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situated*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

DANIEL ALBANI CARBAJAL, individually,
and on behalf of all others similarly situated,

Plaintiff,

v.

SCRATCH, an unknown business entity,
PALO ALTO CREAMERY, an unknown
business entity, REPOSADO, an unknown
business entity, THE BRITISH BANKER'S
CLUB, an unknown business entity; and
DOES 1 through 50, inclusive,

Defendants.

CASE NUMBER: 24CV442539

CLASS ACTION COMPLAINT

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Breaks
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wages
5. Failure to Pay Timely Wages
6. Failure to Pay All Wages Due to Discharged and Quitting Employees
7. Failure to Furnish Accurate Itemized Statements
8. Failure to Maintain Required Records
9. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties
10. Failure to Pay and Include COVID-19 Supplemental Sick Pay on Wage Statements
11. Unfair and Unlawful Business Practices

REPRESENTATIVE ACTION

12. Penalties Under the Labor Code Private Attorneys General Act

DEMAND FOR JURY TRIAL

1 This is a Class and Representative Action brought by Daniel Albani Carbajal, individually
2 and on behalf of all others similarly situated (“Plaintiff”), relating to systemic violations of
3 California wage and hour laws by his former employer, Scratch, The British Banker’s Club, Palo
4 Alto Creamery, Reposado (hereinafter jointly referred to as “Scratch Restaurants” or
5 “Defendants”). Plaintiff makes the following allegations on information and belief, except as to
6 allegations pertaining to Plaintiff individually, which are based on her personal knowledge.

7 **INTRODUCTION**

8 1. As private, for-profit businesses, Defendants have implemented common policies
9 and practices that have resulted in systemic violations of California’s wage and hour laws.

10 2. Defendants operate four (4) affiliated restaurants which do business as Scratch, The
11 British Banker’s Club, Palo Alto Creamery, Reposado. Scratch is located in Mountain View,
12 California, The British Banker’s Club is located in Menlo Park, California, Palo Alto Creamery
13 and Reposado are located in Palo Alto, California.

14 3. At all relevant times herein, Defendants have implemented common policies and
15 practices designed to maximize profits at the expense of its non-exempt employees. These
16 policies and practices have resulted in systematic violations of California’s wage and hour laws.

17 4. Defendants have implemented unlawful written policies with respect to meal and
18 rest breaks. Defendants also require their non-exempt employees, who are informed that the
19 needs of the businesses and customers take top priority, to work through meal and rest breaks, to
20 take untimely meal periods and to remain on call during such breaks. As a result, Plaintiff and
21 other Class Members have been denied the ability to take the meal and rest breaks that they were
22 and are legally entitled to take pursuant to the laws of the State of California.

23 5. Defendants also fail to compensate non-exempt employees at their regular rate of
24 pay for meal and rest period premium payments, to the extent any are paid, and non-
25 discretionary bonus payments are not calculated into the regular rate of pay for non-exempt
26 employees which results in the systematic underpayment of wages to Plaintiff and other non-
27 exempt employees. Defendants willfully turn a blind eye to off-the-clock work that Plaintiff and
28 other non-exempt employees perform as a direct consequence of Defendants’ inadequate staffing

1 and imposition of an unreasonable workload at their restaurants. Moreover, Defendants
2 uniformly failed to pay Plaintiff and other non-exempt, hourly employees proper overtime wages
3 due the fact that it has willfully turn a blind eye to off-the-clock work that Plaintiff and other
4 non-exempt, hourly employees perform as a direct consequence of Defendants' understaffing
5 and imposition of an unreasonable workload. Finally, Defendants have failed to pay final wages
6 to Plaintiff and other on-exempt, hourly employees who were employed by Defendants.

7 6. Plaintiff seeks declaratory, compensatory and other statutorily available relief for
8 himself and a Class of all current and former non-exempt employees of Defendants during the
9 applicable limitations period to compensate these workers for the wages Defendants have stolen
10 from them and to protect current and future workers from being subjected to similar unlawful
11 working conditions perpetrated by Defendants.

12 **JURISDICTION AND VENUE**

13 7. The Superior Court of the State of California has jurisdiction in this matter
14 because Plaintiff is a resident of the State of California, and Plaintiff is informed and believes
15 that Defendants are licensed to do business under the laws of the State of California.

16 8. Venue is proper in this judicial district and the County of San Mateo because
17 Defendants operate four (4) or more restaurants in the City of Mountain View, a city located in
18 the County of Santa Clara. Plaintiff worked at Scratch restaurant, non-exempt, hourly employee,
19 and other non-exempt, hourly employees also worked for Defendants in the County of Santa
20 Clara.

21 9. Defendants employed Plaintiff and other non-exempt, hourly employees within
22 the State of California and the unlawful acts alleged herein have a direct effect on Plaintiff and
23 other non-exempt, hourly employees.

24 **THE PARTIES**

25 10. Plaintiff is a citizen of the State of California and currently resides in Santa Clara
26 County. During the relevant time period, Plaintiff was employed by Defendants as a Cook at
27 Defendant Scratch, a nonexempt, hourly position.

28 11. Plaintiff is informed and believes, and thereon alleges, that Defendant Scratch, at

1 all times relevant hereto, is an unknown business entity organized and existing under the laws of
2 the State of California. Defendant Scratch is authorized to conduct business and does conduct
3 business in the State of California.

4 12. Plaintiff is informed and believes, and thereon alleges, that Defendant The British
5 Banker's Club, at all times relevant hereto, is an unknown business entity organized and existing
6 under the laws of the State of California. Defendant The British Baker's Club is authorized to
7 conduct business and does conduct business in the State of California.

8 13. Plaintiff is informed and believes, and thereon alleges, that Defendant Palo Alto
9 Creamery, at all times relevant hereto, is an unknown business entity organized and existing under
10 the laws of the State of California. Defendant Palo Alto Creamery is authorized to conduct business
11 and does conduct business in the State of California.

12 14. Plaintiff is informed and believes, and thereon alleges, that Defendant Reposado,
13 at all times relevant hereto, is an unknown business entity organized and existing under the laws
14 of the State of California. Defendant Reposado is authorized to conduct business and does conduct
15 business in the State of California.

16 15. At all relevant times herein, Defendants and each of them are affiliated businesses
17 with the same owner and operator, and were the joint employer of Plaintiff and the other non-
18 exempt, hourly employees. Defendants and each of them, are the alter egos, divisions, affiliates,
19 integrated enterprises, joint employers, subsidiaries, parents, principals, related entities, co-
20 conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible,
21 of each other. Each Defendant was completely dominated by his, her or its co-Defendant, and
22 each was the alter ego of the other. Moreover, at all material times there has been extensive
23 interrelation of operations, common management, centralized control of labor relations with
24 respect to Plaintiff and the other non-exempt, hourly employees, and common ownership or
25 financial control between all Defendants.

26 16. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
27 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy.
28 Managing agent, and/or principal of the co-Defendants, and in performing the acts mentioned

below was acting, at least in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with the permission and consent of the co-Defendants. Plaintiff also alleges that the acts of each Defendant are legally attributable to the other Defendants.

17. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants sued herein was, at all relevant times, the employer, owner, shareholder, principal, joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the remaining Defendants, and was acting, at least in part, within the course and scope of such employment and agency, with the express and implied permission, consent and knowledge, approval and/or ratification of the other Defendants. The above co-Defendant, managing agents, and supervisors, aided, abetted, condoned, permitted, approved, authorized, and/or ratified the unlawful acts described herein.

CLASS ACTION ALLEGATIONS

18. Plaintiff brings this action on behalf of himself, and the following similarly situated Class of individuals ("Class members"):

All hourly and nonexempt employees who were employed by Defendants at any time in the state of California during the relevant statute of limitations period.

19. Plaintiff reserves the right to name additional Class representatives as may be necessary and appropriate. Plaintiff also reserves the right to modify or amend the definition of the proposed Class and/or add subclasses before the Court determines whether certification is appropriate.

20. This action is appropriately suited for a class action because:

A. The proposed Class is a significant number. Plaintiff is informed and believes that the proposed Class consists of at least one hundred (100) current and former non-exempt employees, rendering joinder impractical.

B. This action involves common questions of law and fact to the proposed Class because the action focuses on Defendants' systematic course of illegal payroll practices

1 and policies, which was applied to all non-exempt employees in uniform violation of the
2 California Labor Code, IWC Wage Orders, and the California Business and Professions Code,
3 which prohibits unfair business practices arising from such violations. Here are a few common
4 questions of law and fact that will drive resolution of this action:

- 5 1. Whether Defendants failed to provide non-exempt employees with legally
6 compliant meal periods and rest breaks, and whether Defendants properly
7 paid premium pay at the appropriate regular rate as a result of missed and
8 non-compliant meal periods and rest breaks;
- 9 2. Whether Defendants failed to timely pay wages to non-exempt employees
10 in compliance with California law;
- 11 3. Whether Defendants time rounding policies and practices are in violation
12 of California law;
- 13 4. Whether Defendants failed to pay overtime and minimum wages to non-
14 exempt employees in compliance with California law;
- 15 5. Whether Defendants failed to maintain required records and accurate wage
16 statements for non-exempt employees;
- 17 6. Whether Defendants failed to pay non-exempt employees all wages due,
18 for all hours worked, including for off-the-clock work, travel time, pre-
19 shift and post-shift work and COVID screening;
- 20 7. Whether Defendants failed to provide and pay COVID-19 supplemental
21 sick pay and include it on wage statements;
- 22 8. Whether Defendants engaged in unfair and/or unlawful business practices.

23 C. Plaintiff's claims are typical of the proposed Class because Defendants
24 subjected all of its non-exempt employees to the similar and overlapping violations of the
25 California Labor Code, the applicable IWC wage order, and the California Business and
26 Professions Code.

27 D. Plaintiff is able to fairly and adequately protect the interests of all
28 members of the proposed Class because it is in his best interests to prosecute the claims alleged

1 herein to obtain full compensation due to the proposed Class for all services rendered and hours
2 worked. Plaintiff has also retained counsel that is experienced in wage and hour class action
3 litigation.

4 **FIRST CAUSE OF ACTION**
5 **Failure to Provide Required Meal Periods**
6 **[Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197; and All Applicable IWC**
7 **Wage Orders and Applicable Sections]**
8 **(On Behalf of Plaintiff and the Class Against all Defendants)**

9 21. Plaintiff incorporates herein by specific reference, as though fully set forth, the
10 allegations in paragraphs 1 through 20 (A) – (D).

11 22. During the statute of limitations period, as part of Defendants unlawful policies
12 and practices to deprive their non-exempt employees of all wages earned and due, Defendants
13 required, permitted or otherwise suffered Plaintiff and Class members to perform work during
14 their meal periods, to completely skip their meal periods, to take late and short meal periods,
15 working during meal periods, and Defendants have otherwise failed to provide the required meal
16 periods to Plaintiff and Class members as required under California Labor Code §§ 226.7, 512,
17 and § 11 of the applicable IWC Order.

18 23. Moreover, Defendants interfered with and restricted the ability of Plaintiff and
19 Class members to take meal periods by not permitting Plaintiff and the other Class members to
20 leave their work areas when taking meal periods.

21 24. Defendants have implemented several common policies and practices that have
22 caused Plaintiff and Class members to systematically miss and otherwise take non-compliant
23 meal periods.

24 25. Defendants grossly understaff the restaurants such that non-exempt employees are
25 given so much work to complete that they regularly miss or take non-compliant meal periods.
26 As a direct consequence of this understaffing, Plaintiff and Class members have so much work to
27 complete within their scheduled shifts that they are forced to skip their meal periods altogether,
28 to take them after working longer than five (5) hours, to perform work during their meal periods,

1 or return to work after taking less than a thirty (30) minute meal period. Further, Defendants
2 failed to implement a meal period policy for work shifts longer than ten (10) hours or more.

3 26. Moreover, Defendants failed to implement adequate policies or procedures to
4 provide meal periods to their non-exempt employees. Among other things, Defendants
5 overworked Plaintiff and Class members and did not adequately advise them of their rights to
6 take meal periods, and systematically denied them the opportunity to take meal periods,
7 including second meal periods during shifts of ten hours or longer.

8 27. Defendants have also violated California Labor Code §§ 226.7, all applicable
9 wage orders and applicable sections, and the California Unfair Competition Law, Cal. Bus. &
10 Prof. Code §§ 17200 *et. seq.*, by failing to compensate Plaintiff and Class members who were not
11 authorized and permitted to take a complete, timely, uninterrupted meal period, in accordance
12 with the applicable wage order, one additional hour of compensation at the proper regular rate of
13 pay for each workday that such a meal period was not authorized or permitted.

14 28. Defendants further violated California Labor Code sections 226.7, 510, 1194,
15 1197, and all applicable IWC Wage Orders, by failing to compensate Plaintiff and Class
16 members for all hours worked during their meal periods.

17 29. As a proximate result of the aforementioned violations, Plaintiff and Class
18 members have been damaged in an amount according to proof at trial, and seek all wages earned
19 and due, interest, penalties, expenses, and costs of suit.

20 **SECOND CAUSE OF ACTION**
21 **Failure to Provide Required Rest Breaks**
22 **[Cal. Lab. Code §§ 226.7, 512; and All Applicable IWC Wage Orders**
23 **and Applicable Sections]**
24 **(On Behalf of Plaintiff and the Class Against all Defendants)**

25 30. Plaintiff incorporates herein by specific reference, as though fully set forth, the
26 allegations in paragraphs 1 through 29.

27 31. At all times relevant herein, as part of Defendants illegal policies and practices to
28 deprive the non-exempt employees of all wages earned and due, Defendants failed to permit

1 Plaintiff and Class members to take rest breaks as required under California Labor Code §§
2 226.7 and 512, and § 12 of the applicable IWC Wage Order.

3 32. As with meal periods, Defendants policies and practices caused Plaintiff and
4 Class members to miss or otherwise take non-compliant rest periods by, among other things,
5 giving them unreasonable amounts of work that had to be completed within their shift such that
6 rest periods simply could not be taken. This was the result of systematic understaffing of the
7 restaurants. Further, as set forth above, Defendants implemented skeletal staffing policies, which
8 resulted in the inability of Plaintiff and Class members to take compliant rest periods. In
9 addition, Defendants did not adequately notify Plaintiff and Class members of their rights to take
10 rest periods, and systematically denied them the opportunity to take rest periods, including all
11 rest periods required during long shifts.

12 33. Defendants further violated California Labor Code § 226.7, and all other
13 applicable IWC Wage Orders and the California Unfair Competition Law, Cal. Bus. & Prof.
14 Code §§ 17200 *et. seq.*, by failing to pay Plaintiff and Class members who were not provided
15 with a rest break, in accordance with the applicable wage order, one additional hour of
16 compensation at the proper regular rate of pay for each workday that a rest break was not
17 provided.

18 34. As a proximate result of the aforementioned violations, Plaintiff and Class
19 members have been damaged in an amount according to proof at trial, and seek all wages earned
20 and due, interest, penalties, expenses, and costs of suit.

21 **THIRD CAUSE OF ACTION**

22 **Failure to Pay Overtime Wages**

23 **[Cal. Lab. Code §§ 510, 1194, 1198; and All Applicable IWC Wage Orders
and Applicable Sections]**

24 **(On Behalf of Plaintiff and the Class against all Defendants)**

25 35. Plaintiff incorporates herein by specific reference, as though fully set forth, the
26 allegations in paragraphs 1 through 34.

27 36. Pursuant to California Labor Code §§ 510, 1194, and all applicable wage orders
28 and applicable sections, Defendants are required to compensate Plaintiff and Class members for

1 all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all
2 hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the
3 first eight (8) hours on the seventh consecutive workday, with double time for all hours worked
4 in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8)
5 hours on the seventh consecutive day of work in any workweek.

6 37. Plaintiff and Class members are current and former direct and temporary hourly
7 paid employees entitled to the protections of California Labor Code §§ 510, 1194, and all
8 applicable IWC Wage Orders. During the statute of limitations period, Defendants failed to
9 compensate Plaintiff and Class members for all overtime hours worked as required under the
10 foregoing provisions of the California Labor Code and IWC Wage Order by, among other
11 methods: failing to pay any overtime compensation; failing to properly calculate the regular rate
12 of pay for the purposes of calculating overtime pay owed and due; requiring, permitting or
13 suffering Plaintiff and Class members to work off-the-clock; illegally rounding time worked so
14 as to deprive Plaintiff and the Class members of wages; requiring, suffering, or permitting
15 Plaintiff and Class members to work through meal and rest periods but not compensating them
16 for this time, failing to include this time in all hours worked; failing to pay the highest regular
17 rate of pay based upon nondiscretionary bonus/commission payments; failing to pay for training
18 time; editing or otherwise manipulating the overtime hours worked, failing to pay for pre-and
19 post-shift work (including COVID screenings and donning and doffing uniforms); failing to pay
20 wages to Class Members for COVID testing, and other methods to be discovered.

21 38. During a portion of the statute of limitations period, Defendants have also
22 engaged in an unlawful time rounding practice, where the time worked by Plaintiff and Class
23 members is systematically rounded down, resulting in unpaid regular and overtime wages.
24 Defendants implemented a rounding practice wherein it rounds the time worked by non-exempt
25 employees unfavorable to the Class members. Defendants pay Plaintiff and Class members
26 based on rounded time despite the fact that it maintains records of all hours worked.

27 39. In violation of California law, Defendants have knowingly and willfully refused
28 to perform their obligations to compensate Plaintiff and Class members for all wages earned and

1 all hours worked at the legally required rates of pay. As a proximate result, Plaintiff and Class
2 members have suffered, and continue to suffer, substantial losses related to the use and
3 enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in
4 seeking to compel Defendants to fully perform their obligations under state law, all to their
5 respective damages in amounts according to proof at time of trial, and within the jurisdiction of
6 this Court.

7 40. Defendants' conduct described herein violates California Labor Code §§ 510,
8 1194, 1198 and all applicable IWC Wage Orders and applicable sections. Therefore, pursuant to
9 California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions
10 under the California Labor Code and IWC Wage Orders, Plaintiff and Class members are
11 entitled to recover the unpaid balance of wages owed to them by Defendants, plus interest,
12 penalties, attorneys' fees, expenses, and costs of suit.

13 **FOURTH CAUSE OF ACTION**
14 **Failure to Pay Minimum Wages**
15 **[Cal. Lab. Code §§ 1194, 1197; All Applicable IWC Wage Orders and Applicable Sections]**
16 **(On Behalf of Plaintiff and the Class against all Defendants)**

17 41. Plaintiff incorporates herein by specific reference, as though fully set forth, the
18 allegations in paragraphs 1 through 40.

19 42. Pursuant to Cal. Lab. Code §§ 1194, 1197, and all applicable IWC Wage Orders
20 and applicable sections, payment to an employee of less than the applicable minimum wage for
21 all hours worked in a payroll period is unlawful.

22 43. During the statute of limitations period, the hourly rates for Plaintiff and Class
23 members were precisely at minimum wage. Based on this common practice, Defendants failed
24 to actually pay Plaintiff and Class members minimum wages for all hours worked by requiring,
25 permitting or suffering them to work off-the-clock, such as requiring them to work through meal,
26 rest breaks, but not compensating them for this time, and failing to include this time in all hours
27 worked, engaging in illegal and unlawful rounding and time entry manipulation practices, failing
28 to pay for travel time, failing to pay for pre-shift work and post-shift work (including COVID

1 screenings and donning and doffing uniforms) failure to pay wages when Class Members were
2 sent to test for COVID-19; and other methods to be discovered.

3 44. Defendants conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and
4 all applicable IWC Wage Orders and applicable sections. As a proximate result of the
5 aforementioned violations, Plaintiff and other Class members have been damaged in an amount
6 according to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558,
7 1194, 1197.1, and any other applicable law, Plaintiff and other aggrieved employees are entitled
8 to recover the unpaid balance of wages owed to them by Defendants, plus interest, penalties,
9 attorneys' fees, expenses, and costs of suit.

10 **FIFTH CAUSE OF ACTION**
11 **Failure to Pay Timely Wages**
12 **[Cal. Lab. Code §§ 204, 210]**
(On Behalf of Plaintiff and the Class against all Defendants)

13 45. Plaintiff incorporates herein by specific reference, as though fully set forth, the
14 allegations in paragraphs 1 through 44.

15 46. California Labor Code § 204 provides that all wages earned by any person in any
16 employment between the 1st and 15th days, inclusive, of any calendar month, other than those
17 wages due upon termination of an employee, are due and payable between the 16th and 26th day
18 of the month during which the labor was performed. California Labor Code § 204 further
19 provides that all wages earned by any person in any employment between the 16th and the last
20 day, inclusive, of any calendar month, other than those wages due upon termination of an
21 employee, are due and payable between the 1st and the 10th day of the following month.
22 California Labor Code § 204 further provides that all wages eared for labor in excess of the
23 normal work period shall be paid no later than the payday for the next regular payroll period.

24 47. During the statute of limitations period, Defendants, among other things, willfully
25 failed to pay Plaintiff and Class members all wages earned and due to them, including but not
26 limited to, meal and rest break premiums, and payment for work performed off-the-clock, within
27 any time period permissible under Labor Code § 204.
28

48. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff and Class members are entitled to all available statutory penalties, including but not limited to, civil penalties pursuant to California Labor Code §§ 200, 210, 558, 1194, 1197.1, 2699(a), and other applicable provisions under the California Labor Code and IWC Wage Orders, and an award of costs, expenses, and reasonable attorneys' fees.

SIXTH CAUSE OF ACTION
Failure to Pay All Wages Due to Discharged and Quitting Employees
[Cal. Lab. Code §§ 201, 202, 203]
(On Behalf of Plaintiff and the Class against all Defendants)

49. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 48.

50. Pursuant to California Labor Code §§ 200, 201, 202, and 203, Defendants are required to pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately.

51. Furthermore, pursuant to California Labor Code § 202, Defendants are required to pay all accrued wages due to an employee no later than seventy-two (72) hours after the employee quits his or her employment, unless the employee provided seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

52. California Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to thirty (30) workdays.

53. During the statute of limitations period, Defendants have willfully failed to pay accrued wages and other compensation to Plaintiff and Class members in accordance with California Labor Code §§ 201 and 202. Defendants do not have a sufficient policy to provide Plaintiff and Class members with their final paychecks within the timeframes required under California law. In addition, because Defendants have failed and continue to fail to properly

1 compensate Plaintiff and Class members for all hours worked when due, overtime wages, and
2 compensation for non-compliant meal and rest breaks, Defendants have also willfully failed and
3 continues to fail to pay accrued wages and other compensation to Plaintiff and Class members in
4 accordance with California Labor Code §§ 201 and 202.

5 54. As a result, Plaintiff and Class members are entitled to all available statutory
6 penalties, including the waiting time penalties provided in California Labor Code § 203, together
7 with interest thereon, as well as other available remedies.

8 55. As a proximate result of Defendants unlawful actions and omissions, Plaintiff and
9 Class members have been deprived of compensation in an amount according to proof at the time
10 of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery of such
11 amounts, plus interest thereon, and attorneys' fees and costs, pursuant to California Labor Code
12 § 1194.

13 **SEVENTH CAUSE OF ACTION**

14 **Failure to Furnish Accurate Itemized Wage Statements**
15 **[Cal. Lab. Code §§ 226, 246, 248.1, 248.2 and 248.6; and All Applicable**
16 **IWC Wage Orders and Applicable Sections]**
17 **(On Behalf of Plaintiff and the Class against all Defendants)**

18 56. Plaintiff incorporates herein by specific reference, as though fully set forth, the
19 allegations in paragraphs 1 through 55.

20 57. During the statute of limitations period, Defendants routinely failed to provide
21 Plaintiff and Class members with timely, accurate, and itemized wage statements in writing
22 showing each employee's gross wages earned, total hours worked, all deductions made, net
23 wages earned, and all applicable hourly rates in effect during each pay period and the
24 corresponding number of hours worked at each hourly rate, in violation of California Labor Code
25 § 226 and all applicable IWC Wage Orders and applicable sections.

26 58. Defendants' pay stubs violate Labor Code § 226 on their face by, failing to list the
27 applicable rates of pay for regular and overtime hours worked by Plaintiff and aggrieved
28 employees, and in violation of Labor Code §§246, 248.1, 248.2 and 248.6 based upon
Defendants failure to include information related to COVID-19 supplemental sick pay. Further,

1 Defendants was and is not providing Plaintiff and other Class members with proper meal periods
2 and rest breaks but intentionally fails to include in their wage statements one (1) additional hour
3 of compensation at their regular rates of pay for each non-compliant meal period or rest break
4 which include but not limited to, shift differentials, nondiscretionary bonuses, etc., and failing to
5 pay all wages due based upon Defendants' illegal and unlawful rounding policy which favored
6 Defendants. These are violations of Labor Code §226.

7 59. Defendants knowingly and intentionally failed to provide Plaintiff and Class
8 members with timely, accurate, and itemized wage statements in accordance with California
9 Labor Code § 226(a) so as to prevent Plaintiff and Class members from being able to determine
10 whether they were being paid for, among other things, all of the hours they worked and at the
11 proper rates of pay.

12 60. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff
13 and Class members have been damaged in an amount according to proof at trial, and seek all
14 wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are
15 entitled to all available penalties, including but not limited to penalties pursuant to California
16 Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable
17 attorneys' fees, including but not limited to those provided in California Labor Code § 226(e), as
18 well as other available remedies.

19 **EIGHTH CAUSE OF ACTION**
20 **Failure to Maintain Required Records**
21 **[Cal. Lab. Code §§ 226, 1174; and All Applicable IWC Wage Orders**
22 **and Applicable Sections]**
23 **(On Behalf of Plaintiff and the Class against all Defendants)**

24 61. Plaintiff incorporates herein by specific reference, as though fully set forth, the
25 allegations in paragraphs 1 through 60.

26 62. During the statute of limitations period, as part of Defendants' illegal payroll
27 policies and practices to deprive Plaintiff and Class members of all wages earned and due,
28 Defendants knowingly and intentionally failed to maintain records as required under California
Labor Code §§ 226, 1174, and all applicable IWC Wage Orders and applicable sections,

1 including but not limited to, the following records: total daily hours worked by each non-exempt
2 employee; applicable rates of pay; all deductions; meal periods; time records showing when each
3 non-exempt employee begins and ends each workday; and accurate itemized wage statements.

4 63. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff
5 and Class members have been damaged in an amount according to proof at trial, and are entitled
6 to all wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are
7 entitled to all available statutory penalties, including but not limited to civil penalties pursuant to
8 California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and
9 reasonable attorneys' fees, including but not limited to those provided in California Labor Code
10 § 226(e), as well as other available remedies.

11 **NINTH CAUSE OF ACTION**
12 **Failure to Indemnify for Necessary Expenditures Incurred in Discharge of Duties**
13 **[Cal. Lab. Code § 2802]**
14 **(On Behalf of Plaintiff and the Class against Defendants)**

15 64. Plaintiff incorporates herein by specific reference, as though fully set forth, the
16 allegations in paragraphs 1 through 63.

17 65. California Labor Code § 2802(a) requires an employer to indemnify an employee
18 for all necessary expenditures or losses incurred by the employee in direct consequence of the
19 discharge of her his or her duties, or of his or her obedience to the directions of the employer.

20 66. During the Class period, Defendants knowingly and willfully failed to indemnify
21 Plaintiff and Class members for all business expenses and/or losses incurred in direct
22 consequence of the discharge of their duties while working under the direction of Defendants,
23 including but not limited to, the costs and expenses related to their uniforms and uniform
24 maintenance, cellular phones, personal protective equipment ("PPE's) during the COVID-19
25 pandemic, mileage reimbursements, all in violation of California Labor Code § 2802.

26 67. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff
27 and Class members have been damaged in an amount according to proof at trial, and seek
28 reimbursement of all necessary expenditures, plus interest thereon pursuant to California Labor
Code § 2802(b). Additionally, Plaintiff and Class members are entitled to all available statutory

1 penalties and an award of costs, expenses, and reasonable attorneys' fees, including those
2 provided in California Labor Code § 2802(c), as well as other available remedies.

3 **TENTH CAUSE OF ACTION**

4 **Failure to Provide Sick Leave and Supplemental COVID-19 Sick Leaves**
5 **[Cal. Lab. Code §§246, 248.1, 248.2 and 248.6]**
6 **(On Behalf of Plaintiff and the Class against Defendants)**

7 68. Plaintiff incorporates herein by specific reference, as though fully set forth, the
8 allegations in paragraphs 1 through 67.

9 69. Plaintiff is informed and believes Defendants knowingly and intentionally failed
10 in its affirmative obligation to provide and pay paid sick leave and COVID-19 Supplemental
11 Sick Leave to Plaintiff and Class Members in violation of Labor Code section 246. 81. Labor
12 Code section 246(b)(1) requires that employees accrue sick leave at the commencement of
13 employment at a rate of 1 hour for every thirty hours worked. Section 246(c) entitles employees
14 to use any accrued sick leave beginning on their 90th day of employment.

15 70. Defendants failed to pay Plaintiff and Class Members paid sick leave at one of the
16 lawful rates set forth in the statute because Defendants failed to include in their calculation the
17 commissions and additional remuneration received by Plaintiff and the Class Members.

18 71. Furthermore, Defendants knowingly and intentionally failed its affirmative
19 obligation to provide and pay COVID-19 Supplemental Sick Leave to Class Members in
20 violation of Labor Code Sections 246, 247.5, 248.1, 248.2, and 248.6.

21 72. Labor Code Section 248.1 requires employers to provide up to 80 hours of
22 COVID19 Supplemental Paid Sick Leave to employees for the period of April 16, 2020 to
23 December 31, 2020. Labor Code 248.2 requires employers to provide up to 80 hours of COVID-
24 19 Supplemental Paid Sick Leave for the period of January 1, 2021 through September 30, 2021.
25 Labor Code section 248.6 extended COVID sick leave protections and requires employers to
26 provide up to 80 hours of COVID-19 Supplemental Paid Sick Leave for the period of January 1,
27 2022 to September 30, 2022, and may be extended thereafter. 85. Under Labor Code section
28 248.1, employees must be paid for COVID-19 Supplemental Paid Sick Leave at the highest of

the following: (1) the regular rate of pay for the last pay period, (2) state minimum wage, (3) local minimum wage.

73. Under Labor Code Section 248.2, non-exempt employees must be paid COVID-19 supplemental paid sick leave according to the highest of the following four methods: (1) the regular rate of pay for the workweek in which the employee uses COVID-19 supplemental paid sick leave, (2) the employee's total wages in a 90-day period divided by total hours worked, (3) the state minimum wage, or (4) the local minimum wage.

74. Labor Code Section 248.6 requires employers to pay COVID-19 supplemental sick leave under either one of the following methods: (1) regular rate of pay or (2) the employee's total wages in a 90-day period divided by total hours worked.

75. Defendants failed to provide and pay COVID-19 supplemental paid sick leave in the manner described above because Defendants failed to pay Plaintiff and the Class Members such sick leave at one of the rates authorized by statute.

76. As a result, Defendants violated the Labor Code and are liable to Plaintiff and the Class for underpaid sick leave earnings, in addition to interest, attorneys' fees, and costs.

ELEVENTH CAUSE OF ACTION

Unfair and Unlawful Business Practices

[Cal. Bus. & Prof. Code § 17200 *et. seq.*]

(On Behalf of Plaintiff and the Class against all Defendants)

77. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 76.

78. Each and every one of Defendants acts and omissions in violation of the California Labor Code and/or the applicable IWC Wage Orders as alleged herein, including but not limited to, Defendants failure to provide required meal and rest breaks, failure to pay proper overtime compensation, unlawful rounding and requiring off-the-clock work, failure to pay all wages due to discharged or quitting employees or to pay timely wages, failure to furnish accurate itemized wage statements, failure to maintain required records, and failure to provide supplemental COVID-19 sick leave, all constitute an unfair and unlawful business practice under California Business and Professions Code § 17200 *et seq.*

1 79. Defendants violations of California wage and hour laws constitute an unfair
2 business practices because the aforementioned acts and omissions were done repeatedly over a
3 significant period of time, and in a systematic manner, to the detriment of Plaintiff and Class
4 members.

5 80. Among other practices, Defendants have avoided payment of wages, overtime
6 wages, the provision of meal and rest breaks, and other benefits as required by the California
7 Labor Code, the California Code of Regulations, and the applicable IWC Wage Orders. Further,
8 Defendants have failed to record, report, and pay the correct sums of assessment to the state
9 authorities under the California Labor Code and other applicable regulations.

10 81. As a result of these unfair and unlawful business practices, Defendants have
11 reaped unfair and illegal profits during the Class period at the expense of Plaintiff and Class
12 members, and members of the public. Defendants should be made to disgorge its ill-gotten gains
13 and to restore them to Plaintiff and Class members.

14 82. Defendants' unfair and unlawful business practices entitle Plaintiff and Class
15 members to seek preliminary and permanent injunctive relief, including but not limited to orders
16 that Defendants account for, disgorge, and restore to Plaintiff and Class members the wages and
17 other compensation unlawfully withheld from them. Plaintiff and Class members are entitled to
18 restitution of all monies to be disgorged from Defendants in an amount according to proof at the
19 time of trial.

20 **TWELFTH CAUSE OF ACTION**
21 **Representative Action for Civil Penalties**
22 **[Cal. Lab. Code §§ 2698- 2699.5]**

23 ***(On Behalf of Plaintiff and Other Aggrieved Employees against all Defendants)***

24 83. Plaintiff incorporates herein by specific reference as though fully set forth the
25 allegations in paragraphs 1 through 82, with exception of the allegations in Paragraphs 18
26 through 20 (A-D).

27 84. Plaintiff is an "aggrieved employee" within the meaning of California Labor Code
28 § 2699(c), and are proper representatives to bring a civil action on behalf of themselves, and
other non-exempt employees of Defendants who are California citizens, pursuant to the

1 procedures specified in California Labor Code § 2699.3, because Plaintiff was employed by
2 Defendants and the alleged violations of the California Labor Code were committed against
3 Plaintiff.

4 85. Plaintiff seeks to recover civil penalties through a representative action permitted
5 by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969.
6 Thus, class certification is not required.

7 86. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor
8 Code §§ 2698-2699.5, Plaintiff seeks to recover civil penalties, including but not limited to
9 penalties under California Labor Code §§ 2699, 210, 225.5, 226.3, 558, 1174.5, 1197.1, 1775, and
10 all applicable IWC wage order penalties, from Defendants in a representative action for the
11 violations set forth above, including but not limited to, violations of California Labor Code §§ 201,
12 202, 203, 226, 226.7, 246, 248, 248.1, 248.2, 351, 510, 512, 558, 1174, 1194, 1197, 1198 and
13 1774. Plaintiff is also entitled to an award of reasonable attorneys’ fees and costs pursuant to
14 California Labor Code § 2699(g)(1).

15 87. Pursuant to California Labor Code §§ 2699.3, on April 29, 2024, Plaintiff
16 provided written notice by certified mail to the California Labor and Workforce Development
17 Agency (“LWDA”) and Defendants of the specific provisions of the California Labor Code and
18 IWC Wage Orders alleged to have been violated, including the facts and theories to support the
19 alleged violations. Within sixty-five (65) calendar of the postmark date of Plaintiff’s notice
20 letter, the LWDA did not provide notice to Plaintiff that it intends to investigate the alleged
21 violations. Therefore, Plaintiff has complied with all of the requirements set forth in California
22 Labor Code § 2699.3 to commence a representative action under PAGA.

23 88. California Labor Code § 2699(f) provides that for all California Labor Code
24 violations for which a civil penalty is not specifically provided, the following civil penalties are
25 established: one hundred dollars (\$100) for each aggrieved employee per pay period for the
26 initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
27 each subsequent violation.

89. Plaintiff seeks to recover such civil penalties under California Labor Code § 2699(f) for Defendants violations of California Labor Code provisions for which a civil penalty is not specifically provided, including but not limited to, California Labor Code §§ 201, 202, 203, 204, 226.7, 246, 248.1, 248.2, 1197, 1024.5, and for the violations of the applicable IWC Wage Order alleged above.

90. All civil penalties sought and recovered under this action will be allocated as follows: seventy-five (75) percent to the State of California and twenty-five (25) percent to Plaintiffs and aggrieved employees.

91. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1) and California Code of Civil Procedure § 1021.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other persons similarly situated, respectfully prays for relief against Defendants and DOES 1 through 50, inclusive, and each of them, as follows:

1. For compensatory damages in an amount to be ascertained at trial;
2. For restitution of all monies due to Plaintiff and Class members, as well as disgorged profits from the unfair and unlawful business practices of Defendants;
3. For meal and rest break compensation pursuant to California Labor Code § 226.7 and all applicable IWC Wage Orders and applicable sections;
4. For liquidated damages pursuant to California Labor Code § 1194.2;
5. For preliminary and permanent injunctive relief enjoining Defendants from violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and from engaging in the unlawful business practices complained of herein;
6. For waiting time penalties pursuant to California Labor Code § 203;
7. For statutory and civil penalties according to proof, including but not limited to all penalties authorized by the California Labor Code §§ 210, 225.5, 226(e), 226.3, 354, 558, 1174.5, 1197.1, and 2699;

1 8. For interest on the unpaid wages at 10 percent per annum pursuant to California
2 Labor Code §§ 218.6, 1194, California Civil Code §§ 3287, 3288, and/or any other applicable
3 provision providing for pre-judgment interest;

4 9. For reasonable attorneys' fees and costs pursuant to California Labor Code §§
5 218.5, 226, 1194, 2802, and 2699, and California Civil Code § 1021.5, and/or any other
6 applicable provisions providing for attorneys' fees and costs;

7 10. For declaratory relief;

8 11. For an order requiring and certifying the First through Eleven Causes of Action as
9 a class action;

10 12. For an order appointing Plaintiff as Class representative and Plaintiff's counsel as
11 Class counsel; and

12 13. For such further relief that the Court may deem just and proper.

13 DATED: July 5, 2024

THE WHEELER LAW FIRM, APC

14
15 By: 

SCOTT ERNEST WHEELER
JUSTIN A. WHEELER

17 *Attorney for Plaintiff and all others similarly*
18 *situated*

19 **DEMAND FOR JURY TRIAL**

20 Plaintiff on behalf of himself and all others similarly situated, hereby demands a jury trial
21 with respect to all issues triable of right by jury.

22 DATED: July 5, 2024

THE WHEELER LAW FIRM, APC

23
24 By: 

SCOTT ERNEST WHEELER
JUSTIN A. WHEELER

27 *Attorney for Plaintiff and all others similarly*
28 *situated*