-clock work that Defendants either knew or should have known they were performing and, as a result of these policies and practices, Defendants failed to pay Plaintiff and the Aggrieved Employees for all hours worked.

128. Consequently, Defendants violated California Labor Code laws and minimum wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

129. Plaintiff is informed and believes and thereon alleges that Defendants intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

130. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES

PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES

(Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

Plaintiff and the Aggrieved Employees against All Defendants

131. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

132. Plaintiff and the Aggrieved Employees were employees of Defendants who did not receive proper protections and benefits of the laws governing payment of overtime wages.

133. Labor Code § 204 requires that the employer timely pay all overtime wages to its employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12) in one workday shall be compensated at twice the regular rate of pay for an employee.

134. At all relevant times, Plaintiff and the Aggrieved Employees were required by Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to Defendants' policies and practices alleged herein, Defendants failed to compensate Plaintiff and the Aggrieved Employees for all required overtime compensation.

135. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage Order § 3(A) every pay period with respect to Plaintiff and the Aggrieved Employees because Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per week without proper overtime compensation.

136. Plaintiff is informed and believes and thereon alleges that Defendants intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the Aggrieved Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

137. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS

Plaintiff and the Aggrieved Employees against All Defendants

139. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing meal periods.

141. Labor Code § 512(a), in part, provides that employers, including Defendants, may not employ an employee for a work period of more than five hours per day without providing an employee the opportunity to take an uninterrupted meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and the employee. Employers may not employ an employee for a work period more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.

143. At all relevant times herein, and based on the allegations herein, Plaintiff and the Aggrieved Employees were denied the meal periods to which they were entitled. Therefore, Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order every pay period because Plaintiff and the Aggrieved Employees were not provided with all mandatory meal periods and Defendants failed to pay Plaintiff and the Aggrieved Employees one additional hour of compensation at the regular rate of pay in lieu thereof.

144. On information and belief, Plaintiff and the Aggrieved Employees did not voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers

1 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not
2 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
3 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved
4 Employees to take meal periods in accordance with California law.

5 145. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
6 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
7 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

8 **TWELFTH CAUSE OF ACTION**

9 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS**

10 (Labor Code § 226.7 and 512; IWC Wage Order § 12)

11 *Plaintiff and the Aggrieved Employees against All Defendants*

12 146. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
13 as if fully alleged herein.

14 147. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
15 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

16 148. Labor Code § 226.7 requires employers, including Defendants, to provide rest
17 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

18 149. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
19 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
20 each work period. Employees shall receive a 10-minute rest period every four hours or major
21 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
22 hours worked, for which there shall be no deduction from wages.

23 150. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
24 Order, Defendants shall pay Plaintiff and the Aggrieved Employees one additional hour of pay at
25 his regular rate of compensation for each day that the rest period is not provided.

26 151. At all relevant times, and based on the allegations herein, Defendants failed to
27 provide Plaintiff and the Aggrieved Employees with 10 minutes of net rest break time for every 4
28 hours worked, or major fraction thereof, as mandated by California law. Thus, Defendants

1 violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order every pay period
2 because Plaintiff and the Aggrieved Employees were not provided with all mandatory rest
3 periods and Defendants failed to pay Plaintiff and the Aggrieved Employees one additional hour
4 of compensation in lieu thereof.

5 152. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
6 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
7 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

8 **THIRTEENTH CAUSE OF ACTION**

9 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

10 (Labor Code § 2802)

11 *Plaintiff and the Aggrieved Employees against All Defendants*

12 153. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
13 as if fully alleged herein.

14 154. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
15 who did not receive proper protections and benefits of the laws governing reimbursement of
16 business expenses.

17 155. Labor Code § 2802(a) requires that the employer indemnify its employees for
18 expenses incurred while discharging their duties or in obedience to directions of their employer.

19 156. At all relevant times herein mentioned, as a condition of employment, Defendants
20 required Plaintiff and the Aggrieved Employees to incur substantial business-related expenses
21 and costs without reimbursement. Thus, Defendants violated Labor Code § 2802(a) when they
22 failed to reimburse Plaintiff and the Aggrieved Employees for expenses incurred as a direct
23 consequence of Plaintiff's employment with Defendant and/or under the direction of Defendants.

24 157. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
25 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
26 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

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1 **FOURTEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD**

3 (Labor Code § 204)

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 158. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 159. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
8 who did not receive proper protections and benefits of the laws regarding the timing of payment
9 of wages each period.

10 160. Labor Code § 204(a) states that all wages earned by a person are due and payable
11 twice during each calendar month, and further states that wages earned during the first through
12 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
13 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
14 the following month.

15 161. Furthermore, Labor Code § 204(d) states “[t]he requirements of this section shall
16 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
17 the wages are paid not more than seven calendar days following the close of the payroll period.”

18 162. At all relevant times herein, Defendants did not provide Plaintiff and the
19 Aggrieved Employees with all wages due and owing each period within the time required by
20 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Aggrieved
21 Employees with all wages due and owing each pay period, including, but not limited to,
22 minimum, regular, and overtime wages, as well as meal and rest period premiums and sick time
23 at the proper rate, within the time specified by Labor Code § 204.

24 163. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
25 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
26 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

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1 **FIFTEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES**

3 (Labor Code §§ 201 – 203)

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 164. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 165. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
8 who did not receive proper protections and benefits of the laws governing the timing and
9 payment of final wages.

10 166. Labor Code § 201 requires that the employer immediately pay any wages, without
11 abatement or reduction, to any employee who is discharged.

12 167. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
13 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
14 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

15 168. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
16 penalty from the due date thereof at the same rate until paid or until an action therefore is
17 commenced, but the wages shall not continue for more than thirty (30) days.

18 169. At all relevant times here, Defendants did not provide Plaintiff and the Aggrieved
19 Employees with all wages due and owing upon separation of employment, including, but not
20 limited to, minimum, regular, and overtime wages, vacation and sick pay at the proper rates, and
21 meal and rest period premiums, within the time specified by Labor Code §§ 201 – 203.

22 170. Plaintiff alleges that, at all times material to this action, Defendants had a planned
23 pattern and practice of failing to timely pay to Plaintiff and the Aggrieved Employees all wages
24 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.

25 171. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
26 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
27 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

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1 **SIXTEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR**

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

4 (Labor Code § 226)

5 *Plaintiff and the Aggrieved Employees against All Defendants*

6 172. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
7 as if fully alleged herein.

8 173. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
9 who did not receive proper protections and benefits of the laws governing the provision of
10 accurate itemized wage statements.

11 174. Labor Code § 226(a) requires an employer to provide its employees with itemized
12 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
13 inclusive dates of the pay period, the employee's name and the last four digits of his or her
14 Social Security number (or employee identification number), the name and address of the legal
15 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate by the employee.

17 175. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
18 and the Aggrieved Employees due to violations including: failure to accurately state total hours
19 worked (for example, the wage statements failed to accurately reflect the compensable hours
20 worked); failure to accurately state gross wages earned; failure to accurately state all deductions;
21 failure to accurately state net wages earned; failure to state the applicable hourly rates (including
22 the accurate overtime rate of pay); failure to accurately state the corresponding number of hours
23 worked at each hourly rate; and failure to accurately identify the name and address of the legal
24 entity of the employer.

25 176. Additionally, Defendants' wage statements directly violated Labor Code § 226(a)
26 each period due to the failure to pay and report premium wages for denied meal periods and rest
27 breaks under § 226.7.
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1 177. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
2 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
3 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

4 **VII. PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff, on behalf of himself, on a representative basis, and all others
6 similarly situated, prays for judgment and relief against Defendants, jointly and severally, as
7 follows:

8 1. As to the Ninth through Sixteenth Causes of Action, the assessment of all
9 applicable and available remedies under PAGA;

10 2. For reasonable attorneys' fees and costs as permitted under PAGA;

11 3. That the First through Eighth Causes of Action be certified as a class action;

12 4. That Plaintiff be appointed as Class Representative;

13 5. That counsel for Plaintiff be appointed Class Counsel;

14 6. For all applicable statutory penalties recoverable under the First through Eighth
15 Causes of Action to the extent permitted by law, including those pursuant to Labor Code and
16 Orders of the Industrial Welfare Commission;

17 7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by
18 law, including those pursuant to the Labor Code;

19 8. For injunctive relief and/or restitution as provided by the Labor Code and
20 Business and Professions Code § 17200, *et seq.*;

21 9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
22 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194,
23 1197, 1198, 1199, and 2802, among other sections inadvertently omitted;

24 10. For an award of damages in the amount of unpaid compensation including, but
25 not limited to, unpaid wages, benefits, and penalties according to proof, including interest
26 thereon;

27 11. For pre- and post-judgment interest; and

28 12. For such other relief as the Court deems just and proper.

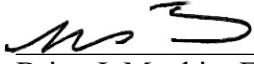
1 **DEMAND FOR JURY TRIAL**

2 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, hereby
3 demands a jury trial as to the First through Eighth Causes of Action pled herein.
4

5 Dated: May 30, 2024

LAUBY, MANKIN & LAUBY LLP

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7 BY:

8 Brian J. Mankin, Esq.
9 Misty M. Lauby Esq.
Attorneys for Plaintiff
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