

1 David Mara, Esq. (230498)
dmara@maralawfirm.com
2 Jill Vecchi, Esq. (299333)
jvecchi@maralawfirm.com
3 **MARA LAW FIRM, PC**
2650 Camino Del Rio North, Suite 302
San Diego, California 92108
4 Telephone: (619) 234-2833
Facsimile: (619) 234-4048

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
9/30/2024 4:11 PM
By: Ariel Smith, DEPUTY

5 Peter Horton, Esq. (227678)
phorton@lfecr.com
6 **LAWYERS FOR EMPLOYEE**
AND CONSUMER RIGHTS, APC
4100 West Alameda Avenue, Third Floor
7 Burbank, California 91505
Telephone: (323) 486-5101
8 Facsimile: (323) 306-5571

9 Attorneys for OSIRIS ORTEGA, on behalf of himself,
all others similarly situated, and on behalf of the general public

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF SAN BERNARDINO**

12 OSIRIS ORTEGA on behalf of himself,
all others similarly situated, and on
13 behalf of the general public,

14 Plaintiffs,

15 v.

16 PROMPT DELIVERY INC. DBA
SOUTHERN CALIFORNIA
17 MESSENGERS; and DOES 1-100,

18 Defendants.

Case No. CIVSB2429753

**PLAINTIFF OSIRIS ORTEGA'S PRIVATE
ATTORNEYS GENERAL ACT OF 2004 ("PAGA")
COMPLAINT FILED PURSUANT TO
CALIFORNIA LABOR CODE § 2698, ET. SEQ.**

1. **Violation of the PAGA for Failure to Pay
Straight Time Wages;**
2. **Violation of the PAGA for Failure to Pay All
Overtime Wages;**
3. **Violation of PAGA for Failure to Provide Meal
Periods;**
4. **Violation of PAGA for Failure to Provide Rest
Periods;**
5. **Violation of PAGA for Failure to Pay Wages
Due at Termination of Employment;**
6. **Violation of PAGA for Knowing and
Intentional Failure to Comply with Itemized
Employee Wage Statements; and**
7. **Violation of PAGA for Failure to Reimburse
Business Expenses Incurred in Discharging
Duties**

26 **DEMAND FOR JURY TRIAL**

1 Plaintiff Osiris Ortega (hereinafter referred to as “Plaintiff”), on behalf himself and all other non-
2 exempt, hourly employees who worked for Defendant Prompt Delivery Inc. dba Southern California
3 Messengers (hereinafter referred to as “Defendant” or “PROMPT DELIVERY”) and/or DOES in
4 California (hereinafter referred to as the “Aggrieved Employees”), files this Complaint against
5 Defendant and/or DOES 1-100.

6 **I. INTRODUCTION**

7 1. This is a representative action seeking recovery of penalties under the California Labor Code
8 Private Attorneys General Act of 2004 (“PAGA”), California Labor Code Sections 2698 et
9 seq., against Defendant and/or DOES 1-100. The PAGA permits an “aggrieved employee” to
10 bring a lawsuit on behalf of himself and other current and former employees to address an
11 employer’s violations of the *California Labor Code*.

12 2. PROMPT DELIVERY is a delivery service in Southern California including in San
13 Bernardino, San Bernardino, Riverside, Orange, and San Diego counties.

14 3. At all times mentioned herein, Defendant and/or DOES have conducted business in San
15 Bernardino County and elsewhere within California.

16 4. At all times mentioned herein, Defendant and/or DOES, within the State of California, have,
17 among other things, employed current and former hourly, non-exempt employees to run its
18 business.

19 5. Defendant and/or DOES have maintained uniform policies that violate the wage and hour
20 rights of Plaintiff and similarly situated non-exempt, hourly employees in the manner
21 complained of herein.

22 6. This action is brought on behalf of Plaintiff and all other Aggrieved Employees of Defendant
23 and/or DOES who: worked a shift of at least five (5) hours without receiving a meal period;
24 worked four (4) hours, or a major fraction thereof, without receiving a ten (10) minute net rest
25 break; were not provided accurate itemized wage statements; were not paid compensation for
26 all time worked at the straight or overtime rate; were not reimbursed for business expenses;
27 and were not paid waiting time penalties. Plaintiff seeks penalties on behalf of himself and all
28 other Aggrieved Employees of Defendant and/or DOES as provided herein. This Complaint

also seeks attorneys' fees and costs under the PAGA, *California Labor Code* section 2699(g)(1).

7. At all times mentioned herein, Plaintiff and the other Aggrieved Employees were not classified as "exempt" or primarily employed in an executive, professional, or administrative capacity. Thus, under California law, Plaintiff and the Aggrieved Employees should be: paid compensation for all time worked at the regular or overtime rate; provided meal periods; authorized and permitted to take rest periods; paid one hour of premium pay for all unprovided meal periods; paid one hour of premium pay for all rest periods that were not authorized and/or permitted; paid penalties for not being provided itemized wage statements; paid compensation for all time worked at the regular or overtime rate; paid penalties for not being paid timely at the time of termination; and reimbursed for business expenses.

8. At all times mentioned herein, Defendant and/or DOES control the working conditions of Plaintiff and the Aggrieved Employees including, but not limited to, having the authority to hire and fire Plaintiff and the Aggrieved Employees, setting the wages of Plaintiff and the Aggrieved Employees, and instructing Plaintiff and the Aggrieved Employees when and/or where to work. In addition, Defendant and/or DOES developed, wrote, dictated, approved and/or authorized wage and hour policies and/or practices that Plaintiff and the Aggrieved Employees labored under. These policies and/or practices included, but were not limited to, policies and/or practices regarding meal periods, straight-time, rest periods, wage statements, paying compensation at time of termination, and reimbursing business expenses. Further, Defendant and/or DOES had the ability to prevent Plaintiff and the Aggrieved Employees from working.

II. JURISDICTION AND VENUE

9. Plaintiff is an individual residing in California. At all times relevant to this action, Plaintiff was employed by Defendant and/or DOES in California. Plaintiff, and each of the Aggrieved Employees, were employees of Defendant and/or DOES, and/or its operating divisions and subsidiaries, within the State of California. Plaintiff and each of the Aggrieved Employees were subject to the unlawful policies beginning one (1) year prior to the date Plaintiff sent

- 1 Notice to the State of California Labor and Workforce Development Agency (LWDA).
- 2 10. Venue as to each Defendant and/or DOE is proper in this judicial district. Each Defendant
- 3 and/or DOE operate industrial facilities, employ hourly employees, conduct business, and
- 4 commit *California Labor Code* violations within San Bernardino County and California. Each
- 5 Defendant and/or DOE is within the jurisdiction of this Court for service of process purposes.
- 6 The unlawful acts alleged herein have a direct effect on Plaintiff and the other aggrieved
- 7 employees situated within the State of California and within San Bernardino County.
- 8 Defendant and/or DOES employ numerous aggrieved employees in California and/or San
- 9 Bernardino County.
- 10 11. Plaintiff brings this action on behalf of himself and the Aggrieved Employees of Defendant
- 11 and/or DOES pursuant to the PAGA. Plaintiff, as a personal representative of the general
- 12 public, will and does seek to recover any and all penalties for each and every violation shown
- 13 to exist or to have occurred during the one (1) year period before Plaintiff filed Notice with the
- 14 LWDA of his intent to bring this action, in an amount according to proof, as to those penalties
- 15 that are otherwise only available to public agency enforcement actions. Funds recovered will
- 16 be distributed in accordance with the PAGA, with at least seventy-five (75) percent of the
- 17 penalties recovered being reimbursed to the State of California and the LWDA.
- 18 12. There is no federal question at issue as the issues herein are based solely upon California
- 19 statutes and law, including the *California Labor Code*, IWC Wage Orders, *Code of Civil*
- 20 *Procedure*, and *Civil Code*.
- 21 13. The California Superior Court also has jurisdiction in this matter because the penalties sought
- 22 exceed the minimum jurisdictional limits of the Superior Court and will be established at trial,
- 23 according to proof. Defendant and/or DOES either own, maintain offices, transact business,
- 24 have an agent or agents, and/or otherwise are found within the County of San Bernardino,
- 25 California.

26 **III. THE PARTIES**

27 **A. Plaintiff**

- 28 14. Throughout the Statutory Period, Plaintiff Osiris Ortega is and was a resident of California.

During the Statutory Period, Plaintiff was employed by Defendant and/or DOES in California as an hourly, non-exempt employee.

15. Plaintiff and the Aggrieved Employees were and are employed in the State of California by Defendant and/or DOES as non-exempt, hourly employees.

16. A notice correspondence showing compliance with *Labor Code* Section 2699.3 was sent to the LWDA and Defendant on June 12, 2024. This notice demonstrates that Plaintiff is an aggrieved employee and has standing to bring a representative action on behalf of the LWDA and as a private attorney general. The violations alleged in this notice also forms the basis for the allegations herein. No notice of cure by Defendant and/or DOES was provided and no notice of investigation was received from the LWDA in the statutorily proscribed sixty-five (65) day period since the mailing of the notices of the action. Accordingly, Plaintiff files this action as a “Representative Action” as authorized by *Labor Code* section 2699.3(a)(2)(C).

B. Defendants

17. PROMPT DELIVERY is a delivery service in Southern California including in Los Angeles, San Bernardino, Riverside, Orange, and San Diego counties.

18. Defendant and/or DOES operate out of locations in California.

19. Defendant and/or DOES employ hourly, non-exempt employees to work at its locations.

20. Defendant and/or DOES employed Plaintiff and similarly situated hourly, non-exempt employees in California.

21. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct alleged, of the Defendants sued as DOES 1 through 100, inclusive, but on information and belief alleges that said Defendants are now, and/or at all times mentioned in this Complaint were doing business in the State of California and/or throughout the United States. Plaintiff is informed and believes that each of the Defendants designated as a DOE is legally responsible in some manner for the unlawful acts alleged. Plaintiff will amend this Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

22. Plaintiff is informed and believes each Defendant acted, in whole or in part, in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business

plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants as each Defendant has ratified, approved, and/or authorized the acts of each of the remaining Defendants.

23. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 100 are partners, agents, owners, and/or shareholders of Defendants and/or DOES and were acting on behalf of Defendants and/or DOES at all times.

IV. **GENERAL ALLEGATIONS**

24. During all, or a portion, of the one (1) year period before Plaintiff filed notice of his claims with the LWDA, Plaintiff and each of the Aggrieved Employees were employed by Defendant and/or DOES in the State of California. Plaintiff and the Aggrieved Employees are composed of all current and former non-exempt, hourly employees of Defendant and/or DOES, or any of its operating divisions and/or subsidiaries, who worked in California.

25. At all times mentioned herein, Defendant and/or DOES have not paid Plaintiff and the Aggrieved Employees for all time they were performing work and/or are subject to Defendant's and/or DOES' control. Defendant and/or DOES have a continuous policy of not paying Plaintiff and those similarly situated Aggrieved Employees for all hours worked. Specifically, PROMPT DELIVERY and/or DOES has a continuous and consistent policy of requiring employees to work before clocking in, after clocking out, and during meal periods. Plaintiff and the Aggrieved Employees are not paid for this time. Failing to pay for all hours worked while under PROMPT DELIVERY's control and/or while suffered or permitted to work has resulted in employees being deprived of straight time and/or overtime wages.

26. At all times mentioned herein, Defendant and/or DOES have had a consistent policy and/or practice of not paying Plaintiff and the Aggrieved Employees for all hours worked in that Defendant and/or DOES continuously and consistently clocked Plaintiff and the Aggrieved Employees out for a thirty (30) minute meal period and/or otherwise recorded a meal period, even though Plaintiff and the Aggrieved Employees work through their meal periods, were unable to take meal periods, and/or were not free of all work duties and employer controls during meal periods. Thus, PROMPT DELIVERY and/or DOES shave/steal earned wages

from Plaintiff and the Aggrieved Employees every day they work without a meal period and have time deducted.

27. At all times mentioned herein, Defendant and/or DOES have had a consistent policy and/or practice of deducting a portion of the wages earned by Plaintiff and the Aggrieved Employees when they worked through their meal periods and/or when Defendant and/or DOES recorded a meal period for Plaintiff and the Aggrieved Employees when no meal period was taken. Specifically, Plaintiff and the Aggrieved Employees worked through their meal periods to satisfy their demanding work duties imposed by Defendant and/or DOES, thereby denying them the right to be completely free from employer control under California law.

28. At all times mentioned herein, PROMPT DELIVERY and/or DOES fail to provide Plaintiff and the Aggrieved Employees with meal periods that comply with California law and failed to authorize and permit rest periods that comply with California law.

29. By failing to provide a duty-free meal period of not less than thirty (30) minutes for every shift of at least five (5) hours worked per day by Plaintiff and all Aggrieved Employees, and by failing to provide compensation for these unprovided meal periods, Defendant and/or DOES willfully violate the provisions of *California Labor Code* section 226.7, IWC Wage Order No. 9-2001, and California Code of Regulations, Section 11090(11). In addition, PROMPT DELIVERY and/or DOES fail to provide Plaintiff and the Aggrieved Employees with another duty-free meal period of not less than thirty (30) minutes for every shift of more than ten (10) hours per day.

30. At all times mentioned herein, PROMPT DELIVERY and/or DOES knew and/or should have known that Plaintiff and the Aggrieved Employees were entitled to be authorized and/or permitted to take legally compliant rest periods in a timely manner or payment of one (1) hour of pay as additional compensation at Plaintiff's and the Aggrieved Employees' regular rate of pay when they were not authorized and/or permitted to take a legally compliant rest period.

31. By failing to provide paid ten (10) minute rest periods for every four (4) hours or major fraction thereof, worked per day by Plaintiff and all Aggrieved Employees and by failing to provide compensation for these periods, PROMPT DELIVERY and/or DOES willfully violate the

provisions of *California Labor Code* section 226.7, IWC Wage Order No. 9-2001, and California Code of Regulations, Section 11090(12).

32. At all times mentioned herein, PROMPT DELIVERY and/or DOES knew and/or should have known that Plaintiff and the Aggrieved Employees were entitled to receive complete and accurate pay statements in accordance with California law.

33. At all times mentioned herein, PROMPT DELIVERY and/or DOES knew and/or should have known that they were not providing complete and accurate pay statements in accordance with California law to Plaintiff and the Aggrieved Employees.

34. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that they had a duty to compensate Plaintiff and the Aggrieved Employees in accordance with California law, and that Defendant and DOES had the ability to pay such compensation, but willfully and intentionally failed to do so, and Defendant and DOES falsely represented to Plaintiff and the Aggrieved Employees that they were properly compensating Plaintiff and the Aggrieved Employees.

35. At all times mentioned herein, PROMPT DELIVERY and/or DOES fail to pay all wages owed to Plaintiff and to other terminated or resigned Aggrieved Employees and failed to timely pay wages during employment.

36. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that Plaintiff and the Aggrieved Employees were entitled to timely wages at the time of termination. Defendant and/or DOES did not pay all timely wages owed, straight-time wages owed, meal period premiums, and/or rest period premiums owed at the time of termination.

37. At all times mentioned herein, Defendant and/or DOES fail to pay Plaintiff and the Aggrieved Employees a sum certain at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter.

38. At all times mentioned herein, PROMPT DELIVERY and/or DOES fail to reimburse Plaintiff and Aggrieved Employees for all necessary expenses incurred in the performance of their jobs.

39. At all times mentioned herein, PROMPT DELIVERY and/or DOES knew and/or should have known that Plaintiff and the other Aggrieved Employees were entitled to be reimbursed for

1 expenses incurred in direct consequence of their duties.

2 40. Plaintiff brings this action on behalf of himself and all Aggrieved Employees defined as all
3 Defendant's non-exempt drivers who worked in California beginning one year prior to the date
4 Plaintiff sent notice to the LWDA.

5 41. Plaintiff reserves the right to amend or modify the definition of Aggrieved Employees with
6 respect to the issues or in any other way.

7 **FIRST CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
8 **PAGA for Failure to Pay Straight Time Wages (California Labor Code §2698 et. seq.).**

9 42. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
10 as if fully plead.

11 43. Defendant and/or DOES have had a continuous policy of not paying Plaintiff and the
12 Aggrieved Employees for all hours worked.

13 44. It is fundamental that an employer must pay its employees for the time worked. *California*
14 *Labor Code* section 222 prohibits the withholding on part of a wage. *California Labor Code*
15 section 223 prohibits the payment of less than a statutory or contractual wage scale. *California*
16 *Labor Code* sections 1194-1197.1 prohibit the payment of less than the minimum wage.
17 *California Labor Code* section 224 only permits deductions from wages when the employer is
18 required or empowered to do so by state or federal law or when the deduction is expressly
19 authorized in writing by the employee for specified purposes that do not in effect reduce the
20 agreed upon wage.

21 45. Section 1197.1 of the *California Labor Code* states "[a]ny employer or other person acting
22 individually as an officer, agent, or employee of another person, who pays or causes to be paid
23 to any employee a wage less than the minimum fixed by an applicable state or local law, or by
24 an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
25 damages payable to the employee, and any applicable penalties pursuant to Section 203."

26 46. Plaintiff and those similarly situated Aggrieved Employees were employed by Defendant
27 and/or DOES at all relevant times. Defendant and/or DOES were required to compensate
28 Plaintiff for all hours worked and were prohibited from making deductions that had the effect

- of reducing the agreed upon wage.
47. Defendant and/or DOES have a continuous policy of not paying Plaintiff and those similarly situated Aggrieved Employees for all hours worked. Specifically, PROMPT DELIVERY and/or DOES has a continuous and consistent policy of requiring employees to work before clocking in, after clocking out, and during meal periods. For example, PROMPT DELIVERY and/or DOES call and/or text Plaintiff and the Aggrieved Employees with work related questions while they are off the clock. Defendant's and/or DOES' failure to pay for all hours worked while under Defendant's and/or DOES' control and/or while suffered or permitted to work has resulted in Plaintiff and Aggrieved Employees being deprived of straight time wages.
48. Additionally, Defendant and/or DOES have had a continuous policy of not paying Plaintiff and the Aggrieved Employees for all hours worked in that Defendant and/or DOES continuously and consistently clocked Plaintiff and the Aggrieved Employees out for a thirty (30) minute meal period and/or otherwise recorded a meal period, even though Plaintiff and the Aggrieved Employees work through their meal periods, were unable to take meal periods, and/or were not free of all work duties and employer controls during meal periods. Thus, Defendant and/or DOES shaves/steals earned wages from Plaintiff and the Aggrieved Employees every day they work without a meal period and have time deducted.
49. Moreover, Plaintiff and the Aggrieved Employees have to work through their meal periods but would nonetheless be required to clock out for thirty minutes to create the appearance of lawful meal periods. If employees do not clock out for thirty minutes while they continue to work, then Defendant and/or DOES alters their time records to create the appearance of a lawful meal period. Thus, Plaintiff and the Aggrieved Employees are owed wages for meal period time during which they are subject to Defendant's and/or DOES' control and during which they are not free from all work duties.
50. Likewise, Plaintiff and the Aggrieved Employees are informed and believe and thereon allege that Defendant and/or DOES breached the legal duty to pay full wages to Plaintiff by deducting a portion of the wages earned by Plaintiff and the Aggrieved Employees when they worked through their meal periods and/or when Defendant and/or DOES recorded a meal period for

1 Plaintiff and the Aggrieved Employees when no meal period was taken. Specifically, Plaintiff
2 and the Aggrieved Employees worked through their meal periods to satisfy their demanding
3 work duties imposed by Defendant and/or DOES, thereby denying them the right to be
4 completely free from employer control under California law.

5 51. Failing to pay for all hours worked while under Defendant's and/or DOES' control and/or
6 while suffered or permitted to work has resulted in Plaintiff and the Aggrieved Employees
7 being deprived of straight time wages.

8 52. Plaintiff and the Aggrieved Employees have suffered, and continue to suffer, substantial
9 unpaid wages, and lost interest on such wages, and expenses.

10 53. Plaintiff and the Aggrieved Employees were employed by Defendants and/or DOES at all
11 relevant times. Defendant and/or DOES were required to compensate Plaintiff and the
12 Aggrieved Employees for all hours worked and were prohibited from making deductions that
13 had the effect of reducing the agreed upon wage.

14 54. Defendant and/or DOES commit the acts alleged herein knowingly and willfully, with the
15 wrongful and deliberate intention of injuring Plaintiff and the Aggrieved Employees.
16 Defendant and/or DOES act with malice or in conscious disregard of Plaintiff's and the
17 Aggrieved Employees' rights.

18 55. These claims are on behalf of all non-exempt, hourly employees who worked for Defendant
19 and/or DOES in California.

20 56. Plaintiff, as a former "non-exempt" employee of Defendant and/or DOES who Defendant
21 and/or DOES fail to pay all wages, is an aggrieved employee with standing to bring an action
22 under the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general
23 public to enforce California's labor laws, and the penalty provisions identified in *California*
24 *Labor Code* section 2699.5.

25 57. Plaintiff, as a representative of the people of the State of California, seeks any and all penalties
26 otherwise capable of being collected by the Labor Commission and/or the Department of Labor
27 Standards Enforcement ("DLSE"). This includes each of the following, as set forth in
28 *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any

alleged violation of the following provisions: sections 510, 1194, 1197, and 1199.

58. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).

59. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

SECOND CAUSE OF ACTION AGAINST DEFENDANT AND/DOES: Violation of the PAGA for Failure to Pay All Overtime Wages Owed

60. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

61. *California Labor Code* section 510 states that eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

62. *California Labor Code* section 510 dictates that any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

63. Defendant and/or DOES fail to pay overtime when employees worked over eight (8) hours per day and when employees worked over forty (40) hours per week. Defendant and/or DOES fail to pay Plaintiff and the Aggrieved Employees for all hours worked, including hours worked

over eight (8) hours in a day and forty (40) hours in a week.

64. Plaintiff and the Aggrieved Employees were deprived of wages for all overtime hours worked because Defendant and/or DOES fail to pay them overtime wages for all overtime hours worked. This resulted in Plaintiff and the Aggrieved Employees not being paid all overtime wages owed to them.

65. Defendant and/or DOES have a continuous policy of not paying Plaintiff and the Aggrieved Employees for all hours worked. Defendant and/or DOES have not paid for all the time Plaintiff and Aggrieved Employees worked throughout the day, including, but not limited to rounding, before “shifts” start, after “shifts” end, and/or any other time in the day when the employees were performing work tasks, subject to the control of Defendant and/or DOES and/or otherwise had work duties but were not paid by Defendant and/or DOES. For example, PROMPT DELIVERY and/or DOES would call Plaintiff and the Aggrieved Employees with work related questions while they are off the clock. When Plaintiff and the Aggrieved Employees work shifts lasting over eight (8) hours, those unpaid hours would qualify for the overtime rate.

66. Additionally, Defendant and/or DOES have had a continuous policy of not paying Plaintiff and the Aggrieved Employees for all hours worked in that Defendant and/or DOES continuously and consistently clocked Plaintiff and the Aggrieved Employees out for a thirty (30) minute meal period and/or otherwise recorded a meal period, even though Plaintiff and the Aggrieved Employees work through their meal periods, were unable to take meal periods, and/or were not free from all work duties and employer controls during meal periods. Thus, Defendant and/or DOES shave/steal earned wages from Plaintiff and the Aggrieved Employees every day they work without a meal period and have time deducted. Because Plaintiff and the Aggrieved Employees work shifts lasting over eight (8) hours, these unpaid hours would qualify for the overtime rate.

67. Likewise, Plaintiff and the Aggrieved Employees have to work through their meal periods but would nonetheless be required to clock out for thirty minutes to create the appearance of lawful meal periods. If employees do not clock out for thirty minutes while they continue to work,

1 then Defendant and/or DOES alters their time records to create the appearance of a lawful meal
2 period. Thus, Plaintiff and the Aggrieved Employees are owed wages for meal period time
3 during with they are subject to Defendant's and/or DOES' control and during which they are
4 not free from all work duties. When Plaintiff and the Aggrieved Employees work over eight
5 (8) hours in a shift, these unpaid hours must be compensated at an overtime rate.

6 68. Moreover, when Plaintiff and the Aggrieved Employees did take meal periods they are not
7 relieved of all duties and/or employer control during their unpaid meal periods. Plaintiff and
8 the Aggrieved Employees are informed and believe and thereon allege that Defendant and/or
9 DOES breached the legal duty to pay for all hours worked by Plaintiff and the Aggrieved
10 Employees by failing to pay Plaintiff and the Aggrieved Employees for meal period time when
11 Plaintiff and the Aggrieved Employees were not relieved of all duties and/or employer control.
12 When Plaintiff and the Aggrieved Employees work over eight (8) hours in a shift, these unpaid
13 hours must be compensated at an overtime rate.

14 69. Further, Plaintiff and the Aggrieved Employees were deprived of wages for all overtime hours
15 worked because Defendant and/or DOES failed to pay Plaintiff and the Aggrieved Employees
16 at the appropriate regular rate of pay for all overtime hours worked.

17 70. Plaintiff and the Aggrieved Employees have suffered, and continue to suffer, substantial
18 unpaid wages, and lost interest on such wages, and expenses.

19 71. These claims are on behalf of all non-exempt, hourly employees who worked for Defendant
20 and/or DOES in California.

21 72. Plaintiff, as a representative of the people of the State of California, will seek any and all
22 penalties otherwise capable of being collected by the Labor commission and/or the Department
23 of Labor Standards Enforcement (DLSE) for violations of *California Labor Code* section 510.

24 73. Plaintiff, as a representative of the people of the State of California, will seek all penalties
25 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
26 each of the following, as set forth in *California Labor Code* section 2699.5, which provides
27 that section 2699.3(a) applies to any alleged violation of the following provisions: sections
28 222, 223 and 510.

1 74. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on
2 behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil
3 penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the
4 initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars
5 (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per
6 *California Labor Code* section 2699(f)(2).

7 75. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other
8 Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for
9 violations pursuant to this chapter or any provisions regulating hours and days of the week of
10 the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and
11 558(a)(2).

12 **THIRD CAUSE OF ACTION AGAINST DEFENDANT AND/DOES: Violation of the PAGA**
13 **for Failure to Provide Meal Periods (California Labor Code §2698 et. seq.).**

14 76. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
15 as if fully plead.

16 77. Under *California Labor Code* section 512, and IWC Wage Order 9-2001(11), no employer
17 shall employ any person for a work period of more than five (5) hours without providing a
18 meal period of not less than thirty (30) minutes. During this meal period of not less than thirty
19 (30) minutes, the employee is to be completely free of the employer's control and must not
20 perform any work for the employer. If the employee does perform work for the employer
21 during the thirty (30) minute meal period, the employee has not been provided a meal period
22 in accordance with the law. Also, the employee is to be compensated for any work performed
23 during the thirty (30) minute meal period.

24 78. In addition, an employer may not employ an employee for a work period of more than ten (10)
25 hours per day without providing the employee with a second meal period of not less than thirty
26 (30) minutes.

27 79. Under *California Labor Code* section 226.7, if the employer does not provide an employee a
28 meal period in accordance with the above requirements, the employer shall pay the employee

1 one (1) hour of pay at the employee's regular rate of compensation for each workday that the
2 meal period is not provided.

3 80. Defendant and/or DOES breach the legal duty to provide meal periods to employees by failing
4 to provide employees with meal periods within the timeframes outlined by California law.
5 Specifically, Defendant and/or DOES fail to provide Plaintiff and the Aggrieved Employees
6 with meal periods within the first five continuous hours of work.

7 81. When Plaintiff and Aggrieved Employees are unable to take a lawful meal period, PROMPT
8 DELIVERY and/or DOES falsify their time records to insert a lawful meal period into their
9 time records.

10 82. Defendant and/or DOES breach the legal duty to provide meal periods to employees by
11 imposing a continuous and consistent policy requiring Plaintiff and the Aggrieved Employees
12 to work through their meal periods to satisfy the demanding workload duties imposed by
13 PROMPT DELIVERY and/or DOES, thereby denying Plaintiff and the Aggrieved Employees
14 of the right to be completely free from employer control under California law. Thus, Plaintiff
15 and the Aggrieved Employees did not receive lawful meal periods while working for PROMPT
16 DELIVERY and/or DOES.

17 83. When Plaintiff and the Aggrieved Employees are able to take a meal period, Plaintiff and the
18 Aggrieved Employees are not relieved of all duties and/or employer control during their meal
19 periods.

20 84. Defendant and/or DOES breach the legal duty to provide meal periods to employees by failing
21 to provide employees with meal periods within the timeframes outlined by California law.
22 Specifically, Defendant and/or DOES fail to provide Plaintiff and the Aggrieved Employees
23 with meal periods within the first five (5) continuous hours of work. Plaintiff and the Aggrieved
24 Employees can only take meal periods when their foreman tells them to. As such, if Plaintiff's
25 and the Aggrieved Employees' time records show late or missed meal periods, this is due to
26 Defendant and/or DOES failing to provide meal periods in accordance with California law.

27 85. Further, Defendant and/or DOES instituted a consistent policy/practice of not providing second
28 meal periods to Plaintiff and all Aggrieved Employees and/or providing compensation in lieu

thereof. Specifically, Plaintiff and the Aggrieved Employees are required to work shifts over ten (10) hours long but never received second meal periods.

86. By failing to provide statutory first and/or second meal periods, and by failing to provide compensation for unprovided meal periods, as alleged above, Defendant and/or DOES willfully violated the provisions of the *California Labor Code* section 226.7 and 512.

87. These claims are on behalf of all non-exempt, hourly employees who worked for Defendant and/or DOES in California.

88. By failing to provide statutory first and/or second meal periods, and by failing to provide compensation for unprovided meal periods, as alleged above, Defendant and/or DOES willfully violate the provisions of *California Labor Code* sections 226.7 and 512, and IWC Wage Order No. 9-2001.

89. As a result of the unlawful acts of Defendant and/or DOES, Plaintiff and the Aggrieved Employees have been deprived of premium wages and/or other compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest, attorneys' fees, and costs.

90. During the relevant time period, Plaintiff and the Aggrieved Employees who were scheduled to work for a period of time in excess of six (6) hours were required to work for periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

91. During the relevant time period, Plaintiff and the Aggrieved Employees who were scheduled to work for a period of time in excess of ten (10) hours and/or (12) hours, and who did not waive their legally-mandated meal periods by mutual consent were required to work in excess of ten (10) hours and/or twelve (12) hours without receiving a second uninterrupted meal period of not less than thirty (30) minutes.

92. During the relevant time period, Defendant and/or DOES fail to pay Plaintiff and the Aggrieved Employees all meal period premiums due pursuant to *California Labor Code* section 226.7.

93. These claims are on behalf of all non-exempt, hourly employees who worked for Defendant and/or DOES in California.

1 94. Defendant's and/or DOES' conduct violates applicable IWC Wage Order 5-2001 and
2 *California Labor Code* sections 226.7 and 512(a).

3 95. Plaintiff, as a non-exempt employee who unlawfully was deprived of first and second meal
4 periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
5 has satisfied all prerequisites to serve as a representative of the general public to enforce
6 California's labor laws, and the penalty provisions identified in *California Labor Code* section
7 2699.5.

8 96. Plaintiff, as a representative of the people of the State of California, will seek all penalties
9 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
10 each of the following, as set forth in *California Labor Code* section 2699.5, which provides
11 that section 2699.3(a) applies to any alleged violation of the following provisions: sections
12 226.7 and 512.

13 97. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on
14 behalf of himself and the other aggrieved employees, seeks recovery of applicable civil
15 penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the
16 initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars
17 (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per
18 *California Labor Code* section 2699(f)(2).

19 98. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
20 employees, seeks penalties pursuant to *California Labor Code* Section 558 for violations
21 pursuant to this chapter or any provisions regulating hours and days of the week of the
22 Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

23 **FOURTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
24 **PAGA for Failure to Provide Rest Periods (*California Labor Code* §2698 et. seq.).**

25 99. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
26 as if fully plead.

27 100. Industrial Welfare Commission Order No. 9-2001 section 12(A) states "[e]very employer shall
28 authorize and permit all employees to take rest periods, which insofar as practicable shall be

- in the middle of each work week period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”
101. At all times mentioned herein, Defendant and/or DOES fail to authorize and/or permit rest period time based upon the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
102. Defendant and/or DOES have a consistent policy and/or practice of not providing duty free, net-ten minute, paid rest periods to Plaintiff and all Aggrieved Employees and/or providing compensation in lieu thereof.
103. Defendant and/or DOES breach the legal duty to provide rest periods to employees by imposing a continuous and consistent policy of requiring Plaintiff and all Aggrieved Employees to work through their rest periods to satisfy the demanding workload duties imposed by Defendant and/or DOES, thereby denying Plaintiff and all Aggrieved Employees of the right to be completely free from employer control under California law.
104. Alternatively, Defendant and/or DOES breach the legal duty to provide rest periods to employees by failing to provide employees with rest periods within the timeframes outlined by California law. Specifically, Defendant and/or DOES do not provide Plaintiff and the Aggrieved Employees with rest periods consisting of a net ten (10) minutes, nor does Defendant and/or DOES provide them with a rest period per four (4) hours worked or major fraction thereof.
105. When Plaintiff and the Aggrieved Employees are able to take rest periods, Plaintiff and the Aggrieved Employees are not relieved of all duties and employer control during their rest periods.
106. By failing to provide rest periods for every four (4) hours or major fraction thereof worked per day by Plaintiff and the Aggrieved Employees, and by failing to provide compensation for these unprovided rest periods, as alleged above, Defendant and/or DOES willfully violate the provisions of *California Labor Code* section 226.7.
107. These claims are on behalf of all non-exempt, hourly employees who worked for Defendant

- and/or DOES in California.
108. Plaintiff, as a non-exempt employee who was unlawfully deprived of paid ten (10) minute rest periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5 for violations of *California Labor Code* section 226.7.
109. Plaintiff, as a non-exempt employee who was unlawfully deprived of paid ten (10)-minute rest periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5.
110. Plaintiff, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 226.7.
111. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).
112. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

///

**FIFTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the
PAGA for Failure to Pay Wages Due at Termination and During Employment (California Labor
Code §2698 et. seq.).**

113. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

114. Defendant and/or DOES and/or their officers and/or managing agents willfully failed to pay, in a timely manner, wages owed to Plaintiff and the Aggrieved Employees who left Defendant's and/or DOES' employ or who were terminated.

115. Plaintiff and the Aggrieved Employees who ended their employment with Defendant and/or DOES during the last year were entitled to be promptly paid all lawful compensation, and other premiums, as required by *California Labor Code* sections 201 through 203.

116. At all relevant times, *California Labor Code* sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable no later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

117. During the relevant time period, Defendant and/or DOES intentionally and willfully fail to pay the Aggrieved Employees who are no longer employed by Defendant and/or DOES their wages, that were earned and unpaid, within seventy-two (72) hours of their leaving Defendant's and/or DOES' employ.

118. For example, Defendant and/or DOES terminated Plaintiff's employment on or about February 26, 2024. Plaintiff did not receive his final paycheck until on or about March 8, 2024.

119. Whether Plaintiff voluntarily or involuntarily terminated his employment with Defendant PROMPT DELIVERY and/or DOES, Defendant and/or DOES did not timely pay him all straight time wages owed at the time of his termination.

120. Whether Plaintiff voluntarily or involuntarily terminated his employment with Defendant PROMPT DELIVERY and/or DOES, Defendant and/or DOES did not timely pay him all

- overtime wages owed at the time of his termination.
121. Whether Plaintiff voluntarily or involuntarily terminated his employment with Defendant PROMPT DELIVERY and/or DOES, Defendant and/or DOES did not timely pay him meal and rest period premiums owed at the time of his termination.
122. PROMPT DELIVERY and/or DOES have had a continuous policy of not paying Plaintiff and those similarly situated for all hours worked, as outlined herein. Specifically, Defendant and/or DOES have had a consistent policy and/or practice of not paying Plaintiff and similarly situated hourly, non-exempt employees for all of the hours they worked, including, but not limited to, rounding, before “shifts” start, after “shifts” end, and/or any other time in the day when Plaintiff and similarly situated hourly non-exempt employees were performing work tasks, subject to the control of Defendant and/or DOES and/or otherwise had work duties but were not paid by Defendant and/or DOES. Failing to pay for all hours worked while under Defendant’s and/or DOES’ control and/or while suffered or permitted to work resulted in hourly, non-exempt employees being deprived of straight time and/or overtime wages.
123. Defendant’s and/or DOES’ failure to pay Plaintiff and the Aggrieved Employees who are no longer employed by Defendant and/or DOES their wages, that were earned and unpaid, at the time of termination or within seventy-two (72) hours of their leaving Defendant’s and/or DOES’ employ, is in violation of *California Labor Code* sections 201 and 202.
124. *California Labor Code* section 203 provides that when an employer willfully fails to pay wages owed, in accordance with *California Labor Code* sections 201 and 202, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until and action is commenced; but the wages shall not continue for more than thirty (30) days.
125. Plaintiff, as a non-exempt employee who Defendant and/or DOES fail to pay all wages, failed to provide a minimum statutory first and/or second meal periods, and failed to provide paid ten (10) minute rest periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to enforce California’s labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5.

1 126. Plaintiff, as a representative of the people of the State of California, seeks all penalties
2 otherwise capable of being collected by the Labor Commission and/or the Department of Labor
3 Standards Enforcement (“DLSE”). This includes each of the following, as set forth in
4 *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any
5 alleged violation of the following provisions: sections 201 through 203.

6 127. These claims are on behalf of all non-exempt, hourly employees who worked for Defendant
7 and/or DOES in California.

8 128. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on
9 behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil
10 penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the
11 initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars
12 (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per
13 *California Labor Code* section 2699(f)(2).

14 129. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other
15 Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for
16 violations pursuant to this chapter or any provisions regulating hours and days of the week of
17 the Industrial Welfare Commission under *California Labor Code* section 558(a)(1) and
18 558(a)(2).

19 **SIXTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
20 **PAGA for Knowing and Intentional Failure to Comply with Itemized Employee Wage**
21 **Statement Provisions (California Labor Code §2698 et. seq.).**

22 130. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
23 as if fully plead.

24 131. *California Labor Code* section 226(a) requires Defendant and/or DOES to itemize in wage
25 statements all deductions from payment of wages and to accurately report total hours worked
26 by Plaintiff and the Aggrieved Employees. *California Labor Code* section 226(a) requires
27 Defendant and/or DOES, at the time of each payment of wages, to “furnish each of her or her
28 employees, either as an detachable part of the check, draft, or voucher paying the employee’s

wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee...(3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than the social security number, (8) the name and address of the legal entity that is the employer...(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate and the corresponding number of hours worked at each hourly rate by the employee....”

132. *California Labor Code* section 226, subdivision (a) also requires that “deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.”

133. In addition, *California Labor Code* section 204(b) requires that “all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.” An employer complies with section 226(a) “if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in the subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.”

134. Defendant and/or DOES have knowingly and intentionally failed to comply with *California Labor Code* section 226(a) on each and every wage statement provided to Plaintiff and the Aggrieved Employees.

135. In every pay period during the period of the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally did not include the gross and net wages earned on wage

statements. Defendant and/or DOES therefore knowingly and intentionally fail to itemize the gross and net wages earned on Plaintiff's and the Aggrieved Employees' wage statements throughout the relevant statute of limitations.

136. PROMPT DELIVERY and/or DOES knowingly and intentionally did not include the total gross wages earned on wage statements. PROMPT DELIVERY and/or DOES therefore knowingly and intentionally failed to itemize the total gross wages earned on Plaintiff's and the Aggrieved Employees' wage statements.

137. In every pay period during the period of the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally did not itemize the total hours worked on wage statements as *California Labor Code* section 226, subsection (a), requires. In every pay period during the period of the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally did not include the total hours worked on wage statements. Defendant and/or DOES therefore knowingly and intentionally failed to itemize the total hours worked on Plaintiff's and the Aggrieved Employees' wage statements. Further, Plaintiff and the Aggrieved Employees are unable to determine the total hours worked based on the data provided on their wage statements.

138. In every pay period during the period of the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally did not itemize the total hours worked on wage statements as *California Labor Code* section 226 (a), requires. In every pay period during the period of the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally did not include the total hours worked on wage statements and failed to include this information accurately. Defendant and/or DOES therefore knowingly and intentionally fail to itemize the total hours worked on Plaintiff's and the Aggrieved Employees' wage statements.

139. In every pay period during the period of the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally did not itemize the total hours worked on wage statements as *California Labor Code* section 226 (a), requires. As discussed herein, Defendant and/or DOES have had a consistent policy and/or practice of not paying Plaintiff and similarly situated hourly, non-exempt employees for all of the hours they worked, including, but not limited to,

rounding, before “shifts” start, after “shifts” end, and/or any other time in the day when Plaintiff and similarly situated hourly non-exempt employees were performing work tasks, subject to the control of Defendant and/or DOES and/or otherwise had work duties but were not paid by Defendant and/or DOES. Thus, Plaintiff and the Aggrieved Employees are owed wages for the unpaid time during which they are subject to Defendant’s and/or DOES’ control and/or during which they are not free from all work duties. As Defendant and/or DOES knew or had reason to know Plaintiff and the Aggrieved Employees were owed compensation for this time, Defendant and/or DOES knowingly and intentionally failed to comply with *California Labor Code* Section 226, subdivision (a).

140. In every pay period during the period of the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally did not include all meal and rest period premiums owed on wage statements. Defendant and/or DOES therefore knowingly and intentionally fail to itemize all meal and rest period premiums owed on Plaintiff’s and the Aggrieved Employees’ wage statements throughout the relevant statute of limitations.

141. Further, PROMPT DELIVERY and/or DOES knowingly and intentionally fail to list the accurate name of the employer on Plaintiff’s and the Class Members’ wage statements. PROMPT DELIVERY lists its name on Plaintiff’s and the Class Members’ wage statements as “Prompt Deliveries Inc.” when the accurate name of the employer is “Prompt Delivery, Inc.”

142. PROMPT DELIVERY and/or DOES also fails to provide employees with written notice that sets forth the amount of sick leave available for use, either in employees’ itemized wage statements or in a separate writing provided to employees on the designated pay date.

143. PROMPT DELIVERY and/or DOES also fails to provide employees with written notice that sets forth the amount of sick leave available for use, either in employees’ itemized wage statements or in a separate writing provided to employees on the designated pay date.

144. Throughout the statutory period, because of the knowing and intentional failure by Defendant and/or DOES to comply with itemized employee wage statement provisions, Plaintiff and the Aggrieved Employees have been able to reconstruct only a reasonable estimate of the hours

1 worked and have, therefore, not received full compensation.

2 145. These claims are on behalf of all non-exempt, hourly employees who worked for Defendant
3 and/or DOES in California.

4 146. Plaintiff, as a non-exempt employee who Defendant and/or DOES fail to provide accurate and
5 itemized wage statements, is an aggrieved employee with standing to bring an action under the
6 PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to
7 enforce California's labor laws, and the penalty provisions identified in *California Labor Code*
8 section 2699.5.

9 147. Plaintiff, as a representative of the people of the State of California, will seek all penalties
10 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
11 each of the following, as set forth in *California Labor Code* section 2699.5, which provides
12 that section 2699.3(a) applies to any alleged violation of the following provisions: sections
13 226, 1174, 1199.

14 148. Pursuant to Labor Code section 2699(f), Plaintiff, as an aggrieved employee, on behalf of
15 himself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one
16 hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation
17 per Labor Code section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved
18 Employee per pay period for each subsequent violation, per *California Labor Code* section
19 2699(f)(2).

20 149. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other
21 Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for
22 violations pursuant to this chapter or any provisions regulating hours and days of the week of
23 the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and
24 558(a)(2).

25 ///

26 ///

27 ///

28 ///

SEVENTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failing to Reimburse Employees for Business Expenses (California Labor Code §2698 et. seq.)

150. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

151. Section 2802(a) of the *California Labor Code* requires “[a]n employer [to] indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.”

152. Plaintiff and the aggrieved employees incurred expenses in the discharge of their duties without receiving reimbursement from Defendant and/or DOES.

153. PROMPT DELIVERY and/or DOES fail to reimburse Plaintiff and Aggrieved Employees for all necessary expenses incurred in the performance of their jobs including, but not limited to, the use of their personal cell phones for business purposes.

154. *California Labor Code* section 2802(a) entitles Plaintiff and the aggrieved employees to reimbursement for said necessary expenditures, plus interest and expenses.

155. These claims are on behalf of all non-exempt, hourly employees who worked for Defendant and/or DOES in California.

156. Plaintiff, as a non-exempt employee who incurred business expenses which Defendant and/or DOES fail to reimburse, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California’s labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5.

157. Plaintiff, as a representative of the people of the State of California, seeks all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: for violations of the *California Labor Code* section 2802.

158. Pursuant to *Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on behalf of

herself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per *Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per *Labor Code* section 2699(f)(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other Aggrieved Employees, prays for relief and judgment against Defendant and/or DOES, jointly and severally, as follows:

- A. For penalties as provided under *California Labor Code* sections 558(a)(1) and 558(a)(2).
- B. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section 2699, et. seq. for failure to provide compliant meal periods;
- C. For all statutory penalties for each pay period during which an employee was underpaid due to failure to provide compliant meal periods;
- D. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section 2699, et. seq. for failure to provide all rest periods;
- E. For all statutory penalties provided under *California Labor Code* for each pay period during which an employee was underpaid due to failure to provide paid rest periods;
- F. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section 2699, et. seq. for failure to timely pay wages at separation;
- G. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section 2699, et. seq. for failure to provide compensation at the regular and overtime rate for all time worked;
- H. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section 2699, et. seq. for failure to provide compensation at the minimum wage;
- I. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section 2699, et. seq. for failure to provide accurate, itemized wage statements;
- J. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section 2699, et. seq. for failure to reimburse business expenses; and
- K. For reasonable attorneys' fees and costs under the PAGA, *California Labor Code* section

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

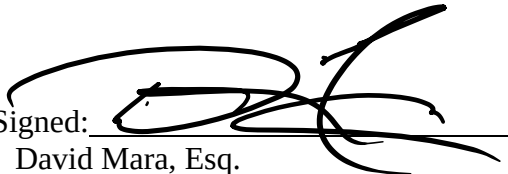
2699(g)(1).

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial as to liability.

MARA LAW FIRM, PC

Date: September 30, 2024

Signed: 
David Mara, Esq.
Jill Vecchi, Esq.
Attorneys for Plaintiff OSIRIS ORTEGA, on
behalf of himself and all others similarly
situated, and on behalf of the general public