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Attorney for Plaintiff,
NORRELL MACK

**SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF CONTRA COSTA**

NORRELL MACK, an individual, on his
own behalf and on behalf of all others
similarly situated,

Plaintiffs,

vs.

G LOGISTICS LLC, a California limited
liability company; and DOES 1 through 100,
inclusive,

Case No.: C-24-01900

[Assigned for all purposes to Hon. Charles S.
Treat, in dept. 12]

**PLAINTIFF'S FIRST AMENDED CLASS
ACTION COMPLAINT FOR:**

- 1. FAILURE TO PAY MINIMUM WAGES**
(Cal. *Labor Code* §§ 1194, 1197, 1197.1,
1198, 119; IWC Wage Order No. 9);
- 2. FAILURE TO PROVIDE TIMELY OFF
DUTY MEAL PERIODS** (Cal. *Labor Code*
§§ 226.7, 512; IWC Wage Order No. 9);
- 3. FAILURE TO PROVIDE REST PERIODS**
(Cal. *Labor Code* § 226.7; IWC Wage
Order No. 9);
- 4. FAILURE TO MAINTAIN RECORDS
AND PROVIDE ACCURATE ITEMIZED
WAGE STATEMENTS** (Cal. *Labor Code*
§226; Wage Order No. 9);
- 5. FAILURE TO PAY WAGES DUE UPON
TERMINATION** (Cal. *Labor Code* §§201-
203; Wage Order No. 9);
- 6. FAILURE TO REIMBURSE BUSINESS
EXPENSES** (Cal. *Labor Code* §2802);
- 7. FAILURE TO PROVIDE UNIFORM
MAINTENANCE ALLOWANCE** (Cal.
Labor Code §2802);
- 8. REPORTING TIME PAY** (Wage Order
No. 9);

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- 9. FAILURE TO ALLOW INSPECTION OF
EMPLOYMENT RECORDS (Cal. *Labor
Code* §1198.5);**
**10. UNFAIR COMPETITION (Cal. *Bus. &
Prof. Code* §§17200 *et seq.*); and**
**11. PRIVATE ATTORNEY GENERAL ACT
(PAGA)**

DEMAND FOR A JURY TRIAL

Action Filed: July 19, 2024
Trial Date: Not Set

All allegations in this First Amended Complaint are based upon information and belief except for those allegations which pertain to the Plaintiff named herein and his counsel. Each allegation has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

NORRELL MACK ("Plaintiff") alleges the following:

1. This is a class action brought under California law by an individual who was employed by G Logistics LLC ("G Logistics" or "Defendant") (along with DOES 1 through 100, collectively "Defendants"). Plaintiff brings this action on behalf of himself and others similarly situated to recover wages from Defendant due to Defendant's systematic failure to: pay minimum wages, provide meal and rest breaks (or pay the statutory compensation due), issue accurate wage statements, pay all wages upon termination, reimburse business expenses, provide a uniform maintenance allowance and pay reporting time pay.

2. Plaintiffs have worked as Delivery Drivers and other employees for Defendant in California. While working, Plaintiffs have been forced to endure stressful and illegal workplace conditions created by Defendant's efforts to maximize profits and tightly control labor costs.

1 3. Plaintiff, like his co-workers whom Defendant also employed during the
2 applicable limitations period, spend their workdays as employment as Delivery Drivers and other
3 employees, under illegal and highly regimented circumstances. That regimen results from
4 Defendant's insistence to strictly monitor and curtail labor costs, which Defendant accomplishes
5 by not paying for all labor costs, failing to provide minimum wages, failing to provide meal and
6 rest breaks (or pay the statutory compensation due), failing to issue accurate wage statements,
7 failing to pay all wages on termination, failing to reimburse business expenses, failing to pay a
8 uniform maintenance allowance, failing to pay reporting time pay, and by using other unlawful
9 stratagems to ensure that labor costs remain artificially low.

10 4. Plaintiff brings this class action to recover, among other things, wages and
11 penalties from unpaid wages earned and due, including but not limited to, minimum wages,
12 premium pay for failure to afford proper meal/rest breaks, wages due to discharged or quitting
13 employees, penalties for failure to provide accurate itemized wage statements, reimbursement of
14 business expenses, monies paid for uniform maintenance, reporting time pay, and interest,
15 attorneys' fees, costs, and expenses.

16 5. Plaintiff seeks compensatory, statutory, declaratory, and injunctive relief for
17 himself and all members of the class, to compensate these workers for the unpaid wages and to
18 protect current and future workers of Defendant from being subjected to similar wage theft and
19 otherwise unlawful working conditions.

20 6. Plaintiff also brings an action seeking relief for Defendant's violations of
21 California *Business & Professions Code* §§ 17200 *et seq.*, including full restitution and
22 disgorgement of all compensation retained by Defendant as a result of its unlawful and unfair
23 business practices, as well as injunctive relief.

24 **JURISDICTION AND VENUE**

25 7. This Court has jurisdiction over this First Amended Complaint under Code of
26 Civil Procedure §410.10. This action is brought under *Code of Civil Procedure* § 382, and
27 *Business & Professions Code* §§ 17200 *et seq.* Plaintiff brings this First Amended Complaint on
28 his own behalf and on behalf of all persons in the class as defined in paragraph 18 below.

8. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and 395.5, because the claims made, and the *Labor Code* violations as against the persons identified herein, occurred in the County of Contra Costa and because Defendant owned and operated their business in the County of Contra Costa.

THE PARTIES

PLAINTIFF

9. At all times relevant hereto, Plaintiff was:

- (a) An individual over age 18 and a resident of Richmond, California;
- (b) Employed as an hourly employee for Defendant in Richmond, California;
- (c) Did not receive minimum wages as required by *Labor Code* §§1194, 1197, 1197.1, 1198, 119 and the applicable Wage Orders;
- (d) Did not receive the meal periods required by *Labor Code* §266.7 and the applicable Wage Orders;
- (e) Did not receive the rest periods required by *Labor Code* §266.7 and the applicable Wage Orders;
- (f) Did not receive accurate wage statements as mandated by *Labor Code* §226;
- (g) When terminated from his employment, did not receive his final paycheck within the time limits prescribed by *Labor Code* §201;
- (h) Was not reimbursed for business expenses as required by *Labor Code* §2802;
- (i) Was not provided a uniform maintenance allowance as required by *Labor Code* §2802;
- (j) Was not paid reporting time pay in violation of Wage Order No. 9; and
- (k) Was not provided his personnel records.

10. Each of these was a violation of the *Labor Code*.

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1 **DEFENDANT**

2 11. Plaintiff is informed and believes, and based on that information and belief,
3 alleges, Defendant G Logistics is, and at all times mentioned herein was:

- 4 (a) A California limited liability company, with a principal place of business
5 at 2995 Atlas Road, Richmond, California 94806. Defendant has been
6 authorized to do business and has been doing business in the County of
7 Contra Costa;
- 8 (b) The former employer of Plaintiff and the current and former employer of
9 the putative Class members;
- 10 (c) Paid Plaintiff and all Class Members on an hourly basis;
- 11 (d) Failed to pay Plaintiff and all putative Class members minimum wages;
- 12 (e) Failed to provide Plaintiff and all putative Class members with meal and
13 rest periods, failed to provide Plaintiff and all putative Class Members with
14 accurate itemized wage statements;
- 15 (f) Failed to issue final paychecks timely to Plaintiff and all putative Class
16 Members;
- 17 (g) Failed to reimburse business expenses to Plaintiff and all putative Class
18 Members;
- 19 (h) Failed to provide a uniform maintenance allowance to Plaintiff and all
20 putative Class Members;
- 21 (i) Failed to pay reporting time pay wages; and
- 22 (j) Failed to provide Plaintiff with his requested personnel records.

23 12. Each of these was a violation of the *Labor Code*.

24 13. The true names and capacities, whether individual, corporate, subsidiary,
25 partnership, associate or otherwise of Defendants DOES 1 through 100, inclusive, are unknown
26 to Plaintiff, who therefore sues these Defendants by such fictitious names pursuant to *Code of*
27 *Civil Procedure* § 474. Plaintiff will seek leave to amend his Complaint to allege the true names
28 and capacities of DOES 1 through 100, inclusive, when they are ascertained.

1 14. Plaintiff is informed and believes, and based on that information and belief alleges,
2 that Defendant DOES 1 through 100 are persons, corporations or other entities which reside in or
3 are authorized to do, or are otherwise doing, business in the State of California. Specifically,
4 DOES 1 through 100 maintain offices, operate businesses, employ persons, and conduct business
5 in the County of Contra Costa. Each of the Defendants DOES 1 through 100 was the managerial
6 agent, employee, predecessor, successor, joint-venturers, co-conspirator, alter ego and/or
7 representative of one or more of the other Defendants named herein, and acting with permission,
8 authorization, and/or ratification and consent of the other Defendants.

9 15. Plaintiff is informed and believes, and based on that information and belief alleges,
10 that the Defendants named in this First Amended Complaint, including DOES 1 through 100,
11 inclusive, are responsible in some manner for one or more of the events and happenings that
12 proximately caused the injuries and damages hereinafter alleged.

13 16. Plaintiff is informed and believes, and based on that information and belief alleges,
14 that Defendants named in this First Amended Complaint, including DOES 1 through 100,
15 inclusive, are, and at all times mentioned herein were, the agents, servants, and/or employees of
16 each of the other Defendants and that each Defendant was acting within the course and scope of
17 his, hers or its authority as the agent, servant and/or employee of each of the other Defendants.
18 Consequently, all of the Defendants are jointly and severally liable to the Plaintiff, and the Class,
19 for the damages sustained as a proximate result of their conduct.

20 17. Plaintiff is informed and believes, and based on that information and belief alleges,
21 that the Defendants named in this First Amended Complaint, including DOES 1 through 100,
22 inclusive, knowingly and willfully acted in concert, conspired and agreed together among
23 themselves and entered into a combination and systemized campaign of activity to *inter alia*
24 damage Plaintiff, and the Class, and to otherwise consciously and/or recklessly act in derogation
25 of the rights of Plaintiff and the Class, and the trust reposed by Plaintiff, and the Class, in each of
26 the Defendants, the acts being negligently and/or intentionally inflicted. Their conspiracy, and
27 Defendants' concerted actions, were such that, to Plaintiff's information and belief, and to all
28 appearances, Defendants, and each of them, represented a unified body so that the actions of one

Defendant were accomplished in concert with, and with the knowledge, ratification, authorization and approval of each of the other Defendants.

CLASS ALLEGATIONS

A. The Definition of the Class

18. The class ("the Class") is defined as follows:

(a) "All current and former employees who were hourly paid employees of Defendant and worked for Defendant in California at any time during the period commencing on the date that is four (4) years prior to the filing of this Complaint and continuing through the present date (the "Class Period")."

(b) "All persons who were hourly paid employees of Defendant and worked for Defendant in California and left the employ of Defendant at any time during the period commencing on the date that is within one (1) year prior to the filing of this Complaint and continuing through the present date (the "Class Period")."

19. Plaintiff reserves his right under Rule 3.765 of the California Rules of Court to amend or modify the Class description with greater specificity or further division into subclasses or limitation to particular issues.

B. Maintenance of the Action

20. Plaintiff brings this action individually and on behalf of himself and as representative of all similarly situated persons under Business & Professions Code §§ 17203 and 17204 and Code of Civil Procedure § 382.

C. The Class Requisites

21. At all material times, Plaintiff was a member of the class.

22. The Class action meets the statutory prerequisites for maintaining a class action under Code of Civil Procedure § 382 in that:

(a) The persons who comprise the class are so numerous that the joinder of all those persons is impracticable, and the disposition of their claims as a Class will benefit the parties and the Court;

- 1 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
2 that are raised in this First Amended Complaint are common to the class and
3 will apply uniformly to every Class member;
- 4 (c) The claims of the representative Plaintiff are typical of the claims of each
5 Class member. Plaintiff, like all Class members, has sustained damages
6 arising from Defendant's violations of the laws of the State of California.
7 Plaintiff, and the Class members, were and are similarly or identically
8 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
9 pattern of misconduct engaged in by the Defendant;
- 10 (d) The representative Plaintiff has, and will continue to, fairly and adequately
11 represent and protect the interests of the class and has retained counsel who
12 are competent and experienced in class action litigation. There are no
13 material conflicts between the claims of the representative Plaintiff and the
14 Class members that would make class certification inappropriate. Counsel
15 for the Class will vigorously assert the claims of all Class members.
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17 23. The persons who comprise the class are so numerous that joining all of them is
18 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.
19 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff
20 will fairly and adequately protect the interests of the class he seeks to represent. Plaintiff does not
21 have any interests that are antagonistic to the class he seeks to represent. Counsel for Plaintiff are
22 experienced, qualified and generally able to conduct complex class action litigation.

23 24. The Court should permit the action to be maintained as a class action under *Code*
24 *of Civil Procedure* § 382 because:

- 25 (a) The questions of law and fact common to the class predominate over any
26 question affecting only individual members:
- 27 (b) A class action is superior to any other available method for fairly and
28 efficiently adjudicating the claims of the class;

- 1 (c) The Class members are so numerous that it is impractical to bring all of
2 them before the Court;
- 3 (d) Plaintiff and other Class members will not be able to obtain effective and
4 economic legal redress unless the action is maintained as a class action;
- 5 (e) There is a community of interest in obtaining appropriate legal and
6 equitable relief for the statutory violations and in obtaining adequate
7 compensation for the damages and injuries for which Defendant is
8 responsible in an amount sufficient to adequately compensate the Class
9 members;
- 10 (f) Without Class certification, the prosecution of separate actions by
11 individual Class members would create a risk of:
- 12 i. Inconsistent or varying adjudications for individual Class members
13 that would establish incompatible standards of conduct for
14 Defendant; and/or,
- 15 ii. Adjudication for individual Class members that would, as a practical
16 matter, dispose of other non-party members' interests, or that would
17 substantially impair or impede the non-parties' ability to protect their
18 interests, by, for example, potentially exhausting the funds available
19 from Defendant, and
- 20 (g) Defendant has acted or refused to act on grounds generally applicable to the
21 Classes, making final injunctive relief appropriate for the class, as a whole.
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24 25. Plaintiff contemplates eventually issuing notice to the proposed Class Members
25 that would set forth the subject and nature of the action. The Defendant's own business records
26 may be utilized for assisting to prepare and issue the contemplated notice. To the extent that any
27 further notices may be required, Plaintiff would contemplate using additional media and/or
28 mailing.

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27. Plaintiff and members of the class were employed as Delivery Drivers and other non-exempt employees in California at various times during the Class Period.

28. The employment by Defendant of the Class Members, and each of them, is governed by Industrial Welfare Commission Wage Order 9, which covers those persons employed in the transportation industry.

29. Plaintiff seeks relief from Defendant's uniform policies and practices of denying Plaintiff and members of the Class wages and compensation owed under California law.

31. While employed by Defendant as a Delivery Driver, Plaintiff was paid \$23.00 per hour.

32. Under California law, non-exempt employees, as defined by Wage Order 9, are entitled to minimum wages.

33. Under California law, an hourly paid employee is entitled to be paid a minimum wage. Labor Code Section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code Section 1194 states, "Any employee receiving less than the legal minimum wage...is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage." The applicable IWC Wage Order(s), including IWC Wage Order No. 9-2001, obligates employers to pay each employee minimum wages for all hours worked.

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1 34. These minimum wage standards apply to each hour employees worked or were
2 subject to control by the employer for which they were not paid. Therefore, an employer's failure
3 to pay for any particular hour of time worked by an employee or subject to the employer's control
4 is unlawful, even if averaging an employee's total pay over all hours worked, paid or not, results
5 in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th
6 314, 324 (2005).

7 35. At all times during the relevant time period, it was the practice and policy of
8 Defendant to pay employees less than minimum wage rates due to the lack of proper meal/rest
9 breaks. Monies for these underpaid amounts remain due and owing.

10 36. At all times during the relevant time period, Plaintiff and the Class routinely
11 worked schedules such that they were due pay at minimum wage rates. During this period, it was
12 the practice and policy of Defendant to not pay employees minimum wages. Monies for unpaid
13 minimum wages remain due and owing.

14 **EXCLUSION OF BONUSES FROM THE REGULAR RATE OF PAY**

15 37. California law uses the terms "compensation" and "pay" interchangeably and
16 requires that all applicable remuneration, including but not limited to, commissions, and/or non-
17 discretionary bonuses, and/or gift cards and/or cash payments based on sales numbers, etc., be
18 included when calculating an employee's regular rate of pay.

19 38. Defendant failed to properly pay and calculate wages due to excluding bonuses
20 from the regular rate of pay calculations. Such payments are required under California law to be
21 included in an employee's regular rate of pay for wage calculation. Defendant failed to do so,
22 thereby failing to pay employees their full wages as required under the Labor Code.

23 39. Plaintiff and members of the class received bonuses that must be included when
24 calculating their regular rates of pay for purposes of wages. However, Defendant failed to
25 correctly calculate Plaintiff and members of the class's regular rate of pay to include all applicable
26 remuneration, including, but not limited to, bonuses.

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1 40. Plaintiff's paystub dated May 12, 2023, shows "Bonus Nondiscr" being paid to
2 Plaintiff at the same time as "Paid Meal A," paid at exactly the base rate. Thus, the bonus is not
3 incorporated into the meal premium rate. Further, Plaintiff's paystub dated September 30, 2023,
4 shows an "Amazon Non-Discretionary Bonus" paid to Plaintiff at the same time as meal break
5 premiums, at less than the base rate. Thus, the bonus was not incorporated into the meal break
6 premium rate. Also, Plaintiff's paystubs dated 5/12/2023, 5/26/2023 and 7/2/2023 show "Bonus
7 Nondiscr" paid to Plaintiff at the same time as two overtime rates were paid, one paid at exactly
8 1.5 times the base rate, and the other higher than 1.5 times the base rate. Thus, the bonus seems
9 to be incorporated into some, but not all, overtime. Lastly, Plaintiff's paystub dated September
10 30, 2023, shows he was paid "Amazon Non-Discretionary Bonus" at the same time as overtime
11 and sick time, and both were paid at a blended rate.

12 **LATE/NOT AFFORDED MEAL BREAKS**

13 41. Plaintiff and the Class members were routinely not afforded proper meal breaks.
14 Meal breaks were afforded late and/or not afforded. Further, Plaintiff and Class members were
15 required to carry their work cell phones during work hours and to keep them on during meal
16 breaks.

17 **REST BREAKS NOT AFFORDED**

18 42. Plaintiff and the Class members were routinely not afforded proper rest breaks. At
19 times, Plaintiff and Class members had to work during their rest periods. On days when Plaintiff
20 and Class members worked between 10-12 hours, they were not afforded third rest breaks.
21 Plaintiff and Class members were required to carry their work cell phones during work hours and
22 keep them on during their rest breaks.

23 **FAILURE TO ISSUE ACCURATE WAGE STATEMENTS**

24 43. As a result of Defendant's failure to pay employees the required minimum wages
25 and failure to afford meal/rest breaks and reporting time pay, the wage statements issued to the
26 employees did not comply with *Labor Code* §226 and California Industrial Welfare Commission
27 ("IWC") Wage Order 9 in that they did not accurately reflect all wages earned and due and owing.

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1 **FAILURE TO PAY WAGES DUE UPON TERMINATION AND/OR RESIGNATION**

2 44. As a further result of Defendant's failure to pay employees at required minimum
3 wages, for meal/rest breaks not properly afforded and reporting time pay, when the employees
4 left their employ, they were not timely paid all wages due them, as required by *Labor Code* §§
5 201, 202 and Wage Order 9. Further, it was the practice of Defendant to not pay employees the
6 final paychecks within the time periods mandated by *Labor Code* §§201, 202 and Wage Order 9.

7 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

8 45. Defendant failed to reimburse Plaintiff and Class members for their necessary
9 business expenses, such as cell phone use.

10 **FAILURE TO PAY UNIFORM MAINTENANCE ALLOWANCE**

11 46. Defendant failed to pay Plaintiff and Class members for the maintenance of their
12 uniforms. Defendant required Plaintiff and Class members to wear uniforms consisting of shirts
13 and logo reflective vests. Plaintiff and Class members paid for maintenance of their uniforms
14 themselves and were not reimbursed therefor.

15 **FAILURE TO PROPERLY PAY REPORTING TIME PAY**

16 47. Defendant failed to pay Plaintiff and Class members reporting time pay. Plaintiff
17 and Class members were at times sent home within the first two hours of their shifts because
18 Defendant did not have a full route available for them. However, Defendant failed to pay
19 reporting time pay to Plaintiff and Class members.

20 **FAILURE TO ALLOW INSPECTION OF PERSONNEL RECORDS**

21 48. Defendant failed to allow Plaintiff to timely inspect his personnel records and
22 payroll file.

23 **FIRST CAUSE OF ACTION**

24 **FOR FAILURE TO PAY MINIMUM WAGES**

25 **(Labor Code §§ 1194, 1197, 1197.1, 1198, 119, IWC Wage Order 9 By Plaintiff Against**
26 **Defendant and Does 1 through 100)**

27 49. Plaintiff and the Class reallege and incorporate by reference all of the allegations
28 set forth in this First Amended Complaint.

1 50. *Labor Code* § 1197 states the California requirement that employees must be paid
2 at least the minimum wage fixed by the Commission, and any payment of less than the minimum
3 wage is unlawful. Similarly, *Labor Code* § 1194 entitles "any employee receiving less than the
4 legal minimum wage...entitled to recover in a civil action the unpaid balance of the full amount
5 of this minimum wage." IWC Wage Order 9-2001 also obligates employers to pay each employee
6 minimum wages for all hours worked. These minimum wage standards apply to each hour
7 employees worked for which they were not paid. Therefore, an employer's failure to pay for any
8 particular hour of time worked by an employee is unlawful, even if averaging an employee's total
9 pay over all hours worked, paid or not, results in an average hourly wage above minimum wage.
10 *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

11 51. Here, Defendant's failure to afford meal/rest breaks resulted in Plaintiff and the
12 Class not being paid the minimum wages that were due to them.

13 52. California Labor Code section 558 provides in pertinent part:

14 (a) Any employer or other person acting on behalf of an employer who
15 violates, or causes to be violated, a section of this chapter or any provision
16 regulating hours and days of work in any order of the Industrial Welfare
Commission shall be subject to a civil penalty as follows:

17 (1) For any initial violation, fifty dollars (\$50) for each underpaid
18 employee for each pay period for which the employee was underpaid in
addition to an amount sufficient to recover underpaid wages.

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

21 (3) Wages recovered pursuant to this section shall be paid to the affected
22 employee...

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

24 53. *Labor Code* § 1194 provides, in part, that any employee receiving less than the
25 legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum
26 wage, including interest thereon, reasonable attorney's fees, and costs of suit.

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54. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor Code* § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid for all hours worked under *Labor Code* § 1194, the employee may recover minimum wages for the time associated with the overtime for which they received no compensation. *See Sillah v. Command Int’l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed they were paid less than minimum wage); *accord Andrade v. Arby’s Rest. Grp., Inc.*, 225 F. Supp. 3d 1115, 1132-33 (N.D. Cal. 2016).

55. Plaintiff and the other Class Members suffered and continue to suffer losses related to the use and enjoyment of compensation due and owing to them as a direct result of Defendants' unlawful acts and Labor Code violations in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

56. Therefore, pursuant to Labor Code §§200, 218.5, 558 and 1194, Plaintiff and the Class are entitled to recover the unpaid balances of the minimum wages Defendants owe them, plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to proof.

SECOND CAUSE OF ACTION

FAILURE TO PAY FOR MEAL BREAKS

**(Labor Code § 226.7 and IWC Wage Order No. 9 By Plaintiff Against Defendant and
Does 1 through 100)**

57. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this First Amended Complaint.

58. California Labor Code §226.7(a) prohibits an employer from requiring an employee to work during any meal period mandated by Industrial Wage Order No. 9. Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an employee to work during a meal or rest break or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission..."

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1 59. California Labor Code §1198 makes unlawful the employment of an employee
2 under conditions the IWC prohibits.

3 60. IWC Order No. 9-2001(11)(A) provides, in relevant part: "No employer shall
4 employ any person for a work period of more than five (5) hours without a meal period of not
5 less than 30-minutes, except that when a work period of not more than six (6) hours will complete
6 the day's work the meal period may be waived by mutual consent of the employer and the
7 employee."

8 61. IWC Order No. 9-2001 (11)(c) further provides, in relevant part: "Unless the
9 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
10 considered an 'on duty' meal period and counted as time worked."

11 62. Section 512(a) of the California Labor Code provides, in relevant part, that:

12 An employer may not employ an employee for a work period of more than five
13 hours per day without providing the employee with a meal period of not less
14 than 30-minutes, except that if the total work period per day of the employee is
15 no more than six hours, the meal period may be waived by mutual consent of
16 both the employer and employee. An employer may not employ an employee
17 for a work period of more than 10 hours per day without providing the
18 employee with a second meal period of not less than 30-minutes, except that if
19 the total hours worked is no more than 12 hours, the second meal period may be
20 waived by mutual consent of the employer and the employee only if the first
21 meal period was not waived.

22 63. The Labor Code and Wage Order provisions cited above require California
23 employers to provide employees with off-duty 30-minute meal periods on or before the fifth hour
24 of their shifts. To satisfy this obligation, California employers must: (1) make employees aware
25 of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and (2) ensure
26 that employees are actually free of job duties for thirty minutes per day on or before the fifth hour
27 of their shifts.

28 64. As alleged herein, Plaintiff and the members of the class were routinely required
to work through their meal period at the fifth hour of their shifts with Defendant's endorsement,
encouragement, knowledge and acquiescence. Further, meal breaks were routinely interrupted.

1 65. Plaintiff and Class Members worked during their meal breaks in violation of
2 *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 270-273 (2016) (holding that on-duty
3 rest breaks violate California law).

4 66. Plaintiff and the Class members were routinely not afforded proper meal breaks.
5 Meal breaks were afforded late and/or not afforded. Further, Plaintiff and Class members were
6 required to carry their work cell phones during work hours and to keep them on during meal
7 breaks.

8 67. Under California law, employers must also record their employees' meal periods:
9 "Every employer shall keep accurate information with respect to each employee, including the
10 following: ... Meal periods ... shall also be recorded. Meal periods during which operations cease
11 ... need not be recorded." IWC Order No. 9, § (7)(A)(3). Where the employer has failed to keep
12 records required by statute, the consequences of such failure should fall on the employer, not the
13 employee. In such a situation, imprecise evidence by the employee can provide a sufficient basis
14 for liability." *Hernandez v. Mendoza*, 199 Cal. App. 3d 721, 727 (1988). Inasmuch as Defendant
15 had an obligation under the record-keeping requirements of the Wage Order to track meal periods
16 unless "all work ceases," Defendant knew or should have known its employees were regularly
17 not afforded proper meal periods during the Class Period.

18 68. Defendant has a policy or practice of failing to ensure that Plaintiff and members
19 of the class take the meal periods required by California Labor Code §226.7 and IWC Wage
20 Order No. 9-2001 §11.

21 69. By their actions in not affording Plaintiff and Class Members proper meal periods,
22 Defendant violated Cal. Lab. Code §226.7(b) and section 11 of the Wage Order in the amount of
23 one additional hour of pay at the employee's regular rate of compensation for each work period
24 during each day in which Defendant failed to provide employees with statutory timely off-duty
25 meal periods.

26 70. Defendant also has a policy or practice of failing to pay each of their employees
27 who were not provided with a meal period as required an additional one hour of compensation at
28 each employee's regular rate of pay.

71. Cal. Labor Code § 218 authorizes Plaintiff and the members of the class to bring a private right of action to recover wages due based on the deprivation of timely meal periods under Cal. Labor Code § 226.7(b).

72. As a direct and proximate result of Defendant's unlawful conduct as alleged herein, Plaintiff and members of the class have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover economic and statutory damages, attorneys' fees and penalties and other appropriate relief due to Defendant's violations of the California Labor Code and the applicable IWC Wage Orders.

THIRD CAUSE OF ACTION

FOR FAILURE TO PROVIDE REST PERIODS

**(Labor Code § 226.7 and IWC Wage Order No. 9 By Plaintiff Against Defendant and
Does 1 through 100)**

73. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this First Amended Complaint.

74. Labor Code § 226.7 and Wage Order No. 9 provide that employers shall authorize and permit all employees to take rest periods at the rate of ten minutes net rest time per four hours of work or major fraction thereof.

75. Labor Code § 226.7 and Wage Order No. 9 provide that if an employer fails to provide an employee with rest periods in accordance with those provisions, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the rest periods were not so provided.

76. Defendant has intentionally and improperly denied rest periods to Plaintiff and the Class in violation of Labor Code § 226.7 and Wage Order No. 9.

77. Plaintiff and Class Members worked during their rest breaks in violation of *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 270-273 (2016) (holding that on-duty rest breaks violate California law).

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1 78. Plaintiff and Class members were required to carry their work cell phones during
2 work hours and keep them on during their rest breaks.

3 79. Plaintiff and members of the class were not afforded rest breaks and/or they were
4 required to work through their rest breaks. Plaintiff and Class members would, at times, take
5 shortened breaks so that they could timely finish their routes and meet Defendant's quotas.
6 Additionally, Plaintiff and Class members were not afforded third rest breaks on days when they
7 worked between 10-12 hours.

8 80. At all times relevant hereto, Defendant failed to provide rest periods as required
9 by Labor Code § 226.7 and the applicable Wage Order.

10 81. By virtue of Defendant's unlawful failure to provide rest periods to Plaintiff and
11 the Class, Plaintiff and the Class have suffered, and will continue to suffer, damages in amounts
12 which are presently unknown to Plaintiff and the Class, but which exceed the jurisdictional limits
13 of the Court, and which will be ascertained according to proof at trial.

14 **FOURTH CAUSE OF ACTION**
15 **FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED**
16 **WAGE STATEMENTS**

17 **(Labor Code §226 By Plaintiffs Against Defendant and Does 1 through 100)**

18 82. Plaintiff and the Class reallege and incorporate by reference all of the allegations
19 set forth in this First Amended Complaint.

20 83. Pursuant to IWC Wage Order No. 9, Defendant was the employer of Plaintiff and
21 the Class.

22 84. Pursuant to California Labor Code sections 226 and Wage Order 9-2001 section
23 7, Defendant is required to maintain and provide accurate records relating to employee
24 compensation, including all formulas and production records used to calculate wages due.

25 85. Defendant is further required to provide, *inter alia*, semimonthly or at the time of
26 each payment of wages, an accurate itemized statement showing: (1) gross wages earned; (2) all
27 deductions from wages; (3) net wages earned; (4) the inclusive dates of the period for which the
28

employee is being paid; (5) the name of the employee; and (6) the name and address of the legal entity that is the employee's actual employer. Cal. Labor Code §226(a).

86. Section 226(e) provides that an employee is entitled to recover \$50 for the initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, plus an award of costs and reasonable attorneys' fees, for all pay periods in which the employer knowingly and intentionally failed to provide accurate itemized statements to the employee causing the employee to suffer injury.

87. Notwithstanding these provisions, Defendant has engaged in a uniform practice of refusing to maintain and provide the accurate records and wage statements required by California law.

88. Throughout the Class Period, Defendant intentionally and knowingly provided Plaintiff and other members of the class with weekly itemized wage statements containing inaccurate information regarding the wages earned by Plaintiff and members of the class in that the payments owed to Plaintiff and the members of the class for, minimum wages, premium pay for meal/rest breaks, and reporting time pay, were not included in gross wages earned by Plaintiff and members of the class. Further, Defendant failed to furnish Plaintiff and the Class, upon payment of wages, itemized statements accurately showing the number of hours worked and the rates paid.

89. Further, Plaintiff's paystubs dated 9/30/2023, 10/13/2023, 10/27/2023, 11/10/2023, and 11/24/2023 incorrectly list 0.00 for rates for "Regular". Additionally, Plaintiff's paystubs dated 10/13/2023, 10/27/2023, 11/10/2023 and 11/24/2023 incorrectly list 0.00 for rates for "Overtime." Plaintiff's paystub dated 9/20/2023, incorrectly lists 0.00 for "Overtime Hours (Weighted)". Plaintiff's paystubs dated 9/30/2023, 10/13/2023, and 10/27/2023 incorrectly list 0.00 for "Paid Time Off." Plaintiff's paystub dated 9/30/2023 incorrectly lists 0.00 for "California Lunch". Plaintiff's paystubs dated 9/1/2023, 9/15/2023, 9/29/2023, 10/13/2023 and 10/27/2023 incorrectly lists the Total Hours Worked and include "Paid Time Off".

90. As a result, Plaintiff and members of the class have been injured by having been deprived of the true facts pertaining to their compensation and employment.

91. Plaintiff and members of the class were damaged by these failures because, among other things, the failures led them to believe that they were not entitled to overtime wages, premium pay for meal/rest breaks not properly afforded, reporting time pay, even though they were so entitled, and these failures hindered them from determining the amounts of wages owed to them.

92. Plaintiff and members of the class are entitled to the amounts provided in Labor Code §226(e), plus attorneys' fees and costs.

93. As a result, Plaintiff seeks recovery of the penalties authorized by Labor Code sections 226(e) and 558, and such other penalties and legal and equitable remedies as are provided by law for Defendant's improper conduct.

FIFTH CAUSE OF ACTION

FOR FAILURE TO PAY WAGES UPON TERMINATION

(Labor Code §§201-203 By Plaintiffs Against Defendant and Does 1 through 100)

94. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this First Amended Complaint.

95. Labor Code § 201(a) provides that a discharged employee's unpaid wages are due and payable immediately. Labor Code § 202(a) provides that when an employee resigns from employment, unpaid wages are due and payable within 72 hours of resignation.

96. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until paid, not to exceed thirty days.

97. Plaintiff and the Class were discharged and/or resigned from Defendant's employ, and Defendant willfully failed to pay Plaintiff and the Class wages due to them for minimum wages, meal/rest breaks not properly afforded and reporting time pay.

98. Under Labor Code § 203(a), Plaintiff and the Class are entitled to one day's wages for each day he or she was not timely paid, not to exceed 30 days' wages.

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1 **SIXTH CAUSE OF ACTION**

2 **REIMBURSEMENT OF BUSINESS EXPENSES**

3 **(Cal. Labor Code §2802 By Plaintiffs Against Defendant and Does 1 through 100)**

4 99. Plaintiff and the Class reallege and incorporate by reference all of the allegations
5 set forth in this First Amended Complaint.

6 100. Labor Code §2802 requires employers to indemnify employees for all necessary
7 expenditures incurred by employees in the discharge of their duties.

8 101. At all times relevant herein, Defendant was aware that Plaintiff and Class
9 members were using their cell phones for business but failed to indemnify Plaintiff and Class
10 members for all their business-related expenses, including wear and tear expenses, in accordance
11 with Labor Code §2802. Plaintiff and the Class were required to use their cell phones for work-
12 related activities such as delivering packages. Plaintiff is informed and believes and thereon
13 alleges that at all relevant times, Defendant maintained a practice of not reimbursing Plaintiff and
14 Class Members for their work-related expenses that they incurred in using their cell phones for
15 work-related purposes.

16 102. As a result of Defendant's conduct, Plaintiff and Class Members suffered damages
17 in an amount, subject to proof, to the extent they were not reimbursed for all of their business-
18 related expenses incurred in the discharge of their duties.

19 103. Pursuant to Labor Code §2802, Plaintiff and Class Members are entitled to recover
20 the full amount of their unreimbursed business expenses, reasonable attorneys' fees and costs of
21 suit.

22 **SEVENTH CAUSE OF ACTION**

23 **(Failure to Provide Uniform Maintenance Allowance in Violation of Cal. Labor Code**
24 **§2802 By Plaintiffs Against Defendant and Does 1 through 100)**

25 104. Plaintiff and the Class reallege and incorporate by reference all of the allegations
26 set forth in this First Amended Complaint.

27 105. Under California law, if an employer requires employees to wear a uniform, the
28 employer must pay for and maintain the uniform for the employee. Labor Code §2802.

1 106. An employer may never impose a financial burden on employees, with respect to
2 paying for and maintaining clothing, which would reduce the employees' wage rate below the
3 minimum wage.

4 107. Here, Defendant required Plaintiff and Class members to wear uniforms consisting
5 of shirts and a logo reflective best. However, Plaintiff and Class members were required to
6 maintain their uniforms themselves.

7 108. Defendant failed to reimburse Plaintiff and members of the class for their uniform
8 maintenance.

9 109. As a proximate result of the aforementioned violations of Labor Code § 2802,
10 Plaintiff and members of the class have been damaged in an amount according to proof at the
11 time of trial.

12 110. As a proximate result of the aforementioned violations of § 2802, Plaintiff and
13 members of the class are entitled to recovery from Defendant for reimbursement of necessary
14 expenditures, including interest and attorneys' fees.

15 **EIGHTH CAUSE OF ACTION**

16 **FAILURE TO PAY REPORTING TIME PAY**

17 **(IWC Wage Order No. 9– By Plaintiff against Defendant and Does 1 through 100)**

18 111. Plaintiff and the Class reallege and incorporate by reference all of the allegations
19 set forth in this First Amended Complaint.

20 112. Wage Order 9-2001 provides that "[e]ach workday an employee is required to
21 report for work and does report, but is not put to work or is furnished less than half said
22 employee's usual or scheduled day's work, the employee shall be paid for half the usual or
23 scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at
24 the employee's regular rate of pay, which shall not be less than the minimum wage."

25 113. Defendant had a policy and practice of sending Plaintiff and Class members home
26 during the first two hours of their shifts if Defendant did not have a full route available for them
27 to drive.

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1 118. Additionally, pursuant to Wage Order 9, at section 7 re: Records, employers are
2 required to keep accurate payroll records on each employee, and such records must be made
3 readily available for inspection by the employee upon reasonable request. The employer must
4 also maintain accurate production records.

5 119. On or about May 15, 2024, Plaintiff's counsel issued a written request to
6 Defendant for copies of his personnel records.

7 120. Under California Labor Code Sections 226, 432 and 1198.5, such records were to
8 include all records relating to Plaintiff's hours worked, wage statements and compensation.
9 Plaintiff's counsel and Defendant did not enter into an agreement to enlarge the time for
10 Defendant's compliance, and Defendant has failed and refused to permit Plaintiff copies of his
11 records.

12 121. As a direct result and consequence of Defendant's failure and refusal to permit
13 Plaintiff full access to his records, Plaintiff seeks injunctive relief in the form of an order or decree
14 mandating Defendant's compliance. Plaintiff has suffered and will suffer harm as a result of
15 Defendant's ongoing refusal to comply. Plaintiff also seeks recovery of the statutory penalty of
16 \$750 based upon Defendants' violation of §1198.

17 **TENTH CAUSE OF ACTION**

18 **(Unfair Competition in Violation of Business & Professions Code §§ 17200 *et seq.* By**
19 **Plaintiffs Against Defendant and Does 1 through 100)**

20 122. Plaintiff and the Class reallege and incorporate by reference all of the allegations
21 set forth in this First Amended Complaint.

22 123. Pursuant to IWC Wage Orders No. 9, Defendant was the employer of Plaintiff and
23 the Class. Defendant is also a "person," as that term is defined in Business & Professions Code
24 §17021.

25 124. The Business & Professions Code defines unfair competition as any unlawful,
26 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
27 described herein, Defendant has engaged in unfair and unlawful practices by failing to (1) pay
28 minimum wages; (2) pay premium pay for meal breaks not properly afforded; (3) pay premium

1 pay for rest breaks not properly afforded; (4) furnish Plaintiff and the Class with accurate itemized
2 wage statements, (5) pay Plaintiff and the Class wages due when leaving their employ, (6)
3 reimburse business expenses, (7) provide a uniform maintenance allowance; (8) paying reporting
4 time pay, and (9) failing to provide personnel records, all in violation of Business & Professions
5 Code §§ 17200 *et seq.*

6 125. By and through the unfair and unlawful business practices described herein,
7 Defendant has obtained valuable property, money and services from the Plaintiff and the Class
8 and has deprived them of valuable rights and benefits guaranteed by law, all to the detriment of
9 Plaintiff and the Class.

10 126. All the acts described herein are violations of, among other things, the Labor Code
11 and Industrial Commission Wage Order No. 9, are unlawful and in violation of public policy; and
12 in addition, are immoral, unethical, oppressive, and unscrupulous, and thereby constitute unfair
13 and unlawful business practices in violation of Business & Professions Code §§ 17200 *et seq.*

14 127. Plaintiff and the Class are entitled to, and do, seek such relief as may be necessary
15 to restore to them the money and property which Defendant has acquired, or of which Plaintiff
16 and the Class have been deprived by means of the above-described unfair and unlawful business
17 practices.

18 128. Plaintiff and the Class are further entitled to, and do, seek a declaration that the
19 above-described business practices are unfair and unlawful, and that injunctive relief should be
20 issued restraining Defendant from engaging in any of the above-described unfair and unlawful
21 business practices in the future.

22 129. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to
23 redress the injuries which they have suffered as a consequence of the unfair and unlawful business
24 practices of Defendant. As a result of the unfair and unlawful business practices described above,
25 Plaintiff and the Class have suffered and will continue to suffer irreparable harm unless Defendant
26 is restrained from continuing to engage in these unfair and unlawful business practices. In
27 addition, Defendant should be required to disgorge the unpaid moneys to Plaintiff and the Class.

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ELEVENTH CAUSE OF ACTION

(Damages Pursuant to Private Attorney General Act Against All Employers)

130. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this First Amended Complaint.

131. Plaintiff brings this action on his own behalf and on behalf of all current and former employees of Defendants who were employed in California for the previous four years seeking to recover unpaid wages, including but not limited to failing to pay minimum wages, meal period violations and rest periods violations, failing to provide accurately itemized wage statements, failing to reimburse business expenses, failing to provide a uniform maintenance allowance, failing to provide reporting time pay, and failure to pay wages due at termination. as set forth in this pleading.

132. On May 24, 2024, Plaintiff, pursuant to California Labor Code §§2699, et seq., by and through his attorneys, uploaded a Private Attorney General Act ("PAGA") claim to the State of California Labor and Workforce Development Agency ("LWDA") and sent a letter via Certified Mail Return Receipt Requested to the defendant.

133. More than 65 days have passed since the above letter, and Plaintiff's counsel has not received any notice from the LWDA stating an intention to prosecute Plaintiff's PAGA claims.

134. Plaintiff has therefore complied with the administrative exhaustion requirements of PAGA.

135. Plaintiff seeks Labor Code penalties, attorney's fees, and costs, in an amount according to proof at trial, as provided by the Labor Code Private Attorney General Act.

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in his favor and against Defendant as follows:

1. For compensatory damages in the amount of minimum wages due to Plaintiff and Class Members, according to proof;

2. For one (1) hour of pay at the regular rate of compensation for Plaintiff and Class Members for each workday that a meal and/or rest period was not provided;

1 3. For compensatory damages in the amount of Plaintiff and Class Members' cell
2 phone expenses for business purposes, costs and attorneys' fees pursuant to Cal. Code Civ. Proc.
3 §2802(c);

4 4. For compensatory damages in the amount of Plaintiff and Class members' uniform
5 maintenance expenses, costs and attorneys' fees pursuant to Cal. Code Civ. Proc. §2802(c);

6 5. For reporting time pay;

7 6. For an award of consequential damages in Plaintiff and Class Members' favor and
8 against Defendant, in an amount to be proven at trial;

9 7. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;

10 8. For payment to Plaintiff and Class Members of waiting time penalties pursuant to
11 *Cal. Lab. Code* §203, in an amount equal to his and Class members' respective daily rates of pay
12 at the time of termination or layoff, multiplied by the total amount of days elapsed between the
13 date of the involuntary termination, and/or 72 hours after notice of the voluntary termination, up
14 to a maximum of 30 days' pay, according to proof;

15 9. For specific relief, enforcing waiting time penalties of 30 days of per diem wages
16 pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;

17 10. For prejudgment interest accrued on all due and unpaid minimum wages from the
18 date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and 1194(a), according
19 to proof;

20 11. For injunctive relief requiring Defendant to comply with Labor Code
21 1198.5(b)(1);

22 12. For reasonable costs, including attorneys' fees, in an amount according to proof
23 pursuant to Cal. Labor Code §2699(g);

24 13. For civil penalties pursuant to *Cal. Labor Code* §1198 and Wage Order 9-
25 2001(14);

26 14. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, according to
27 proof;

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15. For reasonable costs, including attorneys' fees, in an amount according to proof pursuant to, *inter alia*, Cal. Labor Code §§ 1194, 218.5, 2802, 1198.5 (1) and/or Cal. Code of Civ. Proc. §1021.5;

16. For an award of restitution of wages to Plaintiff and Class Members in an amount equal to the amount of wages owed and unpaid, according to proof;

17. For injunctive relief ordering the continuing unfair business acts and practices to cease, as the Court deems just and proper;

18. For other injunctive relief ordering Defendant to notify Plaintiff and Class Members that they have not been paid the proper amounts in accordance with California law;

19. For punitive and exemplary damages in a sum to be determined at trial; and

20. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff Norrell Mack hereby respectfully requests a trial by jury for all claims and issues raised in his First Amended Complaint that may be entitled to a jury trial.

LIPELES LAW GROUP, APC

Date: August 5, 2024

By: Jasmine J. Badawi
Attorneys for Plaintiff,
NORRELL MACK