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Attorneys for Plaintiff COLE ORR,
on behalf of himself and others similarly situated

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

COLE ORR, on behalf of himself and others
similarly situated,

Plaintiff,

vs.

ENGEN ENTERPRISES, INC., a California
corporation; TACO BELL, an entity of
unknown form; and DOES 1 through 50,
inclusive,

Defendants.

Case No. **24STCV24845**

CLASS ACTION

Assigned for All Purposes To:

Hon.

Dept.:

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime
Under Labor Code § 510;
3. Recovery of Reporting Time Pay;
4. Meal-Period Liability Under Labor Code §
226.7;
5. Rest-Break Liability Under Labor Code §
226.7;
6. Reimbursement of Necessary Expenditures
Under Labor Code § 2802;
7. Violation of Labor Code § 226(a);
8. Failure to Keep Required Payroll
Records Under Labor Code §§ 1174 and
1174.5;
9. Penalties Pursuant to Labor Code § 203; and
10. Violation of Business & Professions Code §
17200 *et seq.*; and
11. Penalties Pursuant to Labor Code § 2699, *et
seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff COLE ORR, (hereinafter “Plaintiff”) on behalf of himself and all others similarly
2 situated (collectively, “Employees”; individually, “Employee”) complains of Defendants, and each
3 of them, as follows:

4 INTRODUCTION

5 1. Plaintiff brings this action on behalf of himself and all current and former
6 Employees within the State of California who, at any time four (4) years prior to the filing of this
7 lawsuit, are or were employed as non-exempt, hourly employees by Defendants ENGEN
8 ENTERPRISES, INC., a California corporation; TACO BELL, an entity of unknown form; and
9 DOES 1 through 50 (all defendants being collectively referred to herein as “Defendants”). Plaintiff
10 alleges that Defendants, and each of them, violated various provisions of the California Labor
11 Code, relevant orders of the Industrial Welfare Commission (IWC) and California Business &
12 Professions Code, and seeks redress therefore.

13 2. Plaintiff is a resident of California and during the time period relevant to this
14 Complaint was employed by Defendants as a non-exempt hourly employee within the State of
15 California at Defendants’ facilities and offices in California. Plaintiff and the other Class members
16 worked for Defendants in Los Angeles County, and in other nonexempt positions, throughout
17 California and, and consistently worked at Defendants’ behest without being paid all wages due.
18 More specifically, Plaintiff and the other similarly situated Class members were employed by
19 Defendants and worked at Defendants’ offices and other facilities where the conduct giving rise to
20 the allegations in this Class Action Complaint occurred. Upon information and belief, Plaintiff
21 was employed by Defendants and (1) shared similar job duties and responsibilities, (2) was
22 subjected to the same policies and practices, and (3) endured similar violations at the hands of
23 Defendants as the other Employee Class members who served in similar and related positions.

24 3. Defendants required Plaintiff and the Employees in the Class to perform work
25 while off the clock. Defendants thus failed to pay Plaintiff and the Class members for all hours
26 worked and provided them with inaccurate wage statements that prevented Plaintiff and the Class
27 from learning of these unlawful pay practices. Defendants also failed to provide Plaintiff and the
28 Class with lawful meal and rest periods, as employees were not provided with the opportunity to

1 take timely, uninterrupted, and duty-free meal and rest periods as required by the Labor Code.

2 **THE PARTIES**

3 **A. The Plaintiff**

4 4. Plaintiff COLE ORR has resided in California and during the time period relevant
5 to this Complaint was employed by Defendants as a non-exempt hourly employee within the State
6 of California.

7 **B. The Defendants**

8 5. Defendant ENGEN ENTERPRISES, INC. is a California corporation with its
9 principle executive offices in Westlake Village, California and has been listed as the employer on
10 Plaintiff's W2 during the relevant time period. ENGEN ENTERPRISES, INC. lists a California
11 address in Westlake Village, California with the California Secretary of State and employs
12 Plaintiff and the Class members at Defendants' offices and facilities in Los Angeles, California,
13 and throughout California and conducts business throughout California.

14 6. Defendant TACO BELL is an entity of unknown form with its principle executive
15 office in Los Angeles, California, and was Plaintiff's jobsite during the relevant time period.
16 TACO BELL does not list a California address with the California Secretary of State, but upon
17 information and belief, employs Class members in Los Angeles County, including at Defendants'
18 offices and facilities in Los Angeles, California, and throughout California and conducts business
19 throughout California.

20 7. The true names and capacities, whether individual, corporate, associate, or
21 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
22 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
23 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
24 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
25 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
26 this Complaint to reflect the true names and capacities of the Defendants designated herein as
27 Does 1 through 50 when their identities become known.

28 8. Plaintiff is informed and believes and thereon alleges that each Defendant acted in

1 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
2 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
3 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
4 all respects as the employers or joint employers of Employees. Defendants, and each of them,
5 exercised control over the wages, hours or working conditions of Employees, or suffered or
6 permitted Employees to work, or engaged, thereby creating a common law employment
7 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly
8 employed Employees.

9 **JURISDICTION AND VENUE**

10 9. This Court has jurisdiction over this Action pursuant to California Code of Civil
11 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
12 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
13 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
14 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
15 obligations and liabilities giving rise to this lawsuit occurred at least in part in Los Angeles
16 County and Defendants maintain and operate company offices and facilities in Los Angeles
17 County, and employ Plaintiff and other Class members in Los Angeles County and throughout
18 California.

19 **FACTUAL BACKGROUND**

20 10. The Employees who comprise the Class and Collective, including Plaintiff, are
21 nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire
22 Employees who work in nonexempt positions at the direction of Defendants in the State of
23 California. Plaintiff and the Class members were either not paid by Defendants for all hours
24 worked or were not paid at the appropriate minimum, regular, and overtime rates. Specifically,
25 Plaintiff and Employees were not paid for the time that they worked hours off-the-clock by
26 answering text messages and phone calls from supervisors. Plaintiff also contends that Defendants
27 failed to pay Plaintiff and the Class members all wages due and owing, failed to provide meal and
28 rest breaks, and failed to furnish accurate wage statements, all in violation of various provisions of

1 the California Labor Code and applicable Wage Orders.

2 11. Additionally, from at least four (4) years prior to the filing of this lawsuit and
3 continuing to the present, Defendants' policies and practices required Employees to call in or
4 show up to work but were not put to work or worked less than half said employee's usual or
5 scheduled day's work. On such days when Defendants required Plaintiff and the Class members to
6 report to work only to be sent home, they were not paid half of said Employees' usual or
7 scheduled day's work in violation of California law.

8 12. During the course of Plaintiff and the Class members' employment with
9 Defendants, they were not paid all wages they were owed, including for all work performed and
10 for all overtime hours worked and were forced to work during their meal and rest breaks.

11 13. As a matter of uniform Company policy, Plaintiff and the Class members were
12 required to work during their meal and rest breaks which were not compensated by Defendants in
13 violation of the California Labor Code. Plaintiff and the Class members were also not paid
14 regular wages and overtime for the time they were required to comply with other requirements
15 imposed upon them, which they had to complete while working through their meal and rest
16 breaks and without compensation. As a result, Plaintiff and the Class members worked shifts over
17 eight (8) hours in a day and over forty (40) hours in a work week, but they were not paid at the
18 appropriate overtime rate for all such hours, including by being required to perform work duties
19 and tasks without pay and while off-the-clock. As a result, Plaintiff and the Class members
20 worked substantial overtime hours during their employment with Defendants for which they were
21 not compensated, in violation of the California Labor Code, applicable IWC Wage Orders.

22 14. As a result of the above described daily work demands and pressures to work
23 through breaks, and the other wage violations they endured at Defendants' hands, Plaintiff and the
24 Class members were not properly paid for all wages earned and for all wages owed to them by
25 Defendants, including when working more than eight (8) hours in any given day and/or more than
26 forty (40) hours in any given week. As a result of Defendants' unlawful policies and practices,
27 Plaintiff and Class members incurred overtime hours worked for which they were not adequately
28 and completely compensated. To the extent applicable, Defendants also failed to pay Plaintiff and

1 the Class members at an overtime rate of 1.5 times the regular rate for the first eight hours of the
2 seventh consecutive work day in a week and overtime payments at the rate of 2 times the regular
3 rate for hours worked over eight (8) on the seventh consecutive work day, as required under the
4 Labor Code, applicable IWC Wage Orders.

5 15. Therefore, from at least four (4) years prior to the filing of this lawsuit and
6 continuing to the present, Defendants had a consistent policy or practice of failing to pay
7 Employees for all hours worked and failing to pay minimum wage for all time worked as required
8 by California Law.

9 16. Additionally from at least four (4) years prior to the filing of this lawsuit and
10 continuing to the present, Defendants had a consistent policy or practice of failing to pay
11 Employees overtime compensation at premium overtime rates for all hours worked in excess of
12 eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in
13 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding
14 sections of IWC Wage Orders.

15 17. Additionally from at least four (4) years prior to the filing of this lawsuit and
16 continuing to the present, Defendants have regularly required Employees to work shifts in excess
17 of five (5) hours without providing them with uninterrupted meal periods of not less than thirty
18 (30) minutes and shifts in excess of ten (10) hours without providing them with second meal
19 periods of not less than thirty minutes; nor did Defendants pay Employees “premium pay,” i.e. one
20 hour of wages at each Employee’s effective regular rate of pay, for each meal period that
21 Defendants failed to provide or deficiently provided.

22 18. From at least four (4) years prior to the filing of this lawsuit and continuing to the
23 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less
24 than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did
25 Defendant pay Employees premium pay for each day on which requisite rest breaks were not
26 provided or were deficiently provided at one hour of wages at each Employee’s effective regular
27 rate of pay, for each rest period that Defendants failed to provide or deficiently provided.
28 Specifically, Defendants had a policy and practice of requiring Aggrieved Employees to

1 keep their headsets on and remain on-call during rest-breaks.

2 19. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
3 continuing to the present, Defendants have consistently failed to provide Employees with timely,
4 accurate, and itemized wage statements as required by California wage-and-hour laws.
5 Specifically, Aggrieved Employees were not provided with paper wage statements and did not
6 have access to the online portal to digitally view their wage statements. Upon information and
7 belief, the wage statements given to Employees by Defendants failed to accurately account for
8 wages, overtime, and premium pay for deficient meal periods and rest breaks, all of which
9 Defendants knew or reasonably should have known were owed to Employees, as alleged
10 hereinabove. Thus, Employees' wage statements did not include: the total hours worked in
11 violation of Labor Code § 226(a)(2) and failed to accurately set forth all applicable hourly rates in
12 effect during the pay period and the corresponding number of hours worked at each such rate in
13 violation of Labor Code § 226(a)(9). The wage statements provided to Employees were confusing
14 and required Employees to engage in discovery and refer to outside sources to verify whether their
15 pay was correct and potentially resulting in a miscalculation by the Employees.

16 20. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
17 continuing to the present, Defendants have consistently failed to provide Employees with timely,
18 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

19 21. From at least four (4) years prior to the filing of this lawsuit and continuing to the
20 present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the
21 performance of their job duties for Defendants including, the cost of personal cell phone usage,
22 which were necessary to perform their duties under Defendants' employ in violation of Labor
23 Code § 2802.

24 22. Additionally, from at least three (3) years prior to the filing of this lawsuit, and
25 continuing to the present, Defendants have consistently failed to keep accurate time and wage
26 records as required by California wage-and-hour laws.

27 23. Additionally, from at least four (4) years prior to filing this lawsuit and continuing
28 to the present, Defendants have had a consistent policy of failing to pay all wages fur and owed to

1 Employees at the time of their termination or within seventy-two (72) hours of their resignation, as
2 required by California wage-and-hour laws.

3 24. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor
4 Code §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174,
5 1174.5, 1182.12, 1185, 1194, 1194.2 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802.

6 25. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,
7 Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have
8 enjoyed from their violations of Labor Code.

9 **CLASS ALLEGATIONS**

10 26. Plaintiff brings this class action on behalf of himself and all others similarly
11 situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as
12 follows: all individuals employed by Defendants within the State of California at any time within
13 four (4) years of the filing of this lawsuit.

14 27. Further, Plaintiff seeks to represent the following Subclasses composed of and
15 defined as follows:

16 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
17 compensated for all hours worked for Defendants at the applicable minimum wage.

18 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
19 compensated for all hours worked for Defendants at the required rates of pay, including for all
20 hours worked in excess of eight in a day and/or forty in a week.

21 c. Subclass 3. Recovery of Reporting Time Pay. All Class members who were subject
22 to Defendants' policy and/or practice of not compensating reporting time pay.

23 d. Subclass 4. Meal Period Subclass. All Class members who were subject to
24 Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-
25 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

26 e. Subclass 5. Rest Break Subclass. All Class members who were subject to
27 Defendants' policy and/or practice of failing to authorize and permit Employees to take
28 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction

thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

f. Subclass 6. Payroll Records Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to keep accurate time and wage records as required by California wage-and-hour laws.

g. Subclass 7. Wage Statement Subclass. All Class members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

h. Subclass 8. Failure to Reimburse for Necessary Business Expenditures. All Class members who were subject to Defendants' failure to reimburse for expenses necessarily incurred in the performance of Employees job duties for Defendants.

i. Subclass 9. Termination Pay Subclass. All Class members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants' policy and/or practice of failing to timely pay wages upon termination.

j. Subclass 10. UCL Subclass. All Class members who are owed restitution as a result of Defendants' business acts and practices, to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

28. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify the class description with greater particularity or further division into subclasses or limitation to particular issues.

29. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure § 382 because there is a well-defined community of interest in litigation and proposed class is easily ascertainable.

A. Numerosity

30. The potential members of the class as defined are so numerous that joinder of all the member of the class is impracticable. While the precise number of class members has not been determined at this time, Plaintiff is informed and believes that Defendants employ or, during the time period relevant to this lawsuit, employed more than 100 individuals within the State of California.

31. Accounting for employee turnover during the relevant time period increases this number substantially. Plaintiff alleges that Defendants' employment records will provide information as to the number and location of all class members.

B. Commonality

32. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. These common questions of law and fact include:

- a. Whether Defendants failed to pay Employees minimum wages;
- b. Whether Defendants failed to pay Employees wages for all hours worked;
- c. Whether Defendants failed to pay Employees overtime as required under Labor Code § 510;
- d. Whether Defendants failed to pay Employees reporting time pay;
- e. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Employees with requisite meal periods or premium pay in lieu thereof;
- f. Whether Defendants violated Labor Code § 226.7, and the applicable IWC Wage Orders, by failing to provide Employees with requisite rest breaks or premium pay in lieu thereof;
- g. Whether Defendants violated Labor Code § 226(a);
- h. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- i. Whether Defendants failed to reimburse Employees for necessary business expenses;
- j. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- k. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq.*;
- l. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- m. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

1 **C. Typicality**

2 33. The claims of the named plaintiff are typical of those of the other Employees.
3 Employees all sustained injuries and damages arising out of and caused by Defendants' common
4 course of conduct in violation of statutes, as well as regulations that have the force and effect of
5 law, as alleged herein.

6 **D. Adequacy of Representation**

7 34. Plaintiff will fairly and adequately represent and protect the interest of Employees.
8 Counsel who represents Employees are experienced and competent in litigating employment class
9 actions.

10 **E. Superiority of Class Action**

11 35. A class action is superior to other available means for the fair and efficient
12 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
13 questions of law and fact common to all Employees predominate over any questions affecting only
14 individual Employees. Each Employee has been damaged and is entitled to recovery by reason of
15 Defendants' illegal policies or practices of failing to compensate Employees properly.

16 36. Class action treatment will allow those persons similarly situated to litigate their
17 claims in the manner that is most efficient and economical for the parties and the judicial system.
18 Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PAY MINIMUM WAGES**

21 **(Against All Defendants)**

22 37. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
23 full herein.

24 38. Defendants failed to pay Employees minimum wages for all hours worked.
25 Defendants had a consistent policy of failing to pay Employees for all hours worked. Employees
26 would work hours and not receive wages, including as alleged above in connection with working
27 during meal breaks, and receiving and answering work-related phone calls and text messages
28 while off-the-clock. Additionally, Defendants had a consistent policy of failing to pay Employees

1 for hours worked during alleged meal periods, as also addressed herein. Defendants thus
2 regularly failed to pay minimum wages to Plaintiff and Class members. Moreover, Defendants
3 did not pay Plaintiff and Employees at the applicable minimum wage for all hours worked.
4 Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation,
5 applicable to the Class as a whole, as a result of implementing a uniform policy and practice that
6 denied accurate compensation to Plaintiff and the other members of the Class as to minimum
7 wage pay.

8 39. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
9 states:

10 The minimum wage for employees fixed by the commission is the
11 minimum wage to be paid to employees, and the payment of a less
12 wage than the minimum so fixed is unlawful.

13 40. The applicable minimum wages fixed by the commission for work during the
14 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are
15 therefore entitled to double the minimum wage during the relevant period.

16 41. The minimum wage provisions of California Labor Code are enforceable by private
17 civil action pursuant to California Labor Code § 1194(a) which states:

18 Notwithstanding any agreement to work for a lesser wage, any
19 employee receiving less than the legal minimum wage or the legal
20 overtime compensation applicable to the employee is entitled to
21 recover in a civil action the unpaid balance of the full amount of
22 this minimum wage or overtime compensation, including interest
23 thereon, reasonable attorney's fees and costs of suit.

24 42. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
25 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

26 43. California Labor Code § 1194.2 also provides for the following remedies:

27 In any action under Section 1194 . . . to recover wages because of
28 the payment of a wage less than the minimum wages fixed by an
order of the commission, an employee shall be entitled to recover
liquidated damages in an amount equal to the wages unlawfully
unpaid and interest thereon.

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44. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

45. Wherefore, Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a).

SECOND CAUSE OF ACTION

FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510

(Against All Defendants)

46. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

47. By their conduct, as set forth herein, Defendants violated California Labor Code § 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked including time off the clock working by answering work-related phone calls and text messages. Employees regularly worked over 8 hours on a given day without receiving overtime compensation.

48. Defendants' failure to pay compensation in a timely fashion also constituted a violation of California Labor Code § 204, which requires that all wages shall be paid semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct violation of that provision of the California Labor Code, Defendants have failed to pay all wages and overtime compensation earned by Employees. Each such failure to make a timely payment of compensation to Employees constitutes a separate violation of California Labor Code § 204.

1 49. Employees have been damaged by these violations of California Labor Code §§
2 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

3 50. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
4 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for
5 the full amount of all their unpaid wages and overtime compensation, with interest, plus their
6 reasonable attorneys' fees and costs.

7 **THIRD CAUSE OF ACTION**
8 **RECOVERY OF REPORTING TIME PAY**
9 **(Against All Defendants)**

10 51. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
11 full herein.

12 52. The IWC Wage Orders require that reporting time pay be provided to any
13 employee who is required to report for work and does report but is not put to work or is furnished
14 less than half of said employee's usual or scheduled day's work.

15 53. Plaintiff is informed and believes and thereon alleges that all or substantially all of
16 Defendants' hourly paid employees are subject to Defendants' policies and practices requiring
17 them to call in or otherwise show up to work but are not being paid half said Employee's usual or
18 scheduled day's work when working less than half of said employee's usual or scheduled day's
19 work.

20 54. Therefore, Employees are owed the unpaid balance of said wages pursuant to the
21 Wage Order according to proof at trial, interest pursuant to Labor Code §§ 218.6 and 1994(a),
22 Civil Code §§ 3287 and 3289, and reasonable attorneys' fees and costs and/or penalties pursuant
23 to Labor Code § 558(a).

24 **FOURTH CAUSE OF ACTION**
25 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**
26 **(Against All Defendants)**

27 55. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
28 full herein.

1 56. Employees regularly worked shifts greater than five (5) hours and greater than ten
2 (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of
3 more than five (5) hours without providing him or her with a meal period of not less than thirty
4 (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second
5 meal period of not less than thirty (30) minutes.

6 57. Defendants failed to provide Employees with meal periods as required under the
7 Labor Code. Employees were interrupted during their meal periods which resulted in on-duty meal
8 periods.

9 58. Moreover, Defendants failed to compensate Employees for each meal period not
10 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
11 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
12 employee a meal period in accordance with this section, the employer shall pay the employee one
13 hour of pay at the employee's regular rate of compensation for each workday that the meal period
14 is not provided. Defendants failed to compensate the Employees in the Class for each meal period
15 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11
16 and 20 of the applicable IWC Wage Order.

17 59. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
18 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal
19 period not provided or deficiently provided, a sum to be proven at trial.

20 **FIFTH CAUSE OF ACTION**

21 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

22 **(Against All Defendants)**

23 60. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
24 full herein.

25 61. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the
26 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of
27 not less than ten (10) minutes for each consecutive four (4) hour shift.

28 62. Defendants failed to provide Employees with uninterrupted and off-duty rest breaks

1 of not less than ten (10) minutes for each consecutive four (4) hour shift. Specifically, Defendants
2 had a policy and practice of requiring Aggrieved Employees to keep their headsets on and remain
3 on-call during rest-breaks.

4 63. Moreover, Defendants failed to compensate Employees for each rest period not
5 provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC
6 Wage Orders, which provide that, if an employer fails to provide an employee a rest period in
7 accordance with this section, the employer shall pay the employee one hour of pay at the
8 employee's regular rate of compensation for each workday that the rest period is not provided.
9 Defendants failed to compensate the Employees in the Class for each rest period not provided or
10 inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage
11 Order.

12 64. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
13 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day
14 worked without the required rest breaks, a sum to be proven at trial.

15 **SIXTH CAUSE OF ACTION**
16 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**
17 **IN VIOLATION OF LABOR CODE § 2802**
18 **(Against All Defendants)**

19 65. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
20 full herein.

21 66. Under Labor Code § 2802(a), an employer must indemnify its employees for all
22 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
23 of his or her duties, or of his or her obedience to the directions of the employer.

24 67. Employees incurred necessary expenditures in the performance of their job duties
25 for Defendants, namely the cost of personal cell phone usage, which were necessary to perform
26 their duties under Defendants' employ. From four (4) years prior to the original filing of this
27 lawsuit and continuing to the present, Defendants consistently failed to reimburse Employees for
28 these necessarily incurred business expenses.

1 68. As a result of the unlawful acts of Defendants, Employees have been deprived of
2 reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,
3 plus interest and penalties thereon, attorneys' fees, and costs.

4 **SEVENTH CAUSE OF ACTION**
5 **VIOLATION OF LABOR CODE § 226(a)**
6 **(Against All Defendants)**

7 69. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
8 full herein.

9 70. California Labor Code § 226(a) requires an employer to furnish each of his or her
10 employees with an accurate, itemized statement in writing showing the gross and net earnings,
11 total hours worked, and the corresponding number of hours worked at each hourly rate; these
12 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
13 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
14 statements may be given to the employee separately from the payment of wages; in either case the
15 employer must give the employee these statements twice a month or each time wages are paid.

16 71. Defendants failed to provide Employees with accurate itemized wage statements in
17 writing, as required by the Labor Code. Specifically, Aggrieved Employees were not provided
18 with paper wage statements and did not have access to the online portal to digitally view their
19 wage statements. Upon information and belief, the wage statements given to Employees by
20 Defendants failed to accurately account for wages, overtime, and premium pay for deficient meal
21 periods and rest breaks, all of which Defendants knew or reasonably should have known were
22 owed to Employees, as alleged hereinabove. Thus, the wage statements given to Employees, by
23 Defendants, also failed to include: the total hours worked in violation of Labor Code § 226(a)(2)
24 and failed to accurately set forth all applicable hourly rates in effect during the pay period and the
25 corresponding number of hours worked at each such rate in violation of Labor Code § 226(a)(9).
26 The wage statements provided to Employees were confusing and required Employees to engage in
27 discovery and refer to outside sources to verify whether their pay was correct and potentially
28 resulting in a miscalculation by the Employees.

72. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

73. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

74. With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each employee for each pay period.

75. Plaintiff is seeking penalties against Defendants under Labor Code § 226.3, and any other applicable statute allowing recovery of penalties as alleged herein in an amount to be shown according to proof.

EIGHTH CAUSE OF ACTION

FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE §§ 1174

AND 1174.5

(Against All Defendants)

76. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

77. California Labor Code § 1174 requires that all employers shall keep accurate time and wage records for all employees. California Labor Code § 1174.5 further requires that any employee suffering injury due to a willful violation of the aforementioned obligations may seek damages, including civil penalties, from the employer.

78. During the course of Plaintiff's and Employees' employment, Defendants

1 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as
2 required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages,
3 overtime, and premium pay as discussed above.

4 79. Accordingly, Defendants are liable for civil penalties pursuant to the California
5 Labor Code § 1174.5. for the three (3) years prior to the filing of this Complaint.

6 **NINTH CAUSE OF ACTION**
7 **VIOLATION OF LABOR CODE § 203**
8 **(Against All Defendants)**

9 80. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
10 full herein.

11 81. Numerous Employees are no longer employed by Defendants; they either quit
12 Defendants' employ or were fired therefrom.

13 82. Defendants failed to pay these Employees all wages due and certain at the time of
14 termination or within seventy-two (72) hours of resignation.

15 83. The wages withheld from these Employees by Defendants remained due and owing
16 for more than thirty (30) days from the date of separation of employment.

17 84. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
18 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties
19 under Labor Code § 203, which provides that an employee's wages shall continue until paid for up
20 to thirty (30) days from the date they were due.

21 **TENTH CAUSE OF ACTION**
22 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***
23 **(Against All Defendants)**

24 85. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
25 full herein.

26 86. Plaintiff, on behalf of himself, Employees, and the general public, brings this claim
27 pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as alleged in
28 this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the

1 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
2 meaning of Code of Civil Procedure § 1021.5.

3 87. Plaintiff is a “person” within the meaning of Business & Professions Code
4 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
5 relief, restitution, and other appropriate equitable relief.

6 88. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
7 business practices.

8 89. Wage-and-hour laws express fundamental public policies. Paying employees their
9 wages and overtime, providing them with meal and rest periods, etc., are fundamental public
10 policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously
11 to enforce minimum labor standards, to ensure that employees are not required or permitted to
12 work under substandard and unlawful conditions, and to protect law-abiding employers and their
13 employees from competitors who lower costs to themselves by failing to comply with minimum
14 labor standards.

15 90. Defendants have violated statutes and public policies. Through the conduct alleged
16 in this Complaint, Defendants have acted contrary to these public policies, have violated specific
17 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
18 violation of Business & Professions Code § 17200 *et seq.* Defendants’ conduct has deprived
19 Plaintiff, and all persons similarly situated, and all interested persons, of the rights, benefits, and
20 privileges guaranteed to all employees under the law.

21 91. Defendants’ conduct, as alleged hereinabove, constitutes unfair competition in
22 violation of the Business & Professions Code § 17200 *et seq.*

23 92. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
24 overtime, failing to provide meal and rest periods, etc., either knew or in the exercise of reasonable
25 care should have known that their conduct was unlawful; therefore their conduct violates the
26 Business & Professions Code § 17200 *et seq.*

27 93. As a proximate result of the above-mentioned acts of Defendants, Employees have
28 been damaged, in a sum to be proven at trial.

94. Unless restrained by this Court, Defendants will continue to engage in such unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use by Defendants or their agents or employees of any unlawful or deceptive practice prohibited by the Business & Professions Code, including but not limited to the disgorgement of such profits as may be necessary to restore Employees to the money Defendants have unlawfully failed to pay.

TWELFTH CAUSE OF ACTION

PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ.

(Against All Defendants)

95. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

96. Plaintiff is an aggrieved employee as defined under Labor Code § 2699(c)(1) in that Plaintiff and Employees suffered the violations alleged in this Complaint and were employed by the alleged violators, Defendants.

97. Plaintiff seeks penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the penalty provisions, without limitation, based on the following California Labor Code sections: 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802.

98. The penalties shall be allocated as follows: 65% to the Labor and Workforce Development Agency (LWDA) and 35% to the affected employee.

99. Employees also seek any and all penalties and remedies set forth in Labor Code § 558, which states:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for

1 each underpaid employee for each pay period for which the employee was
2 underpaid in addition to an amount sufficient to recover underpaid wages. (3)
Wages recovered pursuant to this section shall be paid to the affected employee.

3 (b) If upon inspection or investigation the Labor Commissioner determines that
4 a person had paid or caused to be paid a wage for overtime work in violation of any
5 provision of this chapter, or any provision regulating hours and days of work in any
6 order of the Industrial Welfare Commission, the Labor Commissioner may issue a
citation. The procedures for issuing, contesting, and enforcing judgments for
7 citations or civil penalties issued by the Labor Commissioner for a violation of this
chapter shall be the same as those set out in Section 1197.1.

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

10 100. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
11 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
12 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
13 for each violation in a subsequent citation, for which the employer fails to provide the employee a
14 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the
15 extent that Labor Code § 226.3 applies, Plaintiff and Employees also seeks such penalties on.

16 101. Plaintiff has exhausted his administrative remedy by sending a certified letter to the
17 LWDA and Defendants postmarked on June 21, 2024. The LWDA has not provided notice of its
18 intent to investigate the alleged violations within 65 calendar days of the postmark date of the
19 letters.

20 **RELIEF REQUESTED**

21 WHEREFORE, Plaintiff prays for the following relief:

- 22 1. For an order certifying this action as a class action;
- 23 2. For compensatory damages in the amount of the unpaid minimum wages for work
24 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
25 the filing of this action, as may be proven;
- 26 3. For liquidated damages in the amount equal to the unpaid minimum wage and
27 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 28 4. For compensatory damages in the amount of the hourly wage made by Employees

1 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
2 years prior to the filing of this action, as may be proven;

3 5. For compensatory damages in the amount of the hourly wage made by Employees
4 for each day requisite rest breaks were not provided or were deficiently provided and where no
5 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
6 be proven;

7 6. For recovery of the unpaid balance of the full amount of the reporting time pay due
8 pursuant to the applicable Wage Order, as may be proven;

9 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

10 8. For penalties pursuant to Labor Code § 226.3, as may be proven;

11 9. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
12 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

13 10. For penalties pursuant to Labor Code § 1174.5, as may be proven;

14 11. For restitution for unfair competition pursuant to Business & Professions Code
15 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

16 12. For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;

17 13. For compensatory damages in the amount of all previously unreimbursed business
18 expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants
19 from four (4) years prior to the original filing of this action, as may be proven;

20 14. For an order enjoining Defendants and their agents, servants, and employees, and
21 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
22 duties adumbrated in this Complaint;

23 15. For all general, special, and incidental damages as may be proven;

24 16. For an award of pre-judgment and post-judgment interest;

25 17. For an award providing for the payment of the costs of this suit;

26 18. For an award of attorneys' fees; and

27 19. For such other and further relief as this Court may deem proper and just.

28 ///

1 DATED: September 25, 2024

D.LAW, INC.

2
3 By



4 David Yeremian
5 Roman Shkodnik
6 Mason Doidge
7 Attorneys for Plaintiff
8 COLE ORR
9 and the putative class
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

DATED: September 25, 2024

D.LAW, INC.

By



David Yeremian
Roman Shkodnik
Mason Doidge
Attorneys for Plaintiff
COLE ORR
and the putative class