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11 As an individual and on behalf of all others similarly situated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF ALAMEDA**

14 ARTHUR QUESADA, as an individual and
15 on behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 XPDEL, INC., a California Corporation;
19 ADVATIX, INC., a Delaware Corporation;
20 and DOES 1-100, inclusive,

21 Defendants.

Case No.: 23CV031688

CLASS ACTION COMPLAINT FOR:

1. Recovery of Unpaid Minimum Wages and Liquidated Damages
2. Recovery of Unpaid Overtime Wages
3. Failure to Provide Meal Periods or Compensation in Lieu Thereof
4. Failure to Provide Rest Periods or Compensation in Lieu Thereof
5. Failure to Furnish Accurate Itemized Wage Statements
6. Failure to Timely Pay All Wages Due Upon Separation of Employment
7. Failure to Reimburse Business Expenses and
8. Unfair Competition

DEMAND FOR JURY TRIAL

1 Plaintiff, ARTHUR QUESADA (“PLAINTIFF”), as an individual and on behalf of all other
2 similarly situated Class Members (as defined below), hereby files this Complaint against Defendants
3 XPDEL, INC., a California Corporation; ADVATIX, INC., a Delaware Corporation; and DOES 1-
4 100, inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and
5 believes and thereon alleges as follows:

6 **JURISDICTION AND VENUE**

7 1. This court possesses original subject matter jurisdiction over this matter. Venue is
8 proper in the County of Alameda pursuant to California Code of Civil Procedure section 395.5
9 because DEFENDANTS transact business within this judicial district, DEFENDANTS employed
10 PLAINTIFF to work in this judicial district and some of the acts, omissions, and conduct alleged by
11 PLAINTIFF herein occurred in this this judicial district.

12 **THE PARTIES**

13 2. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
14 California and a citizen of the State of California. PLAINTIFF was employed by DEFENDANTS
15 in the State of California as a non-exempt employee during the Class Period (defined below).

16 3. PLAINTIFF worked for DEFENDANTS from in or around May 2021 through on or
17 around November 24, 2021. PLAINTIFF reported to work at DEFENDANTS’ location and/or
18 facilities located in Hayward, California.

19 4. DEFENDANTS are either a California corporation and/or a Delaware corporation
20 that, at all relevant times, were authorized to do business within the State of California and are doing
21 business in the State of California.

22 5. DEFENDANTS own, operate, or otherwise manage a logistics business.

23 6. The true names and capacities of the DOE Defendants sued herein as DOES 1
24 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
25 Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally
26 responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this
27 Complaint to reflect the true names and capacities of the Doe Defendants when such identities
28 become known.

7. PLAINTIFF is further informed and believes that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, and that at all relevant times, each Defendant knew or should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

JOINT LIABILITY

8. Under California law, the definition of the terms “to employ” are broadly construed under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3) to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control was to reach situations in which multiple entities control different aspects of the employment relationship. Supervision of the work, in the specific sense of exercising control over how services are properly performed, is properly viewed as one of the “working conditions” mentioned in the wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a temporary employment agency) hires and pays a worker, and the other entity supervises the work. *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in California, applying a less stringent standard to what constitutes sufficient control by a business over its vendor’s employees’ wages and working conditions to render that business liable as a joint employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the wages, hours, or working conditions of the employee, that is a sufficient showing of joint employment,” *Id.* at 875 [emphasis added].

1 9. During PLAINTIFF's employment by DEFENDANTS, PLAINTIFF and the Class
2 Members (defined below) were jointly employed by DEFENDANTS for purposes of the Wage
3 Orders, under the alternative definitions of "to employ" adopted by the California Supreme Court
4 in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control over wages,
5 hours and working conditions of PLAINTIFF and the Class Members; (2) suffered or permitted
6 PLAINTIFF and Class Members to work for them; and (3) engaged PLAINTIFF and Class
7 Members to work for them.

8 10. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
9 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
10 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
11 across all of their locations/facilities and subjected all of the Class Members to these same policies
12 and practices regardless of the location(s) where they worked. Among other things, PLAINTIFF is
13 informed and believes that: (1) there is common ownership in, and financial control, in
14 DEFENDANTS' companies, (2) DEFENDANTS utilize common management, who have control
15 over the day-to-day operations and employment matters, including the power to hire and fire, set
16 schedules, issue employee policies, and determine rates of compensation across its locations in
17 California; (3) DEFENDANTS utilize the same policies and procedures for all California
18 employees, including issuing the same employee handbooks and other form agreements; (4)
19 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee
20 employment matters; and, (6) DEFENDANTS share employees.

21 11. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
22 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Class Members
23 upon whose behalf PLAINTIFF brings these allegations and causes of action, in that
24 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Class Members' wages,
25 hours and working conditions, and/or suffered or permitted PLAINTIFF and the Class Members to
26 work so as to be considered the joint employers of PLAINTIFF and the Class Members. For
27 example, based on information and belief, DEFENDANTS, and each of them, maintain the same
28 principal place of business and/or Agent for Service of Process as provided to the California

1 Secretary of State and/or maintain some of the same attorneys and/or human resources personnel to
2 oversee employment-related matters.

3 12. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
4 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
5 time-keeping practices, meal and rest periods, reimbursement of business expenses and other
6 working conditions that were distributed to, and/or applied to PLAINTIFF and the Class Members,
7 and further that DEFENDANTS uniformly compensated and controlled the wages of PLAINTIFF
8 and the Class Members in a uniform manner. DEFENDANTS collectively represented to
9 PLAINTIFF and the Class Members that each was an "at-will" employee of DEFENDANTS, and
10 that DEFENDANTS collectively retained the right to terminate PLAINTIFF's and Class Members'
11 employment with or without cause. Upon information and belief, DEFENDANTS further
12 collectively represented to PLAINTIFF and Class Members in writing the details of their
13 compensation, and the manner in which they were to take meal and rest periods, the procedures
14 required by DEFENDANTS collectively for recordation of hours worked and the policies applicable
15 to PLAINTIFF and Class Members by which DEFENDANTS collectively would evaluate the wage
16 rates of PLAINTIFF and Class Members.

17 13. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
18 and working conditions of PLAINTIFF and Class Members. As such, DEFENDANTS collectively
19 held the right to control virtually every aspect of PLAINTIFF's and the Class Members'
20 employment, including the instrumentality that resulted in the illegal conduct for which PLAINTIFF
21 seeks relief in this Complaint.

22 14. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
23 control over, applied the same policies and practices, and engaged in the same acts and omissions
24 with regard to the other Class Members.

25 **CLASS ALLEGATIONS**

26 15. PLAINTIFF brings this action on behalf of PLAINTIFF, and all others similarly
27 situated as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF
28 seeks to represent are defined as follows and referred to as the "Class" or "Class Members":

1 All current and former non-exempt employees that worked either
2 directly or via a staffing agency for any one or more of the
3 DEFENDANTS at any location in California at any time within the
4 four years prior to the filing of the initial Complaint (“Class Period”).

5 a. Numerosity. While the exact number of Class Members is unknown to
6 PLAINTIFF at this time, the Class is so numerous that the individual joinder of
7 all members is impractical under the circumstances of this case. PLAINTIFF is
8 informed and believes the Class consists of at least 100 individuals.

9 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
10 because common questions of law and fact predominate over individual issues.
11 Common questions include, but are not limited to, the following: (1) whether
12 DEFENDANTS understated hours worked and failed to pay all amounts due to
13 PLAINTIFF and the Class Members for wages earned, including minimum and
14 overtime wages, under California law; (2) whether DEFENDANTS provided
15 PLAINTIFF and the Class Members with all meal periods or premium payments
16 in lieu thereof in compliance with California law; (3) whether DEFENDANTS
17 provided PLAINTIFF and the Class Members with all rest periods or premium
18 payments in lieu thereof, in compliance with California law; (4) whether
19 DEFENDANTS provided PLAINTIFF and Class Members with accurate,
20 itemized wage statements in compliance with California law, displaying,
21 including but not limited to, the total hours worked during the pay period; (5)
22 whether DEFENDANTS timely paid PLAINTIFF and the Class Members all
23 wages due upon separation of employment; (6) whether DEFENDANTS failed
24 to reimburse PLAINTIFF and the Class Members for all business expenses; and
25 (7) whether DEFENDANTS violated California Business and Professions Code
26 sections 17200, *et seq.*

27 c. Ascertainable Class. The proposed Class is ascertainable as members can be
28 identified and located using information in DEFENDANTS’ business, payroll

1 and personnel records.

- 2 d. Typicality. PLAINTIFF's claims are typical of the claims of the Class Members.
- 3 PLAINTIFF suffered a similar injury as members of the Class as a result of
- 4 DEFENDANTS' common practices regarding, *inter-alia*, failure to calculate
- 5 and pay all owed minimum and overtime wages, failure to provide proper meal
- 6 periods and rest periods or premium compensation in lieu thereof, failure to
- 7 provide accurate wage statements, failure to reimburse business expenses, and
- 8 failure to timely pay all wages due upon separation of employment.
- 9 e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the
- 10 Class Members. PLAINTIFF has no interests adverse to the interests of the other
- 11 Class Members. Counsel who represent PLAINTIFF are competent and
- 12 experienced in litigating similar class action cases and are California lawyers in
- 13 good standing. Counsel for PLAINTIFF have the experience and resources to
- 14 vigorously prosecute this case.
- 15 f. Superiority. A class action is superior to other available means for the fair and
- 16 efficient adjudication of this controversy since individual joinder of all members
- 17 of the class is impractical. Class action treatment will permit a large number of
- 18 similarly situated persons to prosecute their common claims in a single forum
- 19 simultaneously, efficiently, and without the unnecessary duplication of effort
- 20 and expense that numerous individual actions would engender. Furthermore, as
- 21 the damages suffered by each individual member of the Class may be relatively
- 22 small, the expenses and burden of individual litigation would make it difficult
- 23 or impossible for individual members of the Class to redress the wrongs done to
- 24 them, while an important public interest will be served by addressing the matter
- 25 as a class action. The cost to the court system of adjudication of such
- 26 individualized litigation would be substantial. Individualized litigation would
- 27 also present the potential for inconsistent or contradictory judgments. Finally,
- 28 the alternative of filing a claim with the California Labor Commissioner is not

1 superior, given the lack of discovery in such proceedings, the fact that there are
2 fewer available remedies, and the losing party has the right to a trial de novo in
3 the Superior Court.

4 **FACTUAL AND LEGAL ALLEGATIONS**

5 16. During the relevant period, PLAINTIFF, and each of the Class Members worked for
6 DEFENDANTS in the State of California. At all times referenced herein, DEFENDANTS exercised
7 control over PLAINTIFF and Class Members, and suffered and/or permitted them to work.

8 17. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
9 PLAINTIFF worked for DEFENDANTS as a delivery associate, loader/unloader, and/or similar
10 title(s) and/or position(s) from in or around May 2021 through on or around November 24, 2021.

11 18. DEFENDANTS assigned PLAINTIFF to work out of DEFENDANTS' location
12 and/or facilities located in Hayward, California.

13 19. PLAINTIFF's job duties included but were not limited to loading and unloading
14 vending supplies and/or other supplies and/or merchandise and driving a delivery van and/or box
15 truck weighing less than 10,000 pounds loaded. PLAINTIFF regularly worked at least eight (8) to
16 fourteen (14) hours per day, at least five (5) to six (6) days per week.

17 20. At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an
18 hourly basis for time counted by DEFENDANTS as hours worked.

19 21. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
20 PLAINTIFF and Class Members for all hours worked, resulting in the underpayment of minimum
21 and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Class Members for all
22 hours worked by virtue of, DEFENDANTS' automatic deduction and time rounding policies, and
23 failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise
24 unlawful practices for missed or improper meal periods, as explained below.

25 22. Based on information and belief, DEFENDANTS implemented a policy and/or
26 practice of rounding meal period start and end times and/or automatically deducting at least thirty
27 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
28 PLAINTIFF and other Class Members were subject to DEFENDANTS' control during purported

1 meal periods and/or were otherwise not afforded lawful meal periods, depriving PLAINTIFF and
2 Class Members of all wages owed. For example, as explained below, PLAINTIFF was required to
3 work through his unpaid meal periods during most shifts he worked due to the need to complete
4 deliveries and/or pickups and/or complete other work tasks, yet DEFENDANTS performed an
5 automatic meal break deduction of at least thirty minutes per shift despite DEFENDANTS having
6 actual and/or constructive knowledge that PLAINTIFF was consistently forced to work through his
7 meal periods, resulting in DEFENDANTS' failure to compensate PLAINTIFF for all hours worked
8 and the underpayment of minimum wages and overtime wages owed to PLAINTIFF.

9 23. Based on information and belief, Class Members were not paid for all hours worked
10 due to DEFENDANTS' policy and/or practice of rounding time entries or paying according to
11 scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies
12 and/or practices.

13 24. Based on information and belief, DEFENDANTS required Class Members to be at
14 their assigned workstations in DEFENDANTS' facilities and/or their assigned vehicles at the start
15 of a scheduled shift, thereby forcing Class Members to gather work-related equipment/tools and/or
16 safety gear and/or perform pre-trip vehicle and/or equipment inspections prior to their scheduled
17 shift and/or prior to clocking in, thereby resulting in pre-shift off-the-clock work.

18 25. Based on information and belief, DEFENDANTS did not compensate Class
19 Members for all time spent donning and doffing personal protective equipment, safety equipment
20 and/or uniforms/work clothing (e.g., gloves, reflective vests, hard hats and/or face masks) during
21 meal periods before the start of a scheduled shift, and after completing a scheduled shift.

22 26. Based on information and belief, at times, Class Members were required to complete
23 other work tasks outside of their reported work time, before clocking in for the start of their shift
24 and/or after clocking out for the end of their shift and/or otherwise outside of their scheduled shift
25 times resulting in DEFENDANTS' failure to compensate Class Members for all hours worked and
26 the underpayment of minimum wages and overtime wages to Class Members. For example, based
27 on information and belief, Class Members were required to complete off-the-clock work outside of
28 scheduled shifts due to, including but not limited to, work-related phone calls and/or messages they

1 received to their personal phones and were required to respond to, including but not limited to,
2 communications from supervisors and/or other Class Members regarding scheduling and/or other
3 work tasks, resulting in the underpayment of minimum and overtime wages owed to Class Members.

4 27. Moreover, based on information and belief, at times, DEFENDANTS' electronic
5 time-keeping system/app malfunctioned such that Class Members were required to either reinitiate
6 and/or otherwise troubleshoot the system and/or wait for the system to boot prior to being able to
7 clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in from
8 meal periods, resulting in off-the-clock work and the underpayment of wages owed to Class
9 Members. Based on information and belief, Class Members experienced the same issues when
10 clocking out for shifts and/or back in for meal periods. This time spent under DEFENDANTS'
11 control was not recorded and not compensated and resulted in unpaid minimum wages owed to
12 Class Members.

13 28. Based on information and belief, DEFENDANTS failed to pay Class Members for
14 time they were required to spend completing orientation, policy questionnaires, and/or time spent
15 completing the onboarding process including but not limited to reviewing various documents and
16 policies provided by DEFENDANTS. Based on information and belief, this work time was
17 completed off-the-clock and was not compensated.

18 29. Based on further information and belief, DEFENDANTS implemented a time-
19 rounding system that as applied systematically deprived PLAINTIFF and other Class Members of
20 compensable time because the time-rounding system implemented by DEFENDANTS would
21 almost always, if not always, result in understating actual compensable work time.

22 30. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
23 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
24 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
25 minimum wages owed to PLAINTIFF and Class Members as well as unpaid overtime wages for
26 those Class Members who worked more than eight (8) hours in a day and/or more than forty (40)
27 hours in a week.

28 31. Based on information and belief, DEFENDANTS had actual and/or constructive

1 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to
2 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
3 underpayment of minimum wages owed to PLAINTIFF and other Class Members, in violation of
4 California's minimum and overtime wage laws.

5 32. Based on information and belief, DEFENDANTS failed and continue to fail to pay
6 Class Members two times their regular rate of pay for time worked beyond twelve (12) hours per
7 workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a
8 work week, in violation of California's overtime laws.

9 33. Based on information and belief, DEFENDANTS failed to incorporate all non-
10 discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or
11 other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s),
12 resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other
13 Class Members.

14 34. **Meal Period Violations.** PLAINTIFF and other Class Members consistently worked
15 shifts of at least five and one-half hours or more, entitling them to at least one meal period. However,
16 PLAINTIFF and other Class Members would not receive legally compliant thirty (30) minute first
17 and second meal periods. Based on information and belief, Class Members were consistently unable
18 to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late
19 meal periods, interrupted meal periods, and/or work through part or all their meal periods due to
20 understaffing, the nature and constraints of their job duties and/or commentary from supervisors
21 pressuring them to take non-compliant meal periods or skip meal periods completely.

22 35. Based on information and belief, other Class Members were consistently suffered
23 and permitted to take meal periods past the fifth hour of work and/or had their meal periods
24 interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise on duty due to
25 commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or
26 the need to meet DEFENDANTS' goals and expectations.

27 36. For example, PLAINTIFF was consistently required to work through his meal
28 periods, take a meal period that was less than a full thirty minutes in length and/or was required to

1 take his meal period late (i.e. after the fifth hour of work), due to lack of relief workers, the need to
2 meet delivery deadlines, respond to work-related communications and/or complete other work tasks
3 as well as due to pre-shift off-the-clock work that was not taken into account by DEFENDANTS
4 when scheduling any meal periods. For example, during most of PLAINTIFF's shifts, PLAINTIFF
5 was required to clock out for purported meal periods but to continue working due to explicit
6 instruction from DEFENDANTS to do so, lack of relief workers, the need to complete
7 deliveries/pickups in a timely manner, meet delivery/pickup windows and/or complete other work
8 tasks. Based on information and belief, Class Members working in DEFENDANTS' facilities were
9 also forced to take late meal periods, short meal periods, interrupted meal periods and/or skip meal
10 periods completely due to their need to complete their job duties and/or meet supply
11 demands/deadlines.

12 37. Based on information and belief, DEFENDANTS implemented policies and/or
13 practices that failed to relieve Class Members of all duties and DEFENDANTS' control during
14 unpaid meal periods.

15 38. Based on information and belief, DEFENDANTS required Class Members to
16 complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take
17 into account when scheduling meal periods for Class Members. Based on information and belief,
18 meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

19 39. Based on information and belief, despite DEFENDANTS' failure to provide lawful
20 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
21 times of PLAINTIFF's and other Class Members' meal periods and/or automatically deducting at
22 least thirty minutes per shift for missed and/or otherwise unlawful meal periods despite having
23 actual and/or constructive knowledge that PLAINTIFF and other Class Members did not receive
24 lawful meal periods.

25 40. Moreover, per DEFENDANTS' uniform policy and practice, Class Members who
26 worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute
27 second meal period. For example, when PLAINTIFF worked more than ten (10) and/or twelve (12)
28 hours in a shift, PLAINTIFF was not afforded a second legally compliant thirty (30) minute second

1 meal period.

2 41. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
3 other Class Members as to the timing and duty-free nature of meal periods. Based on further
4 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor
5 did DEFENDANTS have any sort of compliant policy in practice.

6 42. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
7 records of the true start and end times of PLAINTIFF's and Class Members' meal periods. Based
8 on information and belief, to the extent meal period were recorded, DEFENDANTS illegally
9 rounded the start and end times of purported meal periods resulting in PLAINTIFF and other Class
10 Members not being paid for all time worked as well as late and/or shortened meal periods. *See*
11 *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

12 43. Based on information and belief, DEFENDANTS had actual and/or constructive
13 knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which
14 were free of DEFENDANTS' control owed to PLAINTIFF and other Class Members, in violation
15 of California's meal period laws.

16 44. DEFENDANTS failed to pay PLAINTIFF and other Class Members, an additional
17 hour of wages at their respective regular rates of compensation for each workday a lawful meal
18 period was not provided. DEFENDANTS either failed to pay a meal period premium at all for each
19 workday a lawful meal period was not provided and/or failed to pay the proper meal period premium
20 for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses,
21 shift differential pay and/or other non-discretionary compensation into the regular rate or
22 compensation for purposes of calculating the owed meal period premium.

23 45. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide
24 PLAINTIFF and other Class Members with legally compliant rest periods at a rate of every four (4)
25 hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the
26 work period, as required by law.

27 46. PLAINTIFF and other Class Members were not adequately informed, authorized,
28 instructed about, nor permitted an opportunity to take proper rest periods per California law. Based

1 on information and belief, DEFENDANTS had no policy in place nor instruction as to the taking of
2 duty-free rest periods.

3 47. Based on information and belief, DEFENDANTS did not have a have a compliant
4 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
5 practice.

6 48. For example, during the Class Period, PLAINTIFF was rarely, if ever, afforded a
7 legally compliant rest period due to the need to complete deliveries in a timely manner and/or meet
8 delivery windows, provide status updates to DEFENDANTS regarding deliveries and/or
9 communicate with DEFENDANTS via phone calls and/or text message and/or complete other
10 related work tasks. Based on information and belief, other Class Members working in
11 DEFENDANTS' facilities were similarly required to work through their owed rest periods due to
12 the need to meet supply demands/work deadlines, respond to work-related communications and/or
13 complete other work tasks.

14 49. Moreover, based on information and belief, DEFENDANTS failed to authorize and
15 permit rest periods that were a "net" ten minutes in a suitable rest area and instead, to the extent rest
16 periods were provided at all, limited Class Members to only ten-minute rest periods, requiring them
17 to be back at their workstations within ten minutes of leaving, in violation of California rest period
18 law. DEFENDANTS' failure to communicate that the rest period is a net ten minutes deprived
19 Class Members of their rights to a full rest period, as such as policy only relieves Class Members
20 from their workstation for ten minutes to travel to and from a rest area and be back at the workstation
21 by the end of that ten minutes.

22 50. Based on information and belief, Class Members' rest periods were interrupted, cut
23 short, on duty, restricted to work premises and/or late due to understaffing, the nature and constraints
24 of their job duties, and/or due to commentary from supervisors/managers pressuring them to skip
25 rest periods completely or otherwise take non-compliant rest periods.

26 51. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
27 lasting longer than ten hours. For example, when COMPLANANT worked shifts lasting longer than
28 ten (10) hours he was not provided with any form of a third rest period.

1 52. Based on information and belief, DEFENDANTS implemented policies and/or
2 practices that failed to relieve PLAINTIFF and other Class Members of all duties and
3 DEFENDANTS' control during rest periods. For example, based on information and belief,
4 PLAINTIFF and other Class Members were required to remain inside/in close proximity to their
5 vehicles and/or otherwise remained tethered to their workstations and/or restricted to
6 DEFENDANTS' premises and/or were required to monitor work communication devices and
7 respond to work communications during purported rest periods. As such, Class Members were not
8 relieved of all duties and DEFENDANTS' control during any purported rest periods, in violation of
9 California law.

10 53. Based on information and belief, Class Members were pressured to complete their
11 work duties according to a designated schedule such that rest periods were only taken once tasks
12 were completed, and/or as time permitted.

13 54. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
14 which PLAINTIFF and Class Members experienced a missed/unlawful rest period in violation of
15 California law. DEFENDANTS either failed to pay a rest period premium at all for each workday a
16 proper rest period was not provided and/or failed to pay the proper rest period premium for failure
17 to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift
18 differential pay, and/or other non-discretionary compensation into the regular rate of compensation
19 for purposes of calculating the owed rest period premium.

20 55. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
21 provide PLAINTIFF and other Class Members with accurate wage statements that complied with
22 Labor Code section 226. As DEFENDANTS failed to provide PLAINTIFF and Class Members with
23 meal and rest periods that complied with Labor section 226.7, the wage statements DEFENDANTS
24 issued to PLAINTIFF and Class Members failed and continue to fail to correctly set forth the gross
25 wages earned, the total hours worked, the net wages earned, and all applicable hourly rates in effect
26 during the pay period and the corresponding number of hours worked at each hourly rate by the
27 employee.

28 56. DEFENDANTS issued wage statements to PLAINTIFF and Class Members that also

1 failed to indicate the earned gross and net wages earned during the pay period, the correct applicable
2 rates of pay for all hours worked, and the total hours worked by PLAINTIFF and Class Members
3 (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve Class
4 Members of all duties and employer control during unpaid meal periods, payment according to
5 scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies
6 and practices) which results in a violation of Labor Code section 226(a).

7 57. As described herein, based on information and belief, DEFENDANTS also failed to
8 incorporate all forms of non-discretionary compensation earned during the pay period into the
9 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
10 of overtime worked by PLAINTIFF and other Class Members.

11 58. Moreover, based on information and belief, DEFENDANTS issued wage statements
12 to PLAINTIFF and Class Members that further violate Labor Code section 226(a), by among other
13 things, failing to list the correct name and/or address of the legal entity that is the employer.

14 59. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Class
15 Members that were not accurate and did not include all of the statutorily required information. As
16 such, DEFENDANTS violated Labor Code section 226.

17 60. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
18 information and belief, DEFENDANTS failed to timely pay Class Members all wages that were due
19 and owing upon termination or resignation. Based on information and belief, DEFENDANTS
20 untimely provide final wages to Class Members without regard to the timing requirements of Labor
21 Code sections 201-202.

22 61. Upon separation of employment, Class Members' final paychecks were not timely
23 provided and/or were not timely provided with all owed vacation pay and/or paid time off.
24 Moreover, PLAINTIFF's and Class Members' final paychecks, once provided, did not include all
25 wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime
26 wages, premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the
27 properly accrued rates.

28 62. Moreover, DEFENDANTS failed to timely provide all owed wages immediately

1 upon discharge of employment. For example, based on information and belief, at times, Class
2 Members experienced breaks in their employment caused by DEFENDANTS whereby Class
3 Members would not be called in for work for longer than a single pay period due to including but
4 not limited to DEFENDANTS' lack of work or lack of assignments. Such instances qualify as a
5 discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at the end of
6 such periods of employment, in violation of including but not limited to Labor Code section 201-
7 202.

8 63. These violations subject DEFENDANTS to civil penalties under Labor Code section
9 203, 210, and/or 256.

10 64. **Unreimbursed Business Expenses.** Based on information and belief,
11 DEFENDANTS required PLAINTIFF and Class Members to incur business expenses as a direct
12 consequence of the performance of their job duties without providing reimbursement, in violation
13 of Labor Code section 2802. Based on information and belief, PLAINTIFF and Class Members
14 were improperly required to provide and maintain work tools that are supposed to be the
15 responsibility of the employer.

16 65. Based on information and belief, DEFENDANTS shifted the costs of doing business
17 onto Class Members by requiring them to pay for business expenses, including but not limited to,
18 the purchase and/or maintenance of uniforms/work clothing/personal protective/safety gear and/or
19 the use of Class Members' personal mobile phone, internet and/or data usage for work related
20 purposes, including but not limited to, to receive and respond to work related messages and/or phone
21 calls. For example, based on information and belief, Class Members were required to receive/make
22 work-related calls and/or messages from/to their personal cell phones/mobile devices but
23 DEFENDANTS did not provide Class Members with any reimbursement and/or the legally
24 mandated reimbursement for DEFENDANTS' business use of their personal cell phones/mobile
25 devices. For example, DEFENDANTS required PLAINTIFF to download and regularly use an
26 employee timekeeping application on his personal cell phone/mobile device but did not provide
27 PLAINTIFF with the legally mandated reimbursement for these business expenses, including but
28 not limited to, reimbursement for increased data plan charges and/or other expenses incurred from

1 DEFENDANTS' business use of his cellphone.

2 66. Based on information and belief, Class Members were not reimbursed for the cost of
3 purchasing and/or maintaining work uniforms/work clothing/work shoes, personal protective/safety
4 gear.

5 67. Based on information and belief, Class Members were improperly required to pay
6 for additional business expenses, including but not limited to, hand tools/equipment and/or cost of
7 gas, costs of repairs, tolls/fines and/or other work-related fees/fines, incurred as a direct consequence
8 of the discharge of their assigned job duties without receiving any and/or full reimbursement from
9 DEFENDANTS for these expenses.

10 68. On information and belief, at times, Class Members were required to use their
11 personal vehicles for DEFENDANTS' business purposes, including but not limited to, for driving
12 between and/or around DEFENDANTS' job sites/locations/facilities and/or for otherwise carrying
13 out the duties assigned by DEFENDANTS without receiving any and/or full reimbursement from
14 DEFENDANTS for the business use of their personal vehicles. As such, DEFENDANTS failed to
15 compensate Class Members at the legally mandated Internal Revenue Service (IRS) per mile
16 compensation rates in effect during the relevant period.

17 69. Based on information and belief, DEFENDANTS regularly failed to reimburse and
18 indemnify Class Members for business expenses. Pursuant to California Labor Code section 2802,
19 PLAINTIFF and Class Members were entitled to be reimbursed for all reasonable expenses
20 associated with carrying out DEFENDANTS' orders and/or carrying out the duties assigned by
21 DEFENDANTS.

22 70. DEFENDANTS' failure to provide Class Members with full reimbursement for all
23 reasonable expenses associated with carrying out their duties required that Class Members
24 subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

25 71. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
26 engaged in these same herein described unlawful practices and that DEFENDANTS applied these
27 same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.
28

1 **FIRST CAUSE OF ACTION**

2 **Recovery of Unpaid Minimum Wages and Liquidated Damages**
3 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

4 72. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

5 73. It is fundamental that an employer must pay its employees for all time worked.
6 California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages.
7 Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 224 only
8 permits deductions from wages when the employer is required or empowered to do so by state or
9 federal law or when the deduction is expressly authorized in writing by the employee for specified
10 purposes that do not have the effect of reducing the agreed upon wage. Labor Code section 223
11 prohibits the pay of less than a statutory or contractual wage scale.

12 74. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage
13 Commission (“IWC”) Wage Orders, an employer must pay its employees for all hours worked, up
14 to 40 hours per week or 8 hours per day, at a regular rate no less than the mandated minimum wage.
15 Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
16 period is unlawful.

17 75. DEFENDANTS violated California’s minimum wage laws by failing to compensate
18 PLAINTIFF and the Class Members for all hours worked by virtue of, among other things,
19 DEFENDANTS’ time rounding, automatic deduction for meal periods, off-the-clock/unpaid work
20 completed during meal periods, other pre-shift, post-shift and/or otherwise off-the-clock work,
21 and/or payment according to scheduled hours worked rather than actual hours worked (described
22 above), which resulted in the failure to account for all hours worked and thus the denial of minimum
23 wages.

24 76. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
25 Class Members for all hours worked.

26 77. Based on information and belief, DEFENDANTS had actual or constructive
27 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
28 meal periods, failure to relieve employees of all duties and employer control during unpaid meal
periods, policy and practice of payment according to scheduled work time rather than actual work

1 time, and/or other mandated off-the-clock work resulted in the underpayment of minimum wages
2 owed to PLAINTIFF and other Class Members.

3 78. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFF and the Class
4 Members are entitled to recover all unpaid minimum wages and liquidated damages thereon, plus
5 attorney's fees and costs, in an amount to be proved at trial.

6 **SECOND CAUSE OF ACTION**

7 **Recovery of Unpaid Overtime Wages**

8 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

9 79. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

10 80. Employees in California must be paid overtime, equal to one and one-half times the
11 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
12 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
13 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
14 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
consecutive day of work in a workweek, unless they are exempt.

15 81. PLAINTIFF and the Class Members worked overtime hours for which they were not
16 compensated by DEFENDANTS by virtue of, among other things, DEFENDANTS' time rounding,
17 automatic deduction for meal periods, off-the-clock/unpaid work completed during meal periods,
18 other pre-shift, post-shift and/or otherwise off-the-clock work, and/or payment according to
19 scheduled hours worked rather than actual hours worked (described above), which resulted in the
20 failure to account for all hours worked and thus the denial of all owed overtime wages.

21 82. Based on information and belief, DEFENDANTS failed to pay twice Class
22 Members' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for
23 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in
24 violation of California's overtime laws.

25 83. Based on information and belief, DEFENDANTS further violated California's
26 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
27 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
28 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to

1 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
2 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
3 other Class Members.

4 84. DEFENDANTS' conduct described above is in violation of California Labor Code
5 sections 510 and 1194 and all applicable Wage Orders.

6 85. PLAINTIFF and the Class Members are entitled to recover all unpaid overtime
7 wages, plus attorney's fees and costs, in an amount to be proved.

8 **THIRD CAUSE OF ACTION**

9 **Failure to Provide Meal Periods or Compensation in Lieu Thereof
(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

10 86. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

11 87. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
12 DEFENDANTS were required to provide PLAINTIFF and the Class Members with one 30-minute
13 meal break free from all duties and employer control for all shifts longer than 5 hours, and a second
14 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be
15 waived, but only under the following circumstances: (1) if an employee's total work period in a day
16 is over five (5) hours but no more than six (6) hours, the required meal period may be waived by
17 mutual consent of the employer and employee, and (2) if an employee's total work period in a day
18 is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be
19 waived by mutual consent of the employer and employee, but only if the first meal period was not
20 waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their
21 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
22 done so.

23 88. Employers must pay employees an additional hour of wages at the employees'
24 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
25 meal period, first meal period provided after five (5) hours, second meal period provided after 10
26 hours). Lab. Code § 226.7.

27 89. As explained above, PLAINTIFF and other Class Members were consistently unable
28 to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being

1 forced to take late meal periods, interrupted meal periods, and/or work through part or all of their
2 meal periods due to understaffing, the nature and constraints of their job duties, and/or commentary
3 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
4 completely.

5 90. Based on information and belief, DEFENDANTS had and continue to have a policy
6 of rounding the start and end times of employees' meal periods and/or automatically deducting thirty
7 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and Class
8 Members did not receive compliant meal periods.

9 91. Moreover, based on information and belief, Class Members did not receive a timely,
10 uninterrupted second meal period when working shifts over ten (10) hours in a workday.

11 92. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
12 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
13 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in
14 violation of California's meal period laws.

15 93. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
16 periods in violation of California law and/or failed to pay the proper meal period premium for failure
17 to incorporate all non-discretionary remuneration including but not limited to, bonuses, shift
18 differential pay and/or other non-discretionary compensation into the regular rate or compensation
19 for purposes of calculating the owed meal period premium.

20 94. As a result, under Labor Code section 226.7, PLAINTIFF and the Class Members
21 are entitled to one additional hour's pay at the employee's regular rate of compensation for each day
22 a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and costs,
23 all in an amount to be proved at trial.

24 **FOURTH CAUSE OF ACTION**
25 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
26 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

27 95. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

28 96. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours

1 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
2 “insofar as practicable.” In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the
3 California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts
4 from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10
5 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029).
6 The rest period requirement obligates employers to permit and authorize employees to take off-duty
7 rest periods, meaning employers must relieve employees of all duties and relinquish control over
8 how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257.

9 97. If the employer fails to provide any required rest period, the employer must pay the
10 employee one hour of pay at the employee’s regular rate of compensation for each workday the
11 employer did not provide at least one legally required rest period, pursuant to Labor Code section
12 226.7.

13 98. PLAINTIFF and the Class Members did not receive legally compliant, timely 10-
14 minute rest periods for every four (4) hours worked or major fraction thereof. As explained above,
15 any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject to
16 DEFENDANTS’ control due to the nature and constraints of Class Members’ job duties,
17 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Class Members to
18 skip rest periods completely or otherwise take non-compliant rest periods.

19 99. Based on information and belief, DEFENDANTS implemented policies and/or
20 practices that failed to relieve PLAINTIFF and other Class Members of all duties and employer
21 control during rest periods. Based on further information and belief, Class Members were pressured
22 to complete their work duties according to a designated schedule such that rest periods were only
23 taken once tasks were completed, and/or as time permitted.

24 100. As a result, PLAINTIFF and Class Members did not receive legally compliant first,
25 second, or third rest periods as required by California law.

26 101. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
27 period premium to PLAINTIFF and other Class Members for each workday in which there was a
28 missed or otherwise unlawful rest period. Based on further information and belief, when a rest

1 premium was paid, DEFENDANTS failed to include non-discretionary compensation including but
2 not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
3 regular rate of compensation for purposes of determining the owed rest period premium.

4 102. DEFENDANTS are therefore liable to PLAINTIFF and the Class Members for one
5 hour of additional pay at the regular rate of compensation for each workday that a required rest
6 period was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage
7 Order, plus pre-judgment interest, plus attorneys' fees and costs, all in an amount to be proved at
8 trial.

9 **FIFTH CAUSE OF ACTION**
10 **Failure to Furnish Accurate Itemized Wage Statements**
11 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

12 103. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

13 104. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFF and the Class
14 Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized
15 wage statement accurately stating the following:

16 (1) gross wages earned, (2) total hours worked by the employee,
17 except for any employee whose compensation is solely based on a
18 salary and who is exempt from payment of overtime under
19 subdivision (a) of Section 515 or any applicable order of the Industrial
20 Welfare Commission, (3) the number of piece-rate units earned and
21 any applicable piece rate if the employee is paid on a piece-rate basis,
22 (4) all deductions, provided that all deductions made on written orders
23 of the employee may be aggregated and shown as one item, (5) net
24 wages earned, (6) the inclusive dates of the period for which the
25 employee is paid, (7) the name of the employee and his or her social
26 security number, except that by January 1, 2008, only the last four
27 digits of his or her social security number or an employee
28 identification number other than a social security number may be
shown on the itemized statement, (8) the name and address of the
legal entity that is the employer, and (9) all applicable hourly rates in
effect during the pay period and the corresponding number of hours
worked at each hourly rate by the employee.

105. As DEFENDANTS failed to provide PLAINTIFF and other Class Members with
meal and rest periods that complied with Labor Code section 226.7, the wage statements
DEFENDANTS issued to PLAINTIFF and other Class Members failed and continue to fail to
correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the
total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages

1 earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect
2 during the pay period and the corresponding number of hours worked at each hourly rate by the
3 employee, in violation of Labor Code section 226(a)(9).

4 106. Moreover, due to violations detailed above, including but not limited to,
5 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide
6 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
7 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
8 PLAINTIFF and other Class Members with accurate, itemized wage statements that listed the gross
9 and net wages earned and the correct applicable rates of pay for all hours worked. Based on
10 information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
11 compensation earned during the pay period into the regular rate of pay for purposes of calculating
12 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
13 overtime worked by PLAINTIFF and other Class Members.

14 107. As explained above, wage statements issued by DEFENDANTS failed to list the
15 "total hours worked" by PLAINTIFF and Class Members (by virtue of rounded time entries,
16 automatic deduction for meal periods/failure to relieve Class Members of all duties and employer
17 control during unpaid meal periods, payment according to scheduled hours worked rather than actual
18 hours worked, and/or other off-the-clock work policies and practices all described in greater detail
19 *supra*), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on
20 a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v.*
21 *Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

22 108. Based on information and belief, wage statements issued by DEFENDANTS failed
23 to list all applicable hourly rates in effect during the pay period and the corresponding number of
24 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).
25 For example, as described herein, based on information and belief, DEFENDANTS failed to
26 incorporate all forms of non-discretionary compensation earned during the pay period into the
27 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
28 of overtime worked by Class Members.

1 109. Separately, and independent from the above allegations, DEFENDANTS issued
2 wage statements to PLAINTIFF and Class Members that violate Labor Code section 226(a)(8), by
3 failing to list the correct name and/or address of the legal entity that is the employer.

4 110. Based on information and belief, wage statements issued by DEFENDANTS failed
5 to list the inclusive dates of the pay period for which the Class Member is being paid.

6 111. DEFENDANTS' failure to accurately list all hours worked on all wage statements
7 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Class
8 Members over whether they received all wages owed to them.

9 112. As a result, PLAINTIFF and other Class Members have suffered injury as they could
10 not easily determine whether they received all wages owed to them and whether they were paid for
11 all hours worked.

12 113. Moreover, as a result of DEFENDANTS' failure to list the correct name and/or
13 address of the legal entity that is the employer, PLAINTIFF and Class Members have suffered injury
14 as they could not contact their employer regarding any question(s) they had about wages paid.

15 114. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
16 Class Members with accurate, itemized wage statements.

17 115. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Class Members
18 have suffered injury. The absence of accurate information on their wage statements has prevented
19 earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
20 mathematical computations to determine the amount of wages owed, and will cause difficulty and
21 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
22 submission of inaccurate information about wages and amounts deducted from wages to state and
23 federal government agencies. As a result, PLAINTIFF and Class Members are required to
24 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
25 and pay records than if DEFENDANT had complied with its legal obligations.

26 116. Pursuant to California Labor Code section 226(e), PLAINTIFF and Class Members
27 are entitled to recover fifty dollars per employee for the initial pay period in which a Section 226
28 violation occurred and one hundred dollars per employee per violation for each subsequent pay

1 period, not to exceed an aggregate penalty of four thousand dollars per employee.

2 117. Pursuant to California Labor Code § 226(h), PLAINTIFF and Class Members are
3 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
4 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
5 provide currently employed Class Members with inaccurate wage statements in violation of
6 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
7 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
8 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
9 with California Labor Code § 226(a).

10 118. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFF and Class
11 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable
12 attorneys' fees, and costs of suit.

13 **SIXTH CAUSE OF ACTION**

14 **Failure to Timely Pay All Wages Due Upon Separation of Employment (By PLAINTIFF and the Class Members Against all DEFENDANTS)**

15 119. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

16 120. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
17 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
18 payable immediately."

19 121. California Labor Code section 202(a) provides, in relevant part, that "[i]f an
20 employee not having a written contract for a definite period quits his or her employment, his or her
21 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
22 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
23 to his or her wages at the time of quitting."

24 122. Based in information and belief, DEFENDANTS failed and continue to fail to timely
25 pay final wages to PLAINTIFF and Class Members upon separation of employment in violation of
26 Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF and Class
27 Members do not include all wages owed as they are devoid of, including but not limited to, all owed
28 minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or

1 paid time off wages at the properly accrued rates.

2 123. Under Labor Code section 203, PLAINTIFF and the Class Members who are no
3 longer employed by DEFENDANTS are entitled to recover waiting time penalties of up to 30 days'
4 pay, plus attorney's fees and costs, in an amount to be proved at trial.

5 **SEVENTH CAUSE OF ACTION**

6 **Failure to Reimburse Business Expenses**

7 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

8 124. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

9 125. California law requires employers to indemnify their employees for all necessary
10 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
11 their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable
12 Wage Orders section 9(b). Furthermore, "for purposes of [section 2802], the term 'necessary
13 expenditure or losses' shall include all reasonable costs, including, but not limited to, attorneys' fees
14 incurred by the employee enforcing the rights granted by this section."

15 126. Among other things, under California law, when employees must use their personal
16 cellphones for work-related purposes, the employer must reimburse them for a reasonable
17 percentage of their cell phone bills. *See Cochran v. Schwan's Home Services, Inc.* (2014) 228
18 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
19 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
20 *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile
21 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
22 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

23 127. As described above, PLAINTIFF and the Class Members were improperly required
24 to pay for business expenses that are legally the responsibility of the employer.

25 128. DEFENDANTS' failure to provide PLAINTIFF and the Class Members with full
26 reimbursement for all reasonable expenses associated with carrying out their duties required that
27 PLAINTIFF and the Class Members subsidize and/or carry the burden of business expenses in
28 violation of Labor Code section 2802.

129. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Class

1 Members have suffered injury in that they were not completely reimbursed as mandated by
2 California law.

3 130. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members
4 are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable
5 attorneys' fees, and costs of suit.

6 **EIGHTH CAUSE OF ACTION**

7 **Unfair Competition**

8 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

9 131. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

10 132. DEFENDANTS' unlawful conduct alleged herein constitutes unfair competition
11 within the meaning of California Business and Professions Code section 17200 *et seq.* This unfair
12 conduct includes all unlawful conduct alleged herein, including but not limited to: DEFENDANTS'
13 failure to pay minimum and overtime wages by virtue of its illegal policies and practices;
14 DEFENDANTS' failure to authorize or permit, or provide, all required meal and rest periods or pay
15 proper premiums in lieu thereof; DEFENDANTS' failure to furnish complete and accurate itemized
16 wage statements; DEFENDANTS' failure to reimburse business expenses; DEFENDANTS' failure
17 to timely pay all wages owed upon separation of employment; and DEFENDANTS' failure to
18 provide paid sick leave (or paid time off in lieu thereof) at the properly accrued rates (due to,
19 including but not limited to, DEFENDANTS' failure to incorporate all non-discretionary
20 compensation into the sick pay calculation and failure to base the accrued sick leave on the correct
21 number of hours worked as a result of DEFENDANTS' time-rounding/auto deduction policies and
22 practices, payment according to scheduled hours worked and/or other off-the-clock work policies
23 and practices).

24 133. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
25 California Labor Code, DEFENDANTS have gained a competitive advantage over other
26 comparable companies doing business in the State of California that comply with their obligations
27 to authorize or permit rest periods and meal periods or pay proper meal and rest period premiums
28 in lieu thereof, to properly accrue and pay sick time benefits, to provide complete and accurate
itemized wage statements, to reimburse employees for all business expenses, to pay all owed

1 minimum and overtime wages and to pay all wages due upon separation of employment of their
2 employees.

3 134. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFF
4 and Class Members have suffered injury in fact and lost money or property, as described in more
5 detail above. Pursuant to California Business and Professions Code section 17200, *et seq.*,
6 PLAINTIFF and Class Members are entitled to restitution of all wages and other monies rightfully
7 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of their
8 unlawful and unfair business practices.

9 135. PLAINTIFF also seeks an injunction against DEFENDANTS on behalf of the Class
10 Members, enjoining DEFENDANTS and any and all persons acting in concert with them from
11 engaging in each of the unlawful practices and policies set forth herein.

12 136. PLAINTIFF also seeks an award of attorney's fees pursuant to Code Civ. Proc
13 Section 1021.5 and as permitted by law, and an award for costs reasonably incurred, as permitted
14 by law.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for relief and judgment, on behalf of PLAINTIFF and
3 Class Members as follows:

- 4 1. For an order that the action be certified as a class action;
5 2. For an order that PLAINTIFF be appointed as class representative;
6 3. For an order that counsel for PLAINTIFF be appointed as class counsel;
7 4. For compensatory damages according to proof;
8 5. For liquidated damages according to proof;
9 6. For penalties according to proof;
10 7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully
11 withheld from PLAINTIFF and the Class Members;
12 8. For an order finding DEFENDANTS have engaged in unfair competition in violation of
13 section 17200, *et seq.*, of the California Business and Professions Code;
14 9. For an order enjoining DEFENDANTS from further acts of unfair competition;
15 10. For pre-judgment interest as permitted by law;
16 11. For attorney's fees and costs reasonably incurred; and
17 12. For such other and further relief that the Court deems just and proper.

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19 Dated: April 21, 2023

CROSNER LEGAL, PC

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21 By: 

22 Zachary M. Crosner, Esq.
23 Jamie Serb, Esq.
24 Attorneys for Plaintiff
25 ARTHUR QUESADA
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