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As an individual and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

Plaintiff,

v.

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

Defendants.

Case No.: 23CV031688

**FIRST AMENDED CLASS AND
REPRESENTATIVE 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**
- 8. Unfair Competition; and**
- 9. Violation of the Private Attorneys General Act of 2004**

DEMAND FOR JURY TRIAL

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

9 **JURISDICTION AND VENUE**

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

15 **THE PARTIES**

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

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

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

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

26 6. The true names and capacities of the DOE Defendants sued herein as DOES 1
27 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
28 Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally

1 responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this
2 Complaint to reflect the true names and capacities of the Doe Defendants when such identities
3 become known.

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

14 **JOINT LIABILITY**

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

1 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
2 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
3 employment,” *Id.* at 875 [emphasis added].

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

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

24 11. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
25 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Class Members
26 and Aggrieved Employees upon whose behalf PLAINTIFF brings these allegations and causes of
27 action, in that DEFENDANTS, exercised sufficient control over PLAINTIFF and the Class
28 Members and Aggrieved Employees’ wages, hours and working conditions, and/or suffered or

1 permitted PLAINTIFF and the Class Members and Aggrieved Employees to work so as to be
2 considered the joint employers of PLAINTIFF and the Class Members and Aggrieved Employees.
3 For example, based on information and belief, DEFENDANTS, and each of them, maintain the
4 same principal place of business and/or Agent for Service of Process as provided to the California
5 Secretary of State and/or maintain some of the same attorneys and/or human resources personnel to
6 oversee employment-related matters.

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

23 13. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
24 and working conditions of PLAINTIFF and Class Members and Aggrieved Employees. As such,
25 DEFENDANTS collectively held the right to control virtually every aspect of PLAINTIFF's and
26 the Class Members and Aggrieved Employees' employment, including the instrumentality that
27 resulted in the illegal conduct for which PLAINTIFF seeks relief in this Complaint.

28 14. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
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1 control over, applied the same policies and practices, and engaged in the same acts and omissions
2 with regard to the other Class Members and Aggrieved Employees.

3 **CLASS ALLEGATIONS**

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

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

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

15 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
16 because common questions of law and fact predominate over individual issues.
17 Common questions include, but are not limited to, the following: (1) whether
18 DEFENDANTS understated hours worked and failed to pay all amounts due to
19 PLAINTIFF and the Class Members for wages earned, including minimum and
20 overtime wages, under California law; (2) whether DEFENDANTS provided
21 PLAINTIFF and the Class Members with all meal periods or premium payments
22 in lieu thereof in compliance with California law; (3) whether DEFENDANTS
23 provided PLAINTIFF and the Class Members with all rest periods or premium
24 payments in lieu thereof, in compliance with California law; (4) whether
25 DEFENDANTS provided PLAINTIFF and Class Members with accurate,
26 itemized wage statements in compliance with California law, displaying,
27 including but not limited to, the total hours worked during the pay period; (5)
28 whether DEFENDANTS timely paid PLAINTIFF and the Class Members all

1 wages due upon separation of employment; (6) whether DEFENDANTS failed
2 to reimburse PLAINTIFF and the Class Members for all business expenses; and
3 (7) whether DEFENDANTS violated California Business and Professions Code
4 sections 17200, *et seq.*

5 c. Ascertainable Class. The proposed Class is ascertainable as members can be
6 identified and located using information in DEFENDANTS' business, payroll
7 and personnel records.

8 d. Typicality. PLAINTIFF's claims are typical of the claims of the Class Members.
9 PLAINTIFF suffered a similar injury as members of the Class as a result of
10 DEFENDANTS' common practices regarding, *inter-alia*, failure to calculate
11 and pay all owed minimum and overtime wages, failure to provide proper meal
12 periods and rest periods or premium compensation in lieu thereof, failure to
13 provide accurate wage statements, failure to reimburse business expenses, and
14 failure to timely pay all wages due upon separation of employment.

15 e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the
16 Class Members. PLAINTIFF has no interests adverse to the interests of the other
17 Class Members. Counsel who represent PLAINTIFF are competent and
18 experienced in litigating similar class action cases and are California lawyers in
19 good standing. Counsel for PLAINTIFF have the experience and resources to
20 vigorously prosecute this case.

21 f. Superiority. A class action is superior to other available means for the fair and
22 efficient adjudication of this controversy since individual joinder of all members
23 of the class is impractical. Class action treatment will permit a large number of
24 similarly situated persons to prosecute their common claims in a single forum
25 simultaneously, efficiently, and without the unnecessary duplication of effort
26 and expense that numerous individual actions would engender. Furthermore, as
27 the damages suffered by each individual member of the Class may be relatively
28 small, the expenses and burden of individual litigation would make it difficult

1 or impossible for individual members of the Class to redress the wrongs done to
2 them, while an important public interest will be served by addressing the matter
3 as a class action. The cost to the court system of adjudication of such
4 individualized litigation would be substantial. Individualized litigation would
5 also present the potential for inconsistent or contradictory judgments. Finally,
6 the alternative of filing a claim with the California Labor Commissioner is not
7 superior, given the lack of discovery in such proceedings, the fact that there are
8 fewer available remedies, and the losing party has the right to a trial de novo in
9 the Superior Court.

10 **FACTUAL AND LEGAL ALLEGATIONS**

11 16. During the relevant period, PLAINTIFF, and each of the Class Members and
12 Aggrieved Employees worked for DEFENDANTS in the State of California. At all times referenced
13 herein, DEFENDANTS exercised control over PLAINTIFF and Class Members and Aggrieved
14 Employees, and suffered and/or permitted them to work.

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

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

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

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

26 21. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
27 PLAINTIFF and Class Members and Aggrieved Employees for all hours worked, resulting in the
28 underpayment of minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF

1 and Class Members and Aggrieved Employees for all hours worked by virtue of, DEFENDANTS'
2 automatic deduction and time rounding policies, and failure to relieve employees of all
3 duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or
4 improper meal periods, as explained below.

5 22. Based on information and belief, DEFENDANTS implemented a policy and/or
6 practice of rounding meal period start and end times and/or automatically deducting at least thirty
7 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
8 PLAINTIFF and other Class Members and Aggrieved Employees were subject to DEFENDANTS'
9 control during purported meal periods and/or were otherwise not afforded lawful meal periods,
10 depriving PLAINTIFF and Class Members and Aggrieved Employees of all wages owed. For
11 example, as explained below, PLAINTIFF was required to work through his unpaid meal periods
12 during most shifts he worked due to the need to complete deliveries and/or pickups and/or complete
13 other work tasks, yet DEFENDANTS performed an automatic meal break deduction of at least thirty
14 minutes per shift despite DEFENDANTS having actual and/or constructive knowledge that
15 PLAINTIFF was consistently forced to work through his meal periods, resulting in DEFENDANTS'
16 failure to compensate PLAINTIFF for all hours worked and the underpayment of minimum wages
17 and overtime wages owed to PLAINTIFF.

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

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

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

5 26. Based on information and belief, at times, Class Members and Aggrieved Employees
6 were required to complete other work tasks outside of their reported work time, before clocking in
7 for the start of their shift and/or after clocking out for the end of their shift and/or otherwise outside
8 of their scheduled shift times resulting in DEFENDANTS' failure to compensate Class Members
9 and Aggrieved Employees for all hours worked and the underpayment of minimum wages and
10 overtime wages to Class Members and Aggrieved Employees. For example, based on information
11 and belief, Class Members and Aggrieved Employees were required to complete off-the-clock work
12 outside of scheduled shifts due to, including but not limited to, work-related phone calls and/or
13 messages they received to their personal phones and were required to respond to, including but not
14 limited to, communications from supervisors and/or other Class Members and Aggrieved
15 Employees regarding scheduling and/or other work tasks, resulting in the underpayment of
16 minimum and overtime wages owed to Class Members and Aggrieved Employees.

17 27. Moreover, based on information and belief, at times, DEFENDANTS' electronic
18 time-keeping system/app malfunctioned such that Class Members and Aggrieved Employees were
19 required to either reinitiate and/or otherwise troubleshoot the system and/or wait for the system to
20 boot prior to being able to clock in and/or were unable to clock in at all for the start of their shifts
21 and/or clock back in from meal periods, resulting in off-the-clock work and the underpayment of
22 wages owed to Class Members and Aggrieved Employees. Based on information and belief, Class
23 Members and Aggrieved Employees experienced the same issues when clocking out for shifts and/or
24 back in for meal periods. This time spent under DEFENDANTS' control was not recorded and not
25 compensated and resulted in unpaid minimum wages owed to Class Members and Aggrieved
26 Employees.

27 28. Based on information and belief, DEFENDANTS failed to pay Class Members and
28 Aggrieved Employees for time they were required to spend completing orientation, policy

1 questionnaires, and/or time spent completing the onboarding process including but not limited to
2 reviewing various documents and policies provided by DEFENDANTS. Based on information and
3 belief, this work time was completed off-the-clock and was not compensated.

4 29. Based on further information and belief, DEFENDANTS implemented a time-
5 rounding system that as applied systematically deprived PLAINTIFF and other Class Members and
6 Aggrieved Employees of compensable time because the time-rounding system implemented by
7 DEFENDANTS would almost always, if not always, result in understating actual compensable work
8 time.

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

15 31. Based on information and belief, DEFENDANTS had actual and/or constructive
16 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to
17 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
18 underpayment of minimum wages owed to PLAINTIFF and other Class Members and Aggrieved
19 Employees, in violation of California's minimum and overtime wage laws.

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

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

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

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

15 36. For example, PLAINTIFF was consistently required to work through his meal
16 periods, take a meal period that was less than a full thirty minutes in length and/or was required to
17 take his meal period late (i.e. after the fifth hour of work), due to lack of relief workers, the need to
18 meet delivery deadlines, respond to work-related communications and/or complete other work tasks
19 as well as due to pre-shift off-the-clock work that was not taken into account by DEFENDANTS
20 when scheduling any meal periods. For example, during most of PLAINTIFF's shifts, PLAINTIFF
21 was required to clock out for purported meal periods but to continue working due to explicit
22 instruction from DEFENDANTS to do so, lack of relief workers, the need to complete
23 deliveries/pickups in a timely manner, meet delivery/pickup windows and/or complete other work
24 tasks. Based on information and belief, Class Members and Aggrieved Employees working in
25 DEFENDANTS' facilities were also forced to take late meal periods, short meal periods, interrupted
26 meal periods and/or skip meal periods completely due to their need to complete their job duties
27 and/or meet supply demands/deadlines.

28 37. Based on information and belief, DEFENDANTS implemented policies and/or
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1 practices that failed to relieve Class Members and Aggrieved Employees of all duties and
2 DEFENDANTS' control during unpaid meal periods.

3 38. Based on information and belief, DEFENDANTS required Class Members and
4 Aggrieved Employees to complete off-the-clock work prior to their scheduled shift time which
5 DEFENDANTS failed to take into account when scheduling meal periods for Class Members and
6 Aggrieved Employees. Based on information and belief, meal periods were late, in part due to
7 unaccounted pre-shift off-the-clock work.

8 39. Based on information and belief, despite DEFENDANTS' failure to provide lawful
9 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
10 times of PLAINTIFF's and other Class Members and Aggrieved Employees' meal periods and/or
11 automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal
12 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Class
13 Members and Aggrieved Employees did not receive lawful meal periods.

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

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

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

1 58.

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

6 44. DEFENDANTS failed to pay PLAINTIFF and other Class Members and Aggrieved
7 Employees, an additional hour of wages at their respective regular rates of compensation for each
8 workday a lawful meal period was not provided. DEFENDANTS either failed to pay a meal period
9 premium at all for each workday a lawful meal period was not provided and/or failed to pay the
10 proper meal period premium for failure to incorporate all non-discretionary remuneration, including
11 but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into
12 the regular rate or compensation for purposes of calculating the owed meal period premium.

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

17 46. PLAINTIFF and other Class Members and Aggrieved Employees were not
18 adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest
19 periods per California law. Based on information and belief, DEFENDANTS had no policy in place
20 nor instruction as to the taking of duty-free rest periods.

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

24 48. For example, during the Class Period, PLAINTIFF was rarely, if ever, afforded a
25 legally compliant rest period due to the need to complete deliveries in a timely manner and/or meet
26 delivery windows, provide status updates to DEFENDANTS regarding deliveries and/or
27 communicate with DEFENDANTS via phone calls and/or text message and/or complete other
28 related work tasks. Based on information and belief, other Class Members and Aggrieved

1 Employees working in DEFENDANTS' facilities were similarly required to work through their
2 owed rest periods due to the need to meet supply demands/work deadlines, respond to work-related
3 communications and/or complete other work tasks.

4 49. Moreover, based on information and belief, DEFENDANTS failed to authorize and
5 permit rest periods that were a "net" ten minutes in a suitable rest area and instead, to the extent rest
6 periods were provided at all, limited Class Members and Aggrieved Employees to only ten-minute
7 rest periods, requiring them to be back at their workstations within ten minutes of leaving, in
8 violation of California rest period law. DEFENDANTS' failure to communicate that the rest period
9 is a net ten minutes deprived Class Members and Aggrieved Employees of their rights to a full rest
10 period, as such as policy only relieves Class Members and Aggrieved Employees from their
11 workstation for ten minutes to travel to and from a rest area and be back at the workstation by the
12 end of that ten minutes.

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

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

21 52. Based on information and belief, DEFENDANTS implemented policies and/or
22 practices that failed to relieve PLAINTIFF and other Class Members and Aggrieved Employees of
23 all duties and DEFENDANTS' control during rest periods. For example, based on information and
24 belief, PLAINTIFF and other Class Members and Aggrieved Employees were required to remain
25 inside/in close proximity to their vehicles and/or otherwise remained tethered to their workstations
26 and/or restricted to DEFENDANTS' premises and/or were required to monitor work
27 communication devices and respond to work communications during purported rest periods. As
28 such, Class Members and Aggrieved Employees were not relieved of all duties and DEFENDANTS'

1 control during any purported rest periods, in violation of California law.

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

5 54. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
6 which PLAINTIFF and Class Members and Aggrieved Employees experienced a missed/unlawful
7 rest period in violation of California law. DEFENDANTS either failed to pay a rest period premium
8 at all for each workday a proper rest period was not provided and/or failed to pay the proper rest
9 period premium for failure to incorporate all non-discretionary remuneration, including but not
10 limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
11 regular rate of compensation for purposes of calculating the owed rest period premium.

12 55. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
13 provide PLAINTIFF and other Class Members and Aggrieved Employees with accurate wage
14 statements that complied with Labor Code section 226. As DEFENDANTS failed to provide
15 PLAINTIFF and Class Members and Aggrieved Employees with meal and rest periods that
16 complied with Labor section 226.7, the wage statements DEFENDANTS issued to PLAINTIFF and
17 Class Members and Aggrieved Employees failed and continue to fail to correctly set forth the gross
18 wages earned, the total hours worked, the net wages earned, and all applicable hourly rates in effect
19 during the pay period and the corresponding number of hours worked at each hourly rate by the
20 employee.

21 56. DEFENDANTS issued wage statements to PLAINTIFF and Class Members and
22 Aggrieved Employees that also failed to indicate the earned gross and net wages earned during the
23 pay period, the correct applicable rates of pay for all hours worked, and the total hours worked by
24 PLAINTIFF and Class Members and Aggrieved Employees (by virtue of rounded time entries,
25 automatic deduction for meal periods/failure to relieve Class Members and Aggrieved Employees
26 of all duties and employer control during unpaid meal periods, payment according to scheduled
27 hours worked rather than actual hours worked, and/or other off-the-clock work policies and
28 practices) which results in a violation of Labor Code section 226(a).

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

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

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

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

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

23 62. Moreover, DEFENDANTS failed to timely provide all owed wages immediately
24 upon discharge of employment. For example, based on information and belief, at times, Class
25 Members and Aggrieved Employees experienced breaks in their employment caused by
26 DEFENDANTS whereby Class Members and Aggrieved Employees would not be called in for work
27 for longer than a single pay period due to including but not limited to DEFENDANTS' lack of work
28 or lack of assignments. Such instances qualify as a discharge of employment. Yet, DEFENDANTS

1 failed to timely pay all owed wages at the end of such periods of employment, in violation of
2 including but not limited to Labor Code section 201-202.

3 63. These violations subject DEFENDANTS to civil penalties under Labor Code section
4 203, 210, and/or 256.

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

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

26 66. Based on information and belief, Class Members and Aggrieved Employees were
27 not reimbursed for the cost of purchasing and/or maintaining work uniforms/work clothing/work
28 shoes, personal protective/safety gear.

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

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

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

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

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

26 **FIRST CAUSE OF ACTION**

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

29 72. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.
PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

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

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

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

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

22 77. Based on information and belief, DEFENDANTS had actual or constructive
23 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
24 meal periods, failure to relieve employees of all duties and employer control during unpaid meal
25 periods, policy and practice of payment according to scheduled work time rather than actual work
26 time, and/or other mandated off-the-clock work resulted in the underpayment of minimum wages
27 owed to PLAINTIFF and other Class Members.

28 78. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFF and the Class
20
PLAINTIFF’S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

1 Members are entitled to recover all unpaid minimum wages and liquidated damages thereon, plus
2 attorney's fees and costs, in an amount to be proved at trial.

3 **SECOND CAUSE OF ACTION**

4 **Recovery of Unpaid Overtime Wages**
5 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

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

7 80. Employees in California must be paid overtime, equal to one and one-half times the
8 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
9 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
10 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
11 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
12 consecutive day of work in a workweek, unless they are exempt.

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

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

23 83. Based on information and belief, DEFENDANTS further violated California's
24 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
25 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
26 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
27 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
28 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
other Class Members.

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

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

5 **THIRD CAUSE OF ACTION**

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

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

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

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

25 89. As explained above, PLAINTIFF and other Class Members were consistently unable
26 to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being
27 forced to take late meal periods, interrupted meal periods, and/or work through part or all of their
28 meal periods due to understaffing, the nature and constraints of their job duties, and/or commentary
from supervisors pressuring them to take non-compliant meal periods or skip meal periods

1 completely.

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

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

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

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

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

21 **FOURTH CAUSE OF ACTION**

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

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

24 96. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
25 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
26 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
27 "insofar as practicable." In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the
28 California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts

1 from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10
2 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029).
3 The rest period requirement obligates employers to permit and authorize employees to take off-duty
4 rest periods, meaning employers must relieve employees of all duties and relinquish control over
5 how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257.

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

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

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

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

23 101. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
24 period premium to PLAINTIFF and other Class Members for each workday in which there was a
25 missed or otherwise unlawful rest period. Based on further information and belief, when a rest
26 premium was paid, DEFENDANTS failed to include non-discretionary compensation including but
27 not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
28 regular rate of compensation for purposes of determining the owed rest period premium.

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

6 **FIFTH CAUSE OF ACTION**

7 **Failure to Furnish Accurate Itemized Wage Statements**
8 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

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

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

13 (1) gross wages earned, (2) total hours worked by the employee,
14 except for any employee whose compensation is solely based on a
15 salary and who is exempt from payment of overtime under
16 subdivision (a) of Section 515 or any applicable order of the Industrial
17 Welfare Commission, (3) the number of piece-rate units earned and
18 any applicable piece rate if the employee is paid on a piece-rate basis,
19 (4) all deductions, provided that all deductions made on written orders
20 of the employee may be aggregated and shown as one item, (5) net
21 wages earned, (6) the inclusive dates of the period for which the
22 employee is paid, (7) the name of the employee and his or her social
23 security number, except that by January 1, 2008, only the last four
24 digits of his or her social security number or an employee
25 identification number other than a social security number may be
26 shown on the itemized statement, (8) the name and address of the
27 legal entity that is the employer, and (9) all applicable hourly rates in
28 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
earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect
during the pay period and the corresponding number of hours worked at each hourly rate by the
employee, in violation of Labor Code section 226(a)(9).

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

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

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

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

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

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

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

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

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

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

23 116. Pursuant to California Labor Code section 226(e), PLAINTIFF and Class Members
24 are entitled to recover fifty dollars per employee for the initial pay period in which a Section 226
25 violation occurred and one hundred dollars per employee per violation for each subsequent pay
26 period, not to exceed an aggregate penalty of four thousand dollars per employee.

27 117. Pursuant to California Labor Code § 226(h), PLAINTIFF and Class Members are
28 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with

1 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
2 provide currently employed Class Members with inaccurate wage statements in violation of
3 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
4 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
5 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
6 with California Labor Code § 226(a).

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

10 **SIXTH CAUSE OF ACTION**

11 **Failure to Timely Pay All Wages Due Upon Separation of Employment** 12 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

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

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

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

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

28 123. Under Labor Code section 203, PLAINTIFF and the Class Members who are no
longer employed by DEFENDANTS are entitled to recover waiting time penalties of up to 30 days'

1 pay, plus attorney's fees and costs, in an amount to be proved at trial.

2 **SEVENTH CAUSE OF ACTION**
3 **Failure to Reimburse Business Expenses**
4 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

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

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

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

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

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

26 129. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Class
27 Members have suffered injury in that they were not completely reimbursed as mandated by
28 California law.

29 130. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members

1 are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable
2 attorneys' fees, and costs of suit.

3 **EIGHTH CAUSE OF ACTION**

4 **Unfair Competition**

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

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

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

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

134. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFF

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

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

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

12 **NINTH CAUSE OF ACTION**

13 **Violation of the Private Attorneys General Act of 2004**

14 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all Defendants)**

15 137. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

16 138. PLAINTIFF brings this action under the Private Attorneys General Act of 2004,
17 Labor Code sections 2698, *et seq.*, ("PAGA"), as a representative action on behalf of PLAINTIFF,
18 the State of California and Aggrieved Employees, regarding violations of the California Labor Code
19 as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

20 All current and former non-exempt employees that worked either
21 directly or via a staffing agency for any one or more of the
22 DEFENDANTS at any location in California at any time from one
23 year plus 65 days from the filing of the initial Complaint through the
24 present ("PAGA Period").

25 139. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
26 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
27 limitations period and suffered one or more of the Labor Code violations set forth herein.
28 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California and all Aggrieved

1 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
2 PLAINTIFF has standing to bring a PAGA cause of action on behalf of PLAINTIFF, the State of
3 California, and all Aggrieved Employees, as PLAINTIFF was jointly employed by DEFENDANTS
4 and is thereby affected by one or more of the alleged violations. See *Huff v. Securitas Security*
5 *Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties
6 for all known violations committed by the employer - regardless of whether Plaintiff experienced
7 all violations personally. *Id.* at 760-761.

8 **COMPLIANCE WITH PAGA'S NOTIFICATION REQUIREMENTS**

9 140. On March 25, 2024, PLAINTIFF, through counsel, gave written notice by online
10 filing with the California Labor and Workforce Development Agency ("LWDA") informing it that
11 DEFENDANTS failed to comply with California's labor laws with regard to the allegations alleged
12 in this Complaint ("PAGA Notice"). The PAGA Notice was also sent to DEFENDANTS.

13 141. The LWDA did not provide notice of its intention to investigate DEFENDANTS'
14 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
15 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
16 Accordingly, PLAINTIFF has exhausted the administrative remedies as required by Labor Code
17 section 2699.3. Consequently, PLAINTIFF's right to file the instant lawsuit against DEFENDANTS
18 has duly accrued.

19 142. PLAINTIFF seeks to recover the PAGA civil penalties through a representative
20 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
21 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

22 143. From one year prior to PLAINTIFF's filing of the required PAGA notice with the
23 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated California
24 Labor Code sections, 201-203, 226, 226.7, 233, 234, 245-246, 510, 512, 558, 558.1, 1174, 1194,
25 1197, 1197.1, 1198, 1199, 2802, and all applicable Wage Orders.

26 144. As set forth above, DEFENDANTS have committed numerous violations of the
27 California Labor Code due to including but not limited to their failure to pay all owed minimum
28 wages and all owed overtime wages, failure to provide lawful meal and rest periods or compensation

1 in lieu thereof, failure to provide accurate wage statements, failure to reimburse business expenses,
2 and failure to pay all wages owed upon separation of employment as alleged above. PAGA penalties
3 are in addition to any other relief available under the Labor Code.

4 145. Additionally, DEFENDANTS have violated the following Labor Code sections and
5 provisions of the applicable Wage Order as to the PLAINTIFF and other Aggrieved Employees.

6 **Sick Leave Violations**

7 146. Throughout the relevant time period, DEFENDANTS failed to provide proper paid
8 sick leave to PLAINTIFF and other Aggrieved Employees. DEFENDANTS either failed to provide
9 paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay
10 owed to PLAINTIFF and other Aggrieved Employees by failing to base the accrued sick leave hours
11 on the correct number of hours worked (as a result of the rounding/automatic deduction policies and
12 practices for meal periods and/or shift start and end times/other required off-the-clock work
13 including but not limited to work completed during unpaid meal periods and by failing to incorporate
14 multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-
15 discretionary bonuses, shift differential pay, commission and/or piece-rate compensation and/or
16 other non-discretionary compensation into the sick leave pay rate calculation.

17 147. Upon information and belief, DEFENDANTS further failed and continue to fail to
18 comply with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved
19 Employees with a Labor Code section 226 wage statement, or separate writing containing the
20 amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave,
21 at the time it pays wages.

22 148. DEFENDANTS unlawfully retained and continue to retain paid sick leave that
23 should have been paid but was not, as a result of DEFENDANTS' failure to properly institute a paid
24 sick leave program.

25 149. On information and belief, PLAINTIFF alleges that all of these practices were
26 experienced and continue to be experienced by other Aggrieved Employees.

27 150. PLAINTIFF requests all appropriate relief under the PAGA and these statutes,
28 including but not limited to the restitution of earned paid sick leave that could have been used, but

1 was not due to DEFENDANTS' sole failure to institute such a paid sick leave entitlement or paid
2 sick leave bank as required by California law.

3 151. Accordingly, Aggrieved Employees are entitled to injunctive relief, attorney's fees,
4 declaratory relief, restitution, and penalties as permitted by law. PLAINTIFF requests all relief
5 pursuant to the aforementioned code provisions, including but not limited to Labor Code sections
6 233 and 234, which incorporates the paid sick leave requirements.

7 152. Under the provisions of PAGA and the above mentioned Labor Code sections,
8 including but not limited to Labor Code sections 201-203, 226, 226.7, 233, 234, 245-246, 510, 512,
9 558, 558.1, 1174, 1194, 1197, 1197.1, 1198, 1199, 2802, and all applicable Wage Orders as well as
10 all interpretations of these laws by California Courts and administrative bodies, as well as any other
11 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

- 12 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
13 relevant California Labor Code provisions listed herein only if permitted by the
14 PAGA statute, pursuant to Labor Code section 2699(a); and
15 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
16 violations without a civil penalty recoverable under the PAGA, all in the default
17 amounts provided by Labor Code section 2699(f).
18 c. The proper measure of penalties under PAGA is the number of violations,
19 whether those violations were committed as against PLAINTIFF or any
20 Aggrieved Employee, whether a party to this action or not.

21 153. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
22 PLAINTIFF is entitled to recover civil penalties, costs, and attorney's fees.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, PLAINTIFF prays for relief and judgment, on behalf of PLAINTIFF and
25 Class Members and Aggrieved Employees as follows:

- 26 1. For an order that the action be certified as a class action;
27 2. For an order that PLAINTIFF be appointed as class representative;
28 3. For an order that counsel for PLAINTIFF be appointed as class counsel;

4. For compensatory damages according to proof;
5. For liquidated damages according to proof;
6. For penalties according to proof;
7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully withheld from PLAINTIFF and the Class Members;
8. For an order finding DEFENDANTS have engaged in unfair competition in violation of section 17200, *et seq.*, of the California Business and Professions Code;
9. For an order enjoining DEFENDANTS from further acts of unfair competition;
10. For pre-judgment interest as permitted by law;
11. For attorney's fees and costs reasonably incurred;
12. For civil penalties under Labor Code Section 2699 (75% payable to the LWDA and 25% payable to Aggrieved Employees); and
13. For such other and further relief that the Court deems just and proper.

Dated: July 18, 2024

CROSNER LEGAL, PC

By: /s/ Brandon Brouillette
Jamie K. Serb, Esq.
Brandon Brouillette, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiff
ARTHUR QUESADA

DEMAND FOR JURY TRIAL

PLAINTIFF demands a trial by jury on all claims so triable.

Dated: July 18, 2024

CROSNER LEGAL, PC

By: /s/ Brandon Brouillette
Jamie K. Serb, Esq.
Brandon Brouillette, Esq.
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