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on behalf of himself and all others similarly situated

ELECTRONICALLY FILED
Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
8/5/2024 1:54 PM
By: Preston Frye , Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA**

ANGEL NAVA MORA, an individual, on
behalf of himself and others similarly situated,

Plaintiff,

vs.

INSTITUTION ALE COMPANY, a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 24CV01401

CLASS ACTION

Assigned for All Purposes To:

Hon. Colleen K. Sterne

Dept.: 5

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages and for All Hours Worked;
2. Failure to Pay Wages and Overtime under Labor Code § 510;
3. Meal Period Liability, Labor Code § 226.7;
4. Rest-Break Liability, Labor Code § 226.7;
5. Failure to Pay Reporting Time Under 8 CCR § 11050(5);
6. Violation of Labor Code § 226(a);
7. Violation of Labor Code § 221;
8. Violation of Labor Code § 204;
9. Violation of Labor Code § 203;
10. Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5;
11. Failure to Reimburse Necessary Business Expenses under Labor Code § 2802;
12. Violation of Business & Professions Code § 17200 *et seq.* and
13. Penalties under PAGA, Labor Code § 2698.

DEMAND FOR JURY TRIAL

Original Complaint filed: March 12, 2024

1 Plaintiff ANGEL NAVA MORA (hereinafter “Plaintiff”), on behalf of himself and all
2 other similarly situated non-exempt, hourly employees employed by Defendants in California
3 during the relevant period (collectively, “Employees”; individually, “Employee”) complains of
4 Defendants as follows:

5 **INTRODUCTION**

6 1. Plaintiff brings this action on behalf of himself and all current and former
7 Employees within the State of California who, at any time four years prior to the filing of this
8 lawsuit, are or were employed as non-exempt, hourly employees by Defendants INSTITUTION
9 ALE COMPANY, a California corporation; and DOES 1 through 50 (all defendants being
10 collectively referred to herein as “Defendants”). Plaintiff alleges that Defendants violated various
11 provisions of the California Labor Code, relevant orders of the Industrial Welfare Commission
12 (IWC), and California Business & Professions Code, and seeks redress for these violations.

13 2. Plaintiff worked as a food services employee and cook at one of Defendants’
14 facilities and locations in Santa Barbara, California. He and the other Class members were
15 employed by Defendants as non-exempt, hourly employees at Defendants’ locations and facilities
16 in California, including in positions related to providing food and beverage services to
17 Defendants’ customers at Defendants’ brewery and restaurant facilities in California. Plaintiff
18 worked at Defendants’ behest without being paid all wages due and without being provided all
19 required breaks. More specifically, Plaintiff and the other similarly situated Class members were
20 employed by Defendants and shared similar job duties and responsibilities, were subjected to the
21 same policies and practices, and endured similar violations at the hands of Defendants as the other
22 Employees who served in similar and related positions.

23 3. Defendants required Plaintiff and the Employees in the Class to work off the clock
24 and failed to record accurate time worked by these Employees, failed to pay them at the
25 appropriate rates for all hours worked, failed to pay all wages due and owing at termination or
26 resignation, and provided Plaintiff and the Class members with inaccurate wage statements that
27 prevented them from learning of these unlawful pay practices. Defendants also failed to provide
28 Plaintiff and the Class with lawful meal and rest periods, as Employees were required to remain

1 under Defendants' control and were not provided with the opportunity to take full uninterrupted,
2 timely, and duty-free rest periods and meal breaks, as required by the Labor Code and the
3 applicable paragraphs of the IWC Wage Orders.

4 4. Defendant INSTITUTION ALE COMPANY is a California corporation that lists
5 its principal address with the California Secretary of State in Camarillo, California. It also lists its
6 type of business as "Brewery and Restaurant." INSTITUTION ALE COMPANY is listed as the
7 employer on the wage statements issued to Plaintiff by Defendants on a bi-weekly basis, and upon
8 information and belief, the wage statements issued to other Class members listed the same
9 Camarillo, California address. Upon information and belief, INSTITUTION ALE COMPANY
10 operates at least two restaurant facilities where their California Employees are based, including the
11 Santa Barbara location where Plaintiff worked. INSTITUTION ALE COMPANY also operates an
12 e-commerce website where customers can order merchandise, food, kegs, and cans of alcoholic
13 beverages.

14 5. This Court has jurisdiction over this Action pursuant to California Code of Civil
15 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
16 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
17 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
18 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
19 obligations and liabilities giving rise to this lawsuit occurred at least in part in Santa Barbara
20 County, where Defendants operate and provide brewery and restaurant services to customers.

21 6. The true names and capacities, whether individual, corporate, associate, or
22 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
23 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
24 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
25 designated herein as Does 1 through 50, inclusive, and each of them, is legally responsible in some
26 manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this
27 Complaint to reflect the true names and capacities of the Defendants designated herein as Does 1
28 through 50 when their identities become known.

7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all respects as the employers or joint employers of Employees. Defendants, and each of them, exercised control over the wages, hours or working conditions of Employees, created and implemented the policies and practices that governed the employment of Plaintiff and the Class members and dictated their job duties and responsibilities, or otherwise suffered or permitted Plaintiff and the other Employee Class members to work, or engaged, thereby creating a common law employment relationship, with the Employee Class members. Therefore, Defendants, and each of them, employed or jointly employed the Employee Class members.

FACTUAL BACKGROUND

8. The Employees who comprise the Class, including Plaintiff, are non-exempt employees of Defendants pursuant to the applicable Wage Order of the Industrial Welfare Commission (“IWC”). During the period of four years prior to the filing of this action through its resolution, Plaintiff and the Class members were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates, including for meal period and rest break premium payments. Plaintiff also contends that Defendants failed to pay Plaintiff and the Class members all wages due and owing, including by miscalculating wages owed and by requiring off the clock work, failing to provide meal and rest breaks, and failing to furnish accurate wage statements and timely pay all wages owed, all in violation of various provisions of the California Labor Code and applicable paragraphs of the IWC Wage Orders.

9. During the course of Plaintiff and the Class members' employment with Defendants, they were not paid all wages they were owed, including for all work performed (resulting in "off the clock" work) and for all their overtime hours worked, or were not paid at the correct rates. This has resulted in systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders. Upon information and belief, Defendants employ other non-exempt, hourly employees as food and beverage services workers based out of Defendants'

1 facilities in California.

2 10. Plaintiff was employed by Defendants as a prep cook at Defendants' brewery and
3 restaurant facilities in Santa Barbara, California. Plaintiff worked twenty to thirty hours per week,
4 four days per week, which resulted in shifts of approximately five hours or more in duration.
5 Plaintiff's shifts were generally scheduled from 5:00 p.m. to 10:00 p.m.

6 11. The nature of Defendants' operations and its policies and practices require that
7 Employees endure off-the-clock work. Defendants' facilities included two electronic timeclocks
8 where Employees were required to record their shift start and end times as well as their meal
9 periods. Due to the heavy volume of work, on several occasions, Plaintiff was compelled to work
10 after clocking out at the end of his scheduled shifts to take out the trash to the dumpster. Because
11 the restaurant facilities were about to close and Plaintiff would have no way to access the
12 electronic time clock after the restaurant closed, Plaintiff was instructed to clock out and take the
13 trash out to the dumpster. Additionally, Plaintiff and the Class members were also required to
14 work or otherwise remain under Defendants' control after their shift end times, including on-site
15 and through after-hours work-related communications and other work requirements.

16 12. Moreover, Plaintiff and other Employees' meal periods and rest breaks were
17 routinely interrupted, shortened, or not provided at all due to pressing work demands and
18 Defendants' unlawful timekeeping practices, resulting in additional off the clock work.
19 Defendants required that Employees clock out/in for their meal periods on the electronic time
20 clock. Employees had to contend with a timekeeping system that did not permit them to clock in
21 before thirty minutes. Plaintiff was frequently compelled to cut his rest breaks and meal periods
22 short to assist with an influx of customers. Accordingly, Plaintiff would attempt to clock back in
23 on the electronic time clock so timekeeping would reflect that he had resumed working.
24 However, Defendants' timekeeping system did not permit Employees to clock in from a meal
25 period before thirty minutes and if they attempted to do so, the screen indicated that it was not
26 time to clock in yet.

27 13. Accordingly, Defendants' timekeeping system was programmed to ensure that
28 meal periods were always recorded for thirty minutes, even when Employees did not receive

1 them for that length of time. When this happened, Plaintiff would not be able to clock back in at
2 all and would rely on his managers to adjust his time entry. On information and belief, when the
3 managers did so, they would enter a rounded, thirty-minute meal entry, despite Plaintiff taking a
4 shorter meal period. Defendants' timekeeping policies and practices regarding meal periods
5 caused the inaccurate recording of Employees' meal periods which further resulted in unpaid off
6 the clock work.

7 14. Defendants followed similar unlawful practices, upon information and belief, in
8 connection with other Employees to maintain the appearance of compliant meal periods and
9 avoid the payment of meal premiums. Defendants' timekeeping policies were also created in a
10 concerted effort to limit and restrict regular and overtime hours earned by and owing to Plaintiff
11 and the other Class members. Time worked off the clock also caused Plaintiff and other Class
12 members to work beyond eight hours in a shift. As a result of the above-described off the clock
13 work, Defendants failed to pay Plaintiff and Class members overtime for several minutes at the
14 end of work shifts which Defendants did not record in any timekeeping or payroll records.

15 15. Plaintiff was therefore not paid for all his hours worked at the required minimum,
16 overtime, and double time wage rates due to Defendants' policy and practice of requiring him to
17 work off the clock and without pay. With work shifts occasionally scheduled for eight hours or
18 more, this unpaid off the clock work resulted in Plaintiff and the Class members working past
19 eight hours on a shift, which required that they be paid at the correct overtime rate of 1.5 times
20 their regular rate. Defendants thus systematically underpaid Plaintiff and the Class members by
21 failing to pay them at the required overtime rates for all hours over eight in a work shift or over
22 forty in a work week, and all hours over twelve in a day at the required double time rate. Upon
23 information and belief, the Class members were bound by similar scheduling and work policies
24 which Defendants required them to follow and endured similar violations at Defendants' hands as
25 Plaintiff.

26 16. Defendants also failed to pay reporting time pay to Plaintiff and Class members.
27 On several occasions, Plaintiff was called in to work to cover for an absent employee, only to be
28 sent home shortly after arriving because the employee had also shown up. Defendants failed to

1 pay Plaintiff for half of his usual or scheduled day's work at the appropriate rates. Upon
2 information and belief, the Class members endured similar violations at Defendants' hands as
3 Plaintiff.

4 17. Moreover, Defendants paid Plaintiff and the similarly situated Class members
5 non-discretionary bonuses during their pay periods. On information and belief, if and when
6 Defendants paid overtime premium wages or sick pay, they did so at a rate of 1.5 times Plaintiffs'
7 regular rate of pay without including these additional forms of remuneration Defendants paid in
8 the regular rate used to calculate and pay overtime. Upon information and belief, to the extent
9 Defendants paid any other bonuses or shift differentials or other forms of remuneration for hours
10 worked in a pay period, Defendants also failed to include that in the regular rate of pay used to
11 calculate and pay overtime wages and sick pay.

12 18. Defendants have either failed to maintain timekeeping records for Plaintiff that
13 would permit Plaintiff to discover the nature and extent of the off the clock work Defendants'
14 required and the actual hours Plaintiff worked, or have otherwise declined to produce them to
15 Plaintiff in response to a timely and lawful request. By failing to pay for all hours worked,
16 Defendants have committed knowing and intentional ongoing violations of the record keeping
17 requirements under the Labor Code §§ 226 and 1174.

18 19. As a result of the above-described unlawful requirements to work off the clock,
19 the failure to accurately record all hours worked and the other wage violations they endured at
20 Defendants' hands, Plaintiff and the Class members were not properly paid all wages earned and
21 all wages owed to them by Defendants, including when working more than eight hours in any
22 given day and/or more than forty hours in any given week. As a result of Defendants' unlawful
23 policies and practices, Plaintiff and Class members incurred overtime hours worked for which
24 they were not adequately and completely compensated, in addition to the hours they were
25 required to work off the clock at their regular rates.

26 20. The failure to pay for all hours worked and underpayment of wages to Plaintiff
27 and the Class members is and has been a direct consequence of Defendants' unlawful
28 compensation policies and practices, which upon information and belief applied uniformly to the

1 Class members working at Defendants' locations and facilities. As a result of the above-described
2 requirements to work off the clock, the failure to accurately record all hours worked and pay
3 wages at the correct rates, the failure to compensate employees for time under Defendants'
4 control and the other wage violations they endured at Defendants' hands, Plaintiff and the Class
5 members were not paid all wages earned by and owed to them by Defendants, including when
6 working more than eight hours in any given day and/or more than forty hours in any given week.

7 21. Therefore, from at least four years prior to the filing of this lawsuit and continuing
8 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
9 hours worked and failing to pay minimum wages for all time worked, as required by California
10 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
11 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation
12 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a
13 week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of
14 Labor Code § 510 and the corresponding sections of IWC Wage Orders. To the extent Defendants
15 paid Plaintiff and the Class members bonuses and shift differentials and other forms of
16 remuneration above and beyond their hourly pay, upon information and belief Defendants
17 miscalculated and therefore underpaid any overtime they paid during these pay periods by failing
18 to include all forms of remuneration in the regular rate used to calculate and pay overtime.

19 22. Defendants also failed to provide Plaintiff and the Class members with their
20 required meal periods and the at least two ten-minute rest breaks required for scheduled shifts of
21 eight hours. Demanding workloads contributed to Defendants' common policy of failing to
22 provide lawful meal periods to Plaintiff and the Class members, as required under the Labor Code
23 and Paragraph 11 of the IWC Wage Order(s). Defendants similarly systematically failed to
24 authorize and permit Plaintiff and the employee Class Members to take all required 10-minute
25 rest breaks, as required under the Labor Code and Paragraph 12 of the IWC Wage Order(s).

26 23. More specifically, Plaintiff worked shifts that entitled him to at least one meal
27 period, but Defendants' managers required Plaintiff and the Class members to prioritize work
28 over taking lawful meal periods. As noted above, Defendants' timekeeping system and delays

1 with clocking back in after meal periods also caused the inaccurate recording of meal periods.
2 Constant work demands led to systematically late meal periods, and on-duty meal periods that
3 were incessantly interrupted by customer and management demands and required job duties and
4 tasks. The heavy workload and management expectations also contributed to Employees working
5 through meal periods or not taking them or taking them late so work could be accomplished or
6 they were otherwise required to remain under Defendants' control during meal periods.

7 24. Therefore, meal period violations systematically occurred throughout all of
8 Plaintiff's work shifts where Defendants failed to provide both a lawful meal period and meal
9 premium payment. To the extent Defendants ever did pay Plaintiff a meal period premium, they
10 failed to include all forms of remuneration beyond hourly wages in the regular hourly rate used to
11 pay the one-hour premium payment. Upon information and belief, the other Class members were
12 subjected to similar unlawful policies and practices and endured similar violations as Plaintiff.

13 25. Defendants thus failed to provide all the legally required unpaid, off-duty meal
14 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
15 members, as required by the applicable Wage Order and Labor Code. Plaintiff and other Class
16 members were required to perform work as ordered by Defendants or otherwise remain under
17 Defendants' control for more than five hours during a shift, or ten hours in a shift, but were often
18 required to do so without receiving a lawful, timely, and duty-free 30-minute meal breaks.
19 Additionally, as addressed above, Defendants followed a practice of requiring off the clock work,
20 in a manner that would impact when Employees were to receive meal periods and rest breaks,
21 thus leading to further violations.

22 26. As a result, Defendants' failure to provide Plaintiff and the Class members with all
23 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
24 periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants also
25 failed to pay Employees "premium pay," i.e. one hour of wages at each Employee's effective
26 hourly rate of pay, for each meal period or rest break that Defendants failed to provide or
27 deficiently provided. Upon information and belief, if and when Defendants did pay any meal
28 period premiums, they failed to include all forms of remuneration in the regular rate used to

1 calculate and pay it.

2 27. Therefore, for at least four years prior to the filing of this action and through to the
3 present, Plaintiff and the Class members were unable to take off-duty breaks or were otherwise not
4 provided with the opportunity to take required meal breaks due to Defendants' policies and
5 practices. On the occasions when Plaintiff and the Class members were provided with a meal
6 period, it was often untimely or interrupted, or was impermissibly shortened, and Employees were
7 not provided with one hour's wages in lieu thereof. Meal period violations thus occurred in one or
8 more of the following manners:

- 9 (a) Class members were not provided full thirty-minute duty free meal periods
10 for work days in excess of five hours and were not compensated one hour's
11 wages in lieu thereof, all in violation of, among others, Labor Code §§
12 226.7, 512, and the applicable Industrial Welfare Commission Wage
13 Order(s);
- 14 (b) Class members were not provided second full thirty-minute duty free meal
15 periods for work days in excess of ten hours;
- 16 (c) Class members were required to work through at least part of their daily
17 meal period(s);
- 18 (d) Meal periods were provided after five hours of continuous work during a
19 shift; and
- 20 (e) Class members were restricted in their ability to take a full thirty-minute
21 meal period and were not permitted to leave their work premises during
22 meal periods and were otherwise required to remain under Defendants'
23 control during meal periods.

24 28. Defendants also failed to authorize and permit Plaintiff and the Class members to
25 take duty-free, net ten minute rest breaks for every four hours of shift work, or major fraction
26 thereof. There were similar issues with the required net ten-minute rest breaks that Plaintiff and
27 the Class members were unable to take as with meal periods. Employees were required to
28 prioritize work over their rest breaks and Employees were expected to delay, shorten, or forego

1 their rest breaks if the restaurant became busy. Defendants made no efforts or provided no
2 emphasis on authorizing and permitting Employees to take net ten-minute rest breaks for every
3 four hours of work.

4 29. Given the constant and ongoing job demands he faced and Defendants' failure to
5 adequately staff its facilities to permit employees to take breaks, Plaintiff was compelled to
6 remain on the premises performing job-related duties while also remaining under Defendants'
7 control during times when he was supposed to be enjoying a duty-free rest break. By uniformly
8 requiring Plaintiff and the other similarly situated co-workers to remain under Defendants'
9 control and on premises during rest breaks, Defendants committed systematic and ongoing rest
10 break violations. To the extent Defendants paid any rest break premium payments under Labor
11 Code § 226.7 to Plaintiff or Class members these payments failed to include all forms of
12 remuneration, including shift differentials and bonuses and premium payments to Plaintiff, in the
13 regular hourly rate at which they paid the rest break premiums.

14 30. Defendants' management did not emphasize the requirement to provide at least
15 one ten-minute duty-free rest period for each four-hour duty period, or major fraction thereof. If
16 and when Plaintiff was permitted to take a ten-minute rest break on a shift, he was not permitted
17 to take a second one or a third one or any breaks were untimely or impermissibly shortened.
18 Further violations occurred as Plaintiff and the Class members were required to remain under
19 Defendants' control by Defendants' requirement that they remain ready to respond to work
20 requirements and job demands.

21 31. Therefore, Defendants failed to authorize and permit Class members to take all
22 their required rest breaks. Plaintiff and the other similarly situated Class members were either not
23 authorized permitted the opportunity to take a rest break, or were required to remain under
24 Defendants' control and respond to instructions and job demands. Defendants also failed to
25 authorize and permit Employees to leave the property premises during rest breaks, or else
26 prevented them from doing so, thus further evidencing Defendants' policy and practice of
27 requiring Plaintiff and the Class members to remain under their control during required off-duty
28 rest breaks.

1 32. Defendants' policies and practices thus systematically deny and denied Plaintiff
2 and the Class members full, duty-free ten-minute rest periods and thirty-minute, duty-free meal
3 periods. The California Supreme Court has instructed that the rest period requirement obligates
4 employers to permit and authorize employees to take-off-duty rest periods. That is, during rest
5 periods employers must relieve employees of all duties and relinquish control over how
6 employees spend their time. Plaintiff and the Class members were and are under Defendants'
7 control when they are working through rest breaks, and Defendants failed to schedule or account
8 for required first, second, and third rest breaks during the shifts Plaintiff and the Class members
9 generally worked.

10 33. Plaintiff and the Employees in the Class were not authorized and permitted to take
11 lawful rest periods, were systematically required by Defendants to work through or during breaks,
12 and were not provided with one hour's wages in lieu thereof. They were required to remain on
13 duty during breaks or portions of their breaks, thus making them either untimely or shortened and
14 on-duty, and they were also prevented from leaving the premises during rest breaks under
15 Defendants' policies and practices. Rest period violations therefore arose in one or more of the
16 following manners:

- 17 (a) Class members were required to work without being provided a minimum
18 ten minute rest period for every four hours or major fraction thereof worked
19 and were not compensated one hour of pay at their regular rate of
20 compensation for each workday that a rest period was not provided, and to
21 the extent Defendants paid any premiums, they failed to include all forms of
22 remuneration in the regular rate used to calculate and pay them.
- 23 (b) Class members were not authorized and permitted to take timely rest periods
24 for every four hours worked, or major fraction thereof; and
- 25 (c) Class members were required to remain on duty and under Defendants'
26 control during rest periods or otherwise had their rest periods interrupted by
27 work demands.

28 34. From at least four years prior to the filing of this lawsuit and continuing to the

1 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
2 deducting the Employees' earned wages, including by requiring off the clock work during breaks
3 and before and after work shifts and by miscalculating the regular rate and underpaying overtime
4 wages and meal and rest break premiums. By not compensating Employees for all hours worked
5 and under Defendants' control at the correct rates, Defendants unlawfully deducted wages earned
6 by and owed to Plaintiff and the Class members, in violation of Labor Code § 221.

7 35. Defendants also violated California Labor Code § 246 by not providing all
8 required paid sick days to Plaintiff and the similarly aggrieved Employees. Labor Code § 246
9 provides that an Employee who "works in California for the same employer for 30 or more days
10 within a year from the commencement of employment is entitled to paid sick days as specified in
11 this section." Paid sick time for nonexempt employees shall be calculated in the same manner as
12 the regular pay rate for the workweek in which the employee uses the paid sick time. Defendants
13 failed to provide Plaintiff and the other similarly Aggrieved Employees with all their required and
14 earned sick days paid at the correct rate of pay, in violation of Labor Code § 246. Additionally
15 and upon information and belief, Defendants have failed to provide COVID-19 supplemental sick
16 leave to the Class members during the relevant time period, including by failing to provide two
17 work weeks of COVID-19 supplemental paid sick leave paid at the correct rates as required under
18 Labor Code §§ 248.1 and 248.2 and including damages and penalties as these sections are
19 enforced through Labor Code § 248.5, which requires that: "If paid sick days were unlawfully
20 withheld, the dollar amount of paid sick days withheld from the employee multiplied by three, or
21 two hundred fifty dollars (\$250), whichever amount is greater, but not to exceed an aggregate
22 penalty of four thousand dollars (\$4,000), shall be included in the administrative penalty."
23 Plaintiff accordingly seek this relief available for Defendants' failure to provide Employees with
24 all their required and earned sick days and all their COVID-19 supplemental sick leave in
25 violation of Labor Code §§ 246, 248.1, 248.2, and the civil and statutory penalties available and
26 applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and
27 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

28 36. Upon information and belief, Defendants also failed to provide Employees such as

1 Plaintiff at the time of his employment and thereafter with written notice complying with all the
2 requirements of Labor Code § 2810.5, which provides that: “At the time of hiring, an employer
3 shall provide to each employee a written notice, in the language the employer normally uses to
4 communicate employment-related information to the employee, containing” specifically required
5 information. Upon information and belief, Defendants failed to provide this information to the
6 Class Members as required under Labor Code § 2810.5. Defendants were required to provide
7 Plaintiff and the Class members certain specific information upon hiring pursuant to California
8 Labor Code § 2810.5. Defendants failed to provide Plaintiff with all such information when he
9 was hired, or have failed to produce it, and upon information and belief, Defendants committed
10 similar violations in connection with similarly situated Class members.

11 37. As a result of these illegal policies and practices, Defendants also engaged in and
12 enforced the following additional unlawful practices and policies against Plaintiff and the Class
13 members he seeks to represent:

- 14 (a) failing to pay all wages owed to Class members who either were discharged,
15 laid off, or resigned in accordance with the requirements of Labor Code §§
16 201, 202, 203 and 227.3;
- 17 (b) failing to pay all wages owed to the Class members twice monthly in
18 accordance with the requirements of Labor Code § 204;
- 19 (c) failing to pay Class members all wages owed, including all meal and rest
20 period premium wages, and failing to pay them at the regular rate of
21 compensation;
- 22 (d) failing to maintain accurate records of Class members’ hours worked and
23 earned wages and meal periods in violation of Labor Code §§ 226 and
24 1174(d) and section 7 of the applicable IWC Wage Orders; and
- 25 (e) failing to produce timekeeping records in response to Plaintiff’s timely and
26 lawful request to receive them under these authorities.

27 38. Defendants have also consistently failed to provide Class members with timely,
28 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws,

1 including by the above-described requirement of off the clock work, failure to pay all overtime
2 and double time wages owed and failure to pay them at the appropriate premium rates, and failure
3 to pay premium wages for unprovided or otherwise unlawful meal and rest breaks, or by
4 miscalculating any overtime or meal period or rest break premium wages and by the systematic
5 and unlawful deductions Defendants took from Employee wages. Defendants have also made it
6 difficult to account with precision for the unlawfully withheld wages and meal and rest period
7 compensation owed to Plaintiff and the Class, during the liability period, including because they
8 did not calculate the regular rate of pay correctly when paying overtime or meal period premiums
9 and because they did not implement and preserve a record-keeping method as required for non-
10 exempt employees by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable
11 California Wage Orders. Upon information and belief, time clock punches were not maintained or
12 were not accurately maintained for work shifts and meal periods. Defendants also failed to
13 accurately record and pay for all regular and overtime hours worked and submitted by Plaintiff
14 and the Class members, including by failing to pay all overtime hours at the correctly calculated
15 overtime premium rate.

16 39. Defendants also provided Plaintiff and the Class members with wage statements
17 that failed to accurately report all hours worked and applicable hourly rates for all hours worked.
18 For the same reasons as explained above, Plaintiff and the Class members were provided with
19 unlawful wage statements that failed to reflect all hours worked and failed to pay for all overtime
20 hours or failed to pay overtime wages at the correct overtime premium rate, and Defendants
21 miscalculated meal and rest break premiums, and sick time if and when they did pay them.
22 Defendants followed this unlawful policy and practice even though both Plaintiff and Defendants
23 were aware that Plaintiff and the Class members worked more total hours than were reflected on
24 the wage statements, including overtime hours, and were underpaid by regular rate miscalculation.
25 Plaintiff and the Employees in the Class were unable to discern from their wage statements alone
26 the actual hours they worked in total during a pay period and the rates they were paid for those
27 hours worked.

28 40. Defendants have thus also failed to comply with Labor Code § 226(a) by

1 inaccurately reporting or failing to record the total hours worked and total wages earned by
2 Plaintiff and the Class members, along with the appropriate applicable rates, among others
3 requirements. Plaintiff and Class members are therefore entitled to penalties not to exceed
4 \$4,000.00 for each employee pursuant to Labor Code § 226(b). Defendants have also failed to
5 comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain
6 time records showing when the employee begins and ends each work period, meal periods, and
7 wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage
8 statements all deductions from payment of wages and accurately reporting total hours worked.

9 41. Defendants also required Plaintiff and the Class members to work hours off the
10 clock for which they were not compensated. They were also required to endure off the clock work
11 addressed above during interrupted or otherwise on-duty meal and rest periods and were not
12 provided with sick pay and supplemental sick leave and were subjected to systematic off the clock
13 work. Defendants also failed to pay all overtime premium wages owed for work conducted on a
14 work shift and a workday or failed to pay it at the correct rate, as addressed above. Therefore,
15 Defendants have also followed a uniform and consistent policy of failing to pay all wages owed to
16 Plaintiff and other similarly situated Employees at the time of their termination or within seventy-
17 two hours of their resignation, as required by California wage-and-hour laws, including under
18 Labor Code § 203.

19 42. From at least four years prior to the filing of this lawsuit and continuing to the
20 present, Defendants have regularly required Plaintiff and the Class members to incur necessary
21 business expenses in the course of performing their required job duties without reimbursement.
22 These included the cell phone-related expenses Plaintiff incurred in responding to work related
23 communications from management personnel on his personal phone. Plaintiff and the Class
24 members must be reimbursed for these necessary business expenses under Labor Code § 2802,
25 and Defendants systematically failed to do so.

26 43. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
27 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.4,
28 226.7, 227.3, 246, 248.1, 248.2, 248.5, 351, 354, 510, 511, 512, 558, 558.1, 1174, 1174.5,

1 1182.12, 1185, 1194, 1194.2 1197, 1198, 1198.5, 1199, 2802, 2810.5, and 2698 *et seq.*, and
2 California Code of Regulations, Title 8, section 11000 *et seq.*

3 44. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff
4 and the Class members seek injunctive relief, restitution, and disgorgement of all benefits
5 Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or
6 fraudulent practices alleged in this Complaint.

7 **CLASS ALLEGATIONS**

8 45. Plaintiff brings this class action on behalf of himself and all others similarly
9 situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the
10 Class” or “Class members”) defined as follows: “All individuals employed by Defendants at any
11 time during the period of four (4) years prior to the filing of this lawsuit and ending on a date as
12 determined by the Court (“the Class Period”), and who have been employed as non-exempt,
13 hourly employees within the State of California.” This includes all hourly food and beverage
14 service employees and those in similar and related positions. Further, Plaintiff seeks to represent
15 the Subclasses composed of and defined as follows:

16 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
17 compensated for all hours worked for Defendants at the applicable minimum wage.

18 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
19 compensated for all hours worked for Defendants at the required rates of pay, including for all
20 hours worked in excess of eight in a day and/or forty in a week.

21 c. Subclass 3. Meal Period Subclass. All Class members who were subject to
22 Defendants’ policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-
23 free meal periods or one hour of pay at the Employee’s regular rate of pay in lieu thereof.

24 d. Subclass 4. Rest Break Subclass. All Class members who were subject to
25 Defendants’ policy and/or practice of failing to authorize and permit Employees to take
26 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
27 thereof, and failing to pay one hour of pay at the Employee’s regular rate of pay in lieu thereof.

28 e. Subclass 5. Reporting Time Pay Subclass: All Class members who were not

1 compensated reporting time pay

2 f. Subclass 6. Wage Statement Subclass. All Class members who, within the
3 applicable limitations period, were not provided with accurate itemized wage statements.

4 g. Subclass 7. Unauthorized Deductions from Wages Subclass. All Class members
5 who were subject to Defendants' policy and/or practice of deducting wages earned from their pay,
6 including by requiring off the clock work.

7 h. Subclass 8. Failure to Timely Pay Wages Twice Monthly Subclass. All Class
8 members who were subject to Defendants' policy and practice of not timely paying all wages
9 earned when they were due and payable at least twice monthly.

10 i. Subclass 9. Termination Pay Subclass. All Class members who, within the
11 applicable limitations period, either voluntarily or involuntarily separated from their employment
12 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
13 termination.

14 j. Subclass 10. Payroll Records Subclass. All Class members who were subject to
15 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
16 by California wage-and-hour laws.

17 k. Subclass 11. Expense Reimbursement Subclass. All Class members who incurred
18 necessary and reasonable expenses in connection with performing their job duties for Defendants
19 and who were subject to a policy and/or practice under which such expenses were not reimbursed.

20 l. Subclass 12. UCL Subclass. All Class members who are owed restitution as a
21 result of Defendants' business acts and practices, to the extent such acts and practices are found to
22 be unlawful, deceptive, and/or unfair.

23 46. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
24 modify the class description with greater particularity or to provide further division into subclasses
25 or limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class
26 against Defendants, the Class Period should be adjusted accordingly.

27 47. Defendants, as a matter of company policy, practice and procedure, and in violation
28 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements,

1 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged
2 in a practice whereby Defendants failed to correctly calculate and pay compensation for the time
3 worked by Plaintiff and the other members of the Class, even though Defendants enjoyed the
4 benefit of this work, required Employees to perform this work and permitted or suffered to permit
5 this work. Defendants have uniformly denied these Class members wages to which these
6 employees are entitled, and failed to provide meal periods or authorize and permit rest periods, in
7 order to unfairly cheat the competition and unlawfully profit.

8 48. This action has been brought and may properly be maintained as a class action
9 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
10 of interest in this litigation and the proposed Class is easily ascertainable from the employment
11 records for Employees that Defendants are required to maintain under California law.

12 **A. Numerosity**

13 49. The potential members of the Class as defined are so numerous that joinder of all
14 the Class members is impracticable. While the precise number of Class member has not been
15 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
16 time period relevant to this lawsuit employed, at least over one hundred Employees who satisfy
17 the Class definition within the State of California. Plaintiff alleges that Defendants' employment
18 records will provide information as to the number and location of all Class members.

19 **B. Commonality**

20 50. There are questions of law and fact common to the Class that predominate over any
21 questions affecting only individual Class members. The common questions are numerous and
22 substantial and flow from Defendants' uniform policies and/or practices of violating the California
23 Labor Code addressed above. As such, these common questions predominate over individual
24 questions concerning each individual Class Member's showing as to his or her eligibility for
25 recovery or as to the amount of damages. These common questions of law and fact include:

- 26 a. Whether Defendants failed to pay Employees minimum wages;
- 27 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 28 c. Whether Defendants failed to pay Employees overtime as required under Labor

Code § 510;

- d. Whether Defendants paid reporting time pay under the applicable wage order and CCR § 11050(5);
- e. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Employees with requisite meal periods or premium pay in lieu thereof;
- f. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders, by failing to authorize and permit Employees to take requisite rest breaks or provide premium pay in lieu thereof;
- g. Whether Defendants violated Labor Code § 226(a) by providing Employees with inaccurate wage statements and wage statements that omitted many of the Section 226(a) requirements.
- h. Whether Defendants violated Labor Code § 221;
- i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- j. Whether Defendants' conduct was willful;
- k. Whether Defendants violated Labor Code § 226 and § 1174 and §1198 and the IWC Wage Orders by failing to maintain accurate records of Class members' earned wages and work periods;
- l. Whether Defendants violated Labor Code § 1194 by failing to compensate all Employees during the relevant time period for all hours worked, whether regular or overtime;
- m. Whether Defendants violated Labor Code § 204 by failing to pay Employees all wages earned at least twice monthly;
- n. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary business expenses incurred by Employees;
- o. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not providing employees with all required sick days and COVID-19 supplemental sick

1 leave;

2 p. Whether Defendants violated Labor Code §§ 1174 and 1174.5;

3 q. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and

4 r. Whether Employees are entitled to equitable relief pursuant to Business and

5 Professions Code § 17200 *et seq.*

6 **C. Typicality**

7 51. The claims of the named Plaintiff are typical of those of the other Employees. The
8 Employee Class members all sustained injuries and damages arising out of and caused by
9 Defendants' common course of conduct and uniformly applied policies in violation of statutes, as
10 well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for
11 the off the clock work and meal and rest violations they were required to endure are typical of
12 those of the other Class members.

13 **D. Adequacy of Representation**

14 52. Plaintiff will fairly and adequately represent and protect the interest of the
15 Employee Class members. Counsel who represents Plaintiff and the Employees in the Class are
16 experienced and competent in litigating employment class actions.

17 **E. Superiority of Class Action**

18 53. A class action is superior to other available means for the fair and efficient
19 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
20 questions of law and fact common to all Employees predominate over any questions affecting only
21 individual Employees. Each Employee in the Class has been damaged and is entitled to recovery
22 by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

23 54. As to the issues raised in this case, a class action is superior to all other methods for
24 the fair and efficient adjudication of this controversy, as joinder of all Class members is
25 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class
26 members. Further, as the economic or other loss suffered by vast numbers of Class members may
27 be relatively small, the expense and burden of individual actions makes it difficult for the Class
28 members to individually redress the wrongs they have suffered. Moreover, in the event

1 disgorgement is ordered, a class action is the only mechanism that will permit the employment of
2 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
3 managing this case as a class action, and proceeding on a class-wide basis will permit Employees
4 to vindicate their rights for violations they endured which they would otherwise be foreclosed
5 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

6 55. Class action treatment will allow those persons similarly situated to litigate their
7 claims in the manner that is most efficient and economical for the parties and the judicial system.
8 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
9 Plaintiff contemplates the eventual issuance of notice to the proposed Class members that would
10 set forth the subject and nature of the instant action. The Defendants' own business records can be
11 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent
12 that any further notice is required additional media and/or mailings can be used.

13 56. Defendants, as prospective and actual employers of the Employees in the Class,
14 had a special fiduciary duty to disclose to prospective Class members the true facts surrounding
15 Defendants' pay practices, policies and working conditions imposed upon the similarly situated
16 Employees as well as the effect of any alleged arbitration agreements that may have been forced
17 upon them. In addition, Defendants knew they possessed special knowledge about pay practices
18 and policies, most notably intentionally refusing to pay for all hours actually worked which should
19 have been recorded in Defendants' pay records and the consequence of the alleged arbitration
20 agreements and policies and practices on the Employees and Class as a whole.

21 57. Plaintiff and the Employees in the Class did not discover the fact that they were
22 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there
23 any discussion about Plaintiff's and the Class members' waiver of their Constitutional rights of
24 trial by jury, to collectively organize and oppose unlawful pay practices under California law as
25 well as obtain injunctive relief preventing such practices from continuing. As a result, the
26 applicable statutes of limitation tolled until such time as Plaintiff and the Class members
27 discovered their claims.

28

FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(Against All Defendants)

58. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

59. Defendants failed to pay Employees minimum wages for all hours worked. Defendants had a consistent policy of failing to pay Employees for all hours worked. Employees would work hours and not receive wages, including as alleged above in connection with off the clock work, including all the time required to remain on duty and under Defendants' control during breaks and due to the work demands placed upon them by Defendants' management and patients and by paying what should have been overtime hours as regular hours. Defendants' uniformly applied policies required systematic off the clock work and underpayment of all wages owed to Employees over a period of time, while benefiting Defendants. During the relevant time period, Defendants thus regularly failed to pay minimum wages to Plaintiff and the Class members, including by requiring systematic off the clock work. To the extent any wage orders and local wage ordinances were also applicable to paying the employees an hourly rate above the minimum wage rate, Defendants failed to comply with the local wage ordinances. Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Class as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the other members of the Class as to minimum wage pay.

60. In California, employees must be paid at least the applicable state minimum wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Also, pursuant to California Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

61. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states: "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The

1 applicable minimum wage rate fixed by the commission for work during the relevant period is
2 found in the Wage Orders.

3 62. The minimum wage provisions of California Labor Code are enforceable by private
4 civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to
5 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
6 overtime compensation applicable to the employee is entitled to recover in a civil action the
7 unpaid balance of the full amount of this minimum wage or overtime compensation, including
8 interest thereon, reasonable attorney’s fees and costs of suit.”

9 63. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
10 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
11 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
12 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
13 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
14 the absence of a contractually agreed upon one.

15 64. In committing these violations of the California Labor Code, Defendants
16 inaccurately recorded, or required Plaintiff and the Class members to input times that did not
17 reflect their actual hours worked, or miscalculated hours or rates or otherwise underpaid the actual
18 time worked by Plaintiff and other members of the Class, including by requiring off the clock
19 work as addressed in detail above. Defendants acted in an illegal attempt to avoid the payment of
20 all earned wages, and other benefits in violation of the California Labor Code, the Industrial
21 Welfare Commission requirements and other applicable laws and regulations. As a result of these
22 violations, Defendants also failed to timely pay all wages earned in accordance with California
23 Labor Code § 1194.

24 65. California Labor Code § 1194.2 also provides for the following remedies: “In any
25 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
26 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
27 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

28 66. In addition to restitution for all unpaid wages, pursuant to California Labor Code §

1 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial
2 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
3 pay each employee minimum wages.

4 67. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are
5 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
6 interest thereon.

7 68. Defendants have the ability to pay minimum wages for all time worked and have
8 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
9 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

10 69. Plaintiff and the Class members are entitled to recover the unpaid minimum wages
11 (including double minimum wages) and local wage ordinance wages and liquidated damages in an
12 amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's
13 fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other
14 members of the Class further request recovery of all unpaid wages, according to proof, interest,
15 statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as
16 provided by the California Labor Code and/or other applicable statutes. To the extent minimum
17 wage compensation is determined to be owed to the Class members who have terminated their
18 employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore
19 these individuals are also be entitled to waiting time penalties under California Labor Code § 203,
20 which penalties are sought herein on behalf of these Class members. Defendants' failure to timely
21 pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code §
22 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as
23 alleged herein was willful, intentional, and not in good faith. Further, Plaintiff and other Class
24 members are entitled to seek and recover statutory costs.

25 **SECOND CAUSE OF ACTION**

26 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

27 **(Against All Defendants)**

28 70. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in

1 full herein.

2 71. California Labor Code § 1194 provides that “any employee receiving less than the
3 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
4 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
5 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” The action
6 may be maintained directly against the employer in an employee’s name without first filing a
7 claim with the Division of Labor Standards and Enforcement.

8 72. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
9 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the
10 Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular
11 hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40)
12 hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any
13 one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12)
14 hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of
15 work in a workweek.

16 73. Defendants had a consistent policy of not paying Employees wages for all hours
17 worked, including by requiring off the clock work as addressed above, by unlawful deductions, by
18 under-reporting actual hours worked, and by requiring Employees to do so as well. Defendants
19 have also failed to include all forms of remuneration in the regular rate of pay used to calculate
20 and pay overtime, and failed to begin paying overtime when it was incurred due to the off the
21 clock work, as detailed above.

22 74. Defendants thus had a consistent policy of not paying Employees wages for all
23 hours worked, including hours at their required regular, overtime, and double-time rates.
24 Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted
25 and/or modified certain employees’ hours, including Plaintiff’s, or required Plaintiff and the Class
26 members to do so, or otherwise caused them to work off the clock to avoid paying Plaintiff and the
27 Class members all earned and owed straight time and overtime wages and other benefits, in
28 violation of the California Labor Code, the California Code of Regulations and the IWC Wage

1 Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants
2 have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt
3 employees to work through meal periods or remain under Defendants' control when they were
4 required to be clocked out or to otherwise work off the clock to complete their daily job duties and
5 respond to demands from customers and managers.

6 75. Therefore, Employees were not properly compensated, nor were they paid overtime
7 rates for hours worked in excess of eight hours in a given day, and/or forty hours in a given week.
8 Based on information and belief, Defendants did not make available to Employees a reasonable
9 protocol for correcting time records when Employees worked overtime hours or to fix incorrect
10 time entries or those that Defendants unlawfully under-recorded to the Employee's detriment.
11 Defendants have also violated these provisions by requiring Plaintiff and other similarly situated
12 Class members to work through meal periods when they were required to be clocked out or to
13 otherwise work off the clock to complete their daily job duties.

14 76. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of
15 regular wages owed and overtime compensation for all hours worked, as required by California
16 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable
17 IWC Wage Order, and is therefore unlawful. Defendants also failed to correctly calculate the
18 regular rate used to calculate and pay overtime, and meal and rest premiums, as addressed above.

19 77. Additionally, Labor Code § 558(a) provides "any employer or other person acting
20 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
21 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
22 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
23 pay period for which the employee was underpaid in addition to an amount sufficient to recover
24 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
25 underpaid employee for each pay period for which the employee was underpaid in addition to an
26 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
27 be paid to the affected employee." Labor Code § 558(c) states, "the civil penalties provided for in
28 this section are in addition to any other civil or criminal penalty provided by law." Defendants

1 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
2 Wage Orders. Accordingly, Plaintiff and the Class members seek the remedies set forth in Labor
3 Code § 558.

4 78. Defendants' failure to pay compensation in a timely fashion also constituted a
5 violation of California Labor Code § 204, which requires that all wages shall be paid
6 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
7 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
8 and overtime compensation earned by Employees. Each such failure to make a timely payment of
9 compensation to Employees constitutes a separate violation of California Labor Code § 204.

10 79. Employees have been damaged by these violations of California Labor Code §§
11 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
12 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less
13 than \$100 for causing Employees "to work for longer hours than those fixed, or under conditions
14 of labor prohibited by an order of the commission" or if the employer pays "a wage less than the
15 minimum fixed by an order of the commission" or "violates...any provision of this chapter or
16 any order or ruling of the commission."

17 80. Consequently, pursuant to the California Labor Code, including Labor Code §§
18 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including
19 paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of
20 all their unpaid wages and overtime compensation for all their hours worked, with interest, plus
21 their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties
22 against Defendants, and each of them, and any additional sums as provided by the Labor Code
23 and/or other statutes.

24 **THIRD CAUSE OF ACTION**

25 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

26 **(Against All Defendants)**

27 81. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
28 full herein.

1 82. Employees regularly worked shifts greater than five (5) hours and in some
2 instances, greater than ten (10) hours. Pursuant to Labor Code § 512, and paragraph 11 of the
3 applicable IWC Wage Order, an employer may not employ someone for a shift of more than five
4 (5) hours without providing him or her with a meal period of not less than thirty (30) minutes or
5 for a shift of more than ten (10) hours without providing him or her with a second meal period of
6 not less than thirty (30) minutes.

7 83. Defendants failed to provide Employees with meal periods as required under the
8 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required
9 to work or to otherwise remain under Defendants' control during meal periods, or Defendants
10 provided them after Employees worked beyond the fifth hour of their shifts or Employees
11 otherwise had them shortened and interrupted by work demands and requirements to perform off
12 the clock work and remain under Defendants' control. Furthermore, upon information and belief,
13 on the occasions when Employees worked more than ten hours in a given shift, they did so
14 without receiving a second uninterrupted thirty-minute meal period as required by law.

15 84. Defendants thus failed to provide Plaintiff and the Class members with meal
16 periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,
17 including by not providing them with the opportunity to take meal breaks, by providing them late
18 or for less than thirty minutes, or by requiring them to perform work during breaks.

19 85. Moreover, Defendants failed to compensate Employees for each meal period not
20 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
21 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
22 employee a meal period in accordance with this section, the employer shall pay the employee one
23 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
24 period is not provided. As detailed above, when Defendants paid any meal period premiums, they
25 upon information and belief underpaid them by miscalculating the regular rate of compensation by
26 not including all forms of remuneration in it. Defendants thus failed to compensate the Employees
27 in the Class for each meal period not provided or inadequately provided, as required under Labor
28 Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order.

86. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and other statutes and applicable IWC Wage Order paragraphs.

FOURTH CAUSE OF ACTION

REST BREAK LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

87. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

88. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders provide that employers must authorize and permit all employees to take rest periods at the rate of ten minutes net rest time per four (4) work hours.

89. Employees consistently worked consecutive four hour shifts and were generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for each consecutive four hour shift, and Defendants failed to provide Employees with timely rest breaks of not less than ten minutes for each consecutive four hour shift. Defendants made no effort to authorize and permit Plaintiff and the Class members to take lawful rest breaks. Employees were often required to work or to otherwise remain under Defendants' control during rest periods, including by responding to work requirements, and had breaks provided untimely as a result of the above described off the clock work.

90. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Orders provide that if an employer fails to provide an employee rest period in accordance with this section, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided. Defendants failed to do so.

91. Defendants, and each of them, have therefore intentionally and improperly denied rest periods to Plaintiff and the Class members in violation of Labor Code §§ 226.7 and 512 and paragraph 12 of the applicable IWC Wage Orders.

92. Defendants failed to authorize and permit Plaintiff and the Class members to take rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Orders. To the extent Defendants paid any rest break premiums, they upon information and belief, underpaid them by miscalculating the regular rate of compensation by not including all forms of remuneration in it. Defendants thus failed to compensate the Employees in the Class for each rest period not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order.

93. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one hour of wages at their effective hourly rates of pay for each day worked without the required rest breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

FIFTH CAUSE OF ACTION

FAILURE TO PAY REPORTING TIME PAY - WAGE ORDER 5-2001, 8 CCR § 11050(5)

(Against All Defendants)

94. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

95. Wage Order 5-2001 provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” Cal. Code Regs., tit. 8, § 11050(5)(A).

1 96. As set forth herein, Employees were required to report for work and were sent
2 home before half of their scheduled days' work. Defendants failed to pay Plaintiff and Employees
3 for half of their scheduled days' work in violation of the applicable Wage Order.

4 97. As a direct and proximate results of Defendants' actions as set forth herein, Plaintiffs
5 and the Class members have been damaged in that Plaintiffs and the Class members have not been
6 paid all required reporting time pay.

7 98. Consequently, pursuant to the California Labor Code, including Labor Code §§
8 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including
9 paragraphs 5(A-D), Defendants are liable to Employees for the full amount of all their unpaid
10 wages, including reporting time pay, with interest, plus their reasonable attorneys' fees and costs,
11 as well as the assessment of any statutory penalties against Defendants, and each of them, and
12 any additional sums as provided by the Labor Code and/or other statutes.

13 **SIXTH CAUSE OF ACTION**
14 **VIOLATION OF LABOR CODE § 226(a)**
15 **(Against All Defendants)**

16 99. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
17 full herein.

18 100. California Labor Code § 226(a) requires an employer to furnish each of his or her
19 employees with an accurate, itemized statement in writing showing the gross and net earnings,
20 total hours worked, and the corresponding number of hours worked at each hourly rate; these
21 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
22 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
23 statements may be given to the employee separately from the payment of wages; in either case the
24 employer must give the employee these statements twice a month or each time wages are paid.

25 101. Defendants failed to provide Plaintiff and the similarly situated Employee Class
26 members with accurate itemized wage statements in writing, as required by the Labor Code and
27 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements issued to
28 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,

1 including for all overtime and double time hours worked and for deficient meal periods and rest
2 breaks, all of which Defendants knew or reasonably should have known were owed to the
3 Employees, as alleged above.

4 102. Throughout the liability period, Defendants intentionally failed to furnish to
5 Plaintiff and the Class members, upon each payment of wages, itemized statements accurately
6 showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-
7 rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net
8 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
9 the employee and only the last four digits of his or her social security number or an employee
10 identification number other than a social security number, (8) the name and address of the legal
11 entity that is the employer and (9) all applicable hourly rates in effect during the pay period and
12 the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor
13 Code § 226 and paragraph 7 of the applicable IWC Wage Orders, amongst other statutory
14 requirements. Defendants knowingly and intentionally failed to provide Plaintiff and the Class
15 members with such timely and accurate wage and hour statements.

16 103. Plaintiff and the Class members suffered injury as a result of Defendants' knowing
17 and intentional failure to provide them with the wage and hour statements as required by law and
18 are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the
19 Defendants have failed to provide an accurate wage statement, failed to provide accurate and
20 complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9),
21 inclusive, and the Plaintiff and Class members cannot promptly and easily determine from the
22 wage statement alone one or more of the following: (i) The amount of the gross wages or net
23 wages paid to the employee during the pay period or any of the other information required to be
24 provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of
25 subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net
26 wages paid to the employee during the pay period, (iii) The name and address of the employer
27 and, (iv) The name of the employee and only the last four digits of his or her social security
28 number or an employee identification number other than a social security number. For purposes

1 of Labor Code § 226(e) “promptly and easily determine” means a reasonable person [i.e. an
2 objective standard] would be able to readily ascertain the information without reference to other
3 documents or information.

4 104. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
5 are required “to pay each employee, on the established payday for the period involved, not less
6 than the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor
7 Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order
8 or under conditions of labor prohibited by the order is unlawful.” Plaintiff and the Class members
9 may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph
10 4(B) and paragraph 20 of the applicable IWC Wage Orders.

11 105. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
12 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
13 Class suffered injuries, including among other things confusion over whether they received all
14 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
15 them to make mathematical computations to analyze whether the wages paid in fact compensated
16 them correctly for all hours worked.

17 106. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable
18 IWC Wage Order, Plaintiff and the Employee Class members are entitled to recover the greater of
19 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
20 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
21 aggregate penalty of four thousand dollars (\$4,000) under Section 226(e). They are also entitled to
22 an award of costs and reasonable attorneys’ fees.

23 **SEVENTH CAUSE OF ACTION**

24 **VIOLATION OF LABOR CODE § 221**

25 **(Against All Defendants)**

26 107. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
27 full herein.

28 108. Labor Code § 221 provides, “It shall be unlawful for any employer to collect or

1 receive from an employee any part of wages theretofore paid by said employer to said employee.”
2 Pursuant to California Labor Code § 204, other applicable laws and regulations, and public policy,
3 an employer must timely pay its employees for all hours worked. Defendants failed to do so.

4 109. Defendants unlawfully received and/or collected wages from the Employees in the
5 Class by requiring off the clock work, by miscalculating overtime, and by not paying one hour of
6 pay at the regular rate of compensation for every meal and rest period violation endured by
7 Plaintiff and the other Class members, as alleged above. By not compensating Employees for all
8 hours worked and meal and rest period premiums, Defendants unlawfully deducted wages earned
9 in violation of Labor Code § 221.

10 110. As a direct and proximate cause of the unauthorized deductions, Employees have
11 been damaged, in an amount to be determined at trial.

12 **EIGHTH CAUSE OF ACTION**
13 **VIOLATION OF LABOR CODE § 204**
14 **(Against All Defendants)**

15 111. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
16 full herein.

17 112. Labor Code § 204 instructs that: “All wages, ...earned by any person in any
18 employment are due and payable twice during each calendar month, on days designated in
19 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
20 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
21 during which the labor was performed, and labor performed between the 16th and the last day,
22 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
23 month.” Additionally, the requirements of this section shall be deemed satisfied by the payment
24 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
25 calendar days following the close of the payroll period.” As detailed above, Defendants
26 maintained a consistently applied policy and practice of not paying all wages earned between the
27 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
28 between the 16th and the last day of the month between the 1st and 10th day of the following month.

1 Defendants similarly failed to pay all wages earned by not more than seven calendar days
2 following the close of the payroll period.

3 113. All wages due and owing to Plaintiff and the Class members, including as required
4 under Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages
5 required by Labor Code § 1194 and other sections became due and payable to each employee in
6 each pay period that he or she was not provided with a meal period or rest period or paid straight
7 or overtime wages to which he or she was entitled.

8 114. Defendants violated Labor Code § 204 by systematically refusing to timely pay
9 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the
10 applicable IWC Wage Orders, employers are required “to pay each employee, on the established
11 payday for the period involved, not less than the applicable minimum wage for all hours worked in
12 the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer
13 hours than those fixed by the order or under conditions of labor prohibited by the order is
14 unlawful.” Plaintiff and the Class members may therefore pursue damages and penalties for
15 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
16 penalties under paragraph 20 of the applicable IWC Wage Orders.

17 115. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
18 represent have been deprived of wages in amounts to be determined at trial, and they are entitled
19 to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs,
20 pursuant to Labor Code § 204, 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
21 applicable IWC Wage Orders.

22 **NINTH CAUSE OF ACTION**
23 **VIOLATION OF LABOR CODE § 203**
24 **(Against All Defendants)**

25 116. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
26 full herein.

27 117. Plaintiff and numerous Class members are no longer employed by Defendants; they
28 either quit Defendants’ employ or were fired therefrom.

1 118. Defendants failed to pay these Employees all wages due and certain at the time of
2 termination or within seventy-two hours of resignation.

3 119. The wages withheld from these Employees by Defendants remained due and owing
4 for more than thirty days from the date of separation from employment. Additionally, Defendants
5 failed to pay Plaintiff his final check at the time of his separation from Defendants' employment.

6 120. Defendants thus failed to pay Plaintiff and the Class members without abatement,
7 all wages as defined by applicable California law. Among other things, these Employees were not
8 paid all regular and overtime wages, including by Defendants failing to pay for all hours worked
9 or requiring off the clock work or by unlawfully under-recording time entries to the detriment of
10 Employees, and Defendants failed to pay premium wages owed for unprovided meal periods and
11 rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the
12 required time was willful within the meaning of Labor Code § 203.

13 121. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
14 are required "to pay each employee, on the established payday for the period involved, not less
15 than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor
16 Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order
17 or under conditions of labor prohibited by the order is unlawful." Plaintiff and the Class members
18 may therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph
19 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
20 IWC Wage Orders. Additionally, under Labor Code § 1199(a)-(c), it is a misdemeanor and
21 Defendants are subject to a fine of not less than \$100 for causing Employees "to work for longer
22 hours than those fixed, or under conditions of labor prohibited by an order of the commission" or
23 if the employer pays "a wage less than the minimum fixed by an order of the commission" or
24 "violates...any provision of this chapter or any order or ruling of the commission."

25 122. Defendants' failure to pay wages, as alleged, entitles Plaintiff and these former
26 Employee Class members to penalties under Labor Code § 203 and the applicable paragraphs of
27 the IWC Wage Orders as addressed above, including the requirement that an employee's wages
28 shall continue until paid for up to thirty (30) days from the date they were due.

1 **TENTH CAUSE OF ACTION**

2 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS, LABOR CODE §§ 1174, 1174.5**

3 **(Against All Defendants)**

4 123. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
5 full herein.

6 124. California Labor Code § 1174 requires that all employers shall keep accurate time
7 and wage records for all employees. California Labor Code § 1174.5 further requires that any
8 employee suffering injury due to a willful violation of the aforementioned obligations may seek
9 damages, including civil penalties, from the employer.

10 125. During the course of Plaintiff's and Employees' employment, Defendants
11 consistently failed to maintain accurate time and wage records for Plaintiff and Class Members as
12 required by California Labor Code § 1174 by failing to pay them proper wages, overtime, and
13 premium pay as discussed above and failing to document and pay for actual hours worked.

14 126. Defendants are also required by the California Labor Code § 1198 and Wage
15 Orders to maintain a tracking system to accurately record the hours Employees worked.

16 127. Defendants have maintained a common unlawful policy and practice of failing to
17 accurately record all hours worked and all meal period start and end times.

18 128. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
19 knew wages to be due but failed to pay them.

20 129. Accordingly, Defendants are liable for civil penalties pursuant to the California
21 Labor Code including § 1174.5, for the three years prior to the filing of this Complaint.

22 **ELEVENTH CAUSE OF ACTION**

23 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES LABOR CODE § 2802**

24 **(Against All Defendants)**

25 130. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
26 full herein.

27 131. Plaintiff is informed and believes and based thereon alleges that throughout the
28 period applicable, Defendants required Plaintiff and the Class members to pay for necessary work

1 related expenses they incurred. These included the cell phone-related expenses Plaintiff incurred
2 in responding to work-related communications from management personnel on his personal
3 phone. Plaintiff and the Class members must be reimbursed for these necessary business expenses
4 under Labor Code § 2802 and Defendants systematically failed to do so.

5
6 132. Defendants thus followed a uniform policy and practice of failing to reimburse
7 Employees for these necessary work related expenses or losses incurred in direct discharge of their
8 job duties during employment with Defendants and at the direction of the Defendants pursuant to
9 Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

10 133. Defendants' knowing and willful failure to reimburse lawful necessary work related
11 expenses and losses to Plaintiff and the Class members resulted in damages because, among other
12 things, Defendants did not inform employees of their right to be reimbursed for those work related
13 expenses. As Defendants failed to inform and misled Plaintiff and the Class members with regard
14 to their rights, Plaintiff and the Class members were led to believe that incurring those lawful and
15 necessary expenses was an expected and essential function of their employment with Defendants
16 and that failure to incur those expenses would have adverse consequences on their employment.

17 134. Therefore, Plaintiff and the Class members are entitled to reimbursement for any
18 and all necessary work related expenses, as provided for in Labor Code § 2802(b) and paragraph 9
19 of the applicable IWC Wage Orders, incurred during the direct discharge of their duties while
20 employed by Defendants, as well as accrued interest on those expenses that were not reimbursed
21 from the date Plaintiff and the Class members incurred those expenses. Further, Plaintiff and the
22 Class members are entitled to costs and attorney's fees pursuant to Labor Code § 2802(c).

23 **TWELFTH CAUSE OF ACTION**

24 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

25 **(Against All Defendants)**

26 135. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth
27 in full herein. Plaintiff, on behalf of himself, the Employees in the Class, and the general public,
28 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of

1 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
2 harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting
3 the public interest within the meaning of Code of Civil Procedure § 1021.5.

4 136. Plaintiff is a “person” within the meaning of Business & Professions Code
5 § 17204, has suffered injury, and therefore has standing to bring this cause of action for
6 injunctive relief, restitution, and other appropriate equitable relief.

7 137. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
8 business practices. By the conduct alleged herein, Defendants’ practices were deceptive and
9 fraudulent in that Defendants’ policy and practice failed to provide the required amount of
10 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and
11 Class members for all hours worked, due to systematic business practices as alleged herein that
12 cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare
13 Commission requirements in violation of California Business and Professions Code §§ 17200, *et*
14 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California
15 Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

16 138. Wage-and-hour laws express fundamental public policies. Paying employees their
17 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental
18 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State
19 vigorously to enforce minimum labor standards, to ensure that employees are not required or
20 permitted to work under substandard and unlawful conditions, and to protect law-abiding
21 employers and their employees from competitors who lower costs to themselves by failing to
22 comply with minimum labor standards.

23 139. Defendants have violated statutes and public policies. Through the conduct alleged
24 in this Complaint Defendants have acted contrary to these public policies, have violated specific
25 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices
26 in violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived
27 Plaintiff, and all persons similarly situated, and all interested persons, of the rights, benefits, and
28 privileges guaranteed to all employees under the law.

1 140. Defendants' conduct, as alleged above, constitutes unfair competition in violation
2 of the Business & Professions Code § 17200 *et seq.*

3 141. Defendants, by engaging in the conduct herein alleged, by failing to pay wages
4 and overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise
5 of reasonable care should have known that their conduct was unlawful; therefore, their conduct
6 violates the Business & Professions Code § 17200 *et seq.*

7 142. By the conduct alleged herein, Defendants have engaged and continue to engage in
8 a business practice which violates California and federal law, including but not limited to, the
9 applicable Industrial Wage Order(s), the California Code of Regulations, and the California
10 Labor Code including Sections 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 for which this
11 Court should issue declaratory and other equitable relief pursuant to California Business &
12 Professions Code § 17203 as may be necessary to prevent and remedy the conduct held to
13 constitute unfair competition, including restitution of wages wrongfully withheld.

14 143. As a proximate result of the above-mentioned acts of Defendants, Employees have
15 been damaged, in a sum to be proven at trial.

16 144. Unless restrained by this Court Defendants will continue to engage in such
17 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court
18 should make such orders or judgments, including the appointment of a receiver, as may be
19 necessary to prevent the use by Defendants or their agents or employees of any unlawful or
20 deceptive practice prohibited by the Business & Professions Code, including but not limited to
21 the disgorgement of such profits as may be necessary to restore Employees to the money
22 Defendants have unlawfully failed to pay.

23 **THIRTEENTH CAUSE OF ACTION**

24 **PENALTIES PURSUANT TO LABOR CODE § 2698, *ET SEQ.***

25 **(Against All Defendants)**

26 145. Plaintiff realleges and incorporate all preceding paragraphs, as though set forth in
27 full herein.

28 146. Plaintiff and the Employees in the Class are also aggrieved employees as defined

1 under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and
2 either were or are employed by Defendants (“Aggrieved Employees”) during the relevant time
3 period.

4 147. In failing to pay Aggrieved Employees minimum wages and overtime, not
5 providing proper meal and rest periods, failing to provide accurate itemized wage statements, and
6 failing to pay Employees wages upon termination or timely upon resignation, all discussed above,
7 Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required
8 under Labor Code § 204. Defendants also failed to maintain records showing accurate hours
9 worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and
10 paragraph 7 of the applicable IWC Wage Orders.

11 148. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699
12 for Defendants’ violation of Labor Code provisions included under Labor Code § 2699.5,
13 including the penalty provisions, without limitation, based, inter alia, on the following California
14 Labor Code sections: §§ 201, 202, 203, 204, 210, 221, 226, 226.7, 246, 248.1, 248.2, 248.5, 351,
15 354, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2802,
16 2810.5, 2698, and 2699, *et seq.*;

17 149. More specifically, after complying with the notice procedures of Labor Code §
18 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
19 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed
20 underlying claims and seeking penalties as specified by the applicable corresponding provisions,
21 including as follows:

22 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
23 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
24 premium wages for overtime hours worked under Labor Code §§ 510, 1194(a), 1197, and 1198,
25 and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all
26 civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2,
27 1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for attorneys’ fees and costs pursuant to
28 Labor Code § 2699(g)(1);

1 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
2 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
3 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
4 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC
5 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under
6 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,
7 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs
8 pursuant to Labor Code § 2699(g)(1);

9 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
10 Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to
11 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,
12 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking
13 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),
14 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,
15 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by
16 providing inaccurate wage statements and failing to maintain records as required under Labor
17 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor
18 Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a
19 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
20 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
21 citation, ...";

22 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
23 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
24 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§
25 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC
26 Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

27 (e) Unlawful Deductions and Failure to Reimburse Business Expenses: For
28 Defendants' unlawful deductions from wages and for Defendants' failure to reimburse the

necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(f) Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave: For Defendants' failure to provide Employees with all their required and earned sick days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(g) Failure to Pay Reporting Time Pay: For Defendants failure to provide Employees with all their required reporting time pay in violation of Wage Order 5-2001 and 8 § CCR 11050(5) and civil and statutory penalties available and applicable under Labor Code §§ 204, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1) and;

(h) All Other Alleged Violations of the Labor Code and IWC Wage Orders: For Labor Code § 2810.5, and any above addressed violation of the applicable provisions of the Labor Code and IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

150. As also addressed above, Plaintiff, on behalf of the Aggrieved Employees, also seeks the penalties and remedies set forth in Labor Code § 558, which states:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover

1 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for
2 each underpaid employee for each pay period for which the employee was
underpaid in addition to an amount sufficient to recover underpaid wages...

3 (b) If upon inspection or investigation the Labor Commissioner determines that
4 a person had paid or caused to be paid a wage for overtime work in violation of any
5 provision of this chapter, or any provision regulating hours and days of work in any
6 order of the Industrial Welfare Commission, the Labor Commissioner may issue a
citation. The procedures for issuing, contesting, and enforcing judgments for
7 citations or civil penalties issued by the Labor Commissioner for a violation of this
chapter shall be the same as those set out in Section 1197.1.

8 (c) The civil penalties provided for in this section are in addition to any other
civil or criminal penalty provided by law.

9 151. Plaintiff has exhausted his administrative remedies by submitting a certified letter to
10 the LWDA and Defendants on March 12, 2024 (LWDA-CM-1016145-24) addressing in detail the
11 specific provisions of the Labor Code Defendants have violated and addressing the facts and legal
12 theories to support the alleged violations and requested penalties. The LWDA has not provided
13 notice of its intent to investigate the alleged violations within 65 calendar days of the postmark
14 date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations
addressed herein and in the PAGA Notice letter and the original Complaint.

15 **RELIEF REQUESTED**

16 WHEREFORE, Plaintiff prays for the following relief:

- 17 1. For an order certifying this action as a class action;
- 18 2. For compensatory damages in the amount of the unpaid minimum wages for work
19 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
20 the filing of this action, as may be proven;
- 21 3. For liquidated damages in the amount equal to the unpaid minimum wage and
22 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 23 4. For compensatory damages in the amount of all unpaid wages, including overtime
24 and double-time pay, as may be proven;
- 25 5. For compensatory damages in the amount of the hourly wage made by Employees
26 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
27 years prior to the filing of this action, as may be proven;
- 28 6. For compensatory damages in the amount of the hourly wage made by Employees

1 for each day requisite rest breaks were not provided or were deficiently provided where no
2 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
3 be proven;

4 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

5 8. For restitution and/or damages and penalties for Defendants' failure to pay all
6 wages due twice monthly under Labor Code § 204, as may be proven;

7 9. For restitution and/or damages for all amounts unlawfully withheld from the wages
8 for all class members in violation of Labor Code § 221, as may be proven;

9 10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
10 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

11 11. For penalties pursuant to Labor Code § 1174.5, as may be proven;

12 12. For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;

13 13. For damages and restitution for failure to reimburse all reasonable and necessary
14 business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;

15 14. For restitution for unfair competition pursuant to Business & Professions Code
16 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

17 15. For an order enjoining Defendants and their agents, servants, and employees, and
18 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
19 duties adumbrated in this Complaint;

20 16. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;

21 17. For penalties under Labor Code § 558, as may be proven;

22 18. For other wages and penalties under the Labor Code as may be proven;

23 19. For all general, special, and incidental damages as may be proven;

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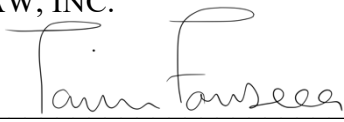
28

- 1 20. For an award of pre-judgment and post-judgment interest;
2 21. For an award providing for the payment of the costs of this suit;
3 22. For an award of attorneys' fees; and
4 23. For such other and further relief as this Court may deem proper and just.

5
6 DATED: August 5, 2024

D.LAW, INC.

7
8 By



Emil Davtyan
David Yermian
Alvin B. Lindsay
Tania Fonseca
Attorneys for Plaintiff Angel Nava Mora
and the putative class

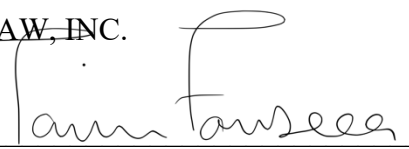
DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

DATED: August 5, 2024

D.LAW, INC.

By


Emil Davtyan
David Yeremian
Alvin B. Lindsay
Tania Fonseca
Attorneys for Plaintiff Angel Nava Mora
and the putative class

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA:

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 880 E Broadway, Glendale, CA 91205

On August 5, 2024, I served the foregoing: **FIRST AMENDED CLASS ACTION COMPLAINT** on Interested Parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

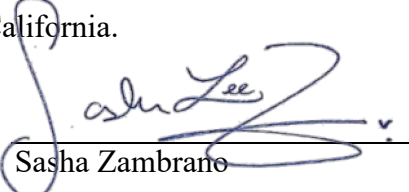
Lily Solmer
lsolmer@lightgablerlaw.com
Michael Brody
mbrody@lightgablerlaw.com
Light Gabler Law
760 Paseo Camarillo, Suite 300
Camarillo, CA 93010

☒ **(BY MAIL)** I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

☒ **(COURTESY COPY BY ELECTRONIC SERVICE)** I caused the document(s) described herein to be served on the person(s) noted above by electronic mail to their E-mail address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. [Pursuant to Civil Code Procedure 1010.6]

☒ **(STATE)** I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 5, 2024, at Glendale, California.


Sasha Zambrano