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Attorneys for Plaintiff,
DERRICK JERMAINE KELLY

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

DERRICK JERMAINE KELLY, an
individual, on his own behalf and on
behalf of all others similarly situated,

Plaintiffs,

vs.

AMIRIAN MANAGEMENT
COMPANY DBA POPEYES, a
California corporation; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 24STCV15288

CLASS ACTION COMPLAINT FOR:

- 1. FAILURE TO PAY PREMIUM OVERTIME/DOUBLE TIME WAGES DUE (Cal. Labor Code §§ 510, 511, 1194, 1198; IWC Wage Order No. 5);**
- 2. FAILURE TO PAY MINIMUM WAGES (Cal. Labor Code §§1194, 1194.2, 1997, 1197.1, 1198; IWC Wage Order No. 5);**
- 3. FAILURE TO PROVIDE TIMELY OFF DUTY MEAL PERIODS (Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 5)**
- 4. FAILURE TO PROVIDE REST PERIODS (Cal. Labor Code § 226.7; IWC Wage Order No. 5);**
- 5. FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. Labor Code §226; IWC Wage Order No. 5);**
- 6. FAILURE TO PAY WAGES DUE UPON TERMINATION (Cal. Labor Code §§201-203);**
- 7. FAILURE TO REIMBURSE BUSINESS EXPENSES (Cal. Labor Code §2802);**
- 8. FAILURE TO PROVIDE UNIFORM AND MAINTENANCE ALLOWANCE (Cal. Labor Code §2802);**
- 9. FOR PAYMENT OF WAGES IN A NON-LABOR CODE COMPLIANT INSTRUMENT (Cal. Labor Code §§ 212);**

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

DEMAND FOR A JURY TRIAL

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

Derrick Jermaine Kelly (“Plaintiff”) alleges the following:

1. This is a class action brought under California law by an individual who was employed by Amirian Management Company dba Popeyes (“POPEYES” or “Defendant”) (along with DOES 1 through 100, collectively “Defendants”). Plaintiff brings this action on behalf of himself and others similarly situated to recover wages from Defendant due to Defendant’s systematic failure to: pay overtime/double time wages, pay minimum wages, provide meal and rest breaks (or pay the statutory compensation due), issue accurate wage statements, pay all wages upon termination, reimburse business expenses, provide a uniform maintenance allowance, payment of wages in a non-Labor Code compliant instrument and failure to allow inspection of employee records.

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

3. Plaintiff, like his co-workers whom Defendant also employed during the applicable limitations period, spend their workdays as shift managers and other nonexempt employees, under illegal and highly regimented circumstances. That regimen results from

1 Defendant's insistence to strictly monitor and curtail labor costs, which Defendant
2 accomplished by not paying for all labor costs, failing to pay overtime/double time, failing to
3 pay minimum wages, refusing to provide meal periods, refusing to provide rest breaks, not
4 paying the required extra hour for missed meal and rest breaks, failing to issue accurate wage
5 statements, failing to pay all wages on termination, failing to reimburse business expenses,
6 failing to provide a uniform maintenance allowance, paying of wages in a non-Labor Code
7 compliant instrument, failing to allow inspection of employee records and by using other
8 unlawful stratagems to ensure that labor costs remain artificially low.

9 4. Plaintiff brings this class action to recover, among other things, wages and
10 penalties from unpaid wages earned and due, including but not limited to, premium
11 overtime/double time wages, minimum wages, late and missed rest break wages, wages due to
12 discharged or quitting employees, penalties for failure to provide accurate itemized wage
13 statements, penalties for failure to allow inspection of records, reimbursement of business
14 expenses, reimbursement of uniform maintenance allowance, payment of wages in a non-Labor
15 Code compliant instrument, attorneys' fees, costs, and expenses.

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

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

24 JURISDICTION AND VENUE

25 7. This Court has jurisdiction over this Complaint under Code of Civil Procedure
26 §410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business &*
27 *Professions Code* §§ 17200 *et seq.* Plaintiff Derrick Jermaine Kelly brings this Complaint on
28 his own behalf and on behalf of all persons in the Class as defined in paragraph 16 below.

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

THE PARTIES

PLAINTIFF

9. At all times relevant hereto, Plaintiff was:

- (a) An individual over age 18 and a resident of Lancaster, California;
- (b) Employed as an hourly employee for Defendant in Lancaster, California;
- (c) Did not receive overtime/double time compensation required by *Labor Code* §§510, 511, 1194 and 1198 and the applicable Wage Orders;
- (d) Did not receive minimum wages in violation of *Labor Code* §§1194, 1194.2, 1997, 1197.1, 1198 and the applicable Wage Orders;
- (e) Did not receive the meal periods required by *Labor Code* §266.7 and the applicable Wage Orders;
- (f) Did not receive the rest periods required by *Labor Code* §266.7 and the applicable Wage Orders;
- (g) Did not receive accurate wage statements as mandated by *Labor Code* §226;
- (h) When terminated from his employment, did not receive his final paycheck within the time limits prescribed by *Labor Code* §201;
- (i) Was not reimbursed for business expenses as required by *Labor Code* §2802;
- (j) Was not provided a uniform maintenance allowance as required by *Labor Code* §2802;
- (k) Was provided his wages in a non-Labor Code Compliant manner in violation of *Labor Code* § 212; and

- 1 (l) Was not allowed to inspect his employment records as required by *Labor*
2 *Code* §1198.5. Each of these was a violation of the *Labor Code*.

3 **DEFENDANT**

4 10. Plaintiff is informed and believes, and based on that information and belief,
5 alleges, Defendant POPEYES is, and at all times mentioned herein was:

- 6 (a) A California corporation, with a principal place of business at 601 E.
7 Glenoaks Blvd., Suite 108, Glendale, California 91027. Defendant has
8 been authorized to do business and has been doing business in the
9 County of Los Angeles;
- 10 (b) The former employer of Plaintiff and the current and former employer of
11 the putative Class members;
- 12 (c) Paid Plaintiff and all Class Members on an hourly basis;
- 13 (d) Failed to pay Plaintiff and all putative Class members premium
14 overtime/double time wages;
- 15 (e) Failed to pay Plaintiff and all putative Class members minimum wages;
- 16 (f) Failed to provide Plaintiff and all putative Class members with meal and
17 rest periods, failed to provide Plaintiff and all putative Class Members
18 with accurate itemized wage statements and failed to issue final
19 paychecks timely to Plaintiff and all putative Class Members;
- 20 (g) Failed to reimburse business expenses to Plaintiff and all putative Class
21 Members;
- 22 (h) Failed to provide a uniform maintenance allowance to Plaintiff and all
23 putative Class Members;
- 24 (i) Paid Plaintiff and all putative Class Members wages in a non-Labor
25 Code compliant instrument; and
- 26 (j) Failed to allow Plaintiff and all putative Class Members to inspect
27 employment records. Each of these was a violation of the *Labor Code*.
28

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

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

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

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

25 15. Plaintiff is informed and believes, and based on that information and belief
26 alleges, that the Defendants named in this Complaint, including DOES 1 through 100,
27 inclusive, knowingly and willfully acted in concert, conspired and agreed together among
28 themselves and entered into a combination and systemized campaign of activity to *inter alia*

1 damage Plaintiff, and the Class, and to otherwise consciously and/or recklessly act in
2 derogation of the rights of Plaintiff and the Class, and the trust reposed by Plaintiff, and the
3 Class, in each of the Defendants, the acts being negligently and/or intentionally inflicted. Their
4 conspiracy, and Defendants' concerted actions, were such that, to Plaintiff's information and
5 belief, and to all appearances, Defendants, and each of them, represented a unified body so that
6 the actions of one Defendant were accomplished in concert with, and with the knowledge,
7 ratification, authorization and approval of each of the other Defendants.

8 **CLASS ALLEGATIONS**

10 **A. The Definition of the Class**

11 16. The Class ("the Class") is defined as follows:

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

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

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

23 18. Pursuant to the California Labor Code, Plaintiff intends to file a notice with
24 Labor and Workforce Development Agency (LWDA) and pursue claims against Defendants
25 under the Private Attorney General Act (PAGA). As such, Plaintiff further reserves the right to
26 amend this Complaint once he completes and complies with the provisions under the law.

28 **B. Maintenance of the Action**

1 19. Plaintiff brings this action individually and on behalf of himself and as
2 representative of all similarly situated persons under *Business & Professions Code* §§ 17203
3 and 17204 and *Code of Civil Procedure* § 382.
4

5 **C. The Class Requisites**

6 20. At all material times, Plaintiff was a member of the Class.

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

- 9 (a) The persons who comprise the Class are so numerous that the joinder of all
10 those persons is impracticable and the disposition of their claims as a Class
11 will benefit the parties and the Court;
- 12 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
13 that are raised in this Complaint are common to the Class and will apply
14 uniformly to every Class member;
- 15 (c) The claims of the representative Plaintiff are typical of the claims of each
16 Class member. Plaintiff, like all Class members, has sustained damages
17 arising from Defendants' violations of the laws of the State of California.
18 Plaintiff, and the Class members, were and are similarly or identically
19 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
20 pattern of misconduct engaged in by the Defendants;
- 21 (d) The representative Plaintiff has, and will continue to, fairly and adequately
22 represent and protect the interests of the Class and has retained counsel
23 who are competent and experienced in class action litigation. There are no
24 material conflicts between the claims of the representative Plaintiff and the
25 Class members that would make class certification inappropriate. Counsel
26 for the Class will vigorously assert the claims of all Class members.

27 22. The persons who comprise the Class are so numerous that joining all of them is
28 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.

1 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff
2 will fairly and adequately protect the interests of the Class he seeks to represent. Plaintiff does
3 not have any interests that are antagonistic to the Class he seeks to represent. Counsel for
4 Plaintiff are experienced, qualified and generally able to conduct complex class action
5 litigation.

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

- 8 (a) The questions of law and fact common to the Class predominate over any
9 question affecting only individual members;
- 10 (b) A class action is superior to any other available method for fairly and
11 efficiently adjudicating the claims of the Class;
- 12 (c) The Class members are so numerous that it is impractical to bring all of
13 them before the Court;
- 14 (d) Plaintiff and other Class members will not be able to obtain effective and
15 economic legal redress unless the action is maintained as a class action;
- 16 (e) There is a community of interest in obtaining appropriate legal and
17 equitable relief for the statutory violations, and in obtaining adequate
18 compensation for the damages and injuries for which Defendants is
19 responsible in an amount sufficient to adequately compensate the Class
20 members;
- 21 (f) Without Class certification, the prosecution of separate actions by
22 individual Class members would create a risk of:
 - 23 i. Inconsistent or varying adjudications for individual Class members
24 that would establish incompatible standards of conduct for
25 Defendants; and/or,
 - 26 ii. Adjudication for individual Class members that would, as a
27 practical matter, dispose of other non-party members' interests, or
28 that would substantially impair or impede the non-parties' ability

1 to protect their interests, by, for example, potentially exhausting
2 the funds available from Defendant, and

3 (g) Defendant has acted or refused to act on grounds generally applicable to
4 the Classes, making final injunctive relief appropriate for the Class, as a
5 whole.

6 24. Plaintiff contemplates eventually issuing notice to the proposed Class Members
7 that would set forth the subject and nature of the action. The Defendants' own business records
8 may be utilized for assisting to prepare and issue the contemplated notice. To the extent that
9 any further notices may be required, Plaintiff would contemplate using additional media and/or
10 mailing.

11 GENERAL ALLEGATIONS

12 25. At all times material hereto, Defendant POPEYES is and has been a restaurant
13 operating in California.

14 26. Plaintiff and members of the Class were employed as shift managers and other
15 nonexempt employees at Defendant's restaurants in California at various times during the Class
16 Period.

17 THE CONDUCT

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

20 28. Starting on or about March 1, 2021 and continuing to March 26, 2024,
21 Defendant employed Plaintiff on an hourly basis as a Shift Manager in Lancaster, California.

22 29. While employed by Defendant as a Shift Manager, Plaintiff was initially paid
23 \$14.00 per hour and later \$18.00 per hour.

24 30. The employment by Defendant of the Class Members, and each them, is
25 governed by Industrial Welfare Commission Wage Order 5, which covers those persons
26 employed in the public housekeeping industry.

27 OFF-THE-CLOCK WORK

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1 31. Employers must compensate non-exempt employees for “off-the-clock” work
2 (before punching in or after punching out on a time clock) if the employers knew or should
3 have known that the employees were working those hours. *Morillion v. Royal Packing Co.*
4 (2000) 22 Cal. 4th 575, 585.

5 32. Defendant required Plaintiff and the Class to regularly perform compensable
6 tasks pre and post-shift off-the-clock for which they did not receive any compensation.
7 Specifically, as part of the Class members’ employment, Defendant required Plaintiff and Class
8 members to wait to clock in on one of the 3 POS registers at the start of their shifts for up to 5
9 minutes while off-the clock. Further, approximately 3-4 times per week, Plaintiff and Class
10 members performed off the clock work pre-shift such as picking up supplies from other
11 Popeyes locations 10 minutes away which took up to 1 hour and purchasing supplies at a store
12 next door to POPEYES for about 15 minutes. Additionally, Plaintiff and Class members
13 performed post-shift activities off the clock about 4 times per week, such as completing reports
14 for 30 minutes after clocking out for their shift. Further, approximately 3 times per week,
15 Plaintiff and Class members also had to wait for other employees to clock out for about 30-60
16 minutes after Plaintiff and Class members already clocked out. The off the clock work was
17 required by Defendant’s management and Plaintiff and Class members were not allowed to
18 clock out later than their 8-hour shift. Defendant’s managers threatened to retaliate against
19 Plaintiff and Class members by reducing their hours if they clocked out later than their shift end
20 time. Moreover, once a month, Plaintiff and Class members were required by Defendant to
21 attend employee meetings for 2-3 hours off the clock on their days off. Plaintiff and Class
22 members were required to use their personal cell phones off the clock for work-related
23 activities such as checking their schedules, and recording temperatures, for about 10 minutes
24 per day. Plaintiff and Class members also received employee group chat messages that they
25 were required to read and respond to, for about 5-10 minutes per day, off the clock. Defendant
26 failed to compensate Plaintiff and the Class for such time.

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1 33. At all times relevant, Plaintiff and Class members consistently worked hours for
2 which they were not paid because Plaintiff and the Class members were required to engage in
3 pre and post-shift off-the-clock activities.

4 **FAILURE TO PAY OVERTIME/DOUBLE TIME**

5 34. Under California law, non-exempt employees as defined by Wage Order 5, are
6 entitled to premium wages for overtime/double time worked.

7 35. Here, at all times during the relevant time period, Plaintiff and the Class
8 routinely worked schedules such that they were due pay at overtime/double time rates. During
9 this period, it was the practice and policy of Defendant to not pay employees overtime/double
10 time. Monies for unpaid overtime/double time remain due and owing.

11 **FAILURE TO PAY MINIMUM WAGES**

12 36. Under California law, non-exempt employees as defined by the applicable Wage
13 Order are entitled to minimum wages. Plaintiff and the Class were not paid minimum wages
14 due to off the clock work and meal/rest breaks not afforded.

15 **MISSED/INTERRUPTED/ LATE MEAL BREAKS**

16 37. Under California law, non-exempt employees as defined by the applicable Wage
17 Order are entitled to a 30-minute lunch period for each 10 hours worked, a 10-minute paid rest
18 break for every four hours worked, or major fraction thereof. Non-exempt employees are also
19 entitled to one hour pay at their regular pay rate for each day the requisite rest and/or meal
20 periods are not provided.

21 38. Plaintiff and the Class members' meal breaks were at times not afforded,
22 afforded late and/or routinely interrupted.

23 **MISSED/INTERRUPTED/REST BREAKS**

24 39. Plaintiff and Class members' rest breaks were routinely interrupted and/or not
25 afforded.

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

27 40. As a result of Defendant's failure to pay employees at required overtime/double
28 time rates, minimum wages and afford proper meal/rest breaks, the wage statements issued to

1 the employees did not comply with *Labor Code* §226 and California Industrial Welfare
2 Commission (“IWC”) Wage Order 5 in that they did not accurately reflect all wages earned and
3 due and owing.

4 **FAILURE TO PAY WAGES ON TERMINATION AND/OR RESIGNATION**

5 41. As a further result of Defendant’s failure to pay employees at required overtime/
6 double time rates, minimum wages due and afford proper meal/rest breaks, when the
7 employees left their employ, they were not timely paid all wages due them, as required by
8 *Labor Code* §§ 201, 202 and Wage Order 5. Further, it was the practice of Defendant to not pay
9 employees the final paychecks within the time periods mandated by *Labor Code* §§201, 202
10 and Wage Order 5.

11 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

12 42. Here, Defendant required Plaintiff and the Class to use their personal cell
13 phones, vehicles and purchase items for work-related purposes, but failed to reimburse them for
14 such use and items.

15 **FAILURE TO PROVIDE UNIFORM MAINTENANCE ALLOWANCE**

16 43. Defendant required Plaintiff and Class members to wear uniforms, but failed to
17 reimburse them for maintenance thereof. Defendant required Plaintiff and Class members to
18 clean and maintain their uniforms themselves.

19 **FAILURE TO PAY WAGES IN A LABOR CODE COMPLIANT INSTRUMENT**

20 44. Plaintiff and Class members were at times paid their wages via pay cards.
21 Plaintiff and Class members were charged fees for using those pay cards.

22 **FAILURE TO PROVIDE REQUESTED PERSONNEL RECORDS**

23 45. Defendant failed to allow Plaintiff and Class members to inspect their personnel
24 records.

25 **FIRST CAUSE OF ACTION**

26 **FAILURE TO PAY OVERTIME/DOUBLE TIME**

27 **(Labor Code §§510, 511, 558, 1194, 1194.3, 1198 and Wage Order 5 By Plaintiffs Against**
28 **Defendant and Does 1-100)**

1 46. Plaintiff and the Class reallege and incorporate by reference all of the allegations
2 set forth in this Complaint.

3 47. During Plaintiff's entire employment with Defendant pursuant to Cal. Lab. Code
4 §§510, 1194, and 1198, and IWC Wage Order No. 5, Defendant was required to compensate
5 Plaintiff and Class members with premium pay for all overtime work performed, for hours
6 worked in excess of eight (8) hours per day and/or forty (40) hours per week and for the first
7 eight (8) hours on the seventh (7th) consecutive day of any work week. Further, Defendant was
8 required to compensate Plaintiff with premium pay for all double-time performed, for hours
9 worked in excess of twelve (12) hours per workday and for work in excess of eight hours on
10 any seventh day of a workweek.

11 48. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
12 who had not been paid overtime/double time compensation could recover the unpaid balance of
13 the full amount of overtime/double time wages due, including interest thereon, together with
14 reasonable attorneys' fees and costs of suit.

15 49. Pursuant to IWC Wage Order No 5-2001, § 3, "Employment beyond eight (8)
16 hours in any workday is permissible provided the employee is compensated for such overtime
17 at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all
18 hours worked in excess of eight (8) hours up to and including twelve (12) hours in any
19 workday...

20 50. California Labor Code section 558 provides in pertinent part:

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

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

27 (2) For each subsequent violation, one hundred dollars (\$100) for each
28 underpaid employee for each pay period for which the employee was

1 underpaid in addition to an amount sufficient to recover underpaid
2 wages.

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

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

7 51. As a result of Defendant's requiring off the clock work pre and post-shift,
8 Plaintiff and Class members were not paid overtime after 40 hours of work in a week at time
9 and one half their regular rate for hours worked in excess of eight hours a day. At times,
10 Plaintiff and Class members worked more than 12 hours per day. However, Plaintiff and Class
11 members were not paid double time hours they were owed.

12 52. Defendant violated Labor Code section 510 and the IWC Wage Orders when
13 they failed to pay Plaintiff and Class members overtime wages for any and all work performed
14 in excess of 8 hours per day, 40 hours per week. Defendant also violated section 510 and the
15 IWC Wage Orders when they failed to pay Plaintiff and Class members double time wages for
16 any and all work performed in excess of 12 hours per day.

17 53. Plaintiff and Class members were required by Defendant to use their personal
18 cell phones to communicate with Defendant while off the clock for work-related activities such
19 as schedule checking, recording temperatures and viewing/responding to group chat messages.
20 However, Defendant failed to pay Plaintiff and Class members for their off the clock work.

21 54. Throughout Plaintiff's employment, Plaintiff and Class members worked
22 overtime/double time hours and were not paid overtime/double time pay on a regular basis.

23 55. Throughout Plaintiff's employment, Defendant failed and refused to pay and
24 properly calculate overtime/double time compensation to Plaintiff and Class Members as
25 required by law.

26 56. The foregoing overtime/double time compensation is owed and unpaid. As a
27 direct and proximate result of Defendant's failure and refusal to pay overtime/double time,
28 Plaintiff and Class Members suffered damages in an amount to be proven at trial.

1 57. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal
2 counsel in order to enforce Plaintiff's rights to overtime/double time pay, is entitled to recover
3 Plaintiff's attorneys' fees, costs and interest.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY MINIMUM WAGES**

6 **(IWC Wage Order No. 5; Labor Code §§ 1194, 1194.2, 1997, 1197.1, 1198 By Plaintiffs**
7 **Against Defendant and Does 1 through 100)**

8 58. Plaintiff and the Class reallege and incorporate by reference all of the allegations
9 set forth in this Complaint.

10 59. Labor Code §§ 1194(a) states: "Notwithstanding any agreement to work for a
11 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
12 compensation applicable to the employee is entitled to recover in a civil action the unpaid
13 balance of the full amount of this minimum wage or overtime compensation, including interest
14 thereon, reasonable attorney's fees, and costs of suit."

15 60. *Labor Code* § 1197 states the California requirement that employees must be
16 paid at least the minimum wage fixed by the Commission, and any payment of less than the
17 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles "any employee receiving
18 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of
19 the full amount of this minimum wage." IWC Wage Order 5-2001 also obligates employers to
20 pay each employee minimum wages for all hours worked. These minimum wage standards
21 apply to each hour employees worked for which they were not paid. Therefore, an employer's
22 failure to pay for any particular hour of time worked by an employee is unlawful, even if
23 averaging an employee's total pay over all hours worked, paid or not, results in an average
24 hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324
25 (2005).

26 61. Pursuant to Wage Order 5, Defendant is required to pay the members of the
27 Class for all hours worked, meaning the time during which an employee is subject to the
28

1 control of an employer, including all the time the employee is suffered or permitted to work,
2 whether or not required to do so.

3 62. Furthermore, pursuant to *Labor Code* § 1198, “[t]he maximum hours of work
4 and the standard conditions of labor fixed by the commission shall be the maximum hours of
5 work and the standard conditions of labor for employees. The employment of any employee for
6 longer hours than those fixed by the order or under conditions of labor prohibited by the order
7 is unlawful.”

8 63. Plaintiff and Class members were not paid for their pre and post-shift off the
9 clock work and for meal/rest breaks not afforded, interrupted and/or afforded late.

10 64. Defendant’s pattern, practice and uniform administration of corporate policy
11 regarding illegal employee compensation as described herein is unlawful and creates an
12 entitlement, pursuant to Labor Code § 218, to recovery by Plaintiff and the members of the
13 Class, in a civil action, of the unpaid balance of the full amount of wages owing, calculated at
14 the appropriate rate.

15 65. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
16 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
17 *Code* § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid
18 for all hours worked under *Labor Code* § 1194, the employee may recover minimum wages for
19 the time associated with the overtime for which they received no compensation. *See Sillah v.*
20 *Command Int’l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees
21 suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also
22 showed they were paid less than minimum wage); *accord Andrade v. Arby’s Rest. Grp., Inc.*,
23 225 F. Supp. 3d 1115, 1132-33 (N.D. Cal. 2016).

24 66. Plaintiff and the other Class Members suffered and continue to suffer losses
25 related to the use and enjoyment of compensation due and owing to them as a direct result of
26 Defendant’s unlawful acts and Labor Code violations in an amount to be shown according to
27 proof at trial and within the jurisdictional limitations of this Court.

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

THIRD CAUSE OF ACTION

FOR FAILURE TO PROVIDE TIMELY OFF-DUTY MEAL PERIODS

(IWC Wage Order No. 5; Labor Code §§ 226.7, 512 By Plaintiffs Against Defendant and Does 1 through 100)

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

69. California Labor Code §226.7(a) prohibits an employer from requiring an employee to work during any meal period mandated by an applicable Industrial Wage Order. Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an employee to work during a meal or rest break or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission..."

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

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

72. IWC Order No. 5-2001 (11)(c) further provides, in relevant part: "Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked."

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

1 An employer may not employ an employee for a work period of more than five
2 hours per day without providing the employee with a meal period of not less
3 than 30-minutes, except that if the total work period per day of the employee is
4 no more than six hours, the meal period may be waived by mutual consent of
5 both the employer and employee. An employer may not employ an employee
6 for a work period of more than 10 hours per day without providing the
7 employee with a second meal period of not less than 30-minutes, except that if
8 the total hours worked is no more than 12 hours, the second meal period may
9 be waived by mutual consent of the employer and the employee only if the first
10 meal period was not waived.

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

17 75. As alleged herein, Defendant failed to relieve employees of duties for timely
18 meal breaks throughout the Class Period. Plaintiff and the members of the Class were at times
19 required to work through their meal period at the fifth hour of their shifts at the direction of
20 Defendant and/or with their endorsement, encouragement, knowledge and acquiescence. At
21 times, Plaintiff and Class members were not afforded any meal breaks because there was too
22 much work to do. Moreover, Defendant routinely interrupted Plaintiff and Class members'
23 meal breaks. At times, Plaintiff and Class members were required to use their meal periods to
24 pick up supplies from another Popeyes location 10 minutes away or to purchase supplies at a
25 store next door, after clocking out for their meal breaks. Further, Plaintiff and Class members
26 were routinely not afforded second meal periods on days when they worked 12 or more hours
27 as required by law. Plaintiff and Class members did not sign waivers regarding their second
28 meal breaks.

76. Plaintiff and Class members were routinely not afforded legally compliant meal
breaks.

1 77. Under California law, employers must also record their employees' meal
2 periods: "Every employer shall keep accurate information with respect to each employee,
3 including the following: ... Meal periods ... shall also be recorded. Meal periods during which
4 operations cease ... need not be recorded." IWC Order No. 5, § (7)(A)(3). Where the employer
5 has failed to keep records required by statute, the consequences of such failure should fall on
6 the employer, not the employee. In such a situation, imprecise evidence by the employee can
7 provide a sufficient basis for liability." *Hernandez v. Mendoza*, 199 Cal. App. 3d 721, 727
8 (1988). Inasmuch as Defendant had an obligation under the record-keeping requirements of the
9 Wage Order to track meal periods unless "all work ceases", Defendant knew or should have
10 known its employees were regularly missing meal periods during the Class Period.

11 78. Defendant has a policy or practice of failing to ensure that Plaintiff and
12 members of the Class take the meal periods required by California Labor Code §226.7 and
13 IWC Wage Order No. 5-2001 §11.

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

19 80. Defendant also has a policy or practice of failing to pay each of their employees
20 who was not provided with a meal period as required an additional one hour of compensation at
21 each employee's regular rate of pay.

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

25 82. As a direct and proximate result of Defendant's unlawful conduct as alleged
26 herein, Plaintiff and members of the Class have sustained economic damages, including but not
27 limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled
28 to recover economic and statutory damages, attorneys' fees and penalties and other appropriate

1 relief due to Defendant's violations of the California Labor Code and the applicable IWC Wage
2 Orders.

3 **FOURTH CAUSE OF ACTION**
4 **FOR FAILURE TO PROVIDE REST PERIODS**

5 **(Labor Code § 226.7 and IWC Wage Order No. 5 By Plaintiffs Against Defendant and**
6 **Does 1 through 100)**

7 83. Plaintiff and the Class reallege and incorporate by reference all of the allegations
8 set forth in this Complaint.

9 84. Labor Code § 226.7 and the applicable Wage Order provide that employers shall
10 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time
11 per four hours of work, or major fraction thereof.

12 85. Labor Code § 226.7 and the applicable Wage Order provide that if an employer
13 fails to provide an employee with rest periods in accordance with those provisions, the
14 employer shall pay the employee one hour of pay at the employee's regular rate of
15 compensation for each workday that the rest periods were not so provided.

16 86. Defendant has intentionally and improperly denied rest periods to Plaintiff and
17 the Class in violation of Labor Code § 226.7 and the applicable Wage Order. At times Plaintiff
18 and Class members were required to work through their rest breaks and/or their rest breaks
19 were interrupted. On occasions when Plaintiff and Class members worked between 10-12 hour
20 shifts, they did not take third rest breaks.

21 87. At all times relevant hereto, Plaintiff and members of the Class have worked 8
22 or more hours daily.

23 88. At all times relevant hereto, Defendant failed to provide rest periods as required
24 by Labor Code § 226.7 and the applicable Wage Order. Plaintiff and Class members rest breaks
25 were routinely interrupted and/or not afforded. Further, Plaintiff and Class members were
26 routinely not afforded third rest breaks on their 12-hour shifts.

27 89. By virtue of Defendant's unlawful failure to provide rest periods to the Plaintiff
28 and the Class, Plaintiff and the Class have suffered, and will continue to suffer, damages in

1 amounts which are presently unknown to Plaintiff and the Class, but which exceed the
2 jurisdictional limits of the Court and which will be ascertained according to proof at trial.

3 **FIFTH CAUSE OF ACTION**

4 **FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE WAGE**

5 **ITEMIZED STATEMENTS**

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

7 90. Plaintiff and the Class reallege and incorporate by reference all of the allegations
8 set forth in this Complaint.

9 91. Pursuant to the applicable IWC Wage Orders, Defendant was the employer of
10 Plaintiff and the Class.

11 92. Pursuant to California Labor Code sections 226 and 1174, and Wage Order 5-
12 2001 section 7, Defendant is required to maintain and provide accurate records relating to
13 employee compensation including all formulas and production records used to calculate wages
14 due.

15 93. Defendant is further required to provide, *inter alia*, semimonthly or at the time
16 of each payment of wages, an accurate itemized statement showing: (1) gross wages earned; (2)
17 all deductions from wages; (3) net wages earned; (4) the inclusive dates of the period for which
18 the employee is being paid; (5) the name of the employee; and (6) the name and address of the
19 legal entity that is the employee's actual employer. Cal. Labor Code §226(a).

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

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

28

1 96. Throughout the Class Period, Defendant intentionally and knowingly provided
2 Plaintiff and other members of the Class with weekly itemized wage statements containing
3 inaccurate information regarding the wages earned by Plaintiff and members of the Class in
4 that the payments owed to Plaintiff and the members of the Class for overtime/double time
5 compensation, minimum wages due, untimely or missed meal and rest periods, wages owed
6 due to failure to pay wages in Labor Code compliant manner, were not included in gross wages
7 earned by Plaintiff and members of the Class. Further, Defendant failed to furnish Plaintiff and
8 the Class, upon payment of wages, itemized statements accurately showing the number of
9 hours worked and the rates paid.

10 97. As a result, Plaintiff and members of the Class have been injured by having been
11 deprived of the true facts pertaining to their compensation and employment.

12 98. Plaintiff and members of the Class were damaged by these failures because,
13 among other things, the failures led them to believe that they were not entitled to overtime/
14 double time compensation, minimum wages, pay for meal and rest periods not provided,
15 payment in a Labor Code compliant manner, even though they were so entitled and these
16 failures hindered them from determining the amounts of wages owed to them.

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

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

22 **SIXTH CAUSE OF ACTION**

23 **FOR FAILURE TO PAY WAGES UPON TERMINATION**

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

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

27 //

28 //

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

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

104. Plaintiff and the Class were discharged and/or resigned from Defendant's employ and Defendant willfully failed to pay Plaintiff and the Class wages due them.

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

SEVENTH CAUSE OF ACTION

REIMBURSEMENT OF BUSINESS EXPENSES

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

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

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

108. At all times relevant herein, Defendant was aware that Plaintiff and Class members were using their personal cell phones, vehicles and purchasing tools for business, but failed to indemnify Plaintiff and Class members for all their business-related expenses, including wear and tear expenses, in accordance with Labor Code §2802. Plaintiff is informed and believes and thereon alleges that at all relevant times, Defendant maintained a practice of not reimbursing Plaintiff and Class Members for their work-related expenses that they incurred in using their cell phones, vehicles and store-bought supplies for work-related purposes.

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

1 110. Pursuant to Labor Code §2802, Plaintiff and Class Members are entitled to
2 recover the full amount of their unreimbursed business expenses, reasonable attorneys' fees and
3 costs of suit.

4 **EIGHTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE UNIFORM AND MAINTENANCE ALLOWANCE**

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

7 111. Plaintiff and the Class reallege and incorporate by reference all of the allegations
8 set forth in this Complaint.

9 112. Under California law, if an employer requires employees to wear a uniform, the
10 employer must pay for and maintain the uniform for the employee. Labor Code
11 §2802.

12 113. In addition to the cost of the uniform, the employer must provide employees
13 with reasonable maintenance of the uniforms. The employer can either maintain the uniform
14 itself, or pay the employee a weekly maintenance allowance.

15 114. An employer may never impose a financial burden on employees, with respect
16 to paying for and maintaining clothing, which would reduce the employees' wage rate below
17 the minimum wage.

18 115. Here, Defendant required Plaintiff and Class members to wear uniforms.
19 However, Defendant does not maintain the uniforms. Plaintiff and members of the Class pay
20 for the maintenance and cleaning themselves.

21 116. Defendant failed to maintain the uniforms, nor pay Plaintiff and members of the
22 Class a weekly maintenance allowance.

23 117. As a proximate result of the aforementioned violations of Labor Code § 2802,
24 Plaintiff and members of the Class have been damaged in an amount according to proof at the
25 time of trial.

26 118. As a proximate result of the aforementioned violations of § 2802, Plaintiff and
27 members of the Class are entitled to recovery from Defendant for reimbursement of necessary
28 expenditures including interest and attorneys' fees.

NINTH CAUSE OF ACTION
FOR PAYMENT OF WAGES IN A NON-LABOR CODE COMPLIANT
INSTRUMENT

(Labor Code § 212 By Plaintiffs against Defendant and Does 1 through 100)

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

120. California Labor Code § 212 requires California employers to comply with a series of provisions when issuing wages to employees. In short, the provisions of section 212(a)(1) forbid an employer from issuing payment of wages in an instrument that is not (1) negotiable, (2) payable in cash, (3) on demand, (4) without discount, (5) at an established place of business in the State, (6) the name and address of which appears on the instrument, and (7) which place of business has been prepared, by the deposit of funds, the establishment of credit, or by some arrangement or understanding, to pay the money called for by the instrument. *See People v. Turner*, 154 Cal. App. 2d 883, 885-86 (1957).

121. An employer that violates Labor Code section 212 is liable to the employee for, among other matters, civil penalties and attorney fees. *See, e.g.*, Lab. Code, §§ 225.5.

122. Defendant violated Labor Code sections 212 by issuing payment to Plaintiff and Class Members for some of their wages in a non-Labor Code compliant instrument as Defendant would issue pay cards to Plaintiff and Class Members to be included as a form of compensation for working. These pay cards were not payable in cash on demand in violation of Labor Code §212. Further, Plaintiff and Class members were charged fees for using the pay cards.

123. As a result of the unlawful acts of Defendant, Plaintiff and Class Members have been deprived of wages to be determined at trial, and are entitled to the recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

TENTH CAUSE OF ACTION
FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS
(Labor Code §1198.5 By Plaintiffs against Defendant and Does 1 through 100)

1 124. Plaintiff and the Class reallege and incorporate by reference all of the allegations
2 set forth in this Complaint.

3 125. California Labor Code Section 1198.5 provides:

4 (a) Every current and former employee, or his or her representative, has the
5 right to inspect and receive a copy of the personnel records that the
6 employer maintains relating to the employee's performance or to any
grievance concerning the employee.

7 (b) The employer shall make the contents of those personnel records available
8 for inspection to the current or former employee, or his or her
9 representative, at reasonable intervals and at reasonable times, but not later
10 than 30 calendar days from the date the employer receives a written request,
11 unless the current or former employee, or his or her representative, and the
12 employer agree in writing to a date beyond 30 calendar days to inspect the
13 records, and the agreed-upon date does not exceed 35 calendar days from
the employer's receipt of the written request to inspect the records. Upon a
14 written request from a current or former employee, or his or her
representative, the employer shall also provide a copy of the personnel
15 records,..... later than 30 calendar days from the date the employer receives
the request...

16 (k) If an employer fails to permit a current or former employee, or his or her
17 representative, to inspect or copy personnel records within the times specified I
18 this section... the current or former employee may recover a penalty of seven
19 hundred fifty dollars (\$750) from the employer.

20 (1) A current or former employee may also bring an action for injunctive relief
21 to obtain compliance with this section, and may recover costs and reasonable
22 attorney's fees in such an action.

23 126. Additionally, pursuant to Wage Order 5, at section 7 re: Records, employers are
24 required to keep accurate payroll records on each employee, and such records must be made
25 readily available for inspection by the employee upon reasonable request. The employer must
26 also maintain accurate production records.

27 127. On or about June 18, 2024, Plaintiff's counsel issued a written request to
28 Defendant for copies of his personnel records.

 128. Under California Labor Code Sections 226, 432 and 1198.5, such records were
to include all records relating to Plaintiff's hours worked, wage statements and compensation.
Plaintiff's counsel and Defendant did not enter into an agreement to enlarge the time for

1 Defendant's compliance, and Defendant has failed and refused to permit Plaintiff copies of his
2 records.

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

8 **THIRTEENTH CAUSE OF ACTION**

9 **UNFAIR COMPETITION**

10 **(Business & Professions Code §§ 17200 *et seq.* By Plaintiffs Against Defendant and Does 1**
11 **through 100)**

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

14 131. Pursuant to applicable IWC Wage Orders, Defendant was the employer of
15 Plaintiff and the Class. Defendant is also a "person" as that term is defined in Business &
16 Professions Code §17021.

17 132. The Business & Professions Code defines unfair competition as any unlawful,
18 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
19 described herein, Defendant has engaged in unfair and unlawful practices by failing to (1) pay
20 Plaintiff and the Class overtime/double time compensation; (2) pay minimum wages; (3) pay
21 Plaintiff and the Class meal periods not provided, (4) pay Plaintiff and the Class rest periods
22 not provided, (5) furnish Plaintiff and the Class with accurate itemized wage statements, (6)
23 pay Plaintiff and the Class wages due when leaving their employ, (7) reimburse business
24 expenses, (8) provide uniform maintenance allowances, (9) pay wages in a Labor Code
25 compliant instrument; and (10) allow inspection of employment records, all in violation of
26 Business & Professions Code §§ 17200 *et seq.*

27 133. By and through the unfair and unlawful business practices described herein,
28 Defendant has obtained valuable property, money and services from the Plaintiff and the Class

1 and have deprived them of valuable rights and benefits guaranteed by law all to the detriment
2 of Plaintiff and the Class.

3 134. All the acts described herein are violations of, among other things, the Labor
4 Code and applicable Industrial Commission Wage Orders, are unlawful and in violation of
5 public policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and
6 thereby constitute unfair and unlawful business practices in violation of Business & Professions
7 Code §§ 17200 et seq.

8 135. Plaintiff and the Class are entitled to, and do, seek such relief as may be
9 necessary to restore to them the money and property which Defendant has acquired, or of
10 which Plaintiff and the Class have been deprived by means of the above-described unfair and
11 unlawful business practices.

12 136. Plaintiff and the Class are further entitled to, and do, seek a declaration that the
13 above-described business practices are unfair and unlawful and that injunctive relief should be
14 issued restraining Defendant from engaging in any of the above described unfair and unlawful
15 business practices in the future.

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

23 **PRAYER FOR RELIEF**

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

26 1. For compensatory damages in the amount of unpaid overtime/double time due to
27 Plaintiff and Class Members, according to proof;

28

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

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

5 4. For compensatory damages in the amount of Plaintiff and Class Members' cell
6 phone expenses, vehicles and supplies for business purposes, costs and attorneys' fees pursuant
7 to Cal. Code Civ. Proc. §2802(c);

8 5. For compensatory damages for failure to indemnify for uniform maintenance;

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

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

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

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

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

22 11. For statutory penalties pursuant to *Cal. Lab. Code* §§ 225.5, 558, 226.7, 1198.5,
23 according to proof;

24 12. For civil penalties pursuant to *Cal. Labor Code* §1198 and Wage Order 5-
25 2001(14);

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

1 14. For an award of restitution of wages to Plaintiff and Class members in an
2 amount equal to the amount of wages owed and unpaid, according to proof;

3 15. For injunctive relief requiring Defendant to comply with Labor Code
4 1198.5(b)(1);

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

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

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

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

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff Derrick Jermaine Kelly hereby respectfully requests a trial by jury for all
13 claims and issues raised in his Complaint that may be entitled to a jury trial.

14
15 LIPELES LAW GROUP, APC

16 Date: June 18, 2024

17
18 By:  _____

19 Kevin A. Lipeles
20 Attorneys for Plaintiff
21 Derrick Jermaine Kelly
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