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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

JUSTIN BROWN, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

JOSHUA'S PEST CONTROL, a California
Limited Partnership; MOXIE PEST
CONTROL, L.P., an Entity Unknown;
MOXIE PEST CONTROL (ORANGE
COUNTY), L.P., a California Limited
Partnership; MOXIE ADVISORS, LLC, a
Utah Limited Liability Company; WALTON
HOLDINGS GP, LLC, a Texas Limited
Liability Company; MGFLEMING
HOLDINGS, INC., a California Corporation;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: Case No.: CVRI2402875
*[Assigned to Hon. Harold Hopp, Dept 1, for
all purposes]*

FIRST AMENDED COMPLAINT

CLASS ACTION CLAIMS

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

PAGA CLAIMS

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

JURY TRIAL DEMANDED

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

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

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

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

16 3. Plaintiff and the Represented Employees were not provided all minimum, regular,
17 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
18 worked at the proper rate of pay, which led to frequent and reoccurring unpaid compensable
19 time. *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law “do[es] not allow
20 employers to require employees to routinely work for minutes off the clock without
21 compensation”); *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when
22 employee is under company’s control and where the tasks served the employer’s interests).

23 4. Additionally, Plaintiff and the Class often worked more than 8 hours per day
24 and/or 40 hours per week yet did not receive all required overtime compensation on such
25 occasions. Also, at all relevant times, Plaintiff and the Class were compensated on an hourly
26 basis plus additional earned compensation (such as bonuses). However, on the occasions when
27 the Class worked overtime hours and received earned additional compensation during the same
28 workweek, Defendants failed to properly include these amounts in the calculations for the

1 regular rate of pay – in violation of California law.

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

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

16 7. Moreover, at all relevant times, Defendants required Plaintiff and the Represented
17 Employees to incur necessary business-related expenses and costs without reimbursement,
18 including, but not limited to, expenses related to using personal cellular phones to communicate
19 with Defendants and the customers.

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

26 9. Plaintiff further alleges that Defendants failed to provide accurate itemized wage
27 statements that fully complied with the requirements of Labor Code § 226(a).
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1 10. Plaintiff alleges that Defendants' violations of the wage and hour components of
2 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their
3 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
4 its competitors.

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

11 12. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
12 monetary relief against Defendants and each of them, on behalf of himself and the Represented
13 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
14 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
15 210, 218.6, 226, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1,
16 1198, 1199, and 2802, among possibly other sections inadvertently omitted. Plaintiff also
17 reserves the right to name additional representatives throughout the State of California.

18 **II. JURISDICTION**

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

21 **III. VENUE**

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

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1 **IV. PARTIES**

2 **Plaintiff**

3 15. Plaintiff and Class Representative Justin Brown was employed by Defendants and
4 performed work for Defendants in the city of Temecula, within Riverside County.

5 **Defendants**

6 16. Plaintiff alleges that Defendant Joshua's Pest Control, L.P., is a California limited
7 partnership authorized to and doing business in Riverside County and is or was the legal
8 employer of Plaintiff and the Represented Employees during the applicable periods.

9 17. Plaintiff alleges that Defendant Moxie Pest Control, L.P., is an entity unknown
10 authorized to and doing business in Riverside County and is or was the legal employer of
11 Plaintiff and the Represented Employees during the applicable periods.

12 18. Plaintiff alleges that Defendant Moxie Pest Control (Orange County), L.P., is a
13 California limited partnership authorized to and doing business in Riverside County and is or
14 was the legal employer of Plaintiff and the Represented Employees during the applicable
15 periods.

16 19. Plaintiff alleges that Defendant Moxie Advisors, LLC, is a Utah limited liability
17 company authorized to and doing business in Riverside County and is or was the legal employer
18 of Plaintiff and the Represented Employees during the applicable periods.

19 20. Plaintiff alleges that Defendant Walton Holdings GP, LLC, is a Texas limited
20 liability company authorized to and doing business in Riverside County and is or was the legal
21 employer of Plaintiff and the Represented Employees during the applicable periods.

22 21. Plaintiff alleges that Defendant MGFleming Holdings, Inc., is California
23 corporation authorized to and doing business in Riverside County and is or was the legal
24 employer of Plaintiff and the Represented Employees during the applicable periods.

25 22. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
26 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
27 inclusive, but on information and belief alleges that those Defendants are legally responsible for
28 the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of

1 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
2 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
3 Defendants when ascertained.

4 23. Plaintiff is informed and believes and thereon alleges that he and the Represented
5 Employees worked under the joint direction and control of Defendants and that Defendants, and
6 each of them, acted in all respects pertinent to this action as the agent of the other Defendants,
7 carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of
8 each Defendant are legally attributable to the other Defendants. On information and belief, a
9 unity of interest and ownership between each Defendant exists such that all Defendants acted as
10 a single employer of Plaintiff and other Represented Employees.

11 24. Furthermore, Plaintiff is informed and believes and thereon alleges that
12 Defendants, and each of them, are an integrated enterprise and should be treated as a single
13 employer because these entities share an interrelation of operations, with common human
14 resources and personnel policies and shared common offices and facilities. Additionally,
15 Defendants also have a shared website, common management, a centralized control of labor
16 operations, and common ownership or financial control.

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

26 26. Plaintiff is further informed and believes that at all relevant times, Defendants
27 have been inadequately capitalized to conduct business, have failed to follow appropriate
28 corporate formalities, and have simply been a shell and instrumentality through which

Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly, the corporate veil should be pierced, and any liability attached to Defendants should be imposed jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the separate existence of these corporate entities would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice.

V. CLASS ACTION ALLEGATIONS

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

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

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

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

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

31. Plaintiff also seeks to represent the following subclasses:

Meal Break Subclass

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

Rest Break Subclass

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

Unreimbursed Expense Subclass

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

1 **Waiting Time Penalties Subclass**

2 All Represented Employees who separated from their
3 employment with Defendants during the period three years
4 before the filing of this action and ending when final
5 judgment is entered.

6 **Wage Statement Penalties Subclass**

7 All Represented Employees during the period one year
8 before the filing of this action and ending when final
9 judgment is entered.

10 32. Plaintiff reserves the right to amend or modify the class description with greater
11 specificity or further division into subclasses or limitation to particular issues as appropriate.

12 33. Plaintiff, as Class Representative, is a member of the class and subclasses that he
13 seeks to represent.

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

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

20 36. **Commonality:** There are questions of law and fact common to the class which
21 predominate over any questions affecting only individual members of the class, including
22 without limitation:

23 i. Whether Defendants violated the California Labor Code and applicable
24 IWC Wage Order by failing to pay wages to Plaintiff and the Represented Employees for all
25 hours worked;

26 ii. Whether Defendants violated the California Labor Code and applicable
27 IWC Wage Order by failing to pay proper overtime wages to Plaintiff and the Represented
28 Employees for hours above 8 and/or 12 per day and/or 40 per week;

1 iii. Whether Defendants violated the California Labor Code and applicable
2 IWC Wage Order by failing to provide compliant meal periods to Plaintiff and the Meal Break
3 Subclass and whether Defendants failed to compensate Plaintiff and the Meal Break Subclass
4 with one additional hour of wages at the regular rate of pay for each instance when a compliant
5 meal period was not provided;

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

11 v. Whether Defendants violated the California Labor Code and applicable
12 IWC Wage Order by failing to reimburse Plaintiff and the Unreimbursed Expense Subclass for
13 business expenses incurred while discharging their duties or in obedience to the directions of
14 their employer;

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

18 vii. Whether Defendants violated the California Labor Code by failing to
19 provide Plaintiff and the Wage Statement Penalties Subclass with complete, accurate, itemized
20 wage statements;

21 viii. Whether Defendants violated California Business & Professions Code §§
22 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest
23 breaks, failure to provide mandated meal periods, failure to reimburse business expenses, and
24 failure to timely pay final wages; and

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

27 37. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the
28 claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants'

1 ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all
2 wages owed, failure to provide mandated meal periods and rest breaks, failure to reimburse
3 business expenses, failure to timely pay wages upon separation of employment, and failure to
4 provide accurate itemized wage statements.

5 38. **Adequacy of Representation.** Plaintiff, as Class Representative, will fairly and
6 adequately represent and protect the interests of the Class. Plaintiff's interests are not in conflict
7 with those of the Class. Class Representative's counsel are competent and experienced in
8 litigating employment class actions and other complex litigation matters similar to this case.

9 39. **Superiority of Class Action.** Class certification is appropriate because a class
10 action is superior to other available means for the fair and efficient adjudication of this
11 controversy. Individual joinder of all Represented Employees is not practicable, and questions of
12 law and fact common to the Class predominate over any questions affecting only individual
13 members of the Class. Each Represented Employee has been damaged and is entitled to
14 recovery by reason of Defendants' illegal policies and practices set forth above. Class action
15 treatment will allow those similarly situated persons to litigate their claims in the manner that is
16 most efficient and economical for the parties and the judicial system.

17 **FIRST CAUSE OF ACTION**

18 **FAILURE TO PAY MINIMUM WAGES**

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

20 *Plaintiff and the Represented Employees Against All Defendants*

21 40. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
22 as if fully alleged herein.

23 41. Plaintiff and the Represented Employees were not exempt from the requirement
24 to be paid at least the applicable California minimum wage (or the agreed-upon wage)
25 throughout the statutory period for each hour worked.

26 42. As noted herein, Plaintiff and the Represented Employees were not provided
27 proper minimum and regular wages due to Defendants' failure to accurately record and
28 compensate for all hours worked at the proper rate of pay. As a result of this policy and practice,

1 Plaintiff and the Represented Employees were required to perform off-the-clock work that
2 Defendants either knew or should have known they were performing.

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

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

9 45. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
10 Represented Employees were entitled to be paid wages throughout the statutory period for each
11 hour worked, including proper minimum and regular wages, yet Defendants chose not to pay
12 them in accordance thereto.

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

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

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

22 49. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of
23 all unpaid minimum wages, liquidated damages, penalties, interest, and attorneys' fees and costs,
24 under Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be proven at trial.

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

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

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

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

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

17 61. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
18 as if fully alleged herein.

19 62. Plaintiff and the Meal Break Subclass are and/or were employees of Defendants
20 who did not receive proper protections and benefits of laws governing mandatory meal periods.

21 63. Labor Code § 226.7 requires employers, including Defendants, to provide
22 employees with meal periods as mandated by the Industrial Welfare Commission.

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

1 the employee with a second meal period of not less than 30 minutes.

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

5 66. At all relevant times, and as a result of the policies and practices described in this
6 Complaint, Plaintiff and the Meal Break Subclass were denied the 30-minute meal periods to
7 which they were entitled. Additionally, Defendants failed to record or keep accurate information
8 regarding when Represented Employees took their meal periods, in violation of the applicable
9 IWC Wage Order § 7(A)(3).

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

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

20 69. At all relevant times herein, Defendants failed to provide Plaintiff and the Meal
21 Break Subclass all mandated meal breaks and failed to pay wage premiums in lieu of mandated
22 meal breaks, thereby receiving an economic benefit.

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

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

4 **FOURTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE REST BREAKS**

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

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

8 72. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
9 as if fully alleged herein.

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

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

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

19 76. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
20 Order, Defendants shall pay Plaintiff and the Rest Break Subclass one additional hour of pay at
21 their regular rate of compensation for each day that the rest period is not provided.

22 77. At all relevant times, and as a result of the policies and practices described in this
23 Complaint, Plaintiff and the Rest Break Subclass were denied mandated paid rest breaks.

24 78. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
25 Order every pay period because Plaintiff and the Represented Employees were not provided with
26 all mandatory rest periods and Defendants failed to pay Plaintiff and the Rest Break Subclass one
27 additional hour of compensation in lieu thereof.

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

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

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

13 **FIFTH CAUSE OF ACTION**

14 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

15 (Labor Code § 2802)

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

17 82. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
18 as if fully alleged herein.

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

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

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

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

6 87. Pursuant to Labor Code § 2802, Plaintiff and the Represented Employees seek to
7 recover the unreimbursed expenses, interest on the unreimbursed expenses, and the costs and
8 attorney's fees necessarily incurred in pursuing same. The exact amount of reimbursements,
9 interest, costs, and attorney's fees will be in an amount to be proved at the time of trial.

10 **SIXTH CAUSE OF ACTION**

11 **FAILURE TO TIMELY PAY FINAL WAGES**

12 (Labor Code §§ 201 – 203)

13 *Plaintiff and the Waiting Time Penalties Subclass Against All Defendants*

14 88. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
15 as if fully alleged herein.

16 89. Plaintiff and the Waiting Time Penalties Subclass are and/or were employees of
17 Defendants who did not receive proper protections and benefits of the laws governing the timing
18 and payment of wages.

19 90. Labor Code § 201 requires that the employer immediately pay any wages, without
20 abatement or reduction, to any employee who is discharged.

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

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

27 93. At all relevant times, Defendants employed a policy and practice whereby
28 Plaintiff and the Waiting Time Penalties Subclass were not paid all wages due and owing upon

1 separation of employment within the time required by Labor Code §§ 201 and 202.

2 94. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
3 wages due and owing to Plaintiff and the Waiting Time Penalties Subclass upon separation of
4 employment, including, but not limited to, minimum, regular, and overtime wages, meal and rest
5 period premiums, and vested vacation wages.

6 95. Additionally, at all relevant times, Defendants failed to pay all mandated sick
7 wages owed to the Waiting Time Penalties Subclass at the proper rate of pay under Labor Code §
8 246(l), leading to a failure to pay all wages owed upon separation of employment.

9 96. Plaintiff alleges that, at all times material to this action, Defendants had a planned
10 pattern and practice of failing to timely pay Plaintiff and the Waiting Time Penalties Subclass all
11 wages due and owing upon separation of employment as required by Labor Code §§ 201 and
12 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Waiting
13 Time Penalties Subclass the above-described waiting time penalty, all in an amount to be shown
14 according to proof at trial and within the jurisdiction of this Court.

15 **SEVENTH CAUSE OF ACTION**

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

17 (Labor Code § 226)

18 *Plaintiff and the Wage Statement Penalties Subclass Against All Defendants*

19 97. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
20 as if fully alleged herein.

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

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

1 corresponding number of hours worked at each hourly rate by the employee.

2 100. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
3 and the Wage Statement Penalties Subclass due to violations including: failure to accurately state
4 total hours worked (for example, the wage statements failed to accurately state total hours
5 worked and/or reflect the correct compensable hours); failure to accurately state gross wages
6 earned, all deductions, and net wages earned (due to, for example, the failure to pay all required
7 minimum and overtime wages); failure to state the applicable hourly rates (including the accurate
8 overtime rate of pay); failure to state the inclusive dates of the pay period; failure to accurately
9 state the name and address of the legal entity of the employer; and failure to accurately state the
10 corresponding number of hours worked at each hourly rate.

11 101. Moreover, Defendants' wage statements directly violated Labor Code § 226(a)
12 each period due to the failure to pay and report premium wages for denied meal periods and rest
13 breaks under § 226.7.

14 102. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
15 to Plaintiff and the Wage Statement Penalties Subclass because Defendants failed to provide a
16 wage statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
17 requirements of Labor Code § 226(a).

18 103. Defendants' failure to provide the required writing deprived Plaintiff and the
19 Wage Statement Penalties Subclass of the ability to know, understand, and question the rate of
20 pay and hours used to calculate the wages paid by Defendants. Therefore, Plaintiff and the Wage
21 Statement Penalties Subclass had no way to dispute the resulting miscalculation of wages, all of
22 which resulted in an unjustified economic enrichment to said Defendants. As a direct result,
23 Plaintiff and the Wage Statement Penalties Subclass have suffered and continue to suffer,
24 substantial losses related to the use and enjoyment of such wages, lost interest on such wages and
25 expenses and attorney's fees in seeking to compel Defendants to fully perform its obligation
26 under state law, all to their respective damages in amounts according to proof at trial.

27 104. As a result of Defendants' knowing and intentional failure to comply with Labor
28 Code § 226(a), Plaintiff and the Wage Statement Penalties Subclass have suffered an injury in

1 that each was prevented from knowing, understanding and disputing the wage payments paid to
2 them. Furthermore, Plaintiff and the Wage Statement Penalties Subclass have each suffered an
3 injury in that the failure to show all wages earned on the itemized wage statements resulted in
4 Plaintiff and the Represented Employees being denied all necessary deductions, payments, and
5 withholdings owed by the employer, including, but not limited to, the failure to make all
6 necessary contributions for unemployment benefits, social security benefits, proper payment of
7 taxes and withholdings, and other mandated state and federal benefits.

8 105. Plaintiff has also been injured as a result of having to bring this action to attempt
9 to obtain correct wage information following Defendants' refusal to comply with many of the
10 mandates of California's Labor Code and related laws and regulations.

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

17 **EIGHTH CAUSE OF ACTION**

18 **UNFAIR AND UNLAWFUL COMPETITION**

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

20 *Plaintiff and the Represented Employees Against All Defendants*

21 107. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
22 as if fully alleged herein.

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

27 109. Defendants, and each of them, are "persons" as defined under Business &
28 Professions Code § 17021.

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

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

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

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

15 114. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
16 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
17 Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code
18 of Civil Procedure § 1021.5.

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

25 116. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
26 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
27 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
28 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,

1 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
2 harm unless Defendants, and each of them, are restrained from continuing to engage in said
3 unfair, unlawful and/or fraudulent business practices.

4 117. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
5 and does, seek such relief as may be necessary to disgorge the profits which Defendants have
6 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the
7 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
8 Represented Employees are not obligated to establish individual knowledge of the unfair
9 practices of Defendants in order to recover restitution.

10 118. Plaintiff, individually, and on behalf of the Represented Employees, is further
11 entitled to and do seek a declaration that the above described business practices are unfair,
12 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
13 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
14 the future.

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

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

22 120. Plaintiff is an “aggrieved employee” under the PAGA as he was employed by
23 Defendants during the applicable statutory period and suffered one or more of the Labor Code
24 violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil
25 action filed on behalf of hi,self and all other similarly situated current and former aggrieved
26 employees in California against whom one or more of the alleged violations was committed
27 (hereinafter the “Aggrieved Employees”).
28

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

122. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. More than sixty-five (65) days have elapsed since the date Plaintiff provided the written notice of the claims alleged herein without the LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiff has fully satisfied the administrative prerequisites to suit under the PAGA.

NINTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES

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

Plaintiff and the Aggrieved Employees against All Defendants

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

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

125. Plaintiff and the Aggrieved Employees were not provided proper minimum and regular wages due to Defendants' failure to accurately record and compensate for all hours worked. As a result of this policy and practice, Plaintiff and the Aggrieved Employees were required to perform off-the-clock work that Defendants either knew or should have known they were performing.

126. As a result of these policies and practices, Defendants failed to pay Plaintiff and the Aggrieved Employees for all hours worked.

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

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

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

10 **TENTH CAUSE OF ACTION**

11 **PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES**

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

13 *Plaintiff and the Aggrieved Employees against All Defendants*

14 130. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
15 as if fully alleged herein.

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

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

24 133. At all relevant times, Plaintiff and the Aggrieved Employees were required by
25 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
26 Defendants' practices described herein, Defendants failed to pay Plaintiff and the Aggrieved
27 Employees for all overtime hours worked at the proper rate of pay.

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

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

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

11 **ELEVENTH CAUSE OF ACTION**

12 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS**

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

14 *Plaintiff and the Aggrieved Employees against All Defendants*

15 137. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
16 as if fully alleged herein.

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

19 139. Labor Code § 226.7 requires employers, including Defendants, to provide
20 employees with meal periods as mandated by the Industrial Welfare Commission.

21 140. Labor Code § 512(a), in part, provides that employers, including Defendants, may
22 not employ an employee for a work period of more than five hours per day without providing an
23 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
24 except that if the total work period per day of the employee is no more than six hours, the meal
25 period may be waived by mutual consent of both the employer and the employee. Employers
26 may not employ an employee for a work period more than 10 hours per day without providing
27 the employee with a second meal period of not less than 30 minutes.
28

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

4 142. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied
5 the 30-minute meal periods to which they were entitled due to Defendants' policies and practices
6 discussed herein.

7 143. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
8 Order every pay period because Plaintiff and the Aggrieved Employees were not provided with
9 all mandatory meal periods and Defendants failed to pay Plaintiff and the Aggrieved Employees
10 one additional hour of compensation at the regular rate of pay in lieu thereof.

11 144. On information and belief, Plaintiff and the Aggrieved Employees did not
12 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
13 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not
14 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
15 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved
16 Employees to take meal periods in accordance with California law.

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

20 **TWELFTH CAUSE OF ACTION**

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

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

23 *Plaintiff and the Aggrieved Employees against All Defendants*

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

26 147. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
27 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.
28

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

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

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

11 151. At all relevant times, and due to the policies and practices described herein,
12 Defendants failed to provide Plaintiff and the Aggrieved Employees with 10 minutes of net rest
13 break time for every 4 hours worked, or major fraction thereof, as mandated by California law.

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

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

21 **THIRTEENTH CAUSE OF ACTION**

22 **PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES**

23 (Labor Code § 2802)

24 *Plaintiff and the Aggrieved Employees against All Defendants*

25 154. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
26 as if fully alleged herein.

27 155. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
28 who did not receive proper protections and benefits of the laws governing reimbursement of

1 business expenses.

2 156. Labor Code § 2802(a) requires that the employer indemnify its employees for
3 expenses and losses incurred while discharging their duties or in obedience to the directions of
4 their employer.

5 157. At all relevant times herein mentioned, Defendants violated Labor Code § 2802(a)
6 when they failed to reimburse Plaintiff and the Aggrieved Employees for expenses incurred as a
7 direct consequence of employment with Defendants and/or under the direction of Defendants.

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

11 **FOURTEENTH CAUSE OF ACTION**

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

13 (Labor Code § 204)

14 *Plaintiff and the Aggrieved Employees against All Defendants*

15 159. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
16 as if fully alleged herein.

17 160. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
18 who did not receive proper protections and benefits of the laws regarding the timing of payment
19 of wages each period.

20 161. Labor Code § 204(a) states that all wages earned by a person are due and payable
21 twice during each calendar month, and further states that wages earned during the first through
22 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
23 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
24 the following month.

25 162. Furthermore, Labor Code § 204(d) states "[t]he requirements of this section shall
26 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
27 the wages are paid not more than seven calendar days following the close of the payroll period."
28

1 163. At all relevant times herein, Defendants did not provide Plaintiff and the
2 Aggrieved Employees with all wages due and owing each period within the time required by
3 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Aggrieved
4 Employees with all wages due and owing each pay period, including, but not limited to,
5 minimum, regular, and overtime wages, as well as meal and rest period premiums and sick time
6 at the proper rate, within the time specified by Labor Code § 204.

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

10 **FIFTEENTH CAUSE OF ACTION**

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

12 (Labor Code §§ 201 – 203)

13 *Plaintiff and the Aggrieved Employees against All Defendants*

14 165. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
15 as if fully alleged herein.

16 166. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
17 who did not receive proper protections and benefits of the laws governing the timing and
18 payment of final wages.

19 167. Labor Code § 201 requires that the employer immediately pay any wages, without
20 abatement or reduction, to any employee who is discharged.

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

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

27 170. At all relevant times here, Defendants did not provide Plaintiff and the Aggrieved
28 Employees with all wages due and owing upon separation of employment, including, but not

1 limited to, minimum, regular, and overtime wages, vacation and sick pay at the proper rates, and
2 meal and rest period premiums, within the time specified by Labor Code §§ 201 – 203.

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

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

9 **SIXTEENTH CAUSE OF ACTION**

10 **PAGA ASSESSMENT FOR**

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

12 (Labor Code § 226)

13 *Plaintiff and the Aggrieved Employees against All Defendants*

14 173. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
15 as if fully alleged herein.

16 174. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
17 who did not receive proper protections and benefits of the laws governing the provision of
18 accurate itemized wage statements.

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

25 176. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
26 and the Aggrieved Employees due to violations including: failure to accurately state total hours
27 worked (for example, the wage statements failed to accurately state total hours worked and/or
28 reflect the correct compensable hours); failure to accurately state gross wages earned, all

1 deductions, and net wages earned (due to, for example, the failure to pay all required minimum
2 and overtime wages); failure to state the applicable hourly rates (including the accurate overtime
3 rate of pay); failure to state the inclusive dates of the pay period; failure to accurately state the
4 name and address of the legal entity of the employer; and failure to accurately state the
5 corresponding number of hours worked at each hourly rate.

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

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

12 **VII. PRAYER FOR RELIEF**

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

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

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

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

20 4. That Plaintiff be appointed as Class Representative;

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

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

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

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

1 9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
2 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5,
3 1194, 1197, 1198, 1199, and 2802, among other sections inadvertently omitted;

4 10. For an award of damages in the amount of unpaid compensation including, but
5 not limited to, unpaid wages, benefits, and penalties, including interest thereon;

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

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

8 **DEMAND FOR JURY TRIAL**

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

11 Dated: July 29, 2024

LAUBY, MANKIN & LAUBY LLP

12 BY: 
13 _____
14 Brian J. Mankin, Esq.
15 Peter J. Carlson, Esq.
16 Attorneys for Plaintiff

PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 5198 Arlington Avenue, PMB 513, Riverside, CA 92504.

On August 5, 2024, I caused to be served the foregoing document(s) described as follows:

FIRST AMENDED COMPLAINT

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the 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 one day after date of deposit for mailing in affidavit.

☐ **By Mail** I deposited such envelope in the mail at Riverside, California. The envelope was mailed with postage thereon fully prepaid.

☐ **By Facsimile** I sent this document via fax to all parties as listed on attached service list, on

☐ **By Overnight Service** I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

☐ **By Certified Mail-Return Receipt Requested** I caused such envelope with postage fully prepaid thereon, to be placed in the United States mail at Riverside, California

☐ **By Personal Service** I caused said document(s) to be personally served by hand on the parties listed on the attached service list.

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 5, 2024, Riverside, California.

☐ **Federal** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


Tracie Chiarito, Declarant

SERVICE LIST

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