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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JEFF SMOROWSKI, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

ARC HOME LLC, a New Jersey Corporation;
and DOES 1–50, inclusive,

Defendants.

CASE NO.: 23STCV22716

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Reimburse Business Expenses and Losses (Cal. Labor Code §§ 2800, *et seq.*);
2. Wage Statement Violations;
3. Minimum Wage and Overtime Violations;
4. Wages Upon Separation;
5. Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*)
6. Violation of Rest Break Laws;
7. Violation of Meal Period Laws;
8. Reporting Time Pay
9. PAGA

1. Plaintiff JEFF SMOROWSKI (collectively “Plaintiff”) individually and on behalf of all others similarly situated as well as all other aggrieved employees pursuant to the California Private Attorneys General Act, bring this civil class and representative action against Defendant ARC HOME, LLC, a New Jersey Corporation (“ARC”) and DOES 1–50 (collectively, “Defendants”), demanding trial by jury, complaining on information and belief as follows.

2. Plaintiff petitions this Court to represent and prosecute claims against Defendants in class action proceedings on behalf of all those similarly situated who are residents of the State of California, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act.

THE PARTIES

3. At all material times, SMOROWSKI was/is a resident of the County of Los Angeles, in the State of California. From May 2021 to November 2021, ARC employed SMOROWSKI. SMOROWSKI worked from home in Los Angeles, California and his final ARC location was in Los Angeles, California. Plaintiff bring this action on behalf of himself and all others similarly situated persons and in a representative capacity under California Business and Professions Code sections 17200, *et seq.* and the Labor Code.

4. At all material times, ARC conducted business in Los Angeles County and throughout the State of California.

5. The true names and capacities, whether individual, corporate, partnership, associate, or otherwise of Defendants DOES 1–50, inclusive, are unknown to Plaintiff who sues these Defendants by such fictitious names. (Cal. Code Civ. Proc. § 474.) Plaintiff will either seek leave to amend this complaint or file a DOE statement to allege the true names and capacities of DOES 1–50, inclusive, when the same are ascertained. The DOE Defendants together and ARC are collectively referred to herein as “Defendants” or “ARC.”

6. Plaintiff is informed and believes, and thereon alleges that Defendants are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

7. Plaintiff is informed and believes, and thereon alleges, that each of Defendants knowingly and willfully acted in concert, conspired together, and agreed among themselves to enter into a

1 combination and systemized campaign of activity to cause the injuries and damages hereinafter alleged,
2 and to otherwise consciously and or recklessly act in derogation of Plaintiff's rights, and the trust reposed
3 by Plaintiff in each of said Defendants, said acts being negligently and or intentionally inflicted. Said
4 conspiracy, and Defendants' concerted actions, were such that, to Plaintiff's information and belief, and
5 to all appearances, Defendants represented a unified body so that the actions of one Defendant was
6 accomplished in concert with, and with knowledge, ratification, authorization, and approval of each and
7 every other Defendant.

8 8. Plaintiff is informed and believes, and thereon alleges, that each Defendant in this
9 complaint, is, and at all times mentioned was, the agent, servant, alter ego, and or joint employer along
10 with each of the other Defendants, and each Defendant acted within the course or scope of his, her, or its
11 authority as the agent, servant, and or employee of each other Defendant. Consequently, each and every
12 Defendant is jointly and severally liable to Plaintiff and Class Members for the damages incurred as a
13 proximate result of each Defendant's conduct.

14 **JURISDICTION AND VENUE**

15 9. This Court has jurisdiction over this action under the California Constitution, Article VI,
16 section 10, which grants the Superior Court, "Original Jurisdiction in all causes except those given by
17 statute to other courts." The statutes under which Plaintiff brings this action do not specify any other
18 basis for jurisdiction.

19 10. This Court has jurisdiction over all Defendants because upon information and belief, each
20 is either a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally
21 avails itself to the California market so as to render the exercise of jurisdiction over it by the California
22 courts consistent with traditional notions of fair play and substantial justice.

23 11. Venue as to each Defendant is proper in this judicial district under California Code of
24 Civil Procedure sections 395(a) and 395.5 because Plaintiff was employed by Defendants in the County
25 of Los Angeles. Defendants own, maintain offices, transact business, have an agent or agents within the
26 County of Los Angeles or Defendants have transacted business within the County.

27 **INTRODUCTION**

28 12. ARC HOME founded in 2016, is a leading Non-QM and Non-Agency TPO (Third Party

1 Originations) mortgage lender, offering comprehensive mortgage solutions to our customers. ARC
2 HOME is owned by AG Mortgage Investment Trust, a publicly traded REIT, and other funds under
3 management of Angelo Gordon, a privately held investment advisor with approximately \$53B of assets
4 under management.

5 13. ARC HOME's mission is to provide their clients with a comprehensive array of mortgage
6 solutions with an emphasis on specialty products, delivered through a technology-driven process that is
7 efficient, transparent, and competitive.

8 14. ARC HOME is licensed to operate in all States and the District of Columbia except HI,
9 and is not licensed to engage in retail/direct to consumer lending activities in Nevada. ARC HOME
10 conducts business under the name Arc Home LLC.

11 **FACTUAL ALLEGATIONS**

12 15. Plaintiff and all Class Members identified herein were regularly scheduled as a matter of
13 uniform company policy to work and in fact worked in excess of eight hours per workday and/or in excess
14 of forty hours per workweek without receiving straight time or overtime compensation for such regular
15 hours and overtime hours worked in violation of California Labor Code Section 1194 and the applicable
16 California Industrial Welfare Commission wage order(s). Plaintiff and a portion of the Class Members
17 were improperly and illegally mis-classified by Defendants as "exempt" outside sales employees when, in
18 fact, they were "non-exempt" employees according to California law. Plaintiff and Class Members have
19 the right to be compensated by Defendants at the appropriate compensatory wage rate (no less than
20 minimum wage) for said work heretofore performed, consisting of the straight time rate plus the
21 appropriate overtime premium as mandated by California law. Furthermore, Defendants neither provided
22 Plaintiff and Class Members the required meal and/or rest periods during the relevant time period as
23 required under the IWC Wage Orders and Labor Code nor paid the one hour of pay required by the Labor
24 Code and thus are entitled to such pay. Plaintiff, on behalf of himself and all Class Members, brings this
25 action pursuant to California Labor Code sections 200-204, 210, 218, 226, 226.3, 226.7, 510, 512, 558,
26 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 2800, 2802.

27 16. In or about 2021, ARC hired SMOROWSKI as an exempt employee in Los Angeles,
28 California.

1 17. At all relevant times, Defendants required the Plaintiff and the Class Members they
2 employed to work from their home, requiring their work location to be in the home they live in. Defendants
3 have required and continue to require the same from its current and former similarly situated employees.

4 18. Plaintiff and Class Members incurred expenses related to the required business-related
5 trips, telephone/cell phone, electricity, home office space, water, gas, and stationery expenses while
6 discharging duties under their employment agreement with the Defendants who employed them.
7 Defendants have not reimbursed Plaintiff and Class Members for their expenses incurred while
8 discharging their duties for Defendants.

9 19. Defendants do not reimburse Plaintiff and Class Members they employ for internet
10 expenses, for equipment such as computers to perform work, travel expense for required business-related
11 trips, telephone/cell phone expenses, home office space, and electricity, water, gas, and stationery
12 expenses.

13 20. Defendants have not reimbursed Plaintiff and Class Members for any of the expenses
14 incurred for the acts stated herein.

15 21. Even though Defendants require and continue to require Class Members they employ to
16 provide a home office, from which most, if not all, work must be completed, Defendants have a policy
17 and practice of not reimbursing these employees for the expenses incurred in providing and maintaining
18 the home office Defendants require of their employees.

19 22. Even though Plaintiff and Class Members have incurred necessary business expenses in
20 providing and maintaining their home offices, Defendants have never reimbursed them or similarly
21 situated exempt and non-exempt employees in any way for these necessary business expenses.

22 23. These necessary business expenses incurred by Plaintiff and Class Members include such
23 things as desk, chair, computer, and other items related to the specific workspace, office space/rent,
24 telephone/cell phone charges, utilities such as electricity, gas, and water; and stationery expenses.

25 24. Defendants have had and continue to have a policy and practice of not reimbursing Plaintiff
26 and Class Members for the above expenses.

27 25. Though Plaintiff and Class Members each have incurred necessary business expenses in
28 providing, furnishing, and maintaining their home offices, Defendants have never reimbursed either

1 Plaintiff or other similarly situated exempt and non-exempt employees, in any way for these necessary
2 business expenses.

3 26. At all times, Defendants knew or should have known that Plaintiff and Class Members
4 were incurring necessary business expenses to benefit the business enterprise of the Defendant who
5 employs them.

6 27. Defendants, at all material times, have had, and continue to have, a policy and practice of
7 not reimbursing current and former employees who work from home, including Plaintiff, and Class
8 Members located throughout the State of California for the expenses incurred as stated hereinabove.

9 28. On information and belief, Plaintiff asserts that Defendants maintain a policy of not
10 reimbursing exempt and non-exempt employees who work from home and subject those employees to a
11 similar practice of reimbursement violations.

12 29. Further, Plaintiff and Class Members non-discretionary bonuses/commissions were not
13 calculated into the regular rate of pay.

14 30. Plaintiff and Class Members' wage statements are inaccurate because they do not include
15 the correct regular rate and Plaintiff and Class Members and also Defendants did not provide Plaintiff and
16 the Class Members the option to receive paper wage statements as required under California law.

17 **CLASS ALLEGATIONS**

18 31. Plaintiff brings this class action under the provisions of California Code of Civil Procedure
19 section 382, and the procedural provisions of Rule 23 of the Federal Rules of Civil Procedure, which the
20 California Supreme Court has adopted for use by the trial courts of this State. Plaintiff brings this class
21 action on behalf of themselves, and all other others similarly situated, with Plaintiff proceeding as the
22 representative member of the proposed classes defined as follows:

23 All current and former exempt and non-exempt employees of Defendants within the State of
24 California, at any time from four years prior to the filing of this lawsuit to the date of judgment.
25 ("Plaintiff Class")

26 Plaintiff also seeks certification of the following subclasses:

27 A. All current and former exempt and non-exempt employees of Defendants, who incurred
28 necessary expenditures or losses in direct consequence of the discharge of his or her duties
performing work for Defendants, located anywhere within the state of California, at any time
from four years prior to the filing of this lawsuit to the date of judgment.
("Reimbursement Subclass")

- 1 B. All current and former exempt and non-exempt employees of Defendants, who were entitled to
2 receive wage statements, located anywhere within the State of California, at any time from four
3 years prior to the filing of this lawsuit to the date of judgment.
4 (“Wage Statement Subclass”)
- 5 C. All current and former exempt and non-exempt employees of Defendants, located anywhere
6 within the State of California, at any time from four years prior to the filing of this lawsuit to
7 the date of judgment.
8 (“Minimum and Overtime Wage Subclass”)
- 9 D. All current and former exempt and non-exempt employees of Defendants, who did not receive
10 timely wages located anywhere within the State of California, at any time from four years
11 prior to the filing of this lawsuit to the date of judgment.
12 (“Separation Subclass”)
- 13 (collectively hereinafter referred to as “Class Members”)

14 32. Plaintiff reserves the right, under Rule 3.765 of the California Rules of Court, to amend
15 or modify the Class Members description with greater specificity or further division into subclasses or
16 limitation to particular issues. Plaintiff, together with members of Plaintiff Class and Reimbursement
17 Subclass are collectively referred to as “Class Members.”

18 33. Plaintiff brings this action, which may properly be maintained as a class action, under the
19 provisions of California Code of Civil Procedure section 382, because there is a well-defined community
20 of interest in the litigation and the proposed class is easily ascertainable as well as for the other reasons
21 explained in this Complaint.

22 34. The persons who comprise Class Members are so numerous that the joinder of all such
23 persons would be unfeasible and impracticable. The membership of Class Members is unknown to
24 Plaintiff at this time; however, Class Members are estimated to total in the thousands of individuals, whose
25 identities are readily ascertainable by inspecting Defendants’ payroll records.

26 35. Common questions of fact or law, which arise from Defendants’ conduct as described in
27 this Complaint and Defendants’ continued practice of engaging in illegal payroll and wage and hour
28 policies as to all members of Class Members exist. This action focuses on Defendants’ systematic course
of illegal payroll practices or policies, which Defendants applied to all Class Members in violation of the
California Industrial Welfare Commission (“IWC”) Wage Orders, the California Labor Code, and the
California Business and Professions Code, which prohibits unfair business practices arising from such
violations.

1 36. Further, these common questions of law or fact predominate over questions affecting only
2 individual members, including (without limitation):

- 3 a. whether Defendants had a practice and or policy of failing to reimburse and indemnify its
4 California employees for necessary expenditures or losses incurred in direct consequence of
5 the discharge of his or her duties;
- 6 b. whether Defendants violated Labor Code Sec. 226(a) by failing to provide (i) written wage
7 statements, and (ii) accurate wage statements;
- 8 c. whether Defendants failed to pay minimum, straight, overtime, and double time wages;
- 9 d. whether Defendants failed to provide meal periods;
- 10 e. whether Defendants failed to authorize and permit rest periods;
- 11 f. whether Defendants paid all wages upon separation; and
- 12 g. whether Defendants engaged in unfair business practices under California Business and
13 Professions Code section 17200, *et seq.*

14 37. Defendants' defenses, to the extent that any such defenses are alleged, are applicable
15 generally to Class Members and are not distinguishable, to any degree relevant or necessary to defeat
16 predominance in this case.

17 38. Plaintiff's claims are typical of the claims of the Class Members as a whole, all of whom
18 have incurred or will incur damages, including irreparable harm, as a legal, proximate result of
19 Defendants' common course of conduct as complained of in this Complaint. Plaintiff's claims are typical
20 of Class Members because Defendants used common policies and practices to subject Plaintiff and Class
21 Members to identical violations of the California Labor Code, and the California Business and
22 Professions Code, which prohibits unfair business practices arising from such violations. Further, the
23 duties and responsibilities of members of Class Members were similar and comparable with respect to
24 the issues relevant to this litigation, and any variations in job activities between individual members of
25 Class Members are legally insignificant to the issues presented by this action because the central facts
26 remain, to wit, that (a) Plaintiff and Class Members were improperly denied full reimbursement and
27 indemnification from Defendants for necessary expenditures or losses in direct consequence of the
28 discharge of his or her duties, (b) Defendants failed to provide both accurate and written wage statements
to Plaintiff and the Class Members, (c) Defendants failed to correctly and accurately calculate the regular
rate when Defendant excluded non-discretionary pay (i.e., bonuses, commissions and the like) from the

regular rate resulting in a failure to pay all wages owed to Plaintiff and the Class Members, (d) Defendants failed to accurately keep track of all “hours worked” (as defined by California law) when it failed to include “time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so (See, IWC Wage Order 7, Sec. 2(G)) and, as a result, failed to pay all wages owed to Plaintiff and the Class Members, (e) Defendants willfully failed to timely pay all wages owed upon separation of employment.

39. Plaintiff, on behalf of himself and all others similarly situated, will fairly and adequately protect the interests of Class Members in connection with which they have retained attorneys skilled and experienced in handling these claims. Plaintiff can fairly and adequately protect the interests of Class Members because it is in their best interests to prosecute the claims alleged herein to obtain full reimbursement and indemnification due to them for all necessary expenditures they have incurred and for full compensation for all services rendered and all hours worked. Plaintiff neither has a conflict with Class Members nor are their interests antagonistic to those of Class Members. Plaintiff has retained counsel competent and experienced in class action litigation – and particularly litigation involving wage and hour issues such as those presented in this case.

40. Under the facts and circumstances set forth above, a class action proceeding is superior to any other methods available for both fair and efficient adjudication of both Defendants’ rights and the rights of each member of Class Members inasmuch as joinder of individual members of Class Members is not practical and, if the same were practical, said members of Class Members could not individually afford the litigation, such that individual litigation would be inappropriately burdensome, not only to said citizens, but also to the courts of the nation.

41. To process individual cases would increase both the expenses and delay not only to Class Members, but also to Defendants and the Court. In contrast, class action litigation of this matter will avoid case management difficulties and provide multiple benefits to the litigating parties, including efficiency, economy of scale, unitary adjudication with consistent results, and equal protection of the rights of each member of Class Members, all by way of the comprehensive and efficient supervision of the litigation by a single court.

42. A community of interest in obtaining appropriate legal and equitable relief for the

common law and statutory violations and other improprieties and adequate compensation for the damages and injuries which Defendants' actions have inflicted upon Plaintiff and Class Members exists.

43. A community of interest in ensuring Defendants' combined assets and available insurance are sufficient to adequately compensate members of Class Members for injuries sustained exists.

44. Plaintiff and Class Members are entitled to the monies Defendants have unlawfully withheld as restitution. This action is brought as a representative action under California's Unfair Competition Law for the benefit of the public. Any business that violates the California Labor Code by failing to pay all time worked, all wages earned and owed and failing to reimburse and indemnify its employees for necessary expenditures the employee incurs is, by definition, engaging in an unfair business practice, and all causes of action are subject to a four-year statute of limitation.

45. Notice of the pendency and any result or resolution of the litigation can be provided to Class Members by the usual forms of publication, sending out to Class Members a notice at their current address, establishing a website where the members of Plaintiff Classes can choose to opt-out, or other methods of notice the Court deems appropriate.

46. Without class certification, the prosecution of separate actions by individual members of Plaintiff Classes would create a risk of: (1) inconsistent or varying adjudications with respect to Class Members that would establish incompatible standards of conduct for Defendants or (2) adjudications with respect to the individual members of the putative class that would, as a practical matter, create disparities of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interest.

FIRST CAUSE OF ACTION
LABOR CODE §§ 2800, *et seq.*
(Against Defendants)

47. Plaintiff and Class Members re-allege and incorporate by reference, as though fully set forth herein, all preceding paragraphs of this Complaint. Plaintiff and Class Members allege this cause of action against Defendants.

48. "An employer shall in all cases indemnify his employee for losses caused by the employer's want of ordinary care." (Cal. Labor Code § 2800.)

49. "An employer shall indemnify his or her employee for all necessary expenditures or losses

1 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her
2 obedience to the directions of the employer, even though unlawful, unless the employee, at the time of
3 obeying the directions, believed them to be unlawful.” (Cal. Labor Code § 2802(a).

4 50. “All awards made by a court or by the Division of Labor Standards Enforcement for
5 reimbursement of necessary expenditures under this section shall carry interest at the same rate as
6 judgments in civil actions. Interest shall accrue from the date on which the employee incurred the
7 necessary expenditure or loss.” (Cal. Labor Code § 2802(b).

8 51. California Labor Code section 2802(c) provides: “For purposes of this section, the term
9 “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to,
10 attorney’s fees incurred by the employee enforcing the rights granted by this section.”

11 52. Defendants owe a duty to Plaintiff and Class Members to indemnify them for all necessary
12 expenditures, losses, and damages suffered and incurred in direct consequence of the discharge of their
13 duties, or of their obedience to the directions of their employer, ARC. Defendants continue to refuse to
14 reimburse and indemnify Plaintiff and Class Members for all necessary expenditures and losses incurred
15 by them, including but not limited to, clothing and makeup.

16 53. Plaintiff and Class Members have incurred, and are continuing to incur, necessary
17 expenditures and losses in direct consequence of the discharge of duties, or of obedience to ARC’s
18 directions as an employer, which at the time of obeying the directions, Plaintiff and Class Members
19 believed to be lawful.

20 54. The acts and omissions herein violated California Labor Code section 2802(a). Plaintiff
21 and Class Members are entitled to attorney’s fees under to California Labor Code section 2802(c).

22 55. Plaintiff seeks reimbursement and indemnification for them and Class Members for all
23 necessary expenditures or losses incurred by them in direct consequence of the discharge of their duties,
24 or obedience to the directions of the defendants as an employer.

25 56. During the relevant time period, Defendants intentionally and improperly failed to
26 reimburse necessary expenditures Plaintiff and Class Members incurred.

27 57. Under the California Labor Code sections cited herein, Plaintiff and Class Members are
28 entitled to recover the necessary expenditures they incurred for the four years preceding the filing of their

original Complaint, plus reasonable attorney's fees and costs under California Labor Code section 2802.

58. By virtue of Defendants' unlawful failure to reimburse necessary expenditures Plaintiff and Class Members incurred, Plaintiff and Class Members have incurred damages in amounts presently unknown to Plaintiff and Class Members.

59. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendants, and each of them, knew or should have known Plaintiff and Class Members were not being reimbursed for all necessary business expenditures they incurred.

60. As a direct and legal (proximate) result of Defendants' violation of the California Labor Code, Plaintiff and Class Members have been damaged. Under California Labor Code section 2802, Plaintiff and Class Members are entitled to, and request reimbursement of all necessary expenditures they incurred, interest, penalties, reasonable attorney's fees, and costs, incurred in this action in an amount to be proven at or following trial of this matter.

SECOND CAUSE OF ACTION

Violation of Labor Code section 226(a), 1174, 1175 – Improper Wage Statements *(Against Defendants)*

61. Plaintiff and Class Members re-allege and incorporate by reference, as though fully set forth herein, all preceding paragraphs of this Complaint.

62. Plaintiff and Class Members allege this cause of action against Defendants and Plaintiff seeks to represent himself and Class Members for the period of any time from four years prior to the filing of this lawsuit to the date of judgment.

63. Plaintiff, on information and belief and based upon such basis, alleges that Plaintiff and Class Members who received direct deposit pay were intentionally not provided the right to elect to receive the wage statement in a written paper stub or record form, pursuant to Labor Code section 226(a) by Defendants. Further, Defendants failed to make the electronic wage statements easily accessible.

64. Defendants are required to provide an option for such employees to receive paper wage statements and the failure to do so constitutes a violation of California Labor Code section 226. Defendants' intentional conduct by failing to provide Plaintiff and all similarly situated employees with the option of paper wage statements has caused Plaintiff, similarly situated employees and Class

1 Members to suffer injury in fact by depriving them of their wage records.

2 65. Further, Labor Code section 226(a) mandates that employers provide their employees,
3 along with the employees' paychecks, "an accurate itemized statement in writing showing (1) gross
4 wages earned, (2) total hours worked by the employee, except for any employee whose compensation is
5 solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section
6 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units
7 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
8 provided that all deductions made on written orders of the employee may be aggregated and shown as
9 one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7)
10 the name of the employee and his or her social security number, except that by January 1, 2008, only the
11 last four digits of his or her social security number or an employee identification number other than a
12 social security number may be shown on the itemized statement, (8) the name and address of the legal
13 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the
14 corresponding number of hours worked at each hourly rate by the employee."

15 66. Labor Code section 226(e) provides that an employee "suffering injury as a result of a
16 knowingly and intentional failure by an employer" can result in damages of \$50 for the initial pay period
17 and \$100 per employee for each subsequent violation, not to exceed \$4,000. Plaintiff, on information and
18 belief and based thereon, alleges that Plaintiff and the other Class Members knowingly and intentionally
19 failed to provide accurate and written wage statements, required pursuant to Labor Code section 226(a).

20 67. Defendants also knowingly and intentionally violated California Labor Code section 226,
21 which requires wage statements to provide paper wage statements and/or the option to elect to receive a
22 paper wage statement and to also accurately list "all applicable hourly rates in effect during the pay
23 period and the corresponding number of hours worked at each hourly rate by the employee." Defendants
24 have knowingly and intentionally failed to comply with Labor Code § 226(a) on wage statements which
25 should have been properly provided to Plaintiff and all other similarly situated employees, and such
26 violations flow from Defendants' illegal policies and practices, including implementation and
27 enforcement by Defendants, resulting in the violations and damages alleged and herein. Further, the
28 miscalculation of the regular rate by excluding non-discretionary pay such as bonuses and commissions

1 resulted in an inaccurate regular rate calculation shown on the wage statements. Defendants' knowing
2 and intentional conduct in failing to provide Plaintiff and all similarly situated employees with accurate
3 and written wage statements have caused Plaintiff and all similarly situated employees to suffer injury in
4 fact by depriving them of accurate wage records and access to their wage records as required by law. In
5 order to determine if they had been paid the correct amount and rate for all hours worked, Plaintiff and
6 all other similarly situated employees have been, would have been, and are compelled to conduct
7 discovery to find their wage statements and then investigate the statements for both accuracy and to
8 determine if accurate information is located on their wage statements and to perform calculations in light
9 of the inaccuracies and incompleteness of the wage statements – which Defendants failed to provide to
10 them in writing. Given the violations addressed above and the resulting inaccuracies in the wage
11 statements provided by Defendants to Plaintiff and all other similarly situated employees, Defendants
12 have made it very difficult, to determine from the wage statements themselves such important items of
13 information as the appropriate pay rate applicable to their hours worked, or whether all hours worked are
14 accounted for in the wage statements. Defendants' Labor Code section 226 violations further injured
15 employees by rendering them unaware of the full compensation to which they were entitled under
16 applicable provisions of the California Labor Code and applicable IWC Wage Orders, and Defendants'
17 employees have been accordingly rendered unaware of the violations and how to re-calculate such
18 compensation. Pursuant to California Labor Code §226(c), Plaintiff issued a written request to copy,
19 inspect, and/or receive copies of Plaintiff's employment file, including, but not limited to all documents
20 supporting employment with Defendants, however Defendants intentionally failed to respond to the
21 request.

22 68. California Labor Code section 1174 requires employers to maintain and preserve, in a
23 centralized location, records showing the daily hours worked by and the wages paid to its employees.
24 Defendant has knowingly and intentionally failed to comply with California Labor Code section 1174.
25 The failure of Defendant to comply with California Labor Code section 1174 is unlawful pursuant to
26 California Labor Code section 1175.

27 69. The applicable IWC Wage Order requires that employers maintain accurate time records
28 showing, among other things, when the employee begins and ends each work period, the total daily hours

1 worked in itemized wage statements, total wages, bonuses, and/or incentives earned, and all deductions
2 made. Defendants failed to maintain accurate time records as required by the applicable IWC Wage
3 Order.

4 70. Plaintiff and all other similarly situated employees are also entitled to injunctive relief
5 under California Labor Code §226(h), compelling Defendants to comply with California Labor Code
6 §226. Plaintiff, on information and belief and based upon such basis, alleges that Plaintiff and all other
7 similarly situated employees are entitled to recover from Defendants for such amounts, plus interest
8 thereon, attorneys' fees, and costs, pursuant to California Labor Code section 226, 226.3, and 246,
9 including the greater of their actual damages caused by Defendants' failure to comply with Labor Code
10 Section 226(a) or fifty dollars (\$50.00) for the initial pay period in which the violation occurred and one
11 hundred dollars (\$100.00) per employee for each violation in subsequent pay periods or an aggregate
12 penalty not exceeding \$4,000, and an award of costs and reasonable attorneys' fees pursuant to Labor
13 Code Section 226(e).

14 **THIRD CAUSE OF ACTION**
15 **Violation of Labor Code sections 510, 551, 552, 558, 1194, 1198**
16 **Minimum, Straight Time, Overtime and Double Time Wages**
(Against Defendants)

17 71. Plaintiff and Class Members re-allege and incorporate by reference, as though fully
18 set forth herein, all preceding paragraphs of this Complaint.

19 72. Plaintiff and Class Members allege this cause of action against Defendants and Plaintiff
20 seeks to represent himself and Class Members for the period of three years from the filing of this
21 Complaint to the present date.

22 73. At all times herein set forth, California Labor Code section 218 authorizes employees to
23 sue directly for any wages or penalties due to them under this article of the California Labor Code.
24 California Labor Code section 222 prohibits the withholding of part of a wage. California Labor Code
25 section 223 prohibits the payment of less than a statutory or contractual wage scale. California Labor
26 Code section 224 only permits deductions from wages when the employer is required or empowered to
27 do so by state or federal law or when the deduction is expressly authorized in writing by the employee
28 for specified purposes that do not have the effect of reducing the agreed upon wage.

74. California Labor Code § 1194 and the applicable IWC Wage Order provide that any person not paid the legal rate. California Labor Code § 1197 prohibits the payment of less than the minimum wage. Defendant was required to compensate Plaintiff and the Class Members for all hours worked and were prohibited from making deductions that had the effect of reducing the agreed upon wage. Plaintiff and Class Members were not paid for all wages owed according to California statutes and regulations, including the minimum wage rate, while working for Defendants . Plaintiffs and the Class Members were required to work off-of-clock for which they were not compensated Plaintiff and the Class Members were also required to round their time entries for the start and end of the day and/or Defendant rounded Class Members' time records so that the records reflected less hours worked than were actually worked. Thus, Plaintiff and the Class were not paid for all hours actually worked. California Labor Code § 1194.2 states that an employee receiving less than the legal minimum wage is entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. Pursuant to Labor Code § 1194.2, Plaintiff and Class Members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. Pursuant to California Labor Code § 1197.1, Plaintiff and Class Members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each employee minimum wages.

75. At all times herein set forth, California Labor Code section 1198 provides that it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission (hereinafter "IWC"). Defendants are and were required to pay Plaintiff and Class Members all wages owed and earned, including the minimum wage, overtime compensation, and double time.

76. At all times herein set forth, IWC Wage Order section 4-2001(3)(A), which is applicable to Plaintiff and all other similarly situated employees employed by Defendants, has provided that employees working for more than eight (8) hours in one (1) day, and/or more than forty (40) hours in one (1) workweek, are entitled to payment at the rate of one-and-one-half (1 ½) his or her regular rate of pay for all hours worked in excess of eight (8) hours in one (1) day or more than forty (40) hours in one (1) work week. An employee who works more than twelve (12) hours in one (1) day is entitled to overtime

1 compensation at a rate of twice his or her regular rate of pay. During this liability period, Plaintiff and
2 other similarly situated employees received commissions as well as an hourly rate.

3 77. Plaintiff and all similarly situated persons worked in excess of forty (40) hours per
4 workweek for each workweek while employed by Defendants throughout the course of employment with
5 Defendants, subject to any workweeks wherein Plaintiff and class members missed workdays as a result
6 of sick days, personal emergencies, or anything else that would otherwise interfere with workweek
7 schedules. Defendants required Plaintiff and the class to work but did not pay Plaintiff and the class
8 for all “hours worked” as defined in IWC Wage Order in any of the given workweeks herein
9 mentioned. Defendants failed to accurately and correctly compensate Plaintiff and all similarly situated
10 persons for work performed in excess of eight (8) hours a day or forty (40) hours per workweek while
11 employed by Defendants, which occurred throughout Plaintiff and all similarly situated persons course
12 of employment with Defendants.

13 78. California Labor Code section 510 codifies the right to overtime compensation at one-
14 and-one-half (1 ½) the regular hourly rate for hours worked in excess of eight (8) hours in one (1) day or
15 forty (40) hours in one (1) week or for the first eight (8) hours worked on the seventh day of work, and
16 at twice the regular hourly rate for hours worked in excess of twelve (12) hours in one (1) day or in excess
17 of eight (8) hours on the seventh day of work.

18 79. California Labor Code section 551 entitles every employee “one day’s rest therefrom in
19 seven.” [Lab. Code § 551.] Labor Code section 552 prohibits an employer from “caus[ing] his employees
20 to work more than six days in seven.” Defendants during the relevant time period, on one or more
21 occasions, scheduled to work and in fact required Plaintiff and the Class Member to work more than six
22 days in seven and failed to fully compensate Plaintiffs and the Class Members for working more than six
23 days in seven. Defendants’ pattern, practice, and policy is unlawful and creates an entitlement to recovery
24 by the Class Members.

25 80. During the relevant time period, Defendants failed to pay all premium overtime wages
26 due to a) misclassification of the Plaintiff and a portion of the Class Members as exempt employees when
27 in fact they failed to meet the criteria for overtime exemption and b) in failing to properly incorporate
28 non-discretionary wage pay, including bonuses/commission payments and meal/rest period wages owed

pursuant to Labor Code 226.7, into the regular rate of pay when calculating overtime, which directly led to Defendants undercompensating Plaintiff and all other similarly situated employees for overtime hours worked and meal/rest break wages owed. Additionally, on information and belief, these wages were not always paid to Plaintiff and other similarly situated employees when earned or when due, thereby making Defendants liable for failing to timely pay wages (or at times at all) and to properly incorporate these wages payments into the regular rate of pay when calculating overtime compensation and meal/rest wages.

81. This failure to properly calculate the regular rate led directly to Defendants undercompensating Plaintiff and other similarly situated employees for overtime hours worked and meal/rest break pay. The same miscalculation of the regular rate, by either not properly computing the overtime rate based on failing to incorporate the non-discretionary wage pay, such as bonus/commission payments, into the regular rate of pay or delaying payment of non-discretionary wages to Plaintiff and all other similarly situated employees resulted in Plaintiff and all other similarly situated employees from being undercompensated for worked performed in excess of twelve (12) hours at the double-time rate.

82. Defendants' failure to pay Plaintiff and all other similarly situated employees the unpaid balance of premium overtime compensation, and rest/meal wages correctly calculated, as required by California state law, violates the provisions of Labor Code section 510, 558, 226.7, 1194.2, 1197, 1197.1, 1197.2, and 1198 and is therefore unlawful.

FOURTH CAUSE OF ACTION

Violation of Labor Code sections 201-203 – Wages Not Paid Upon Separation

(Against Defendants)

83. Plaintiff and Class Members re-allege and incorporate by reference, as though fully set forth herein, all preceding paragraphs of this Complaint.

84. Plaintiff and Class Members allege this cause of action against Defendants and Plaintiff seeks to represent himself and Class Members for the period of four years prior to the filing of this lawsuit to the date of judgment.

85. At all times herein set forth, Labor Code section 218 authorizes employees to sue directly for any wages or penalties due to them under this article of the California Labor Code.

1 86. At all times herein set forth, Labor Code sections 201-204 provide that if an employer
2 discharges an employee, the wages earned and unpaid at the time of discharge are due and payable
3 immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall
4 become due and payable not later than seventy-two (72) hours thereafter; unless the employee has given
5 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is
6 entitled to his or her wages at the time of quitting. During the relevant time period, Defendants failed to
7 pay Plaintiff and all other similarly situated employees, who are no longer employed by Defendants, all
8 their wages, earned and unpaid, either at the time of discharge, or within seventy-two (72) hours of their
9 leaving Defendants' employ.

10 87. Defendants also willfully violated Labor Code sections 201-203 by failing to provide all
11 owed wages at separation from employment. Labor Code sections 201 and 202 require Defendants to pay
12 their employees all wages due either at time of firing, or within seventy-two (72) hours of voluntary
13 separation, if not sooner. Section 203 of the Labor Code provides that if an employer willfully fails to
14 timely pay such wages, the employer must, as a penalty, continue to pay the subject employee's wages
15 until the back wages are paid in full or an action is commenced. The penalty cannot exceed thirty (30)
16 days of wages. Plaintiff and all other similarly situated employees who were separated from employment
17 are entitled to compensation for all forms of wages earned, including but not limited to unpaid overtime
18 compensation and wage payments for non-provided meal and rest periods, but to date have not received
19 such compensation, therefore entitling them to such earned and unpaid wages.

20 88. Defendants' willful failure to pay Plaintiff and all other similarly situated employees, who
21 are no longer employed by Defendants, all wages earned at the time of their discharge, or within seventy-
22 two (72) hours of their leaving Defendants' employ, is in violation of Labor Code sections 201-204.

23 89. Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in
24 accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from
25 the due date, and at the same rate until paid or until an action is commenced; but the wages shall not
26 continue for more than thirty (30) days. Plaintiff and all other similarly situated employees, who are no
27 longer employed by Defendants, are entitled to recover from Defendants the statutory penalty for each
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1 day they were not paid at their regular hourly rate of pay, up to a thirty (30) day maximum, pursuant to
2 Labor Code section 203.

3 **FIFTH CAUSE OF ACTION**
4 **FOR UNFAIR COMPETITION**
(Against All Defendants)

5 90. Plaintiff and Class Members re-allege and incorporate by reference, as though fully set
6 forth herein, all preceding paragraphs of this Complaint.

7 91. By and through the conduct described above, Defendants have deprived Plaintiff and
8 Class Members of their right to be compensated for all wages owed, provided with accurate wage
9 statements, reimbursed, and indemnified necessary expenditures they incurred under California Labor
10 Code sections 226, 510, 1194, 1198, 201-203, 2800, *et seq.* and 2802.

11 92. By and through their unfair, unlawful, and or fraudulent business practices described
12 herein, Defendants have obtained valuable property, money, and services from Plaintiff and Plaintiff
13 Class, and have deprived them of valuable rights and benefits guaranteed by law, all to Plaintiff and Class
14 Members' detriment. The loss Plaintiff and Class Members have incurred is a direct result of Defendants'
15 failure to follow California statutes and regulations as alleged herein. Plaintiff and Class Members are
16 seeking restitution for the losses incurred by Defendants' conduct.

17 93. All of Defendants' acts described herein as violations of, among other things, the
18 California Labor Code and IWC Wage Orders, are unlawful and violate public policy; and are immoral,
19 unethical, oppressive, fraudulent, and unscrupulous, and thereby constitute unfair, unlawful, and or
20 fraudulent business practices in violation of California Business and Professions Code section 17200, *et*
21 *seq.*

22 94. Plaintiff and Class Members are entitled to and do seek such relief as may be necessary to
23 obtain restitution which Defendants have acquired, or of which Plaintiff and Class Members have been
24 deprived, by means of the above-described unfair, unlawful, and or fraudulent business practices.
25 Therefore, Plaintiff and Plaintiff Class request that Defendants pay them restitution owed as a result of
26 Defendants' failure to reimburse necessary business expenditures incurred. Plaintiff and Class Members
27 also request an order that Defendants identify, locate, and make restitution to affected members of the
28 general public all funds and the value of all things or property acquired by the acts of unfair competition

1 and deceptive practices set forth above, and all additional orders necessary to accomplish this purpose,
2 under California Business and Professions Code section 17203.

3 95. Plaintiff and Class Members are further entitled to and do seek a declaration that the
4 above-described business practices are unfair, unlawful, and or fraudulent.

5 96. Plaintiff and Class Members also request an order for distribution of any monies recovered
6 on behalf of the general public, or members of the class, via fluid recovery or cy pres recovery where
7 necessary to prevent Defendants from retaining the benefits of its wrongful conduct as provided in
8 *California v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, and *People v. Thomas Shelton Powers, M.D. Inc.*
9 (1992) 2 Cal.App.4th 330.

10 97. Plaintiff and Class Members seek to recover attorney fees and costs under California law.

11 **SIXTH CAUSE OF ACTION**
12 **VIOLATION OF REST BREAK LAWS**
13 (Against Defendants)

14 98. Plaintiffs incorporate by reference and re-alleges, as if fully stated herein, the material
15 allegations set forth in paragraphs 1 through 94 of this Complaint.

16 99. At all times herein, Labor Code section 218 authorizes employees to sue directly for any
17 wages or penalties due to them under this article of the California Labor Code. Labor Code section
18 226.7(a) provides that no employer shall require an employee to work during any rest period mandated
19 by an applicable order of the IWC.

20 100. IWC Order No. 4-2001 § 12, which covers rest periods, provides “[e]very employer shall
21 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
22 middle of each work period. The authorized rest period time shall be based on the total hours worked
23 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However,
24 a rest period need not be authorized for employees whose total daily work time is less than three and
25 one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall
26 be no deduction from wages.” Plaintiffs allege that Defendants denied Plaintiff and the Class Members
27 rest breaks and did not provide Plaintiffs and Class Members proper premium wages for these
28 missed/shortened/interrupted rest breaks. Upon information and belief, during the relevant time frame,

Defendants maintained and enforced a schedule and policies that do not pay the proper premium wages for missed/shortened/interrupted rest breaks. Wage orders required that Plaintiffs and Class Members be compensated for the rest periods for which Defendants required Plaintiffs and Class Members to work. Defendants did not provide Plaintiffs and Class Members with a rest break(s) during each workweek throughout the course of employment with Defendants. Defendants failed to compensate Plaintiffs and the Class Members with premium wages for these rest periods worked on any given day or in any given workweek.

101. “[A]ll hours must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage obligation.” (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.) “Under the California minimum wage law, employees must be compensated for each hour worked at either the legal minimum wage or the contractual hourly rate, and *compliance cannot be determined by averaging hourly compensation.*” (*Bluford v. Safeway Stores, Inc.* (2013) 216 Cal.App.4th 864, 872 (emphasis added); *see also Sheppard v. North Orange County Regional Occupational Program* (2010) 191 Cal.App.4th 289, 297 n.5 (“Compliance with the minimum wage law is determined by analyzing the compensation paid for each hour worked; *averaging hourly compensation is not permitted under California law.*”) (emphasis added).) “[A]ny 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” (*Cal. Lab. Code* § 1194(a).) “[A]ll hours must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage obligation.” (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.) “An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry.” (*Brinker*, 53 Cal.4th at 1033; *see also Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220, 236 (“An employer has a duty to authorize and permit rest breaks.”).) “No employer shall require any employee to work during any ... rest period mandated by an applicable order of the Industrial Welfare Commission.” (*Cal. Labor Code* § 226.7(a).) “Under Industrial Welfare Commission wage orders, employers are required to ‘authorize and permit all employees to take rest periods’ at the rate of at least 10 minutes for every four hours worked.” (*Bluford*, 216 Cal.App.4th at 871 (*quoting* 8 C.C.R. § 11070, § 12); *see also Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1104 (Employees are

entitled to “a paid 10–minute rest period per four hours of work.”.) “Rest periods are considered hours worked and must be compensated.” (*Id.* at 872.). Also see, *Vaquero v. Stoneledge Furniture LLC* (2017) 9 Cal.App.5th 98; also see, LC 226.7. *Ferra v. Loews Hollywood Hotel, LLC* S259172 (Cal. Sup. Ct., July 15, 2021).

102. Defendants’ conduct, as alleged herein, violates Labor Code section 226.7(a), which authorizes that no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the IWC.

103. Pursuant to Labor Code section 226.7(b) and Code of Civil Procedure section 338, Plaintiffs and the other Class Members are entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each workday that a rest period was not authorized and permitted/shortened/interrupted, for a three-year statutory period dating back from the date of the commencement of this action.

104. Plaintiffs and Class Members were systematically not paid or underpaid premium wages for rest break violations. Plaintiffs and Class Members were not compensated with one hour of premium wages for every day in which a rest period was missed or untimely as a result of Defendants’ policies, practices, or work demands. By failing to authorize and permit a ten-minute rest period for every four (4) hours or major fraction thereof worked per day by Class Members, and by failing to provide proper compensation for such non-provided or shortened rest periods, as alleged above, Defendants willfully violated the provisions of Labor Code sections 226.7, 512 and IWC Wage Order No. 4-2001.

SEVENTH CAUSE OF ACTION
IMPROPER MEAL PERIODS

(Against Defendants)

105. Plaintiffs incorporate by reference and re-alleges, as if fully stated herein, the material allegations set forth in paragraphs 1 through 101 of this Complaint.

106. At all times herein, Labor Code section 218 authorizes employees to sue directly for any wages or penalties due to them under this article of the California Labor Code.

107. At all times herein, Labor Code section 226.7(a) provides that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC.

1 108. At all times herein, Labor Code section 512(a) provides that an employer may not employ
2 an employee for a work period of more than five (5) hours per day without providing the employee with
3 a meal period of not less than thirty (30) minutes, except that if the total work period per day of the
4 employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the
5 employer and the employee.

6 109. The language of IWC Order No. 4-2001 § 11(B) relating to meal periods tracks the
7 language of the California Labor Code.

8 110. During the relevant time period, Plaintiff and Class Members, who were scheduled to
9 work in excess of five (5) hours, but not longer than six (6) hours, and who did not waive their legally-
10 mandated meal periods by mutual consent, were required to work in excess of five (5) hours without
11 receiving a meal period of not less than thirty (30) minutes.

12 111. During the relevant time period, Plaintiff and Class Members, who were scheduled to
13 work for a period of time in excess of six (6) hours, were required to work in excess of five (5) hours,
14 without receiving a meal period of not less than thirty (30) minutes. An employer may not employ an
15 employee for a work period of more than ten (10) hours per day without providing the employee with a
16 second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more
17 than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and
18 the employee only if the first meal period was not waived.

19 112. Upon information and belief, during the relevant time frame, Defendants maintained and
20 enforced a policy where Plaintiff and the Class Members were forced to work in excess of five (5) hours
21 per day on a regular basis without being provided a daily thirty (30) minute restrictive-free meal period.

22 113. Upon information and belief, during the relevant time frame, Plaintiffs and Class Members
23 did not receive uninterrupted meal periods; in addition, Defendant's work demands and pressure from
24 Defendant's management, with specific knowledge and/or at the instruction of Defendant, as a result of
25 an implemented policy, regularly required Plaintiffs and Class Members to remain in the store and work
26 through meal periods without receiving a premium payment.

27 114. Pursuant to Labor Code section 226.7(b) and Industrial Welfare Commission Wage Order
28 4-2001, section 11(B), Plaintiff and all other similarly situated employees are entitled to recover from

Defendant one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a meal period was not provided, for a three-year statutory period dating back from the date of the commencement of this action.

EIGHTH CAUSE OF ACTION

Industrial Welfare Commission Wage Order 1-16, Section 5(A) – Reporting Time Pay

115. Plaintiff SMOROWSKI re-alleges and incorporates by reference, as though fully set forth herein, all preceding paragraphs of this Complaint.

116. Employees who report to their job expecting to work a specified number of hours but are deprived of that amount of work because of inadequate scheduling or lack of proper notice by the employer, California law requires that employers pay nonexempt employees for certain unworked but regularly scheduled time in addition to the hours the employee actually works. See, Industrial Welfare Commission (“IWC”) Wage Orders 1-16, Section 5.

117. The following are specific requirements for reporting-time pay under the applicable IWC Wage Order:

a) Each workday an employee is required to report to work but is not put to work or is furnished with less than half of his or her usual day’s work, the employee must be paid for half of the usual or scheduled day’s work, but in no event for less than two hour or more than four hours, at the employee’s regular rate of pay.

b) If an employee is required to report a second time in any one workday an is furnished less than two hours of work on the second reporting, he or she must be paid for two hours at the employee’s regular rate of pay.

118. In California, reporting time pay constitutes wages. *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094. The IWC’s purpose in adopting reporting time pay requirements is two-fold: (1) compensate employees and 2) encourage proper notice and scheduling. *Id* at 1111-1112. There are certain types of situation which trigger reporting time pay, which include: (a) physically appearing at workplace at the shift start, (b) presenting themselves for work by logging on to a computer remotely, (c)

1 appearing at client job site, (d) setting out on a trucking route, or telephoning the store two hours prior to
2 the start of the shift. *Id.* at 1185.

3 119. Plaintiff and Class Members are entitled to reporting time pay for a minimum of 4 hours
4 of pay at their regular rate of pay.

5 120. Pursuant to Labor Code section 558, Plaintiff and Class Members are entitled to fifty
6 dollars (\$50.00) for each pay period for which the employee was underpaid. This is in addition to an
7 amount sufficient to recover underpaid wages and for each subsequent violation, one hundred dollars
8 (\$100.00) for each pay period for which the employee was underpaid in addition to an amount sufficient
9 to recover underpaid wages.

10 **NINTH CAUSE OF ACTION**
11 **FOR PAGA**
(Against All Defendants)

12 121. Plaintiff SMOROWSKI re-alleges and incorporates by reference, as though fully set forth
13 herein, all preceding paragraphs of this Complaint.

14 122. Plaintiff SMOROWSKI alleges under the PAGA, as a representative action on behalf of
15 the State of California and Aggrieved Employees, regarding violations of the California Labor Code as
16 set forth herein as to all Aggrieved Employees. Said “Aggrieved Employees” include:

17 All current and former exempt and non-exempt employees that worked for Defendants in
18 California at any time from September 20, 2022 through the present (“PAGA Period”).

19 123. Plaintiff SMOROWSKI is an “aggrieved employee,” as that term is defined under Labor
20 Code section 2699(c), as Plaintiff SMOROWSKI was employed by Defendants during the applicable
21 statutory limitations period and suffered one or more of the Labor Code violations set forth herein.
22 Accordingly, Plaintiff SMOROWSKI seeks to recover on behalf of Plaintiff SMOROWSKI, the State of
23 California, and all other Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable
24 attorney's fees and costs. Plaintiff SMOROWSKI has standing to bring a PAGA cause of action on behalf
25 of the State and all Aggrieved Employees, as Plaintiff SMOROWSKI was employed by Defendants and
26 is thereby affected by one or more of the alleged violations. *See Huff v. Securitas Security Services USA,*
27 *Inc.* (2018) 23 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known
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violations committed by the employer – regardless of whether Plaintiff experienced all violations personally. *Id.* at 760-761.

124. On May 14 2024, Plaintiff SMOROWSKI, through counsel, gave written notice by online filing with the California Labor and Workforce Development Agency (“LWDA”) informing Defendants and the State of California that Defendants failed to comply with California’s labor laws with regard to the allegations alleged in this Complaint (“PAGA Letter”).

125. The LWDA did not provide notice of its intention to investigate the alleged violations after expiration of the 65-day waiting time, or at any time. To the extent any of the alleged violations were curable, Defendants failed to cure within the time allotted by PAGA. Accordingly, Plaintiff SMOROWSKI has exhausted the administrative remedies as required by Labor Code section 2699.3. Consequently, Plaintiff SMOROWSKI’s right to file the instant lawsuit has duly accrued.

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

127. Defendants’ unlawful policies and practices described herein as incorporated by reference also resulted in violations of Labor Code Sections 200-204, 210, 218, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 2800, 2802, 2698 *et seq.*, and 2699 *et seq.*), as well as the applicable IWC Wage Order.

Penalties

128. Pursuant to California Labor Code §§ 2699 and 558, Plaintiff, individually, and on behalf of other current and former aggrieved employees, requests and is entitled to recover from Defendants, and each of them, civil penalties, interest, attorneys’ fees and costs pursuant, as well as all statutory penalties against Defendants, and each of them, including but not limited to:

129. Penalties under California Labor Code § 2699 in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

130. Penalties under California Code of Regulations Title 8 § 11040 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred

dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;

131. Penalties under California Labor Code § 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

132. Penalties under Labor Code § 1197.1 in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred and fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;

133. Any and all additional penalties as provided by the Labor Code and/or other statutes; and; Attorneys' fees and costs pursuant to Labor Code §§ 210, 1194, 2802, and 2699, and any other applicable statute.

PRAYER FOR RELIEF

Plaintiff prays for relief and judgment against Defendants, jointly and severally as follows:

1. For an order certifying the proposed class and sub-classes;
2. For an order appointing Plaintiff as representatives of the Class and sub-classes;
3. For an order appointing counsel for Plaintiff as counsel for Plaintiff Class and sub-classes;
4. For compensatory, consequential, general, special and statutory damages according to proof;
5. For restitution of all monies due to Plaintiff and Class Members arising from Defendants' unlawful, unfair, and or fraudulent business practices;
6. For injunctive relief necessary and appropriate to modify Defendants' conduct in accordance with the requirements of California law;
7. Upon the PAGA Cause of Action, for civil penalties pursuant to statute as set forth in Labor Code § 2698 *et seq.*, for Defendants' violations of Labor Code §§ 200-204, 208, 210, 218, 218.5, 221, 222, 223, 226, 226.3, 226.7, 500-508, 510, 512, 515, 551, 552, 558, 558(a)(3), 1174, 1174.5, 1182, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 2699, 2800, 2802 and 2810.5;
8. For interest accrued to date;
9. For costs of suit, expenses, and attorney fees allowed by law; and

1 10. For all such other and further relief the Court may deem just and proper.
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3 Dated: August 1, 2024

RIGHETTI GLUGOSKI, P.C.

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5 By: /s/ John Glugoski, Esq.
6 Attorneys for Plaintiff
7 JEFF SMOROWSKI
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