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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

FRANCISCO VILLA, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

LINKTRANS LOGISTICS USA, INC., a
California Corporation; XIN LIU, an
individual; SHICHAO LIU, an individual;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVSB2412403
[Assigned to Hon. Judge Jeffrey R Erickson,
Dept S14, for all purposes]

FIRST AMENDED COMPLAINT

CLASS ACTION COMPLAINT

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Pay Rest Periods and
Nonproductive Time Under Labor Code
§ 226.2;
- (4) Failure to Provide Meal Periods;
- (5) Failure to Provide Rest Breaks;
- (6) Failure to Timely Pay Final Wages;
- (7) Failure to Provide Accurate Itemized
Wage Statements;
- (8) Unfair and Unlawful Competition;

PAGA CLAIMS

- (9) Misclassification in Violation of Labor
Code § 226.8;
- (10) Failure to Pay Minimum Wages;
- (11) Failure to Pay Overtime Wages;
- (12) Failure to Pay Rest Periods and
Nonproductive Time Under Labor Code
§ 226.2;
- (13) Failure to Provide Meal Periods;
- (14) Failure to Timely Pay Wages Each
Period;
- (15) Failure to Timely Pay Final Wages;
- (16) Failure to Provide Accurate Itemized
Wage Statements

JURY TRIAL DEMANDED

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

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against his employer(s), Defendants Linktrans
5 Logistics USA, Inc., Xin Liu, Shichao Liu, and DOES 1 through 20, inclusive, (collectively,
6 “Defendants”) on behalf of all current and former nonexempt employees employed by
7 Defendants in California (the “Class” or “Represented Employees”), for Labor Code violations
8 stemming from Defendants’ failure to pay all wages owed, including minimum, regular, and
9 overtime wages, failure to provide meal periods and rest breaks, failure to timely pay wages
10 upon separation of employment, and failure to provide accurate itemized wage statements.

11 2. Plaintiff has been employed by Defendants from approximately November 2019
12 through present.

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

16 4. Notably, at all relevant times, Defendants engaged in a practice of willfully
17 misclassifying the Plaintiff and Represented Employees as independent contractors when they
18 are/were employees of the Company because they (A) are/were subject to the control and direction of
19 Defendants in connection with the performance of their work, both under contract and in fact, (B)
20 performed work that was the core business of the company (e.g., cargo pickup and delivery, etc.),
21 and therefore the tasks were not outside the usual course of the Defendants’ business, and (C) were
22 not customarily engaged in an independently established trade, occupation, or business of the same
23 nature as the work performed by the Defendants.

24 5. Also, at all relevant times, Plaintiff and the Represented Employees were subject
25 to the direction and control of Defendants in regard to work assignments, scheduling
26 requirements, and days of work. Furthermore, Defendants directly and indirectly exercised
27 control over the wages, hours, and working conditions of Plaintiff and the Represented
28 Employees. At all relevant times, the daily schedule for Plaintiff and the Represented

1 Employees was controlled solely by the Defendants. Furthermore, through the performance of
2 their job duties, Plaintiff and the Represented Employees performed an integral and entirely
3 essential aspect of the Defendants' business. In fact, Plaintiff and the Represented Employees
4 were tasked to perform the one and only service that the Company provided: logistic transport of
5 goods. In this role, Plaintiff and the Represented Employees loaded and unloaded trucks for the
6 Company that were at the company's warehouse, among other duties related to the warehousing
7 and shipment of goods. Additionally, the customers are and/or were the Defendants' customers,
8 not those of Plaintiff or the Represented Employees. Plaintiff and the Represented Employees
9 were also prohibited from performing similar services for other companies and, thus, were not
10 engaged in an independently established trade, occupation or business of the same nature as the
11 work performed by the Defendants. And, perhaps most importantly, Defendants retained the
12 right to terminate Plaintiff and the Represented Employees' working relationship without cause
13 and at its discretion. Despite these facts, Defendants misclassified Plaintiff and the Represented
14 Employees as independent contractors.

15 6. Despite the facts discussed herein, Defendants misclassified Plaintiff and the
16 Represented Employees as independent contractors rather than as employees, leading to
17 violations of the California Labor Code and IWC Wage Orders discussed below.

18 7. Plaintiff and the Represented Employees were not provided all minimum, regular,
19 and overtime wages due to Defendants' failure to accurately record and compensate for all hours
20 worked. This violates California law. *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829
21 (California law "do[es] not allow employers to require employees to routinely work for minutes
22 off the clock without compensation"); *Frlekin v. Apple Inc* (2020) 8 Cal.5th 1038 (tasks are
23 compensable when employee is under company's control and where the tasks served the
24 employer's interests). For instance, Defendants did not record the time that Plaintiff spent
25 performing work for the Defendants. Instead, Plaintiff was paid based upon the weight of
26 shipping containers that he unloaded. However, Plaintiff was expected to perform substantial
27 work in addition to the unloading of containers for which he was never compensated, including
28 but not limited to, driving forklifts, unloading pallets, and meetings. Moreover, any time that

1 was recorded was not recorded accurately and Plaintiff and Represented Employees worked off-
2 the-clock without compensation.

3 8. Additionally, Plaintiff and the Represented Employees are/were employees of
4 Defendants who were paid on a piece-rate basis. However, Defendants did not comply with the
5 requirements of Labor Code § 226.2 when it failed to provide separate payments to its piece-rate
6 employees for rest and recovery periods and other nonproductive time.

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

14 10. Defendants also failed to provide Plaintiff and the Represented Employees with
15 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
16 mandated by California law. Defendants did not schedule rest breaks for Plaintiff and the
17 Represented Employees, and the Represented Employees were often not authorized and/or
18 permitted to take mandated rest breaks due to being overwhelmed by their hectic workload.
19 Furthermore, Defendants illegally required the Represented Employees to combine their rest
20 breaks with their meal periods and, on occasions when Plaintiff and the Represented Employees
21 worked longer shifts, Defendants failed to authorize and/or permit additional rest breaks.

22 11. Plaintiff also alleges that he and the Represented Employees were not paid all
23 wages due and owing each pay period (Labor Code § 204) and upon separation of employment
24 within the time required by Labor Code §§ 201 – 203. Plaintiff further alleges that Defendants
25 engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Represented
26 Employees at the time their employment ended with Defendants, including, but not limited to
27 minimum, regular, and overtime wages, vacation and sick wages, wage premiums, among others.
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1 12. Plaintiff further alleges that Defendants failed to provide accurate itemized wage
2 statements that fully complied with the requirements of Labor Code § 226(a).

3 13. Plaintiff alleges that Defendants' violations of the wage and hour components of
4 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their
5 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
6 its competitors.

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

13 15. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
14 monetary relief against Defendants and each of them, on behalf of himself and the Represented
15 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
16 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
17 210, 218.6, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194, 1194.2, 1197, 1197.1,
18 1198, and 1199, among possibly other sections inadvertently omitted. Plaintiff also reserves the
19 right to name additional representatives throughout the State of California.

20 16. Pursuant to Labor Code § 2699.3(a), Plaintiff is in the process of giving written
21 notice the Labor and Workforce Development Agency ("LWDA") and to Defendants of the
22 specific provisions of the Labor Code alleged to have been violated, including the facts and
23 theories to support the alleged violations. As such, Plaintiff reserves the right to amend this
24 complaint or bring a complaint for the PAGA claims pursuant to Labor Code § 2699.3(a)(2)(C).

25 **II. JURISDICTION**

26 17. This Court has jurisdiction over the claims for relief of Plaintiff and the
27 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

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1 **III. VENUE**

2 18. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
3 Procedure § 395(a). Defendants transact business in San Bernardino County and the unlawful
4 acts alleged herein have a direct effect on Plaintiff and the Represented Employees in San
5 Bernardino County. Furthermore, Defendants employed or employ Represented Employees in
6 San Bernardino County.

7 **IV. PARTIES**

8 **Plaintiff**

9 19. Plaintiff and Class Representative Francisco Villa has been employed by
10 Defendants from approximately November 2019 and performed work for Defendants in the City
11 of Fontana, which is in San Bernardino County.

12 **Defendants**

13 20. Plaintiff is informed and believes and thereon alleges that Defendant Linktrans
14 Logistics USA, Inc. is a California corporation that maintains operations and employs the
15 Represented Employees throughout California, including San Bernardino County.

16 21. Plaintiff is informed and believes and thereon alleges that Defendant Xin Liu is an
17 individual that maintains operations and employs the Represented Employees throughout
18 California, including San Bernardino County.

19 22. Plaintiff is informed and believes and thereon alleges that Defendant Shichao Liu
20 is an individual that maintains operations and employs the Represented Employees throughout
21 California, including San Bernardino County.

22 23. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
23 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
24 inclusive, but on information and belief alleges that those Defendants are legally responsible for
25 the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of
26 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
27 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
28 Defendants when ascertained.

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

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

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

23 27. Plaintiff is further informed and believes that at all relevant times, Defendants
24 have been inadequately capitalized to conduct business, have failed to follow appropriate
25 corporate formalities, and have simply been a shell and instrumentality through which
26 Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly,
27 the corporate veil should be pierced, and any liability attached to Defendants should be imposed
28 jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the

1 separate existence of these corporate entities would permit abuse of the corporate privilege,
2 thereby sanctioning fraud and promoting injustice.

3 **V. CLASS ACTION ALLEGATIONS**

4 28. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
5 alleged herein.

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

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

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

12 All current and former employees who performed services
13 for Defendants in the State of California and who were
14 classified by Defendants as independent contractors at any
15 time during the Relevant Time Period.

16 32. Plaintiff also seeks to represent the following subclasses:

17 **Meal Break Subclass**

18 All Represented Employees who worked a shift in excess of
19 5 hours during the Relevant Time Period.

20 **Rest Break Subclass**

21 All Represented Employees who worked a shift of at least
22 3.5 hours during the Relevant Time Period.

23 **Waiting Time Penalties Subclass**

24 All Represented Employees who separated from their
25 employment with Defendants during the period three years
26 before the filing of this action and ending when final
27 judgment is entered.

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1 **Wage Statement Penalties Subclass**

2 All Represented Employees during the period one year
3 before the filing of this action and ending when final
4 judgment is entered.

5 33. Plaintiff reserves the right to amend or modify the class description with greater
6 specificity or further division into subclasses or limitation to particular issues as appropriate.

7 34. Plaintiff, as Class Representative, is a member of the class and subclasses that he
8 seeks to represent.

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

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

15 37. **Commonality:** There are questions of law and fact common to the class which
16 predominate over any questions affecting only individual members of the class, including
17 without limitation:

18 i. Whether Defendants misclassified the Represented Employees as
19 independent contractors;

20 ii. Whether Defendants violated the California Labor Code and applicable
21 IWC Wage Order by failing to pay wages to Plaintiff and the Represented Employees for all
22 hours worked;

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

26 iv. Whether Defendants violated California Labor Code and IWC Wage
27 Order by paying the Represented Employees on a piece-rate basis yet not providing separate
28 hourly compensation for rest periods and other nonproductive time;

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

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

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

14 viii. Whether Defendants violated the California Labor Code by failing to
15 provide Plaintiff and the Wage Statement Penalties Subclass with complete, accurate, itemized
16 wage statements;

17 ix. Whether Defendants violated California Business & Professions Code §§
18 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest
19 breaks, failure to provide mandated meal periods, failure to reimburse business expenses, and
20 failure to timely pay final wages; and

21 x. Whether Plaintiff and Represented Employees are entitled to equitable
22 relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

23 38. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the
24 claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants'
25 ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all
26 wages owed, failure to pay rest periods and nonproductive time under § 226.2, failure to provide
27 mandated meal periods and rest breaks, failure to timely pay wages upon separation of
28 employment, and failure to provide accurate itemized wage statements.

1 39. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly
2 and adequately represent and protect the interests of the Class. Plaintiff's interests are not in
3 conflict with those of the Class. Class Representative's counsel are competent and experienced in
4 litigating large employment class actions and other complex litigation matters, including cases
5 like this case.

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

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO PAY MINIMUM WAGES**

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

17 *Plaintiff and the Represented Employees Against All Defendants*

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

20 42. Plaintiff and the Represented Employees were not exempt from the requirement
21 to be paid at least the applicable California minimum wage throughout the statutory period for
22 each hour worked.

23 43. Plaintiff and the Represented Employees were not provided proper minimum and
24 regular wages due to Defendants' failure to accurately record and compensate for all hours
25 worked. As a result of this policy and practice, Plaintiff and the Represented Employees were
26 required to perform off-the-clock work that Defendants either knew or should have known they
27 were performing.
28

1 44. As a result of these policies and practices, Defendants failed to pay Plaintiff and
2 the Represented Employees for all hours worked.

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

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

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

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

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

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

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

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FAILURE TO PAY OVERTIME WAGES

Plaintiff and the Represented Employees Against All Defendants

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

1 less than the higher of the applicable minimum wage or “an average hourly rate determined by
2 dividing the total compensation for the workweek, exclusive of compensation for rest and
3 recovery periods and any premium compensation for overtime, by the total hours worked during
4 the workweek, exclusive of rest and recovery periods.” Labor Code § 226.2(a)(3)(A).

5 68. Furthermore, Labor Code § 226.2 requires employers that pay their employees on
6 a piece-rate basis to provide separate payment for nonproductive time at an hourly rate that is no
7 less than the applicable minimum wage. Labor Code § 226.2(a)(4).

8 69. At all relevant times herein, Defendants failed to compensate the Represented
9 Employees, including Plaintiff, for all rest and recovery periods and all other nonproductive time
10 separate from any piece-rate compensation at the rate required by Labor Code § 226.2.
11 Therefore, Defendants violates Labor Code § 226.2 every pay period with respect to Plaintiff and
12 each and every one of the Represented Employees.

13 70. As a result of Defendant’s violation of Labor Code § 226.2, Plaintiff and the
14 Represented Employees seek to recover, in a civil action, the unpaid balance of the full amount
15 of unpaid payments for rest and recovery periods and other nonproductive time, including
16 interest thereon, reasonable attorneys’ fees, and costs of suit.

17 **FOURTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

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

23 72. Plaintiff and the Meal Break Subclass are and/or were employees of Defendants
24 who did not receive proper protections and benefits of the laws governing mandatory meal
25 periods.

26 73. Labor Code § 226.7 requires employers, including Defendants, to provide
27 employees with meal periods as mandated by the Industrial Welfare Commission.
28

1 74. Labor Code § 512(a), in part, provides that employers, including Defendants, may
2 not employ an employee for a work period of more than five hours per day without providing an
3 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
4 except that if the total work period per day of the employee is no more than six hours, the meal
5 period may be waived by mutual consent of both the employer and the employee. Employers
6 may not employ an employee for a work period more than 10 hours per day without providing
7 the employee with a second meal period of not less than 30 minutes.

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

11 76. At all relevant times herein, Plaintiff and the Meal Break Subclass were denied
12 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
13 practices, Plaintiff and the Represented Employees were subjected to meal period violations
14 when they were: (1) unable to take a meal period due to policy of not providing meal periods
15 and/or workload, (2) forced to take an on-duty meal period while under the control of the
16 Company, (3) forced to take a shortened meal period, (4) forced to take a meal period after the
17 5th hour of work, and (5) not provided mandated second meal periods for shifts in excess of 10
18 hours.

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

23 78. At all relevant times herein, Defendants failed to provide Plaintiff and the Meal
24 Break Subclass all mandated meal periods and failed to pay wage premiums in lieu of mandated
25 meal or rest periods, thereby receiving an economic benefit.

26 79. On information and belief, Plaintiff and the Meal Break Subclass did not
27 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
28 obtained from Plaintiff and the Meal Break Subclass were not willfully obtained, were not

1 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
2 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Meal Break Subclass
3 to take meal periods in accordance with California law.

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

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

13 **FIFTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE REST BREAKS**

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

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

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

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

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

23 85. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
24 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
25 each work period. Employees shall receive a 10-minute rest period every four hours or major
26 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
27 hours worked, for which there shall be no deduction from wages.
28

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

4 87. At all relevant times, Defendants also failed to provide Plaintiff and the Rest
5 Break Subclass with 10 minutes of net rest break time for every 4 hours worked, or major
6 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks for the
7 Rest Break Subclass and the Rest Break Subclass were often not authorized and/or permitted to
8 take mandated rest breaks due to being overwhelmed by their hectic workload. Furthermore, on
9 occasions when the Rest Break Subclass worked longer shifts, Defendants failed to authorize
10 and/or permit mandated third or fourth rest breaks.

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

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

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

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

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1 or not the employee actually works overtime in that workweek.” Additionally, Labor Code §
2 246(1)(2) states that the paid sick time must be “calculated by dividing the employee’s total
3 wages, not including overtime premium pay, by the employee’s total hours worked in the full
4 pay periods of the prior 90 days of employment.” Here, Defendants only calculated and paid sick
5 pay at the base rate of pay, rather than at the rate required by Labor Code § 246, leading to
6 unpaid sick pay and violations of Labor Code §§ 201 – 203.

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

13 **SEVENTH CAUSE OF ACTION**

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

15 (Labor Code § 226)

16 *Plaintiff and the Wage Statement Penalties Subclass against All Defendants*

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

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

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

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

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

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

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

26 108. As a result of Defendants' knowing and intentional failure to comply with Labor
27 Code § 226(a), Plaintiff and the Wage Statement Penalties Subclass have suffered an injury in
28 that each was prevented from knowing, understanding and disputing the wage payments paid to

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

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

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

16 **EIGHTH CAUSE OF ACTION**

17 **UNFAIR AND UNLAWFUL COMPETITION**

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

19 *Plaintiff and the Represented Employees against All Defendants*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NINTH CAUSE OF ACTION

PAGA ASSESSMENT FOR MISCLASSIFICATION

(Labor Code § 226.8)

Plaintiff and the Aggrieved Employees against All Defendants

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

128. At all relevant times, Defendant employed Plaintiff and the Aggrieved Employees under the guise of an independent contractor classification.

129. Despite the classification, Plaintiff and the Aggrieved Employees were required to perform their duties under conditions that are characteristic of an employment relationship, including but not limited to:

- a. Adhering to a fixed schedule determined by Defendants;
- b. Performing tasks under the direct supervision and control of Defendants' management;
- c. Being required to attend meetings organized and lead by Defendants' management;

1 d. Wearing items of clothing required by Defendants;

2 e. Utilizing equipment and tools provided by the Defendants to carry out their
3 assigned duties.

4 130. Moreover, Defendant exercised rigorous control over the manner and means by
5 which work was accomplished by Plaintiff and the Aggrieved Employees.

6 131. Furthermore, Plaintiff and Aggrieved Employees performed work that was in the
7 usual course of Defendants' business.

8 132. Finally, Plaintiff and Aggrieved Employees were not engaged in an independently
9 established trade, occupation or business that was the same nature as the work they performed
10 for Defendants.

11 133. Labor Code § 226.8(a) states that it is unlawful for any person or employer to
12 willfully misclassify an individual as an independent contractor. Subsection (b) provides that any
13 person or employer violating this section shall be subject to a civil penalty o not less than \$5,000
14 and not more than \$15,000 for each violation, in addition to any other penalties or fines
15 permitted by law.

16 134. Moreover, if the court finds that a person or employer has engaged in a pattern or
17 practice of violations, pursuant to Labor Code § 226.8(b), the person shall be subject to a civil
18 penalty of not less than \$10,000 and not more than \$25,000 per violation.

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

22 **TENTH CAUSE OF ACTION**

23 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES**

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

25 *Plaintiff and the Aggrieved Employees against All Defendants*

26 136. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
27 as if fully alleged herein.
28

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

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

9 139. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
10 Aggrieved Employees for all hours worked.

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

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

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

20 **ELEVENTH CAUSE OF ACTION**

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

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

23 *Plaintiff and the Aggrieved Employees against All Defendants*

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

26 144. Plaintiff and the Aggrieved Employees were employees of Defendants who did
27 not receive proper protections and benefits of the laws governing payment of overtime wages.
28

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

7 146. At all relevant times, Plaintiff and the Aggrieved Employees were required by
8 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
9 Defendants' failure to accurately record and compensate for all hours worked Plaintiff and the
10 Aggrieved Employees did not receive proper overtime compensation.

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

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

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

21 **TWELFTH CAUSE OF ACTION**

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

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

24 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

1 152. Labor Code § 226.7 requires employers, including Defendants, to provide
2 employees with meal periods as mandated by the Industrial Welfare Commission.

3 153. Labor Code § 512(a), in part, provides that employers, including Defendants, may
4 not employ an employee for a work period of more than five hours per day without providing an
5 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
6 except that if the total work period per day of the employee is no more than six hours, the meal
7 period may be waived by mutual consent of both the employer and the employee. Employers
8 may not employ an employee for a work period more than 10 hours per day without providing
9 the employee with a second meal period of not less than 30 minutes.

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

13 155. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied
14 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
15 practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when
16 they were: (1) not provided lawful meal periods due to misclassification as independent
17 contractors; (2) unable to take a meal period due to workload, (3) forced to take an on-duty meal
18 period while under the control of the Company, (4) forced to take a shortened meal period, (5)
19 forced to take a meal period after the 5th hour of work, and (6) not provided mandated second
20 meal periods for shifts in excess of 10 hours.

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

25 157. On information and belief, Plaintiff and the Aggrieved Employees did not
26 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
27 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not
28 voluntarily agreed to, were a condition of employment, or were a part of a contract of an

1 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved
2 Employees to take meal periods in accordance with California law.

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

6 **THIRTEENTH CAUSE OF ACTION**

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

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

9 *Plaintiff and the Aggrieved Employees against All Defendants*

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

12 160. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
13 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

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

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

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

24 164. At all relevant times, Defendants also failed to provide Plaintiff and the
25 Aggrieved Employees with 10 minutes of net rest break time for every 4 hours worked, or major
26 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks for the
27 Aggrieved Employees, the Aggrieved Employees were unable to leave the premises for breaks,
28 and the Aggrieved Employees were often not authorized and/or permitted to take mandated rest

breaks due to being overwhelmed by their hectic workload. Furthermore, on occasions when the Aggrieved Employees worked longer shifts, Defendants failed to authorize and/or permit mandated third rest breaks.

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

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

FOURTEENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD

(Labor Code § 204)

Plaintiff and the Aggrieved Employees against All Defendants

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

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

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

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

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

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

10 **FIFTEENTH CAUSE OF ACTION**

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

12 (Labor Code §§ 201 – 203)

13 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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

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

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

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

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

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

9 **SIXTEENTH CAUSE OF ACTION**

10 **PAGA ASSESSMENT FOR**

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

12 (Labor Code § 226)

13 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

25 184. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
26 and the Aggrieved Employees due to violations including: failing to provide a wage statement
27 each pay period; failure to accurately state total hours worked (for example, the wage statements
28 failed to accurately reflect the compensable hours worked); failure to accurately state gross

1 wages earned; failure to accurately state all deductions; failure to accurately state net wages
2 earned; failure to state the applicable hourly rates (including the accurate overtime rate of pay);
3 failure to accurately state the corresponding number of hours worked at each hourly rate; and
4 failure to accurately identify the name and address of the legal entity of the employer.

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

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

11 **VII. PRAYER FOR RELIEF**

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

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

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

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

19 4. That Plaintiff be appointed as Class Representative;

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

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

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

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

1 9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
2 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194,
3 1197, 1198, 1199, and 2802, among other sections inadvertently omitted;

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

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

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

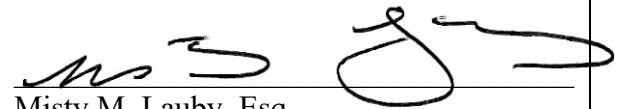
9 **DEMAND FOR JURY TRIAL**

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

12
13 Dated: July 9, 2024

LAUBY, MANKIN & LAUBY LLP

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15 BY:


Misty M. Lauby, Esq.
Attorneys for Plaintiff