

July 16, 2024

VIA ON-LINE SUBMISSION ONLY TO:

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Private Attorneys General Act
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

VIA CERTIFIED MAIL TO:

(by certified mail to TXRH El Cajon LLC as follows)

TXRH El Cajon LLC
235 W. Market St.
San Diego, CA. 92101
Certified Mail Tracking Number: 9414 8112 0620 4282 3644 61

Alisha Lapkewych
Agent for Service of Process for TXRH El Cajon LLC
235 W. Market St.
San Diego, CA. 92101
Certified Mail Tracking Number: 9414 8112 0620 4282 3894 40

**Re: Labor Code § 2698, *et seq.* Penalties - PAGA Notice Letter to LWDA
Brandon Johnson v. TXRH El Cajon LLC
Superior Court for the County of San Diego**

Gentlepersons:

This office represents Plaintiff Brandon Johnson (“Plaintiff”) and other similarly aggrieved employees employed as non-exempt, hourly employees, including servers, bussers, hosts, dishwashers, and those in related positions at Defendants’ restaurants and facilities in California during the relevant period (collectively “Aggrieved Employees”) for, *inter alia*, violations of California Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.4, 226.7, 246, 248.1, 248.2, 248.5, 510, 511, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2 1197, 1198, 1198.5, 1199, 2802, 2810.5, 2698, and 2699, *et seq.*; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et. seq.* (“the Act”). Plaintiff would like to bring a representative action, pursuant to the Act, on behalf of himself and all other similarly situated Aggrieved Employees, and the State of California, against TXRH El Cajon LLC; and Does 1 through 50 inclusive (all defendants being referred to herein collectively as “Defendants”).



Additionally, this correspondence will serve to satisfy the notice requirements under the Act, along with Plaintiff's Class Action Complaint, which is attached to this Notice letter. The Complaint is being filed concurrently in San Diego County Superior Court and will be assigned a local case number. The Complaint allegations and claims are incorporated into this Notice Letter.

We also set forth herein the facts and theories and the California Labor Code violations which Defendants engaged in with respect to Plaintiff and all of their Aggrieved Employees in California. The attached Class Action Complaint provides the details of Plaintiff's class-wide claims and representative claims under the Act, and the applicable California law governing them. It, along with this Notice Letter, addresses in detail numerous violations that subject Defendants to civil and statutory penalties under the Act.

Relevant Facts

Plaintiff worked as a server at Defendants' restaurants and facilities in California. Defendants employed other similarly situated Aggrieved Employees as servers, bussers, dishwashers, hosts, and in similar and related positions in connection to food and restaurant services they provided to Defendants' customers throughout California. Plaintiff and the other similarly situated Aggrieved Employees worked at Defendants' behest without being paid all wages due and without being provided all required breaks. More specifically, Plaintiff and the other similarly situated Aggrieved Employees were employed by Defendants and shared similar job duties and responsibilities, were subjected to the same policies and practices, and endured similar violations at the hands of Defendants as the other Employees who served in similar and related positions.

Defendants required Plaintiff and the Aggrieved Employees to work off the clock and failed to record accurate time worked by these Employees, failed to pay them at the appropriate rates for all hours worked, failed to pay all wages due and owing at termination or resignation, and provided Plaintiff and the Aggrieved Employees with inaccurate wage statements that prevented them from learning of these unlawful pay practices. Defendants also failed to provide Plaintiff and the Aggrieved Employees with lawful meal and rest periods, as Employees were required to remain under Defendants' control and were not provided with the opportunity to take full uninterrupted, timely, and duty-free rest periods and meal breaks, as required by the Labor Code and the applicable paragraphs of the IWC Wage Orders.

Defendant TXRH EL CAJON LLC is a California Limited Liability Company which lists its principal address with the California Secretary of State in San Diego, California with its registered corporate agent located in Glendale, California. It lists its type of business as "Restaurant." Defendant TXRH EL CAJON LLC is listed as the employer on the wage statements issued to Plaintiff by Defendants, and upon information and belief to other Aggrieved Employees, with the same San Diego address. Upon information and belief, TXRH EL CAJON LLC does business as "Texas Roadhouse." Upon information and belief, TXRH EL CAJON LLC employs restaurant workers at restaurants and facilities throughout California, including in San Diego County where Plaintiff predominantly worked. On information and belief, Defendants maintain operations and locations throughout San Diego County and California conducting



business wherever their customers are located. TXRH EL CAJON LLC's website explains that: "Texas Roadhouse is a legendary steak restaurant serving American cuisine from the best steaks and ribs to made-from-scratch sides & fresh-baked rolls."

Plaintiff and the Aggrieved Employees were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates, including for meal period and rest break premium payments. Plaintiff also contends that Defendants failed to pay him and the Aggrieved Employees all wages due and owing, including by miscalculating wages owed and by requiring off the clock work, failed to provide meal and rest breaks, and failed to furnish accurate wage statements and timely pay all wages owed, all in violation of various provisions of the California Labor Code and applicable paragraphs of the IWC Wage Orders.

During the course of Plaintiff's and the Aggrieved Employees' employment with Defendants, they were not paid all wages they were owed, including for all work performed (resulting in "off the clock" work) and for all their overtime hours worked, or were not paid at the correct rates. This has resulted in systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders. Upon information and belief, Defendants employ other non-exempt, hourly employees as servers, bussers, hosts, dishwashers, and related positions based out of Defendants' facilities in California.

Plaintiff was employed by Defendant as a server, with duties that included public safety communication services and maintaining radio communication systems. Plaintiff generally worked over 40 hours per week, five to six shifts per week, excluding on-call time. Plaintiff's scheduled hours were generally from 4:00 p.m. through 10:30 p.m., 3:30 p.m. through 9:00 p.m., 4:00 p.m. through 10:00 p.m., and 5:00 p.m. through 11:00 pm. 8:00 a.m. through 4:30 p.m. and habitually worked on-call. Plaintiff was assigned to be on an on-call schedule that required him to work immediately upon notification of his shifts. Many times, Defendants' computer system which set forth the "on call" schedule were down, and Plaintiff was required to report to work to determine if he was scheduled for that day and would not be paid.

Despite their obligation to maintain accurate timekeeping records for hours worked by the Aggrieved Employees, Defendants maintained improper time record-keeping systems across their California restaurants and facilities. Defendants required Plaintiff and Aggrieved Employees to clock in and out on the register that were also utilized for inputting food orders. There was often a line to clock in and out because other servers would be occupied on the register inputting orders and those waiting to clock in or out and were unable to do so. Moreover, on many occasions, a management member would purposely input orders in slowly to taunt and chide Plaintiff causing Plaintiff and other Aggrieved Employees to endure off the clock work that were unpaid.

Employees were also instructed to record a meal period of 30 minutes, even when they did not actually take one or did so untimely or for less than 30 minutes. Plaintiff and Aggrieved Employees often suffered late and interrupted meal breaks, thus denying them a full 30 minute meal period.



On information and belief, Defendants' flawed timekeeping systems failed to accurately record Employees' actual time worked, rounded down, and shaved total hours worked to the detriment of Employees. To maintain the appearance of compliance with Labor laws, Defendants demanded that Employees record a thirty-minute meal period. In doing so, Defendants effectively automatically deducted thirty-minute meal periods from Employees' time worked. By virtue of deducting thirty minutes for meal periods and manipulating daily hours actually worked to conform to scheduled hours, Defendants further unlawfully deducted many hours Employees actually worked from the total hours Defendants recorded for them for payroll purposes during the relevant pay period.

The failure to maintain accurate timekeeping and payroll records perpetrated by Defendants has also been exacerbated by other off the clock work Defendants required their Employees to endure. Plaintiff was required to spend 2-3 minutes per day checking his mobile phone to ascertain his work schedule. Further, Plaintiff and Aggrieved Employees were required to complete annual training required by HR. Furthermore, Defendants required Employees to periodically watch webinars such as workplace harassment training and learning management system training outside of scheduled work hours without compensation.

Thus, all of Plaintiff's pre- or post-shift time worked, and on information and belief that of other Aggrieved Employees, went uncompensated. Employees were also expected to access the Defendants' portal outside of work hours to learn about their shift times without receiving any compensation for this time.

Defendants also required that Employees participate in an on-call schedule without proper compensation. During on-call shifts, Plaintiff and Aggrieved Employees remain under the control of Defendants while waiting for notification of their shifts, employees are thus required to remain under Defendants' control while also refraining from engaging in personal activities or otherwise using their time for their own purposes. When Defendants' work portal was down, as it frequently was, employees were required to arrive to Defendants' workplace in person to determine if they are scheduled to work. If the employees were not scheduled to work, they were not paid by the Defendants.

Defendants also had a policy of providing a free meal under \$12.99 to employees to be consumed only off the clock. This usually resulted in a 30% off discount on meals and free bread and a house salad. However, to whatever extent Defendant provided this other form of remuneration besides their regular hourly rate to Aggrieved Employees, Defendants failed to include it in the regular hourly rate used to calculate and pay the overtime that Defendants did pay.

Defendants also failed to pay reporting time pay to Plaintiff and Aggrieved Employees. On several occasions, Plaintiff reported to on-call work, was told he was not on the schedule and Defendants failed to pay Employees in such instances for half of their usual or scheduled day's work, at the correct regular rate of pay.



Defendants followed a similar unlawful practice, upon information and belief, in connection with other Employees in a concerted effort to limit and restrict regular and overtime hours earned by and owing to Plaintiff and the other Aggrieved Employees. Time worked off the clock also caused Plaintiff and other Aggrieved Employees to work beyond eight hours in a shift. As a result of the above-described off the clock work, Defendants failed to pay Plaintiff and Aggrieved Employees overtime for several minutes to hours at the end of work shifts which Defendants did not record in any timekeeping or payroll records.

Plaintiff was therefore not paid for all his hours worked at the required minimum, overtime and double time wage rates due to Defendants' policy and practice of requiring them to work off the clock and without pay. With work shifts generally scheduled for eight hours or more, this unpaid off the clock work resulted in Plaintiff and the Aggrieved Employees working past eight hours on a shift, which required that they be paid at the correct overtime rate of 1.5 times their regular rate. Defendants thus systematically underpaid Plaintiff and the Aggrieved Employees by failing to pay them at the required overtime rates for all hours over eight in a work shift or over forty in a work week, and all hours over twelve in a day at the required double time rate. Upon information and belief, the Aggrieved Employees were bound by similar scheduling and work policies which Defendants required them to follow and endured similar violations at Defendants' hands as Plaintiff.

Defendants have either failed to maintain timekeeping records for Plaintiff that would permit Plaintiff to discover the nature and extent of the off the clock work Defendants required and the actual hours Plaintiff worked or have otherwise declined to produce them to Plaintiff in response to a timely and lawful request. By failing to pay for all hours worked, Defendants have committed knowing and intentional ongoing violations of the record keeping requirements under the Labor Code §§ 226 and 1174.

As a result of the above-described unlawful requirements to work off the clock, the failure to accurately record all hours worked and unlawful rounding, and the other wage violations they endured at Defendants' hands, Plaintiff and the Aggrieved Employees were not properly paid all wages earned and all wages owed to them by Defendants, including when working more than eight hours in any given day and/or more than forty hours in any given week. As a result of Defendants' unlawful policies and practices, Plaintiff and Aggrieved Employees incurred overtime hours worked for which they were not adequately and completely compensated, in addition to the hours they were required to work off the clock at their regular rates.

The failure to pay for all hours worked and underpayment of wages to Plaintiff and the Aggrieved Employees is and has been a direct consequence of Defendants' unlawful compensation policies and practices, which upon information and belief applied uniformly to the Aggrieved Employees working at Defendants' restaurants and facilities. As a result of the above-described unlawful requirements to work off the clock and regular rate miscalculation, the failure to accurately record all hours worked and pay wages at the correct rates, and the other wage violations they endured at Defendants' hands, Plaintiff and the Aggrieved Employees were not



properly paid all wages earned and all wages owed to them by Defendants, including when working more than eight hours in any given day and/or more than forty hours in any given week.

Therefore, Defendants had a consistent policy or practice of failing to pay Employees for all hours worked and failing to pay minimum wages for all time worked, as required by California law. Also, Defendants had a consistent policy or practice of failing to pay Employees overtime compensation at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of Labor Code § 510 and the corresponding sections of IWC Wage Orders. To the extent Defendants paid Plaintiff and the Aggrieved Employees other forms of remuneration above and beyond their hourly pay, upon information and belief Defendants miscalculated and therefore underpaid any overtime they paid during these pay periods by failing to include all forms of remuneration in the regular rate used to calculate and pay overtime.

Defendants also failed to provide Plaintiff and the Aggrieved Employees with their required meal periods, and the at least two ten-minute rest breaks required for scheduled shifts of eight hours. Demanding workloads contributed to Defendants' common policy of failing to provide lawful meal periods to Plaintiff and the Aggrieved Employees, as required under the Labor Code and Paragraph 11 of the IWC Wage Order(s). Defendants similarly systematically failed to authorize and permit Plaintiff and the Aggrieved Employees to take all required 10-minute rest breaks, as required under the Labor Code and Paragraph 12 of the IWC Wage Order(s).

More specifically, Plaintiff worked shifts that entitled him to at least one meal period, but Defendants' required Plaintiff and the Aggrieved Employees to prioritize work over taking proper meal periods. In fact, Defendants made no effort to even schedule or otherwise account for time for Plaintiff and the Aggrieved Employees to use for duty-free, net thirty minute meal periods. Moreover, Plaintiff was prohibited from leaving the customers' premises for meal periods and rest breaks. To the extent Defendants required Plaintiff to work over ten hours on a work shift, Defendants also failed to provide second meal periods and Defendants have produced no evidence of premium payments for meal period violations under Labor Code 226.7.

Defendants thus failed to provide all the legally required unpaid, off-duty meal periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Aggrieved Employees, as required by the applicable Wage Order and Labor Code. Plaintiff and other Aggrieved Employees were required to perform work as ordered by Defendants for more than five hours during a shift without receiving compliant meal periods. Additionally, as addressed above, Defendants followed a practice of requiring off the clock work in a manner that would impact when Employees were to receive meal periods and rest breaks and required them to respond to work demands during breaks, thus leading to further violations.

Upon information and belief, Defendants' systems did not automatically generate a meal period premium under Labor Code § 226.7 for meal periods that commenced after five hours into a work shift or in the event the time punch records reflected a meal period of less than thirty minutes. However, upon information and belief, in the event Defendants did pay any meal period



premiums, they did so at the employee's customary regular rate of hourly compensation without including all forms of remuneration in that hourly rate calculation from the rate at which meal premiums were paid.

As a result, Defendants' failure to provide Plaintiff and the Aggrieved Employees with all legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods is and will be evidenced by Defendants' business records, or lack thereof. Therefore, Plaintiff and the Aggrieved Employees were unable to take off-duty breaks or were otherwise not provided with the opportunity to take required breaks as required under the Labor Code and Wage Orders due to Defendants' policies and practices. On the occasions when Plaintiff and the Aggrieved Employees were provided with a meal period, it was often untimely or interrupted, or was impermissibly shortened, and Employees were not provided with one hour's wages in lieu thereof.

Similar violations resulted from Defendants' failure to authorize and permit Plaintiff and the Aggrieved Employees to take duty-free, net ten minute rest breaks for every four hours of shift work, or major fraction thereof. Plaintiff and the other similarly situated Aggrieved Employees were either not authorized or permitted the opportunity to take a rest break, or were required to remain under Defendants' control and respond to instructions from management and job and customer demands if and when they even attempted to take one. Upon information and belief, Defendants also failed to authorize and permit employees to leave the worksite during rest breaks, evidencing Defendants' policy and practice of requiring Plaintiff and the Aggrieved Employees to remain under their control during required off-duty rest break times.

Defendants thus failed to authorize and permit duty-free ten minute rest breaks as required under the Labor Code and IWC Wage Orders. In fact, Defendants made no effort to even schedule or otherwise account for time for Plaintiff and the Aggrieved Employees to use for duty-free, net ten minute rest breaks. This common and unlawful policy uniformly applied to the Employees during the relevant period, meaning Defendants' rest break policy was not to schedule or otherwise authorize and permit them. Plaintiff and the Aggrieved Employees worked eight to twelve hours on an average shift, and were required to receive at least two rest breaks or three rest breaks on shifts over ten hours. Given the work demands, and pressure from Defendants' management, Plaintiff and the Aggrieved Employees were compelled to not take rest breaks despite working extended shifts. Defendants have produced no evidence of any payments for rest break violations under Labor Code § 226.7. To the extent Defendants have paid any such premiums, upon information and belief they failed to include all forms of remuneration, including in the regular rate at which Defendants paid the premium.

Defendants' uniformly applied policies and practices thus resulted in untimely and shortened or on-duty rest breaks when they were authorized and permitted. Plaintiff and the Aggrieved Employees worked shifts of at least eight hours, which required at least two rest breaks, and often worked shifts over ten hours, which required at least three rest breaks. Even on the occasions when Defendants authorized and permitted Plaintiff to take a first rest break, he was



not permitted to take a second or a third break, and those that were provided were often late and generally interrupted by job duties and requirements.

During rest periods, employers must relieve employees of all duties and relinquish control over how employees spend their time. Plaintiff and the Aggrieved Employees were and are under Defendants' control when they are working through rest breaks and remaining under Defendants' control. Defendants have also provided either impermissibly shortened or untimely meal and rest breaks to Plaintiff and the Aggrieved Employees. Plaintiff and the Aggrieved Employees were thus not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks, and were not provided with one hour's wages in lieu thereof. They were required to remain on-duty during breaks or portions of their breaks, thus making them either untimely or shortened and on-duty, and they were also prevented from leaving the worksite and otherwise remain under Defendants' control during rest breaks under Defendants' uniformly applied policies and practices.

Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or deducting the Employees' earned wages, including by requiring off the clock work during breaks and before and after work shifts and by miscalculating the regular rate and accordingly underpaying overtime wages and meal and rest break premiums. By not compensating Employees for all hours worked at the correct rates, Defendants unlawfully deducted wages earned by and owed to Plaintiff and the Aggrieved Employees, in violation of Labor Code § 221.

Defendants also violated California Labor Code § 246 by not providing all required paid sick days to Plaintiff and the similarly aggrieved Employees. Labor Code § 246 provides that an Employee who "works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." Paid sick time for nonexempt employees shall be calculated in the same manner as the regular pay rate for the workweek in which the employee uses the paid sick time. Defendants failed to provide Plaintiff and the other similarly Aggrieved Employees with all their required and earned sick days paid at the correct rate of pay, in violation of Labor Code § 246. Additionally and upon information and belief, Defendants have failed to provide COVID-19 supplemental sick leave to the Aggrieved Employees during the relevant time period, including by failing to provide two work weeks of COVID-19 supplemental paid sick leave paid at the correct rates as required under Labor Code §§ 248.1 and 248.2 and including damages and penalties as these sections are enforced through Labor Code § 248.5, which requires that: "If paid sick days were unlawfully withheld, the dollar amount of paid sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250), whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars (\$4,000), shall be included in the administrative penalty." Plaintiff accordingly seeks this relief available for Defendants' failure to provide Employees with all their required and earned sick days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).



Upon information and belief, Defendants also failed to provide Employees such as Plaintiff at the time of his employment and thereafter with written notice complying with all the requirements of Labor Code § 2810.5, which provides that: “At the time of hiring, an employer shall provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing” specific required information. Upon information and belief, Defendants failed to provide this information to the Aggrieved Employees as required under Labor Code § 2810.5. Defendants were required to provide Plaintiff and the Aggrieved Employees certain specific information upon hiring pursuant to California Labor Code § 2810.5. Defendants failed to provide Plaintiff with any such information when he was hired, or have failed to produce it, and upon information and belief Defendants committed similar violations in connection with similarly situated Aggrieved Employees.

Defendants have also consistently failed to provide Aggrieved Employees with timely, accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws, including by the above-described requirement of off the clock work, failure to pay all overtime and double time wages owed and failure to pay them at the appropriate premium rates, and failure to pay premium wages for unprovided or otherwise unlawful meal and rest breaks, or by miscalculating any overtime or meal period or rest break premium wages and by the systematic and unlawful deductions Defendants took from Employee wages. Defendants have also made it difficult to account with precision for the unlawfully withheld wages and meal and rest period compensation owed to Plaintiff and the Aggrieved Employees, during the liability period, including because they did not calculate the regular rate of pay correctly when paying overtime or meal period premiums and because they did not implement and preserve a record-keeping method as required for non-exempt employees by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable California Wage Orders. Upon information and belief, time clock punches were not maintained or were not accurately maintained for work shifts and meal periods. Defendants also failed to accurately record and pay for all regular and overtime hours worked and submitted by Plaintiff and the Aggrieved Employees, including by failing to pay all overtime hours at the correctly calculated overtime premium rate.

Defendants also provided Plaintiff and the Aggrieved Employees with wage statements that failed to accurately report all hours worked and applicable hourly rates for all hours worked. For the same reasons as explained above, Plaintiff and the Aggrieved Employees were provided with unlawful wage statements that failed to reflect all hours worked and failed to pay for all overtime hours or failed to pay overtime wages at the correct overtime premium rate, and Defendants miscalculated meal and rest break premiums, and sick time if and when they did pay them. Defendants followed this unlawful policy and practice even though both Plaintiff and Defendants were aware that Plaintiff and the Aggrieved Employees worked more total hours than were reflected on the wage statements, including overtime hours, and were underpaid by regular rate miscalculation. Plaintiff and the Aggrieved Employees were unable to discern from their wage statements alone the actual hours they worked in total during a pay period and the rates they were paid for those hours worked.



Defendants have thus also failed to comply with Labor Code § 226(a) by inaccurately reporting total hours worked and total wages earned by Plaintiff and the Aggrieved Employees, along with the appropriate applicable rates, among other requirements. Plaintiff and Aggrieved Employees are therefore entitled to penalties not to exceed \$4,000.00 for each employee pursuant to Labor Code § 226(b). Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, and wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked.

Defendants also required Plaintiff and the Aggrieved Employees to work hours off the clock for which they were not compensated. They were required to endure off the clock work addressed above, including during interrupted or otherwise on-duty meal and rest periods and were not provided with sick pay and supplemental sick leave and were subjected to systematic off the clock work. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a workday or failed to pay it at the correct rate, as addressed above. Therefore, Defendants have also followed a uniform and consistent policy of failing to pay all wages owed to Plaintiff and other similarly situated Employees at the time of their termination or within seventy-two hours of their resignation, as required by California law, including Labor Code § 203.

Additionally, Defendants have regularly required Plaintiff and the Aggrieved Employees to incur necessary business expenses in the course of performing their required job duties without reimbursement. These included the required purchase of non-slip shoes for work, pens for writing down orders, and uniform maintenance Plaintiff incurred for his work duties. Aggrieved Employees must be reimbursed for these necessary business expenses under Labor Code § 2802, and Defendants systematically failed to do so.

PAGA Claim Details, Legal Bases for Violations and Penalties:

As addressed above and in further detail in the attached Class Action Complaint, Plaintiff and the Aggrieved Employees complain of the following violations committed by Defendants:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders.

Defendants failed to pay Employees the minimum wages they were owed, including by their consistent policy of failing to pay Employees for all hours worked. Employees would work hours and not receive wages, including as alleged above in connection with off the clock work, including all the time required to remain on duty and under Defendants’ control during breaks



and due to the work demands placed upon them by Defendants' management and due to unlawful rounding. Defendants, and each of them, have also intentionally and improperly rounded, changed, adjusted and/or modified Employee hours, or required Employees to do so, and imposed difficult to attain job and shift scheduling requirements on Plaintiff and the Aggrieved Employees, which resulted in off the clock work and underpayment of all wages owed to Employees over a period of time, while benefiting Defendants. Defendants also failed to pay Aggrieved Employees at the required prevailing rates. During the relevant time period, Defendants thus regularly failed to pay minimum wages to Aggrieved Employees, including by requiring systematic off the clock work. Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Aggrieved Employees as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the other Aggrieved Employees as to minimum wage pay.

In light of the foregoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other Aggrieved employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, Plaintiff and other Aggrieved Employees are entitled to seek and recover statutory costs.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime. Specifically, Defendants had a consistent policy of not paying Employees wages for all hours worked, including hours at their required regular, overtime, and double-time rates. Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted and/or modified certain employees' hours, including Plaintiff's, or required Aggrieved Employees to do so, or otherwise caused them to work off the clock to avoid paying Aggrieved Employees all earned and owed straight time and overtime wages and other benefits, in violation of the California



Labor Code, the California Code of Regulations and the IWC Wage Orders and guidelines set forth by the Division of Labor Standards and Enforcement.

Defendants have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties or remain under Defendant's control. When considered in combination with the unlawful rounding to their detriment, Aggrieved Employees were not properly compensated, nor were they paid overtime rates or the correct overtime rate (addressed above) for hours worked in excess of eight hours in a given day, and/or forty hours in a given week. Based on information and belief, Defendants did not make available to Employees a reasonable protocol for correcting time records when Employees worked overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the Employee's detriment. Defendants have also violated these provisions by requiring Plaintiff and other Aggrieved Employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties.

In light of the foregoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20. Defendants are liable to Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Pay Reporting Time Pay in Violation of Wage Order 4-2001; 8 § CCR 11040(5)

Plaintiff and Aggrieved Employees were required to report for on-call work and were not paid at all if they were not assigned to a shift and were not paid for their on-call time. Defendants failed to pay Plaintiff and Employees for half of their scheduled days' work in violation of the applicable Wage Order. Thus, Defendants failed to pay Aggrieved Employees for half of their scheduled days' work in violation of Wage Order 4-2001 and 8 § CCR 11040(5). Therefore, pursuant to Wage Order 4-2001 and 8 § CCR 11040(5), Aggrieved Employees are entitled to damages in an amount equal to reporting time pay at their effective hourly rates of pay for all the wages they were not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following the exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 204, 558,



including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure To Provide On-Call Pay Under Labor Code §§ 204, 510, 1194, And 8 CCR § 11160(3)(4)

Wage Order 16-2001 provides that “hours worked means the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” (Internal quotations omitted, Cal. Code Regs., tit. 8, § 11160(2)(J)).

Defendants followed a common practice and policy of requiring Plaintiff and Employees to remain on-call after normal scheduled hours, without proper compensation. Defendants scheduled Employees for on-call shifts but on many occasions, due to computer operation failures, Plaintiff and Employees were required to personally report to work and if they were not on the schedule, they were sent home without pay. Plaintiff and Employees remain under the control of Defendants while they are under Defendant's control and on-call waiting for after-hours work orders to come in and thus were compelled to refrain from other personal activities and could not use their off-duty time for their own purposes. As a direct and proximate results of Defendants' actions as set forth herein, Plaintiff and Aggrieved Employees have been damaged in that Plaintiff Aggrieved Employees have not been paid all required wages, including overtime pay, associated with their on-call work.

The foregoing uncompensated work caused Plaintiff and Employees to work in excess of eight (8), ten (10), and twelve (12) hours a day, and/or forty (40) hours a week, entitling them to overtime and double-time wages which were systemically denied. Defendants' failure to pay compensation in a timely fashion also constituted a violation of California Labor Code § 204, which requires that all wages shall be paid semimonthly. Defendants have failed to pay all wages and overtime compensation earned by Employees. Each such failure to make a timely payment of compensation to Employees constitutes a separate violation of California Labor Code § 204. Employees have been damaged by these violations of California Labor Code §§ 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Consequently, pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of all their unpaid wages and overtime compensation for all their hours worked, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes.

In light of the foregoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other Aggrieved employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any



statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, Plaintiff and other Aggrieved Employees are entitled to seek and recover statutory costs.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 204, 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Meal-Period Liability Under Labor Code § 226.7 and Penalties

Defendants have regularly required Aggrieved Employees to work shifts in excess of five hours without providing them with uninterrupted meal periods of not less than thirty minutes as required under Labor Code §§ 226.7, 512, and paragraph 11 of the applicable Wage Orders. Specifically, Aggrieved Employees were forced to incur shortened meal periods due to the work demands placed upon them by Defendants' management, were provided with breaks late and well after the fifth hour of work, could not be relieved to take breaks, or were required to remain on-duty at all times and were unable to take off-duty breaks or were otherwise not provided with the opportunity to take required breaks due to Defendants' policies and practices.

On the occasions when Aggrieved Employees were provided with a meal period, it was often untimely or interrupted by having to respond to work demands or remain under Defendant's control, in violation of the Labor Code and applicable Wage Orders. On shifts over ten hours, second meal periods were not provided. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided, including by miscalculating any premium payments they did make. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558,



including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Rest-Break Liability and Penalties

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours, as required under Labor Code § 226.7. Specifically, Defendants generally failed to authorize and permit any rest breaks, or provided rest periods untimely or for shortened durations, and Defendants' policies and procedures required Aggrieved Employees to remain under Defendants' control during breaks to respond job requirements or simply failed to authorize and permit them at all. Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided, or miscalculated any premiums paid. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each rest break not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their effective hourly rates of pay for each rest break not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Unlawfully Collecting or Receiving Wages in Violation of Labor Code § 221

Labor Code § 221 provides, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." As discussed above, Defendants have consistently violated Labor Code § 221 by unlawfully collecting or deducting the Employees' earned wages, including by the above described off the clock work and unlawful rounding and overtime miscalculation. In addition, Defendants unlawfully deducted parking and other traffic tickets from Employees wages. By not compensating Employees for all hours worked, Defendant unlawfully deducted wages earned by and owed to Aggrieved Employees, in violation of Labor Code § 221.

In light of the foregoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 558. Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510,



558, 1194, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Issue Accurate Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each employee with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal, rest, and unlawfully received or collected wages, as discussed above, and failed to list accurate rates of pay due to miscalculations of overtime and premium pay. In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ..."

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code §



204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders.

Defendants also required Aggrieved Employees to work hours off the clock for which they were not compensated, including during interrupted or otherwise on-duty meal and rest periods and by rounding. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a workday, or miscalculated these premiums by not including all forms of remuneration in the regular rate, as addressed above. Therefore, when Aggrieved Employees received wage statements and pay checks, they did not compensate all hours worked on a timely basis, resulting in Defendants' systematic failure to pay all wages owed to Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204.

In light of the foregoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties, interest, fees and costs pursuant to Labor Code §§ 210, 218.5, 558, and 1194. In failing to pay Aggrieved Employees minimum wages and overtime, by unlawful rounding and off the clock work, by not providing proper meal, rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Aggrieved Employees to recover penalties pursuant to para. 20 of applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 203, 204, 2926, 2927, and 2699.5 seeking all civil penalties available and applicable under Labor Code §§ 204, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, premium pay, etc., all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the foregoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.* Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Aggrieved Employees, and they are entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.



Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 558, 1174.5, 1199, and 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the foregoing, Defendants have had a consistent policy of failing to pay all wages earned by and owed to Aggrieved Employees at the time of their termination of within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the foregoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199, 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave

Defendants violated California Labor Code § 246 by not providing all required paid sick days to Plaintiff and the Aggrieved Employees. Labor Code § 246 provides that an Employee who "works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." Defendants failed to provide Plaintiff and the other similarly Aggrieved Employees with all their required and earned sick days, in violation of Labor Code § 246. Defendants have also failed to provide COVID-19 supplemental sick leave to the Aggrieved Employees during the relevant time period, including by failing to provide two work weeks of COVID-19 supplemental paid sick leave as required under Labor Code §§ 248.1 and 248.2 and including damages and penalties as these sections are enforced through Labor Code § 248.5, which requires that: "If paid sick days were unlawfully withheld, the dollar amount of paid sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250), whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars (\$4,000), shall be included in the administrative penalty."

Plaintiff accordingly seeks this relief available for Defendants' failure to provide Aggrieved Employees with all their required and earned sick days and all their COVID-19 supplemental



sick leave in violation of Labor Code §§ 246, 248.1, and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Provide Information Upon Hiring Pursuant to Labor Code § 2810.5:

Labor Code § 2810.5 provides that: "At the time of hiring, an employer shall provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing" specific required information. Upon information and belief, Defendants failed to provide this information to the Aggrieved Employees as required under Labor Code § 2810.5. Under the PAGA, and following exhaustion of the notice period, Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 2810.5, 1198, and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802

Defendants required Plaintiff and the Aggrieved Employees to pay for necessary work-related expenses they incurred. These included the required purchase of non-slip shoes for work, pens for writing down orders, and uniform maintenance Plaintiff incurred for his work duties. Defendants thus uniformly failed to reimburse those lawful and necessary work-related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9. Defendants are liable for PAGA penalties resulting from their failure to reimburse necessary business expenses incurred by the Aggrieved Employees.

Accordingly, Plaintiff and Aggrieved Employees are entitled to recover, and hereby seek through this Representative Action, all civil and statutory penalties authorized for violations of California Labor Code §§ 1198 and 2802, and Section 9(B) of the applicable IWC Wage Orders, and Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 2802 and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Unfair Competition Under Business and Professions Code § 17200, et seq.

Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 et seq.

Plaintiff's PAGA Claim under Labor Code § 2698 et seq. and Recovery Bases:

After complying with the notice procedures of Labor Code § 2699.3 and the running of the notice period after the filing of the attached Class Action Complaint, Plaintiff will file an amended Complaint asserting, as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed underlying claims and seeking penalties as specified by the applicable corresponding provisions.



Plaintiff and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.4, 226.7, 246, 248.1, 248.2, 248.5, 510, 511, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1198.5, 1199, 2802, 2810.5, and 2698 *et seq.*, including as follows:

(a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked under Labor Code §§ 510, 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(b) Meal, Rest Period Claims: For failure to provide Plaintiff and the Aggrieved Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, including under paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...";

(d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);



(e) Unlawful Deductions and Failure to Reimburse Business Expenses: For Defendants' unlawful deductions from wages and for Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(f) Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave: For Defendants' failure to provide Employees with all their required and earned sick days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(g) Failure to Pay Reporting Time Pay: For Defendants failure to provide Employees with all their required reporting time pay in violation of Wage Order 4-2001 and 8 § CCR 11040(5) and civil and statutory penalties available and applicable under Labor Code §§ 204, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(h) Failure To Provide On-Call Pay: For Defendants failure to provide Employees with all their on-call pay in violation of Labor Code §§ 510, 1194(a), 1197, and 1198, Wage Order 16-2001 and 8 § CCR 11160(2) and civil and statutory penalties available and applicable under Labor Code §§ 204, 510, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1); and

(i) All Other Alleged Violations of the Labor Code and IWC Wage Orders: For Labor Code §§ 551, 552, 2810.5, and any above addressed violation of the applicable provisions of the Labor Code and IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

We have been constrained to initially move forward with the filing of this Complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

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This letter and the attached Complaint therefore provide the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiff alleges have been violated, including the facts and relevant theories alleged against TXRH El Cajon LLC and any other named Defendants and joint employers. To prevent the violations described in the Complaint and herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

Wherefore we request that you advise us, by certified mail within sixty days of the postmark on this letter, whether you intend to proceed with these claims or whether Plaintiff and the Aggrieved Employees should include them in an amended Labor Code § 2698 *et seq.* claim under the Act in an amended Complaint.

Regards,

D.LAW, INC

A handwritten signature in black ink, appearing to read 'Alvin B. Lindsay', written over a horizontal line.

Alvin B. Lindsay

a.lindsay@d.law

Jean Hopkins Power

j.power@d.law

Cc: TXRH EL CAJON LLC and Alisha Lapkewych by Certified Mail

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Attorneys for Plaintiff Brandon Johnson
on behalf of himself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

BRANDON JOHNSON, an individual, on
behalf of himself and others similarly
situated,

Plaintiff,

vs.

TXRH EL CAJON LLC, a California
Limited Liability Company; and DOES 1
through 50, inclusive,

Defendants.

Case No.:

CLASS ACTION

Assigned for All Purposes To:

Hon.

Dept.:

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages and for All Hours Worked;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Labor Code § 226.7;
4. Rest-Break Liability Labor Code § 226.7;
5. Reporting Time Pay under 8 CCR § 11040(5);
6. Failure to Pay On-Call Time Under Labor Code §§ 204, 510, 1194;
7. Violation of Labor Code § 226(a);
8. Violation of Labor Code § 221;
9. Violation of Labor Code § 204;
10. Violation of Labor Code § 203;
11. Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5;
12. Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802; and
13. Violation of Business & Professions Code § 17200 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff BRANDON JOHNSON (hereinafter “Plaintiff”), on behalf of himself and all
2 other similarly situated non-exempt, hourly employees employed by Defendants in California
3 during the relevant period (collectively, “Employees”; individually, “Employee”), complains of
4 Defendants as follows:

5 **INTRODUCTION**

6 1. Plaintiff brings this action on behalf of himself and all current and former
7 Employees within the State of California who, at any time during the four years prior to the filing
8 of this lawsuit, are or were employed as non-exempt, hourly employees by Defendants TXRH EL
9 CAJON LLC, a California Limited Liability Company; and DOES 1 through 50 (all defendants
10 being collectively referred to herein as “Defendants”). Plaintiff alleges that Defendants violated
11 various provisions of the California Labor Code, relevant orders of the Industrial Welfare
12 Commission (IWC), and California Business & Professions Code, and seeks redress for these
13 violations.

14 2. Plaintiff worked as a server at Defendants’ restaurants and facilities in California.
15 Defendants employed other similarly situated Class members as servers, bussers, dishwashers,
16 hosts, and in similar and related positions in connection to food and restaurant services they
17 provided to Defendants’ customers throughout California. Plaintiff and the other similarly situated
18 Class members worked at Defendants’ behest without being paid all wages due and without being
19 provided all required breaks. More specifically, Plaintiff and the other similarly situated Class
20 members were employed by Defendants and shared similar job duties and responsibilities, were
21 subjected to the same policies and practices, and endured similar violations at the hands of
22 Defendants as the other Employees who served in similar and related positions.

23 3. Defendants required Plaintiff and the Employees in the Class to work off the clock
24 and failed to record accurate time worked by these Employees, failed to pay them at the
25 appropriate rates for all hours worked, failed to pay all wages due and owing at termination or
26 resignation, and provided Plaintiff and the Class members with inaccurate wage statements that
27 prevented them from learning of these unlawful pay practices. Defendants also failed to provide
28 Plaintiff and the Class with lawful meal and rest periods, as Employees were required to remain

1 under Defendants' control and were not provided with the opportunity to take full uninterrupted,
2 timely, and duty-free rest periods and meal breaks, as required by the Labor Code and the
3 applicable paragraphs of the IWC Wage Orders.

4 4. Defendant TXRH EL CAJON LLC is a California Limited Liability Company
5 which lists its principal address with the California Secretary of State in San Diego, California
6 with its registered corporate agent located in Glendale, California. It lists its type of business as
7 "Restaurant." Defendant TXRH EL CAJON LLC is listed as the employer on the wage statements
8 issued to Plaintiff by Defendants, and upon information and belief to other Class members, with
9 the same San Diego address. Upon information and belief, TXRH EL CAJON LLC does business
10 as "Texas Roadhouse," and employs restaurant workers at restaurants and facilities throughout
11 California, including in San Diego County where Plaintiff predominantly worked. On information
12 and belief, Defendants maintain operations and locations throughout San Diego County and
13 California conducting business wherever their customers are located. TXRH EL CAJON LLC's
14 website explains that: "Texas Roadhouse is a legendary steak restaurant serving American cuisine
15 from the best steaks and ribs to made-from-scratch sides & fresh-baked rolls."

16 5. This Court has jurisdiction over this Action pursuant to California Code of Civil
17 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
18 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
19 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
20 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
21 obligations and liabilities giving rise to this lawsuit occurred, at least in part, in San Diego County,
22 where Defendants operate and employ Class members and are headquartered.

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

1 Complaint to reflect the true names and capacities of the Defendants designated herein as Does 1
2 through 50 when their identities become known.

3 7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
4 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
5 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
6 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
7 all respects as the employers or joint employers of Employees. Defendants, and each of them,
8 exercised control over the wages, hours or working conditions of Employees, created and
9 implemented the policies and practices that governed the employment of Plaintiff and the Class
10 members and dictated their job duties and responsibilities, or otherwise suffered or permitted
11 Plaintiff and the other Employee Class members to work, or engaged, thereby creating a common
12 law employment relationship, with the Employee Class members. Therefore, Defendants, and each
13 of them, employed or jointly employed the Employee Class members.

14 **FACTUAL BACKGROUND**

15 8. The Employees who comprise the Class, including Plaintiff, are non-exempt
16 employees of Defendants pursuant to the applicable Wage Order of the Industrial Welfare
17 Commission ("IWC"). During the period of four years prior to the filing of this action through its
18 resolution, Plaintiff and the Class members were employed by Defendants and either were not
19 paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and
20 overtime rates, including for meal period and rest break premium payments. Plaintiff also
21 contends that Defendants failed to pay him and the Class members all wages due and owing,
22 including by miscalculating wages owed and by requiring off the clock work, failed to provide
23 meal and rest breaks, and failed to furnish accurate wage statements and timely pay all wages
24 owed, all in violation of various provisions of the California Labor Code and applicable
25 paragraphs of the IWC Wage Orders.

26 9. During the course of Plaintiff's and the Class members' employment with
27 Defendants, they were not paid all wages they were owed, including for all work performed
28 (resulting in "off the clock" work) and for all their overtime hours worked, or were not paid at the

1 correct rates. This has resulted in systematic and ongoing violations of the California Labor Code
2 and relevant IWC Wage Orders. Upon information and belief, Defendants employ other non-
3 exempt, hourly employees as servers and in related positions based out of Defendants' restaurant
4 locations and facilities in California.

5 10. Plaintiff was employed by Defendant as a server. Plaintiff generally worked over
6 40 hours per week, five to six shifts per week, excluding on-call time. Plaintiff's scheduled hours
7 were generally from 4:00 p.m. through 10:30 p.m., 3:30 p.m. through 9:00 p.m., 4:00 p.m. through
8 10:00 p.m., and 5:00 p.m. through 11:00 pm. 8:00 a.m. through 4:30 p.m., and he habitually
9 worked on-call. Plaintiff was assigned to be on an on-call schedule that required him to work
10 immediately upon notification of a required work shift. Many times, Defendants' computer
11 system, the one that set and issued the "on call" schedule, was down, and Plaintiff was required to
12 report to work to determine if he was scheduled for that day and to find out if he would be paid for
13 any actual hours worked or reporting time or on-call hours or time when he was under Defendants'
14 control.

15 11. Despite their obligation to maintain accurate timekeeping records for hours worked
16 by their Employees, Defendants maintained improper time record-keeping systems across their
17 California restaurants and facilities. Defendants required Plaintiff and the other Class members to
18 clock in and out on the register, which was also utilized for inputting food orders and other point
19 of sale functions. There was often a line to clock in and out because other servers would be
20 occupied on the register inputting orders and those waiting to clock in or out and were unable to
21 do so. Moreover, on many occasions, a manager would purposely input orders slowly to taunt and
22 chide Plaintiff and cause him and other Class Members to endure off the clock work that went
23 unpaid. Plaintiff and Class members often suffered late and interrupted meal breaks. Employees
24 were nevertheless also instructed to record a compliant meal period of 30 minutes, even when they
25 did not actually take one or did so untimely or for less than 30 minutes.

26 12. On information and belief, Defendants' flawed timekeeping systems thus failed to
27 accurately record Employees' actual time worked to the detriment of Employees. To maintain the
28 appearance of compliance with Labor laws, Defendants also demanded that Employees record a

1 thirty-minute meal period. In doing so, Defendants effectively automatically deducted thirty-
2 minute meal periods from Employees' time worked. By virtue of deducting thirty minutes for
3 meal periods and manipulating daily hours actually worked to conform to scheduled hours,
4 Defendants further unlawfully deducted many hours Employees actually worked from the total
5 hours Defendants recorded for them for payroll purposes during the relevant pay period.

6 13. The failure to maintain accurate timekeeping and payroll records perpetrated by
7 Defendants has also been exacerbated by other off the clock work Defendants required their
8 Employees to endure. Plaintiff was required to spend 2-3 minutes per day checking his mobile
9 phone to ascertain his work schedule. Further, Plaintiff and Class members were required to
10 complete annual training required by HR while off the clock. Furthermore, Defendants required
11 Employees to periodically watch webinars such as workplace harassment training and learning
12 management system training outside of scheduled work hours without compensation.

13 14. Thus, all of Plaintiff's pre- or post-shift time worked, and on information and belief
14 that of other Class members, went uncompensated. Employees were also expected to access the
15 Defendants' portal outside of work hours to learn about their shift times without receiving any
16 compensation for this time.

17 15. Defendants also required that Employees participate in an on-call schedule without
18 proper compensation. During on-call shifts, Plaintiff and Class members remain under the control
19 of Defendants while waiting for notification of their shifts. Employees are thus required to remain
20 under Defendants' control while also being restricted from engaging in personal activities or
21 otherwise using their time for their own purposes. When Defendants' work portal was down, as it
22 frequently was, employees were required to arrive to Defendants' workplace in person to
23 determine if they were scheduled to work. If the employees were not scheduled to work, they
24 were not paid by the Defendants.

25 16. Defendants also had a policy of providing a free meal under \$12.99 to employees
26 to be consumed only off the clock. This usually resulted in a 30% off discount on meals and free
27 bread and a house salad. However, to whatever extent Defendant provided this other form of
28 remuneration besides their regular hourly rate to Employees in the Class, Defendants failed to

1 include its value in the regular hourly rate used to calculate and pay the overtime that Defendants
2 did pay.

3 17. Defendants also failed to pay reporting time pay to Plaintiff and Class members.
4 On several occasions, Plaintiff reported to on-call work, was told he was not on the schedule and
5 Defendants failed to pay Employees in such instances for half of their usual or scheduled day's
6 work, at the correct regular rate of pay.

7 18. Defendants followed a similar unlawful practice, upon information and belief, in
8 connection with other Employees in a concerted effort to limit and restrict regular and overtime
9 hours earned by and owing to Plaintiff and the other Class members. Time worked off the clock
10 also caused Plaintiff and other Class members to work beyond eight hours in a shift. As a result
11 of the above-described off the clock work, Defendants failed to pay Plaintiff and Class members
12 overtime for several minutes to hours at the end of work shifts which Defendants did not record
13 in any timekeeping or payroll records.

14 19. Plaintiff was therefore not paid for all his hours worked at the required minimum,
15 overtime and double time wage rates due to Defendants' policy and practice of requiring him to
16 work off the clock and without pay. With work shifts generally scheduled for eight hours or
17 more, this unpaid off the clock work resulted in Plaintiff and the Class members working past
18 eight hours on a shift, which required that they be paid at the correct overtime rate of 1.5 times
19 their regular rate. Defendants thus systematically underpaid Plaintiff and the Class members by
20 failing to pay them at the required overtime rates for all hours over eight in a work shift or over
21 forty in a work week, and all hours over twelve in a day at the required double time rate. Upon
22 information and belief, the Class members were bound by similar scheduling and work policies
23 which Defendants required them to follow and endured similar violations at Defendants' hands as
24 Plaintiff.

25 20. Defendants have either failed to maintain timekeeping records for Plaintiff that
26 would permit Plaintiff to discover the nature and extent of the off the clock work Defendants
27 required and the actual hours Plaintiff worked or have otherwise declined to produce them to
28 Plaintiff in response to a timely and lawful request. By failing to pay for all hours worked,

1 Defendants have committed knowing and intentional ongoing violations of the record keeping
2 requirements under the Labor Code §§ 226 and 1174.

3 21. As a result of the above-described unlawful requirements to work off the clock,
4 the failure to accurately record all hours worked and the other wage violations they endured at
5 Defendants' hands, Plaintiff and the Class members were not properly paid all wages earned and
6 all wages owed to them by Defendants, including when working more than eight hours in any
7 given day and/or more than forty hours in any given week. As a result of Defendants' unlawful
8 policies and practices, Plaintiff and Class members incurred overtime hours worked for which
9 they were not adequately and completely compensated, in addition to the hours they were
10 required to work off the clock at their regular rates.

11 22. The failure to pay for all hours worked and underpayment of wages to Plaintiff
12 and the Class members is and has been a direct consequence of Defendants' unlawful
13 compensation policies and practices, which upon information and belief applied uniformly to the
14 Class members working based out of Defendants' restaurants and facilities. As a result of the
15 above-described unlawful requirements to work off the clock and regular rate miscalculation, the
16 failure to accurately record all hours worked and pay wages at the correct rates, and on-call time
17 and other wage violations they endured at Defendants' hands, Plaintiff and the Class members
18 were not properly paid all wages earned and all wages owed to them by Defendants, including
19 when working more than eight hours in any given day and/or more than forty hours in any given
20 week.

21 23. Therefore, from at least four years prior to the filing of this lawsuit and continuing
22 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
23 hours worked and failing to pay minimum wages for all time worked, as required by California
24 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
25 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation
26 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a
27 week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of
28 Labor Code § 510 and the corresponding sections of IWC Wage Orders. To the extent Defendants

1 paid Plaintiff and the Class members other forms of remuneration above and beyond their hourly
2 pay, upon information and belief Defendants miscalculated and therefore underpaid any overtime
3 they paid during these pay periods by failing to include all forms of remuneration in the regular
4 rate used to calculate and pay overtime.

5 24. Defendants also failed to provide Plaintiff and the Class members with their
6 required meal periods, and the at least two ten-minute rest breaks required for scheduled shifts of
7 eight hours. Demanding workloads contributed to Defendants' common policy of failing to
8 provide lawful meal periods to Plaintiff and the Class members, as required under the Labor Code
9 and Paragraph 11 of the IWC Wage Order(s). Defendants similarly systematically failed to
10 authorize and permit Plaintiff and the employee Class Members to take all required 10-minute
11 rest breaks, as required under the Labor Code and Paragraph 12 of the IWC Wage Order(s).

12 25. More specifically, Plaintiff worked shifts that entitled him to at least one meal
13 period, but Defendants' required Plaintiff and the Class members to prioritize work over taking
14 proper meal periods. In fact, Defendants made no effort to even schedule or otherwise account for
15 time for Plaintiff and the Class members to use for duty-free, net thirty minute meal periods.
16 Moreover, Plaintiff was prohibited from leaving the customers' premises for meal periods and rest
17 breaks. To the extent Defendants required Plaintiff to work over ten hours on a work shift,
18 Defendants also failed to provide second meal periods and Defendants have produced no evidence
19 of premium payments for meal period violations under Labor Code 226.7.

20 26. Defendants thus failed to provide all the legally required unpaid, off-duty meal
21 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
22 members, as required by the applicable Wage Order and Labor Code. Plaintiff and other Class
23 members were required to perform work as ordered by Defendants for more than five hours during
24 a shift without receiving compliant meal periods. Additionally, as addressed above, Defendants
25 followed a practice of requiring off the clock work in a manner that would impact when
26 Employees were to receive meal periods and rest breaks and required them to respond to work
27 demands during breaks, thus leading to further violations.

28

1 27. Upon information and belief, Defendants' systems did not automatically generate a
2 meal period premium under Labor Code § 226.7 for meal periods that commenced after five hours
3 into a work shift or in the event the time punch records reflected a meal period of less than thirty
4 minutes. However, upon information and belief, in the event Defendants did pay any meal period
5 premiums, they did so at the employee's customary regular rate of hourly compensation without
6 including all forms of remuneration in that hourly rate calculation from the rate at which meal
7 premiums were paid.

8 28. As a result, Defendants' failure to provide Plaintiff and the Class members with all
9 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
10 periods is and will be evidenced by Defendants' business records, or lack thereof. Therefore, for at
11 least four years prior to the filing of this action and through to the present, Plaintiff and the Class
12 members were unable to take off-duty breaks or were otherwise not provided with the opportunity
13 to take required breaks as required under the Labor Code and Wage Orders due to Defendants'
14 policies and practices. On the occasions when Plaintiff and the Class members were provided with
15 a meal period, it was often untimely or interrupted, or was impermissibly shortened, and
16 Employees were not provided with one hour's wages in lieu thereof. Meal period violations thus
17 occurred in one or more of the following manners:

- 18 (a) Class members were not provided full thirty-minute duty free meal periods
19 for work days in excess of five hours and were not compensated one hour's
20 wages in lieu thereof, all in violation of, among others, Labor Code §§
21 226.7, 512, and the applicable Industrial Welfare Commission Wage
22 Order(s);
- 23 (b) Class members were not provided second full thirty-minute duty free meal
24 periods for work days in excess of ten hours;
- 25 (c) Class members were required to work through at least part of their daily
26 meal period(s);
- 27 (d) Meal periods were provided after five hours of continuous work during a
28 shift; and

1 (e) Class members were restricted in their ability to take a full thirty-minute
2 meal period and were not permitted to leave their work premises during
3 meal periods and were otherwise required to remain under Defendants'
4 control during meal periods.

5 29. Similar violations resulted from Defendants' failure to authorize and permit
6 Plaintiff and the Class members to take duty-free, net ten minute rest breaks for every four hours
7 of shift work, or major fraction thereof. Plaintiff and the other similarly situated Class members
8 were either not authorized or permitted the opportunity to take a rest break, or were required to
9 remain under Defendants' control and respond to instructions from management and job and
10 customer demands if and when they even attempted to take one. Upon information and belief,
11 Defendants also failed to authorize and permit employees to leave the worksite during rest breaks,
12 evidencing Defendants' policy and practice of requiring Plaintiff and the Class members to
13 remain under their control during required off-duty rest break times.

14 30. Defendants thus failed to authorize and permit duty-free ten minute rest breaks as
15 required under the Labor Code and IWC Wage Orders. In fact, Defendants made no effort to even
16 schedule or otherwise account for time for Plaintiff and the Class members to use for duty-free,
17 net ten minute rest breaks. This common and unlawful policy uniformly applied to the Employees
18 during the relevant period, meaning Defendants' rest break policy was not to schedule or
19 otherwise authorize and permit them. Plaintiff and the Class members worked eight to twelve
20 hours on an average shift, and were required to receive at least two rest breaks or three rest breaks
21 on shifts over ten hours. Given the work demands, and pressure from Defendants' management,
22 Plaintiff and the Class members were compelled to not take rest breaks despite working extended
23 shifts. Defendants have produced no evidence of any payments for rest break violations under
24 Labor Code § 226.7. To the extent Defendants have paid any such premiums, upon information
25 and belief they failed to include all forms of remuneration, including in the regular rate at which
26 Defendants paid the premium.

27 31. Defendants' uniformly applied policies and practices thus resulted in untimely and
28 shortened or on-duty rest breaks when they were authorized and permitted. Plaintiff and the Class

1 members worked shifts of at least eight hours, which required at least two rest breaks, and often
2 worked shifts over ten hours, which required at least three rest breaks. Even on the occasions
3 when Defendants authorized and permitted Plaintiff to take a first rest break, he was not
4 permitted to take a second or a third break, and those that were provided were often late and
5 generally interrupted by job duties and requirements.

6 32. During rest periods, employers must relieve employees of all duties and relinquish
7 control over how employees spend their time. Plaintiff and the Class members were and are under
8 Defendants' control when they are working through rest breaks and remaining under Defendants'
9 control. Defendants have also provided either impermissibly shortened or untimely meal and rest
10 breaks to Plaintiff and the Class members. Plaintiff and the Employees in the Class were thus not
11 authorized and permitted to take lawful rest periods, were systematically required by Defendants
12 to work through or during breaks, and were not provided with one hour's wages in lieu thereof.
13 They were required to remain on-duty during breaks or portions of their breaks, thus making
14 them either untimely or shortened and on-duty, and they were also prevented from leaving the
15 worksite and otherwise remain under Defendants' control during rest breaks under Defendants'
16 uniformly applied policies and practices. Rest period violations therefore arose in one or more of
17 the following manners:

- 18 (a) Class members were required to work without being provided a minimum
19 ten minute rest period for every four hours or major fraction thereof worked
20 and were not compensated one hour of pay at their regular rate of
21 compensation for each workday that a rest period was not provided, and to
22 the extent Defendants paid any premiums, they failed to include all forms of
23 remuneration in the regular rate used to calculate and pay them.
- 24 (b) Class members were not authorized and permitted to take timely rest periods
25 for every four hours worked, or major fraction thereof;
- 26 (c) Class members were required to remain on duty and under Defendants'
27 control during rest periods or otherwise had their rest periods interrupted by
28 work demands.

1 33. From at least four years prior to the filing of this lawsuit and continuing to the
2 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
3 deducting the Employees' earned wages, including by requiring off the clock work during breaks
4 and before and after work shifts and by miscalculating the regular rate and accordingly
5 underpaying overtime wages and meal and rest break premiums. By not compensating Employees
6 for all hours worked at the correct rates, Defendants unlawfully deducted wages earned by and
7 owed to Plaintiff and the Class members, in violation of Labor Code § 221.

8 34. Defendants also violated California Labor Code § 246 by not providing all
9 required paid sick days to Plaintiff and the similarly aggrieved Employees. Labor Code § 246
10 provides that an Employee who "works in California for the same employer for 30 or more days
11 within a year from the commencement of employment is entitled to paid sick days as specified in
12 this section." Paid sick time for nonexempt employees shall be calculated in the same manner as
13 the regular pay rate for the workweek in which the employee uses the paid sick time. Defendants
14 failed to provide Plaintiff and the other similarly Aggrieved Employees with all their required and
15 earned sick days paid at the correct rate of pay, in violation of Labor Code § 246. Additionally
16 and upon information and belief, Defendants have failed to provide COVID-19 supplemental sick
17 leave to the Class members during the relevant time period, including by failing to provide two
18 work weeks of COVID-19 supplemental paid sick leave paid at the correct rates as required under
19 Labor Code §§ 248.1 and 248.2 and including damages and penalties as these sections are
20 enforced through Labor Code § 248.5, which requires that: "If paid sick days were unlawfully
21 withheld, the dollar amount of paid sick days withheld from the employee multiplied by three, or
22 two hundred fifty dollars (\$250), whichever amount is greater, but not to exceed an aggregate
23 penalty of four thousand dollars (\$4,000), shall be included in the administrative penalty."
24 Plaintiff accordingly seeks this relief available for Defendants' failure to provide Employees with
25 all their required and earned sick days and all their COVID-19 supplemental sick leave in
26 violation of Labor Code §§ 246, 248.1, 248.2, and the civil and statutory penalties available and
27 applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and
28 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

1 35. Upon information and belief, Defendants also failed to provide Employees such as
2 Plaintiff at the time of his employment and thereafter with written notice complying with all the
3 requirements of Labor Code § 2810.5, which provides that: “At the time of hiring, an employer
4 shall provide to each employee a written notice, in the language the employer normally uses to
5 communicate employment-related information to the employee, containing” specific required
6 information. Upon information and belief, Defendants failed to provide this information to the
7 Aggrieved Employees as required under Labor Code § 2810.5. Defendants were required to
8 provide Plaintiff and the aggrieved employee Class members certain specific information upon
9 hiring pursuant to California Labor Code § 2810.5. Defendants failed to provide Plaintiff with
10 any such information when he was hired, or have failed to produce it, and upon information and
11 belief Defendants committed similar violations in connection with similarly situated and
12 aggrieved Class members.

13 36. As a result of these illegal policies and practices, Defendants also engaged in and
14 enforced the following additional unlawful practices and policies against Plaintiff and the Class
15 members he seeks to represent:

- 16 (a) failing to pay all wages owed to Class members who either were discharged,
17 laid off, or resigned in accordance with the requirements of Labor Code §§
18 201, 202, 203;
- 19 (b) failing to pay all wages owed to the Class members twice monthly in
20 accordance with the requirements of Labor Code § 204;
- 21 (c) failing to pay Class members all wages owed, including all meal and rest
22 period premium wages, and failing to pay them at the regular rate of
23 compensation; and
- 24 (d) failing to maintain accurate records of Class members’ hours worked and
25 earned wages and meal periods in violation of Labor Code §§ 226 and
26 1174(d) and section 7 of the applicable IWC Wage Orders.

27 37. Defendants have also consistently failed to provide Class members with timely,
28 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws,

1 including by the above-described requirement of off the clock work, failure to pay all overtime
2 and double time wages owed and failure to pay them at the appropriate premium rates, and failure
3 to pay premium wages for unprovided or otherwise unlawful meal and rest breaks, or by
4 miscalculating any overtime or meal period or rest break premium wages and by the systematic
5 and unlawful deductions Defendants took from Employee wages. Defendants have also made it
6 difficult to account with precision for the unlawfully withheld wages and meal and rest period
7 compensation owed to Plaintiff and the Class, during the liability period, including because they
8 did not calculate the regular rate of pay correctly when paying overtime or meal period premiums
9 and because they did not implement and preserve a record-keeping method as required for non-
10 exempt employees by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable
11 California Wage Orders. Upon information and belief, time clock punches were not maintained or
12 were not accurately maintained for work shifts and meal periods. Defendants also failed to
13 accurately record and pay for all regular and overtime hours worked and submitted by Plaintiff
14 and the Class members, including by failing to pay all overtime hours at the correctly calculated
15 overtime premium rate.

16 38. Defendants also provided Plaintiff and the Class members with wage statements
17 that failed to accurately report all hours worked and applicable hourly rates for all hours worked.
18 For the same reasons as explained above, Plaintiff and the Class members were provided with
19 unlawful wage statements that failed to reflect all hours worked and failed to pay for all overtime
20 hours or failed to pay overtime wages at the correct overtime premium rate, and Defendants
21 miscalculated meal and rest break premiums, and sick time if and when they did pay them.
22 Defendants followed this unlawful policy and practice even though both Plaintiff and Defendants
23 were aware that Plaintiff and the Class members worked more total hours than were reflected on
24 the wage statements, including overtime hours, and were underpaid by regular rate miscalculation.
25 Plaintiff and the Employees in the Class were unable to discern from their wage statements alone
26 the actual hours they worked in total during a pay period and the rates they were paid for those
27 hours worked.

1 39. Defendants have thus willfully failed to comply with Labor Code § 226(a) by
2 inaccurately reporting total hours worked and total wages earned by Plaintiff and the Class
3 members, along with the appropriate applicable rates, among others requirements. Plaintiff and
4 Class members are therefore entitled to penalties not to exceed \$4,000.00 for each employee
5 pursuant to Labor Code § 226(b). Defendants have also failed to comply with paragraph 7 of the
6 applicable California IWC Wage Orders by failing to maintain time records showing when the
7 employee begins and ends each work period, meal periods, and wages earned pursuant to Labor
8 Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from
9 payment of wages and accurately reporting total hours worked.

10 40. Defendants also required Plaintiff and the Class members to work hours off the
11 clock for which they were not compensated. They were required to endure off the clock work
12 addressed above, including during interrupted or otherwise on-duty meal and rest periods and were
13 not provided with sick pay and supplemental sick leave and were subjected to systematic off the
14 clock work. Defendants also failed to pay all overtime premium wages owed for work conducted
15 on a work shift and a workday or failed to pay it at the correct rate, as addressed above. Therefore,
16 Defendants have also followed a uniform and consistent policy of failing to pay all wages owed to
17 Plaintiff and other similarly situated Employees at the time of their termination or within seventy-
18 two hours of their resignation, as required by California law, including Labor Code § 203.

19 41. Additionally, from at least four years prior to the filing of this lawsuit and
20 continuing to the present, Defendants have regularly required Plaintiff and the Class members to
21 incur necessary business expenses in the course of performing their required job duties without
22 reimbursement. These included the required purchase of non-slip shoes for work, pens for writing
23 down orders, and uniform maintenance Plaintiff incurred in connection with performing his work
24 duties. Class members must be reimbursed for these necessary business expenses under Labor
25 Code § 2802, and Defendants systematically failed to do so.

26 42. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
27 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.4,
28 226.7, 246, 248.1, 248.2, 248.5, 510, 511, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1182.12, 1185,

1 1194, 1194.2 1197, 1198, 1198.5, 1199, 2802, 2810.5, and California Code of Regulations, Title
2 8, section 11000 *et seq.*

3 43. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff
4 and the Class members seek injunctive relief, restitution, and disgorgement of all benefits
5 Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or
6 fraudulent practices alleged in this Complaint.

7 **CLASS ALLEGATIONS**

8 44. Plaintiff brings this class action on behalf of himself, and all others similarly
9 situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the
10 Class” or “Class members”) defined as follows: “All individuals employed by Defendants at any
11 time during the period of four (4) years prior to the filing of this lawsuit and ending on a date as
12 determined by the Court (“the Class Period”), and who have been employed as non-exempt,
13 hourly employees within the State of California.” This includes servers, bussers, dishwashers,
14 hosts, and others in similar and related positions in connection to food and restaurant services they
15 provided to Defendants’ customers throughout California. Further, Plaintiff seeks to represent the
16 Subclasses composed of and defined as follows:

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

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

22 c. Subclass 3. Meal Period Subclass. All Class members who were subject to
23 Defendants’ policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-
24 free meal periods or one hour of pay at the Employee’s regular rate of pay in lieu thereof.

25 d. Subclass 4. Rest Break Subclass. All Class members who were subject to
26 Defendants’ policy and/or practice of failing to authorize and permit Employees to take
27 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
28 thereof, and failing to pay one hour of pay at the Employee’s regular rate of pay in lieu thereof.

1 e. Subclass 5. Reporting Time Pay Subclass: All Class members who were not
2 compensated reporting time pay.

3 f. Subclass 6. On-Call Subclass: All Class members who were not compensated for
4 all hours worked for Defendants at the required rates of pay, including for all hours worked in
5 excess of eight in a day and/or forty in a week while they were on-call.

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

8 h. Subclass 8. Unauthorized Deductions from Wages Subclass. All Class members
9 who were subject to Defendants' policy and/or practice of deducting wages earned from their pay,
10 including by requiring off the clock work.

11 i. Subclass 9. Failure to Timely Pay Wages Twice Monthly Subclass. All Class
12 members who were subject to Defendants' policy and practice of not timely paying all wages
13 earned when they were due and payable at least twice monthly.

14 j. Subclass 10. Termination Pay Subclass. All Class members who, within the
15 applicable limitations period, either voluntarily or involuntarily separated from their employment
16 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
17 termination.

18 k. Subclass 11. Payroll Records Subclass. All Class members who were subject to
19 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
20 by California wage-and-hour laws.

21 l. Subclass 12. Expense Reimbursement Subclass. All Class members who incurred
22 necessary and reasonable expenses in connection with performing their job duties for Defendants
23 and who were subject to a policy and/or practice under which such expenses were not reimbursed.

24 m. Subclass 13. UCL Subclass. All Class members who are owed restitution as a
25 result of Defendants' business acts and practices, to the extent such acts and practices are found to
26 be unlawful, deceptive, and/or unfair.

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

1 or limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class
2 against Defendants, the Class Period should be adjusted accordingly.

3 46. Defendants, as a matter of company policy, practice and procedure, and in violation
4 of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements,
5 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged
6 in a practice whereby Defendants failed to correctly calculate and pay compensation for the time
7 worked by Plaintiff and the other members of the Class, even though Defendants enjoyed the
8 benefit of this work, required Employees to perform this work and permitted or suffered to permit
9 this work. Defendants have uniformly denied these Class members wages to which these
10 employees are entitled, and failed to provide meal periods or authorize and permit rest periods, in
11 order to unfairly cheat the competition and unlawfully profit.

12 47. This action has been brought and may properly be maintained as a class action
13 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
14 of interest in this litigation and the proposed Class is easily ascertainable from the employment
15 records for Plaintiff and the Class members that Defendants are required to maintain under
16 California law.

17 **A. Numerosity**

18 48. The potential members of the Class as defined are so numerous that joinder of all
19 the Class members is impracticable. While the precise number of Class member has not been
20 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
21 time period relevant to this lawsuit employed, at least hundreds of Employees who satisfy the
22 Class definition within the State of California. Plaintiff alleges that Defendants’ employment
23 records will provide information as to the number and location of all Class members.

24 **B. Commonality**

25 49. There are questions of law and fact common to the Class that predominate over any
26 questions affecting only individual Class members. The common questions are numerous and
27 substantial and flow from Defendants’ uniform policies and/or practices of violating the California
28 Labor Code addressed above. As such, these common questions predominate over individual

1 questions concerning each individual Class Member's showing as to his or her eligibility for
2 recovery or as to the amount of damages. These common questions of law and fact include:

- 3 a. Whether Defendants failed to pay Employees minimum wages;
- 4 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 5 c. Whether Defendants failed to pay Employees overtime as required under Labor
6 Code § 510;
- 7 d. Whether Defendants paid reporting time pay under the applicable wage order and 8
8 CCR § 11040(5);
- 9 e. Whether Defendants failed to compensate Employees for on-call time;
- 10 f. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
11 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
12 premium pay in lieu thereof;
- 13 g. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
14 Orders, by failing to authorize and permit Employees to take requisite rest breaks,
15 or provide premium pay in lieu thereof;
- 16 h. Whether Defendants violated Labor Code § 226(a) by providing Employees with
17 inaccurate wage statements and wage statements that omitted many of the Section
18 226(a) requirements.
- 19 i. Whether Defendants violated Labor Code § 221;
- 20 j. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
21 wages and compensation due and owing at the time of termination of employment;
- 22 k. Whether Defendants' conduct was willful;
- 23 l. Whether Defendants violated Labor Code § 226 and § 1174 and §1198 and the
24 IWC Wage Orders by failing to maintain accurate records of Class members'
25 earned wages and work periods;
- 26 m. Whether Defendants violated Labor Code § 1194 by failing to compensate all
27 Employees during the relevant time period for all hours worked, whether regular or
28 overtime;

- 1 n. Whether Defendants violated Labor Code § 204 by failing to pay Employees all
2 wages earned at least twice monthly;
- 3 o. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary
4 business expenses incurred by Employees;
- 5 p. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not
6 providing employees with all required sick days and COVID-19 supplemental sick
7 leave;
- 8 q. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- 9 r. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 10 s. Whether Employees are entitled to equitable relief pursuant to Business and
11 Professions Code § 17200 *et seq.*

12 **C. Typicality**

13 50. The claims of the named Plaintiff are typical of those of the other Employees. The
14 Employee Class members all sustained injuries and damages arising out of and caused by
15 Defendants' common course of conduct and uniformly applied policies in violation of statutes, as
16 well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for
17 the off the clock work and meal and rest violations he was required to endure are typical of those
18 of the other Class members.

19 **D. Adequacy of Representation**

20 51. Plaintiff will fairly and adequately represent and protect the interest of the
21 Employee Class members. Counsel who represents Plaintiff and the Employees in the Class are
22 experienced and competent in litigating employment class actions.

23 **E. Superiority of Class Action**

24 52. A class action is superior to other available means for the fair and efficient
25 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
26 questions of law and fact common to all Employees predominate over any questions affecting only
27 individual Employees. Each Employee in the Class has been damaged and is entitled to recovery
28 by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

1 53. As to the issues raised in this case, a class action is superior to all other methods for
2 the fair and efficient adjudication of this controversy, as joinder of all Class members is
3 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class
4 members. Further, as the economic or other loss suffered by vast numbers of Class members may
5 be relatively small, the expense and burden of individual actions makes it difficult for the Class
6 members to individually redress the wrongs they have suffered. Moreover, in the event
7 disgorgement is ordered, a class action is the only mechanism that will permit the employment of
8 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
9 managing this case as a class action, and proceeding on a class-wide basis will permit Employees
10 to vindicate their rights for violations they endured which they would otherwise be foreclosed
11 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

12 54. Class action treatment will allow those persons similarly situated to litigate their
13 claims in the manner that is most efficient and economical for the parties and the judicial system.
14 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
15 Plaintiff contemplates the eventual issuance of notice to the proposed Class members that would
16 set forth the subject and nature of the instant action. The Defendants' own business records can be
17 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent
18 that any further notice is required additional media and/or mailings can be used.

19 55. Defendants, as prospective and actual employers of the Employees in the Class,
20 had a special fiduciary duty to disclose to prospective Class members the true facts surrounding
21 Defendants' pay practices, policies and working conditions imposed upon the similarly situated
22 Employees as well as the effect of any alleged arbitration agreements that may have been forced
23 upon them. In addition, Defendants knew they possessed special knowledge about pay practices
24 and policies, most notably intentionally refusing to pay for all hours actually worked which should
25 have been recorded in Defendants' pay records and the consequence of the alleged arbitration
26 agreements and policies and practices on the Employees and Class as a whole.

27 56. Plaintiff and the Employees in the Class did not discover the fact that they were
28 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there

1 any discussion about Plaintiff's and the Class members' waiver of their Constitutional rights of
2 trial by jury, to collectively organize and oppose unlawful pay practices under California law as
3 well as obtain injunctive relief preventing such practices from continuing. As a result, the
4 applicable statutes of limitation tolled until such time as Plaintiff and the Class members
5 discovered their claims.

6 **FIRST CAUSE OF ACTION**
7 **FAILURE TO PAY MINIMUM WAGES**
8 **(Against All Defendants)**

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

11 58. Defendants failed to pay Employees minimum wages for all hours worked.
12 Defendants had a consistent policy of failing to pay Employees for all hours worked. Employees
13 would work hours and not receive wages, including as alleged above in connection with off the
14 clock work, including all the time required to remain on duty and under Defendants' control
15 during breaks and due to the work demands placed upon them by Defendants' management and
16 by paying what should have been overtime hours as regular hours. Defendants' uniformly applied
17 policies required systematic off the clock work and underpayment of all wages owed to
18 Employees over a period of time, while benefiting Defendants. During the relevant time period,
19 Defendants thus regularly failed to pay minimum wages to Plaintiff and the Class members,
20 including by requiring systematic off the clock work. To the extent any local wage ordinances
21 were also applicable to paying the employees an hourly rate above the minimum wage rate,
22 Defendants failed to comply with the local wage ordinances. To the extent any prevailing rates
23 and fringe benefits were also applicable to paying the employees an hourly rate above the
24 minimum wage rate, Defendants failed to comply with the prevailing rate requirements.
25 Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation,
26 applicable to the Class as a whole, as a result of implementing a uniform policy and practice that
27 denied accurate compensation to Plaintiff and the other members of the Class as to minimum
28 wage pay.

1 59. In California, employees must be paid at least the applicable state minimum wage
2 for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and
3 paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Also, pursuant to
4 California Labor Code § 204, other applicable laws and regulations, and public policy, an
5 employer must timely pay its employees for all hours worked. Defendants failed to do so.

6 60. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage”
7 states: “The minimum wage for employees fixed by the commission is the minimum wage to be
8 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The
9 applicable minimum wage rate fixed by the commission for work during the relevant period is
10 found in the Wage Orders.

11 61. The minimum wage provisions of California Labor Code are enforceable by private
12 civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to
13 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
14 overtime compensation applicable to the employee is entitled to recover in a civil action the
15 unpaid balance of the full amount of this minimum wage or overtime compensation, including
16 interest thereon, reasonable attorney’s fees and costs of suit.”

17 62. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
18 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
19 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
20 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
21 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
22 the absence of a contractually agreed upon one.

23 63. In committing these violations of the California Labor Code, Defendants
24 inaccurately recorded, or required Plaintiff and the Class members to input times that did not
25 reflect their actual hours worked, or miscalculated hours or rates or otherwise underpaid the actual
26 time worked by Plaintiff and other members of the Class, including by requiring off the clock
27 work as addressed in detail above. Defendants acted in an illegal attempt to avoid the payment of
28 all earned wages, and other benefits in violation of the California Labor Code, the Industrial

1 Welfare Commission requirements and other applicable laws and regulations. As a result of these
2 violations, Defendants also failed to timely pay all wages earned in accordance with California
3 Labor Code § 1194.

4 64. California Labor Code § 1194.2 also provides for the following remedies: “In any
5 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
6 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
7 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

8 65. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
9 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial
10 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
11 pay each employee minimum wages.

12 66. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are
13 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
14 interest thereon.

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

18 68. Plaintiff and the Class members are entitled to recover the unpaid minimum wages
19 (including double minimum wages) and local wage ordinance wages and liquidated damages in an
20 amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s
21 fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other
22 members of the Class further request recovery of all unpaid wages, according to proof, interest,
23 statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as
24 provided by the California Labor Code and/or other applicable statutes. To the extent minimum
25 wage compensation is determined to be owed to the Class members who have terminated their
26 employment, Defendants’ conduct also violates Labor Code §§ 201 and/or 202, and therefore
27 these individuals are also be entitled to waiting time penalties under California Labor Code § 203,
28 which penalties are sought herein on behalf of these Class members. Defendants’ failure to timely

1 pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code §
2 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as
3 alleged herein was willful, intentional, and not in good faith. Further, Plaintiff and other Class
4 members are entitled to seek and recover statutory costs.

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

7 **(Against All Defendants)**

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

10 70. California Labor Code § 1194 provides that "any employee receiving less than the
11 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
12 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
13 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action
14 may be maintained directly against the employer in an employee's name without first filing a
15 claim with the Division of Labor Standards and Enforcement.

16 71. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
17 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the
18 Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular
19 hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40)
20 hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any
21 one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12)
22 hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of
23 work in a workweek.

24 72. Defendants had a consistent policy of not paying Employees wages for all hours
25 worked, including by requiring off the clock work as addressed above, by unlawful deductions, by
26 under-reporting actual hours worked, and by requiring Employees to do so as well. Defendants
27 have also failed to include all forms of remuneration in the regular rate of pay used to calculate
28 and pay overtime, and failed to begin paying overtime when it was incurred due to the off the

1 clock work, as detailed above.

2 73. Defendants thus had a consistent policy of not paying Employees wages for all
3 hours worked, including hours at their required regular, overtime, and double-time rates.
4 Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted
5 and/or modified certain employees' hours, including Plaintiff's, or required Plaintiff and the Class
6 members to do so, or otherwise caused them to work off the clock to avoid paying Plaintiff and the
7 Class members all earned and owed straight time and overtime wages and other benefits, in
8 violation of the California Labor Code, the California Code of Regulations and the IWC Wage
9 Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants
10 have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt
11 employees to work through meal periods or remain under Defendants' control when they were
12 required to be clocked out or to otherwise work off the clock to complete their daily job duties and
13 respond to demands from customers and managers.

14 74. Therefore, Employees were not properly compensated, nor were they paid overtime
15 rates for hours worked in excess of eight hours in a given day, and/or forty hours in a given week.
16 Based on information and belief, Defendants did not make available to Employees a reasonable
17 protocol for correcting time records when Employees worked overtime hours or to fix incorrect
18 time entries or those that Defendants unlawfully under-recorded to the Employee's detriment.
19 Defendants have also violated these provisions by requiring Plaintiff and other similarly situated
20 Class members to work through meal periods when they were required to be clocked out or to
21 otherwise work off the clock to complete their daily job duties.

22 75. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of
23 regular wages owed and overtime compensation for all hours worked, as required by California
24 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable
25 IWC Wage Order, and is therefore unlawful. Defendants also failed to correctly calculate the
26 regular rate used to calculate and pay overtime, and meal and rest premiums, as addressed above.

27 76. Additionally, Labor Code § 558(a) provides "any employer or other person acting
28 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any

1 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
2 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
3 pay period for which the employee was underpaid in addition to an amount sufficient to recover
4 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
5 underpaid employee for each pay period for which the employee was underpaid in addition to an
6 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
7 be paid to the affected employee.” Labor Code § 558(c) states, “the civil penalties provided for in
8 this section are in addition to any other civil or criminal penalty provided by law.” Defendants
9 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
10 Wage Orders. Accordingly, Plaintiff and the Class members seek the remedies set forth in Labor
11 Code § 558.

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

18 78. Employees have been damaged by these violations of California Labor Code §§
19 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
20 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less
21 than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions
22 of labor prohibited by an order of the commission” or if the employer pays “a wage less than the
23 minimum fixed by an order of the commission” or “violates...any provision of this chapter or
24 any order or ruling of the commission.”

25 79. Consequently, pursuant to the California Labor Code, including Labor Code §§
26 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including
27 paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of
28 all their unpaid wages and overtime compensation for all their hours worked, with interest, plus

1 their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties
2 against Defendants, and each of them, and any additional sums as provided by the Labor Code
3 and/or other statutes.

4 **THIRD CAUSE OF ACTION**

5 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

6 **(Against All Defendants)**

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

9 81. Employees regularly worked shifts greater than five (5) hours and in some
10 instances, greater than ten (10) hours. Pursuant to Labor Code § 512, and paragraph 11 of the
11 applicable IWC Wage Order, an employer may not employ someone for a shift of more than five
12 (5) hours without providing him or her with a meal period of not less than thirty (30) minutes or
13 for a shift of more than ten (10) hours without providing him or her with a second meal period of
14 not less than thirty (30) minutes.

15 82. Defendants failed to provide Employees with meal periods as required under the
16 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required
17 to work or to otherwise remain under Defendants' control during meal periods, or Defendants
18 provided them after Employees worked beyond the fifth hour of their shifts or Employees
19 otherwise had them shortened and interrupted by work demands and requirements to perform off
20 the clock work and remain under Defendants' control. Furthermore, upon information and belief,
21 on the occasions when Employees worked more than ten hours in a given shift, they did so
22 without receiving a second uninterrupted thirty-minute meal period as required by law.

23 83. Defendants thus failed to provide Plaintiff and the Class members with meal
24 periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,
25 including by not providing them with the opportunity to take meal breaks, by providing them late
26 or for less than thirty minutes, or by requiring them to perform work during breaks.

27 84. Moreover, Defendants failed to compensate Employees for each meal period not
28 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and

20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee a meal period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. As detailed above, on the occasions when Defendants did pay any meal period premiums, they upon information and belief underpaid them by miscalculating the regular rate of compensation by not including all forms of remuneration in it. Defendants thus failed to compensate the Employees in the Class for each meal period not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order.

85. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and other statutes and applicable IWC Wage Order paragraphs.

FOURTH CAUSE OF ACTION

REST-BREAK PERIOD LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

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

87. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders provide that employers must authorize and permit all employees to take rest periods at the rate of ten minutes net rest time per four (4) work hours.

88. Employees consistently worked consecutive four hour shifts and were generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for each consecutive four hour shift, and Defendants failed to provide Employees with timely rest

1 breaks of not less than ten minutes for each consecutive four hour shifts. Defendants made no
2 effort to authorize and permit Plaintiff and the Class members to take lawful rest breaks.
3 Employees were often required to work or to otherwise remain under Defendants' control during
4 rest periods, including by responding to work requirements, being prohibited from leaving the
5 worksites, and had breaks provided untimely as a result of the above described off the clock work.

6 89. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage
7 Orders provide that if an employer fails to provide an employee rest period in accordance with this
8 section, the employer shall pay the employee one hour of pay at the employee's regular rate of
9 compensation for each workday that the rest period is not provided. Defendants failed to do so.

10 90. Defendants, and each of them, have therefore intentionally and improperly denied
11 rest periods to Plaintiff and the Class members in violation of Labor Code §§ 226.7 and 512 and
12 paragraph 12 of the applicable IWC Wage Orders.

13 91. Defendants failed to authorize and permit Plaintiff and the Class members to take
14 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
15 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
16 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
17 12 and 20 of the applicable IWC Wage Orders. To the extent Defendants paid any rest break
18 premiums, they upon information and belief, underpaid them by miscalculating the regular rate of
19 compensation by not including all forms of remuneration in it. Defendants thus failed to
20 compensate the Employees in the Class for each rest period not provided or inadequately
21 provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC
22 Wage Order.

23 92. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the
24 applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one hour
25 of wages at their effective hourly rates of pay for each day worked without the required rest
26 breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against
27 Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

28

FIFTH CAUSE OF ACTION
FAILURE TO PAY REPORTING TIME PAY
UNDER WAGE ORDER 16-2001, 8 CCR § 11040(5)
(Against All Defendants)

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

94. Wage Order 4-2001 provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” Cal. Code Regs., tit. 8, § 11040(5)(A).

95. As set forth herein, Plaintiff and Employees were required to report for on-call work and were not paid at all if they were not assigned to a shift and were not paid for their on-call time. Defendants failed to pay Plaintiff and Employees for half of their scheduled days’ work in violation of the applicable Wage Order.

96. As a direct and proximate results of Defendants' actions as set forth herein, Plaintiff and the Class have been damaged in that Plaintiff and the Class have not been paid all required reporting time pay.

97. Consequently, pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 5(A-D), Defendants are liable to Employees for the full amount of all their unpaid wages, including reporting time pay, with interest, plus their reasonable attorneys’ fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes.

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SIXTH CAUSE OF ACTION
FAILURE TO PROVIDE ON-CALL PAY
UNDER LABOR CODE §§ 204, 510, 1194, and 8 CCR § 11160(3)(4)
(Against All Defendants)

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

99. Wage Order 16-2001 provides that “hours worked means the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” (*Internal quotations omitted*, Cal. Code Regs., tit. 8, § 11160(2)(J)).

100. As set forth herein, Defendants followed a common practice and policy of requiring Plaintiff and Employees to remain on-call after normal scheduled hours, without proper compensation. Defendants scheduled Employees for on-call shifts but on many occasions, due to computer operation failures, Plaintiff and Employees were required to personally report to work and if they were not on the schedule, they were sent home without pay. Plaintiff and Employees remain under the control of Defendants while they are under Defendant’s control and on-call waiting for after-hours work orders to come in and thus were compelled to refrain from other personal activities and could not use their off-duty time for their own purposes.

101. As a direct and proximate results of Defendants' actions as set forth herein, Plaintiff and the Class have been damaged in that Plaintiff and the Class have not been paid all required wages, including overtime pay, associated with their on-call work.

102. The forgoing uncompensated work caused Plaintiff and Employees to work in excess of eight (8), ten (10), and twelve (12) hours a day, and/or forty (40) hours a week, entitling them to overtime and double-time wages which were systemically denied.

103. Defendants’ failure to pay compensation in a timely fashion also constituted a violation of California Labor Code § 204, which requires that all wages shall be paid semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct violation of that provision of the California Labor Code, Defendants have failed to pay all wages and overtime

1 compensation earned by Employees. Each such failure to make a timely payment of compensation
2 to Employees constitutes a separate violation of California Labor Code § 204.

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

5 105. Consequently, pursuant to the California Labor Code, including Labor Code §§
6 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including
7 paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of
8 all their unpaid wages and overtime compensation for all their hours worked, with interest, plus
9 their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties
10 against Defendants, and each of them, and any additional sums as provided by the Labor Code
11 and/or other statutes.

12 **SEVENTH CAUSE OF ACTION**
13 **VIOLATION OF LABOR CODE § 226**
14 **(Against All Defendants)**

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

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

24 108. Defendants failed to provide Plaintiff and the similarly situated Employee Class
25 members with accurate itemized wage statements in writing, as required by the Labor Code and
26 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements issued to
27 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,
28 including for all overtime and double time hours worked and for deficient meal periods and rest

breaks, all of which Defendants knew or reasonably should have known were owed to the Employees, as alleged above.

109. Throughout the liability period, Defendants intentionally failed to furnish to Plaintiff and the Class members, upon each payment of wages, itemized statements accurately 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 paid on a piece-rate basis, (4) all deductions, (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 a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor Code § 226 and paragraph 7 of the applicable IWC Wage Orders, amongst other statutory requirements. Defendants knowingly and intentionally failed to provide Plaintiff and the Class members with such timely and accurate wage and hour statements.

110. Plaintiff and the Class members suffered injury as a result of Defendants' knowing and intentional failure to provide them with the wage and hour statements as required by law and are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the Defendants have failed to provide an accurate wage statement, failed to provide accurate and complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9), inclusive, and the Plaintiff and Class members cannot promptly and easily determine from the wage statement alone one or more of the following: (i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period, (iii) The name and address of the employer and, (iv) 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 a social security number. For purposes of Labor Code § 226(e) "promptly and easily determine" means a reasonable person [i.e. an

1 objective standard] would be able to readily ascertain the information without reference to other
2 documents or information.

3 111. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
4 are required “to pay each employee, on the established payday for the period involved, not less
5 than the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor
6 Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order
7 or under conditions of labor prohibited by the order is unlawful.” Plaintiff and the Class members
8 may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph
9 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
10 IWC Wage Orders.

11 112. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
12 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
13 Class suffered injuries, including among other things confusion over whether they received all
14 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
15 them to make mathematical computations to analyze whether the wages paid in fact compensated
16 them correctly for all hours worked.

17 113. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable
18 IWC Wage Order, Plaintiff and the Employee Class members are entitled to recover the greater of
19 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
20 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
21 aggregate penalty of four thousand dollars (\$4,000) under Section 226(e). They are also entitled to
22 an award of costs and reasonable attorneys’ fees.

23 **EIGHTH CAUSE OF ACTION**
24 **VIOLATION OF LABOR CODE § 221**
25 **(Against All Defendants)**

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

1 115. Labor Code § 221 provides, “It shall be unlawful for any employer to collect or
2 receive from an employee any part of wages theretofore paid by said employer to said employee.”
3 Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and
4 public policy, an employer must timely pay its employees for all hours worked. Defendants failed
5 to do so.

6 116. Defendants unlawfully received and/or collected wages from the Employees in the
7 Class by requiring off the clock work, by miscalculating overtime, and by not paying one hour of
8 pay at the regular rate of compensation for every meal and rest period violation endured by
9 Plaintiff and the other Class members, as alleged above. By not compensating Employees for all
10 hours worked and meal and rest period premiums, Defendants unlawfully deducted wages earned
11 in violation of Labor Code § 221.

12 117. As a direct and proximate cause of the unauthorized deductions, Employees have
13 been damaged, in an amount to be determined at trial.

14 **NINTH CAUSE OF ACTION**
15 **VIOLATION OF LABOR CODE § 204**
16 **(Against All Defendants)**

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

19 119. Labor Code § 204 instructs that: “All wages, ...earned by any person in any
20 employment are due and payable twice during each calendar month, on days designated in
21 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
22 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
23 during which the labor was performed, and labor performed between the 16th and the last day,
24 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
25 month.” Additionally, the requirements of this section shall be deemed satisfied by the payment
26 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
27 calendar days following the close of the payroll period.” As detailed above, Defendants
28 maintained a consistently applied policy and practice of not paying all wages earned between the

1 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
2 between the 16th and the last day of the month between the 1st and 10th day of the following month.
3 Defendants similarly failed to pay all wages earned by not more than seven calendar days
4 following the close of the payroll period.

5 120. All wages due and owing to Plaintiff and the Class members, including as required
6 under Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages
7 required by Labor Code § 1194 and other sections became due and payable to each employee in
8 each pay period that he or she was not provided with a meal period or rest period or paid straight
9 or overtime wages to which he or she was entitled.

10 121. Defendants violated Labor Code § 204 by systematically refusing to timely pay
11 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the
12 applicable IWC Wage Orders, employers are required “to pay each employee, on the established
13 payday for the period involved, not less than the applicable minimum wage for all hours worked in
14 the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer
15 hours than those fixed by the order or under conditions of labor prohibited by the order is
16 unlawful.” Plaintiff and the Class members may therefore pursue damages and penalties for
17 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
18 penalties under paragraph 20 of the applicable IWC Wage Orders.

19 122. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
20 represent have been deprived of wages in amounts to be determined at trial, and they are entitled
21 to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs,
22 pursuant to Labor Code § 204, 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
23 applicable IWC Wage Orders.

24 **TENTH CAUSE OF ACTION**
25 **VIOLATION OF LABOR CODE § 203**
26 **(Against All Defendants)**

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

1 124. Plaintiff and numerous Class members are no longer employed by Defendants; they
2 either quit Defendants' employ or were fired therefrom.

3 125. Defendants failed to pay these Employees all wages due and certain at the time of
4 termination or within seventy-two hours of resignation.

5 126. The wages withheld from these Employees by Defendants remained due and owing
6 for more than thirty days from the date of separation from employment.

7 127. Defendants thus failed to pay Plaintiff and the Class members without abatement,
8 all wages as defined by applicable California law. Among other things, these Employees were not
9 paid all regular and overtime wages, including by Defendants failing to pay for all hours worked
10 or requiring off the clock work or by unlawfully under-recording time entries to the detriment of
11 Employees, and Defendants failed to pay premium wages owed for unprovided meal periods and
12 rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the
13 required time was willful within the meaning of Labor Code § 203.

14 128. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
15 are required "to pay each employee, on the established payday for the period involved, not less
16 than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor
17 Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order
18 or under conditions of labor prohibited by the order is unlawful." Plaintiff and the Class members
19 may therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph
20 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
21 IWC Wage Orders. Additionally, under Labor Code § 1199(a)-(c), it is a misdemeanor and
22 Defendants are subject to a fine of not less than \$100 for causing Employees "to work for longer
23 hours than those fixed, or under conditions of labor prohibited by an order of the commission" or
24 if the employer pays "a wage less than the minimum fixed by an order of the commission" or
25 "violates...any provision of this chapter or any order or ruling of the commission."

26 129. Defendants' failure to pay wages, as alleged, entitles Plaintiff and these former
27 Employee Class members to penalties under Labor Code § 203 and the applicable paragraphs of
28 the IWC Wage Orders as addressed above, including the requirement that an employee's wages

1 shall continue until paid for up to thirty (30) days from the date they were due.

2 **ELEVENTH CAUSE OF ACTION**

3 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS, LABOR CODE §§ 1174, 1174.5**

4 **(Against All Defendants)**

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

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

11 132. During the course of Plaintiff's and Employees' employment, Defendants
12 consistently failed to maintain accurate time and wage records for Plaintiff and Class Members as
13 required by California Labor Code § 1174 by failing to pay them proper wages, overtime, and
14 premium pay as discussed above and failing to document and pay for actual hours worked.

15 133. Defendants are also required by the California Labor Code § 1198 and the
16 applicable Wage Order to maintain a tracking system that accurately records the times during
17 which Employees work.

18 134. Defendants have maintained a common unlawful policy and practice of failing to
19 accurately record all hours worked and all meal period start and end times.

20 135. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
21 knew wages to be due but failed to pay them.

22 136. Accordingly, Defendants are liable for civil penalties pursuant to the California
23 Labor Code including § 1174.5, for the three years prior to the filing of this Complaint.

24 **TWELFTH CAUSE OF ACTION**

25 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES LABOR CODE § 2802**

26 **(Against All Defendants)**

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

138. Plaintiff is informed and believes and based thereon alleges that throughout the period applicable, Defendants required Plaintiff and the Class members to pay for necessary work related expenses they incurred. These included the required purchase of non-slip shoes for work, pens for writing down orders, and uniform maintenance Plaintiff incurred for his work duties. Plaintiff and the Class members must be reimbursed for these necessary business expenses under Labor Code § 2802 and Defendants systematically failed to do so.

139. Defendants thus followed a uniform policy and practice of failing to reimburse Employees for these necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

140. Defendants' knowing and willful failure to reimburse lawful necessary work related expenses and losses to Plaintiff and the Class members resulted in damages because, among other things, Defendants did not inform employees of their right to be reimbursed for those work related expenses. As Defendants failed to inform and misled Plaintiff and the Class members with regard to their rights, Plaintiff and the Class members were led to believe that incurring those lawful and necessary expenses was an expected and essential function of their employment with Defendants and that failure to incur those expenses would have adverse consequences on their employment.

141. Therefore, Plaintiff and the Class members are entitled to reimbursement for any and all necessary work related expenses, as provided for in Labor Code § 2802(b) and paragraph 9 of the applicable IWC Wage Orders, incurred during the direct discharge of their duties while employed by Defendants, as well as accrued interest on those expenses that were not reimbursed from the date Plaintiff and the Class members incurred those expenses. Further, Plaintiff and the Class members are entitled to costs and attorney's fees pursuant to Labor Code § 2802(c).

THIRTEENTH CAUSE OF ACTION

VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

(Against All Defendants)

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

1 143. Plaintiff, on behalf of himself, the Employees in the Class, and the general public,
2 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of
3 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
4 harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting
5 the public interest within the meaning of Code of Civil Procedure § 1021.5.

6 144. Plaintiff is a “person” within the meaning of Business & Professions Code
7 § 17204, have suffered injury, and therefore have standing to bring this cause of action for
8 injunctive relief, restitution, and other appropriate equitable relief.

9 145. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
10 business practices. By the conduct alleged herein, Defendants’ practices were deceptive and
11 fraudulent in that Defendants’ policy and practice failed to provide the required amount of
12 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and
13 Class members for all hours worked, due to systematic business practices as alleged herein that
14 cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare
15 Commission requirements in violation of California Business and Professions Code §§ 17200, *et*
16 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California
17 Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

18 146. Wage-and-hour laws express fundamental public policies. Paying employees their
19 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental
20 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State
21 vigorously to enforce minimum labor standards, to ensure that employees are not required or
22 permitted to work under substandard and unlawful conditions, and to protect law-abiding
23 employers and their employees from competitors who lower costs to themselves by failing to
24 comply with minimum labor standards.

25 147. Defendants have violated statutes and public policies. Through the conduct alleged
26 in this Complaint Defendants have acted contrary to these public policies, have violated specific
27 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices
28 in violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived

1 Plaintiff, and all persons similarly situated, and all interested persons, of the rights, benefits, and
2 privileges guaranteed to all employees under the law.

3 148. Defendants' conduct, as alleged above, constitutes unfair competition in violation
4 of the Business & Professions Code § 17200 *et seq.*

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

9 150. By the conduct alleged herein, Defendants have engaged and continue to engage in
10 a business practice which violates California and federal law, including but not limited to, the
11 applicable Industrial Wage Order(s), the California Code of Regulations, and the California
12 Labor Code including Sections 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 for which this
13 Court should issue declaratory and other equitable relief pursuant to California Business &
14 Professions Code § 17203 as may be necessary to prevent and remedy the conduct held to
15 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

25 **RELIEF REQUESTED**

26 WHEREFORE, Plaintiff prays for the following relief:

- 27 1. For an order certifying this action as a class action;
28 2. For compensatory damages in the amount of the unpaid minimum wages for work

1 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
2 the filing of this action, as may be proven;

3 3. For liquidated damages in the amount equal to the unpaid minimum wage and
4 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;

5 4. For compensatory damages in the amount of all unpaid wages, including overtime
6 and double-time pay, as may be proven;

7 5. For compensatory damages in the amount of the hourly wage made by Employees
8 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
9 years prior to the filing of this action, as may be proven;

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

14 7. For compensatory damages in the amount of the hourly wage made by Employees
15 for shifts where no reporting time pay was paid from at least four (4) years prior to the filing of
16 this action, as may be proven;

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

18 9. For restitution and/or damages and penalties for Defendants' failure to pay all
19 wages due twice monthly under Labor Code § 204, as may be proven;

20 10. For restitution and/or damages for all amounts unlawfully withheld from the wages
21 for all class members in violation of Labor Code § 221, as may be proven;

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

24 12. For penalties pursuant to Labor Code § 1174.5, as may be proven;

25 13. For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;

26 14. For damages and restitution for failure to reimburse all reasonable and necessary
27 business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;

28

1 15. For restitution for unfair competition pursuant to Business & Professions Code
2 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

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

6 17. For other wages and penalties under the Labor Code as may be proven;

7 18. For all general, special, and incidental damages as may be proven;

8 19. For an award of pre-judgment and post-judgment interest;

9 20. For an award providing for the payment of the costs of this suit;

10 21. For an award of attorneys' fees; and

11 22. For such other and further relief as this Court may deem proper and just.

12
13 DATED: July 16, 2024

D.LAW, INC.

14
15 By



David Yeremian
Alvin B. Lindsay
Jean Hopkins Power
Attorneys for Plaintiff BRANDON
JOHNSON and the putative class

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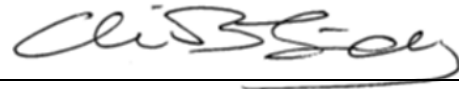
DEMAND FOR JURY TRIAL

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

DATED: July 16, 2024

D.LAW, INC.

By



David Yeremian
Alvin B. Lindsay
Jean Hopkins Power
Attorneys for Plaintiff BRANDON
JOHNSON and the putative class