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David W. Slayton,
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Attorneys for Plaintiff,
KAILEB DOUGLAS HARPER

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

KAILEB DOUGLAS HARPER, an
individual, on his own behalf and on
behalf of all others similarly situated,

Plaintiffs,

vs.

M AND S ENTERPRISE LLC, a
California limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 24STCV21639

CLASS ACTION COMPLAINT FOR:

- 1. FAILURE TO PAY OVERTIME (Cal. Labor Code §§ 510, 558, 1194, 1194.3, 1198; Wage Order No. 9);**
- 2. FAILURE TO PAY MINIMUM WAGES ((Cal. Labor Code §§ 1194, 1197, 1197.1, 1198, 119; IWC Wage Order No. 9);**
- 3. FAILURE TO PROVIDE TIMELY OFF DUTY MEAL PERIODS (Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 9);**
- 4. FAILURE TO PROVIDE REST PERIODS (Cal. Labor Code § 226.7; IWC Wage Order No. 9);**
- 5. FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. Labor Code §226; Wage Order No. 9);**
- 6. FAILURE TO PAY WAGES DUE UPON TERMINATION (Cal. Labor Code §§201-203; Wage Order No. 9);**
- 7. FAILURE TO REIMBURSE BUSINESS EXPENSES (Cal. Labor Code §2802);**
- 8. FAILURE TO PROVIDE UNIFORM MAINTENANCE ALLOWANCE (Cal. Labor Code §2802);**
- 9. FAILURE TO PAY VESTED PAID TIME OFF PAY/SICK LEAVE ON SEPARATION OF EMPLOYMENT (Cal. Labor Code §227.3);**

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

4 3. Plaintiff, like his co-workers whom Defendant also employed during the
5 applicable limitations period, spend their workdays as employment as Drivers and other
6 employees, under illegal and highly regimented circumstances. That regimen results from
7 Defendant's insistence to strictly monitor and curtail labor costs, which Defendant
8 accomplishes by not paying for all labor costs, failing to pay overtime wages due to off the
9 clock work, failing to provide minimum wages, failing to provide meal and rest breaks (or pay
10 the statutory compensation due); failing to issue accurate wage statements, failing to pay all
11 wages on termination, failing to reimburse business expenses, failing to pay a uniform
12 maintenance allowance, failing to pay vested paid time off, failing to pay for all hours worked,
13 failing to adopt standards that minimize excessive indoor heat and by using other unlawful
14 stratagems to ensure that labor costs remain artificially low.

15 4. Plaintiff brings this class action to recover, among other things, wages and
16 penalties from unpaid wages earned and due, including but not limited to, overtime wages,
17 minimum wages, premium pay for failure to afford proper meal/rest breaks, wages due to
18 discharged or quitting employees, penalties for failure to provide accurate itemized wage
19 statements, reimbursement of business expenses, monies paid for uniform maintenance, wages
20 for vested paid time off, wages for all hours worked, penalties for failure to adopt standards that
21 minimize excessive indoor heat and interest, attorneys' fees, costs, and expenses.

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

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

3 7. Pursuant to the California Labor Code, on or about August 22, 2024, Plaintiff
4 filed a notice with Labor and Workforce Development Agency (LWDA) of his intent to
5 pursue claims against Defendant under the Private Attorney General Act (PAGA). As such,
6 Plaintiff reserves the right to amend this Complaint. Plaintiff intends to amend this Complaint
7 to add a cause of action pursuant to PAGA under Labor Code §§2699 et seq.

8 JURISDICTION AND VENUE

9 8. This Court has jurisdiction over this Complaint under Code of Civil Procedure
10 §410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business &*
11 *Professions Code* §§ 17200 et seq. Plaintiff Kaileb Douglas Harper brings this Complaint on
12 his own behalf and on behalf of all persons in the Class as defined in paragraph 17 below.

13 9. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and
14 395.5, because the claims made, and the *Labor Code* violations as against the persons identified
15 herein, occurred in the County of Los Angeles and because Defendant owned and operated
16 their business in the County of Los Angeles.

18 THE PARTIES

19 PLAINTIFF

20 10. At all times relevant hereto, Plaintiff was:

- 21 (a) An individual over age 18 and a resident of Long Beach, California;
- 22 (b) Employed as an hourly employee for Defendant in Torrance, California;
- 23 (c) Did not receive overtime wages due to off the clock work in violation of
24 *Labor Code* §§510, 1198 and IWC Wage Order No. 9;
- 25 (d) Did not receive minimum wages as required by *Labor Code* §§1194,
26 1197, 1197.1, 1198, 119 and IWC Wage Order No. 9;
- 27 (e) Did not receive the meal periods required by *Labor Code* §266.7 and
28 IWC Wage Order No. 9;

- 1 (f) Did not receive the rest periods required by *Labor Code* §266.7 and IWC
2 Wage Order No. 9;
- 3 (g) Did not receive accurate wage statements as mandated by *Labor Code*
4 §226;
- 5 (h) When terminated from his employment, did not receive his final
6 paycheck within the time limits prescribed by *Labor Code* §201;
- 7 (i) Was not reimbursed for business expenses as required by *Labor Code*
8 §2802;
- 9 (j) Was not provided a uniform maintenance allowance as required by
10 *Labor Code* §2802;
- 11 (k) Was not paid vested paid time off/sick leave wages when due in
12 violation of Cal. *Labor Code* §227.3;
- 13 (l) Was not paid for all hours worked in violation of Cal. *Labor Code* § 204;
- 14 (m) Was exposed to excessive indoor heat in violation of Cal. *Labor Code* §
15 6720 and Wage Order No. 9; and
- 16 (n) Was not timely provided his personnel records. Each of these was a
17 violation of the *Labor Code*.

18 **DEFENDANT**

19 11. Plaintiff is informed and believes, and based on that information and belief,
20 alleges, Defendant M and S is, and at all times mentioned herein was:

- 21 (a) A California corporation, with a principal place of business at 5436
22 Senford Avenue, Los Angeles, California 90056. Defendant has been
23 authorized to do business and has been doing business in the County of
24 Los Angeles;
- 25 (b) The former employer of Plaintiff and the current and former employer of
26 the putative Class members;
- 27 (c) Paid Plaintiff and all Class Members on an hourly basis;
- 28 (d) Failed to pay Plaintiff and all putative Class members overtime wages;

- 1 (e) Failed to pay Plaintiff and all putative Class members minimum wages;
2 (f) Failed to provide Plaintiff and all putative Class members with meal and
3 rest periods, failed to provide Plaintiff and all putative Class Members
4 with accurate itemized wage statements;
5 (g) Failed to issue final paychecks timely to Plaintiff and all putative Class
6 Members;
7 (h) Failed to reimburse business expenses to Plaintiff and all putative Class
8 Members;
9 (i) Failed to provide a uniform maintenance allowance to Plaintiff and all
10 putative Class Members;
11 (j) Failed to pay vested paid time off/sick leave wages;
12 (k) Failed to pay for all hours worked;
13 (l) Failed to provide Plaintiff and Class members with a cool indoor
14 temperature;
15 (m) Failed to provide Plaintiff with his personnel records. Each of these was
16 a violation of the *Labor Code*.

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

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

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

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

14 16. Plaintiff is informed and believes, and based on that information and belief
15 alleges, that the Defendants named in this Complaint, including DOES 1 through 100,
16 inclusive, knowingly and willfully acted in concert, conspired and agreed together among
17 themselves and entered into a combination and systemized campaign of activity to *inter alia*
18 damage Plaintiff, and the Class, and to otherwise consciously and/or recklessly act in
19 derogation of the rights of Plaintiff and the Class, and the trust reposed by Plaintiff, and the
20 Class, in each of the Defendants, the acts being negligently and/or intentionally inflicted. Their
21 conspiracy, and Defendants' concerted actions, were such that, to Plaintiff's information and
22 belief, and to all appearances, Defendants, and each of them, represented a unified body so that
23 the actions of one Defendant were accomplished in concert with, and with the knowledge,
24 ratification, authorization and approval of each of the other Defendants.

25 **CLASS ALLEGATIONS**

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

27 17. The Class ("the Class") is defined as follows:
28

1 (a) "All current and former employees who were hourly paid employees of
2 Defendant and worked for Defendant in California at any time during the period
3 commencing on the date that is four (4) years prior to the filing of this
4 Complaint and continuing through the present date (the "Class Period")."
5 (b) "All persons who were hourly paid employees of Defendant and worked for
6 Defendant in California and left the employ of Defendant at any time during the
7 period commencing on the date that is within one (1) year prior to the filing of
8 this Complaint and continuing through the present date (the "Class Period")."
9

10 18. Plaintiff reserves his right under Rule 3.765 of the California Rules of Court to
11 amend or modify the Class description with greater specificity or further division into
12 subclasses or limitation to particular issues.
13

14 **B. Maintenance of the Action**

15 19. Plaintiff brings this action individually and on behalf of himself and as
16 representative of all similarly situated persons under *Business & Professions Code* §§ 17203
17 and 17204 and *Code of Civil Procedure* § 382.
18

18 **C. The Class Requisites**

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

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

- 22 (a) The persons who comprise the Class are so numerous that the joinder of all
23 those persons is impracticable and the disposition of their claims as a Class
24 will benefit the parties and the Court;
25 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
26 that are raised in this Complaint are common to the Class and will apply
27 uniformly to every Class member;
28

- 1 (c) The claims of the representative Plaintiff are typical of the claims of each
2 Class member. Plaintiff, like all Class members, has sustained damages
3 arising from Defendant's violations of the laws of the State of California.
4 Plaintiff, and the Class members, were and are similarly or identically
5 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
6 pattern of misconduct engaged in by the Defendant;
- 7 (d) The representative Plaintiff has, and will continue to, fairly and adequately
8 represent and protect the interests of the Class and has retained counsel
9 who are competent and experienced in class action litigation. There are no
10 material conflicts between the claims of the representative Plaintiff and the
11 Class members that would make class certification inappropriate. Counsel
12 for the Class will vigorously assert the claims of all Class members.

13 22. The persons who comprise the Class are so numerous that joining all of them is
14 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.
15 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff
16 will fairly and adequately protect the interests of the Class he seeks to represent. Plaintiff does
17 not have any interests that are antagonistic to the Class he seeks to represent. Counsel for
18 Plaintiff are experienced, qualified and generally able to conduct complex class action
19 litigation.

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

- 22 (a) The questions of law and fact common to the Class predominate over any
23 question affecting only individual members;
- 24 (b) A class action is superior to any other available method for fairly and
25 efficiently adjudicating the claims of the Class;
- 26 (c) The Class members are so numerous that it is impractical to bring all of
27 them before the Court;
- 28

- 1 (d) Plaintiff and other Class members will not be able to obtain effective and
2 economic legal redress unless the action is maintained as a class action;
3 (e) There is a community of interest in obtaining appropriate legal and
4 equitable relief for the statutory violations, and in obtaining adequate
5 compensation for the damages and injuries for which Defendant is
6 responsible in an amount sufficient to adequately compensate the Class
7 members;
8 (f) Without Class certification, the prosecution of separate actions by
9 individual Class members would create a risk of:
10 i. Inconsistent or varying adjudications for individual Class members
11 that would establish incompatible standards of conduct for
12 Defendant; and/or,
13 ii. Adjudication for individual Class members that would, as a
14 practical matter, dispose of other non-party members' interests, or
15 that would substantially impair or impede the non-parties' ability
16 to protect their interests, by, for example, potentially exhausting
17 the funds available from Defendant, and
18 (g) Defendant has acted or refused to act on grounds generally applicable to
19 the Classes, making final injunctive relief appropriate for the Class, as a
20 whole.

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

26 GENERAL ALLEGATIONS

27 25. At all times material hereto, Defendant has been and is, a Driver who loaded and
28 delivered Amazon packages.

26. Plaintiff and members of the Class were employed as Drivers and other non-exempt employees in California at various times during the Class Period.

27. The employment by Defendant of the Class Members, and each them, is governed by Industrial Welfare Commission Wage Order 9, which covers those persons employed in the transportation industry.

THE CONDUCT

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

29. Starting on or about June 1, 2023 and continuing to September 13, 2023, Defendant employed Plaintiff on an hourly basis as a Driver at its location in Torrance, California.

30. While employed by Defendant as a Driver, Plaintiff was paid \$21.50 per hour.

OFF-THE-CLOCK WORK

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

32. Defendant required Plaintiff and the Class to regularly perform compensable tasks pre and post-shift off-the-clock for which they did not receive any compensation. Specifically, Plaintiff and Class members would arrive about 15 minutes early for their shifts, badge inside the hydration building to obtain water for their routes, then walk to the morning meeting prior to clocking in for their shifts. Further, Plaintiff and Class members would attend the morning meetings for 10-15 minutes, then be issued their mobile devices/phones and keys, then log into the mobile devices prior to clocking in. After clocking out for their shifts, Plaintiff and Class members returned their work mobile device/phone and key, and attended evening briefing by their managers for approximately 10-15 minutes, while off the clock. As a result, and because they improperly treated such pre and post-shift activities as non-compensable, Defendant failed to compensate Plaintiff and the Class for such time.

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FAILURE TO PAY OVERTIME WAGES

33. Under California law, non-exempt employees as defined by Wage Order 9, are entitled to premium wages for overtime worked. Under California law, an hourly paid employee is entitled to overtime pay when they exceed eight hours of work in a single day, exceed 40 hours of work in a week or work seven days in a row.

34. As alleged above, Defendant required Plaintiff and the Class to regularly perform compensable tasks pre- and post-shift off the clock for which they did not receive any compensation. Additionally, Plaintiff and Class members' meal/rest breaks were routinely interrupted, afforded late and/or not afforded.

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

FAILURE TO PAY MINIMUM WAGES

36. Under California law, non-exempt employees as defined by Wage Order 9, are entitled to minimum wages.

37. Under California law, an hourly paid employee is entitled to be paid a minimum wage. Labor Code Section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code Section 1194 states "any employee receiving less than the legal minimum wage...is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage." The applicable IWC Wage Order(s), including IWC Wage Order No. 9-2001, obligates employers to pay each employee minimum wages for all hours worked.

38. These minimum wage standards apply to each hour employees worked or were subject to control by the employer for which they were not paid. Therefore, an employer's failure to pay for any particular hour of time worked by an employee or subject to the employer's control is unlawful, even if averaging an employee's total pay over all hours

1 worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v.*
2 *Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

3 39. At all times during the relevant time period, it was the practice and policy of
4 Defendant to pay employees less than minimum wage rates due to off the clock work and the
5 lack of proper meal/rest breaks. Monies for these underpaid amounts remain due and owing.

6 40. Defendant required Plaintiff and the Class to regularly perform compensable
7 tasks off-the-clock for which they did not receive any compensation.

8 41. At all times during the relevant time period, Plaintiff and the Class routinely
9 worked schedules such that they were due pay at minimum wage rates. During this period, it
10 was the practice and policy of Defendant to not pay employees' minimum wages. Monies for
11 unpaid minimum wages remain due and owing.

12 **EXCLUSION OF "BON HOURS" FROM OVERTIME RATE OF PAY**

13 42. California law uses the terms "compensation" and "pay" interchangeably and
14 requires that all applicable remuneration, including but not limited to, commissions, and/or
15 non-discretionary bonuses, and/or gift cards and/or cash payments based on sales numbers,
16 etc., be included when calculating an employee's regular rate of pay.

17 43. Defendant failed to properly pay and calculate wages due to excluding "BON
18 HOURS" from overtime rate of pay calculations. Such payments are required under California
19 law to be included in an employee's regular/overtime rate of pay for wage calculation.
20 Defendant failed to do so, thereby failing to pay employees their full wages as required under
21 the Labor Code.

22 44. Plaintiff and members of the Class received "BON HOURS" that must be
23 included when calculating their regular/overtime rates of pay for purposes of wages. However,
24 Defendant failed to correctly calculate Plaintiff and members of the Class's regular/overtime
25 rate of pay to include all applicable remuneration, including, but not limited to, "BON
26 HOURS".

27 45. Plaintiff's paystubs dated August 4, 2023 and September 1, 2023, show "BON
28 HOURS" were paid to him, but they were paid at exactly the base rate, at the same time as 2

1 items of “Overtime”, one paid at exactly 1.5 times the base rate and the other paid at higher
2 than 1.5 times the base rate. Thus, it is unclear whether “BON HOURS” were incorporated into
3 the overtime pay rate.

4 **INTERRUPTED/LATE/NOT AFFORDED MEAL BREAKS**

5 46. Plaintiff and the Class members were routinely not afforded proper meal breaks.
6 Meal breaks were routinely interrupted, afforded late and/or not afforded. Further, on days
7 when Plaintiff and Class members worked 10–12-hour shifts, they were not afforded second
8 meal breaks.

9 **REST BREAKS NOT AFFORDED**

10 47. Plaintiff and the Class members were routinely not afforded proper rest breaks.
11 At times, Plaintiff and Class members’ rest breaks were routinely interrupted. On days when
12 Plaintiff and Class members worked between 10-12 hours, they were not afforded third rest
13 breaks.

14 **FAILURE TO ISSUE ACCURATE WAGE STATEMENTS**

15 48. As a result of Defendant’s failure to pay employees required overtime wages,
16 minimum wages, failure to afford meal/rest breaks, vested paid time off and for all hours
17 worked, the wage statements issued to the employees did not comply with *Labor Code* §226
18 and California Industrial Welfare Commission (“IWC”) Wage Order 9 in that they did not
19 accurately reflect all wages earned and due and owing.

20 **FAILURE TO PAY WAGES DUE UPON TERMINATION AND/OR RESIGNATION**

21 49. As a further result of Defendant’s failure to pay employees at required overtime
22 wage rates due to off the clock work, minimum wages, for meal/rest breaks not properly
23 afforded, wages for vested paid time off, wages for all hours worked, when the employees left
24 their employ, they were not timely paid all wages due them, as required by *Labor Code* §§ 201,
25 202 and Wage Order 9. Further, it was the practice of Defendant to not pay employees the final
26 paychecks within the time periods mandated by *Labor Code* §§201, 202 and Wage Order 9.

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1 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

2 50. Defendant failed to reimburse Plaintiff and Class members with their necessary
3 business expenses, such as cell phone use and supplies such as chargers and battery packs.

4 **FAILURE TO PAY UNIFORM MAINTENANCE ALLOWANCE**

5 51. Defendant failed to pay Plaintiff and Class members for their uniforms and the
6 maintenance of their uniforms. Defendant required Plaintiff and Class members to wear
7 uniforms consisting of company shirts, pants and hats. Defendant promised to reimburse
8 Plaintiff for required steel toe boots he purchased, but failed to do so. Plaintiff and Class
9 members paid for maintenance of their uniforms themselves and were not reimbursed therefor.

10 **FAILURE TO PROPERLY PAY VESTED PAID TIME OFF/SICK PAY WAGES ON**
11 **SEPARATION OF EMPLOYMENT**

12 52. Defendant acted intentionally and with deliberate disregard to the rights of
13 Plaintiff and members of the Class by failing to provide vested Paid Time Off/sick leave
14 wages. Although Plaintiff's paystubs show PTO/Sic available, it is unclear if Plaintiff and
15 Class members were paid accrued PTO/Sic upon separation of employment.

16 **FAILURE TO PAY FOR ALL HOURS WORKED**

17 53. Plaintiff and Class members were required by Defendant to attend training for
18 24 hours while off the clock. Plaintiff and Class members were not paid for all hours worked.

19 **FAILURE TO ADOPT STANDARDS THAT MINIMIZE EXCESSIVE INDOOR**
20 **HEAT**

21 54. Labor Code section 1198 requires an employer to comply with the standard
22 conditions of labor for California employees as set forth by the IWC, Section 15 of Wage Order
23 9, states:

24 (A) The temperature maintained in each work area shall provide reasonable comfort
25 consistent with industry-wide standards for the nature of the process and the work
26 performed.

1 (B) If excessive heat or humidity is created by the work process, the employer shall take
2 all feasible means to reduce such excessive heat or humidity to a degree providing
3 reasonable comfort.

4 55. In violation of Labor Code section 6720 and section 15 of IWC Wage Order No.
5 9, Defendant failed to provide Plaintiff and other current and former hourly non-exempt
6 employees employed by Defendant who worked at Defendant's warehouse in California, with
7 reasonable comfort by maintaining the indoor temperature within the range of industry
8 standards by, *inter alia*, providing adequate air conditioning or ventilation. Defendant's
9 warehouse did not have proper ventilation and/or air conditioning. The temperature inside the
10 warehouse was extremely hot for the workers.

11 56. Defendant's violations of Wage Order 9 constituted violations of Labor Code
12 section 1198, which prohibits employment under conditions of labor that violate the Wage
13 Orders.

14 **FAILURE TO ALLOW INSPECTION OF PERSONNEL RECORDS**

15 57. Defendant failed to allow Plaintiff to timely inspect his personnel records and
16 payroll file.

17 **FIRST CAUSE OF ACTION**

18 **FAILURE TO PAY OVERTIME WAGES**

19 **(Labor Code §§ 510, 558, 1194, 1194.3, 1198, IWC Wage Order 9 By Plaintiff Against**
20 **Defendant and Does 1 through 100)**

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

23 59. During Plaintiff's entire employment with Defendant, pursuant to Cal. Lab.
24 Code §§510, 1194, and 1198, and IWC Wage Order No. 9, Defendant was required to
25 compensate Plaintiff with premium pay for all overtime work performed, for hours worked in
26 excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8)
27 hours on the seventh (7th) consecutive day of any work week.
28

1 60. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
2 who had not been paid overtime compensation could recover the unpaid balance of the full
3 amount of overtime wages due, including interest thereon, together with reasonable attorneys'
4 fees and costs of suit.

5 61. Pursuant to IWC Wage Order No. 9-2001, § 3, "Employment beyond eight (8)
6 hours in any workday is permissible provided the employee is compensated for such overtime
7 at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all
8 hours worked in excess of eight (8) hours up to and including twelve (12) hours in any
9 workday...

10 62. California Labor Code section 558 provides in pertinent part:

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

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

17 (2) For each subsequent violation, one hundred dollars (\$100) for each
18 underpaid employee for each pay period for which the employee was
19 underpaid in addition to an amount sufficient to recover underpaid
wages.

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

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

24 63. As alleged above, Defendant required Plaintiff and the Class to regularly
25 perform compensable tasks pre- and post-shift off-the-clock for which they did not receive any
26 compensation. Further, Plaintiff and Class members were required by Defendant to use their
27 personal cell phones while off the clock, to clock in and out on the ADP app, for texting/calling
28 their supervisors and for receiving their work schedules and confirming those schedules.

1 64. The regular rate of pay under California law includes all remuneration for
2 employment paid, on behalf of the employer, to the employee. Employers must properly factor
3 all economic items into the regular rate of pay for purposes of calculating the overtime wages
4 due to their employees. *See Alvarado v. Dart Container Corp. of California* (2018) 4 Cal. 5th
5 542, 554, 568 (the regular rate of pay must include the “value of any nonhourly compensation,”
6 including bonuses).

7 65. Specifically, Defendants had a company-wide policy of failing to properly pay
8 and calculate wages due.

9 66. Defendants violated the rights of Plaintiff and the members of the Class by not
10 correctly calculating their regular/overtime rate of pay. Plaintiff and Class members’ “BON
11 HOURS” were not incorporated into their regular/overtime rate of pay.

12 67. Throughout Plaintiff’s employment, Defendant failed and refused to pay and
13 properly calculate overtime compensation to Plaintiff and Class Members as required by law.

14 68. The foregoing overtime compensation is owed and unpaid. As a direct and
15 proximate result of Defendant’s failure and refusal to pay overtime, Plaintiff and Class
16 Members suffered damages in an amount to be proven at trial.

17 69. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal
18 counsel in order to enforce Plaintiff’s rights to overtime pay, is entitled to recover Plaintiff’s
19 attorneys’ fees, costs and interest.

20 **SECOND CAUSE OF ACTION**

21 **FOR FAILURE TO PAY MINIMUM WAGES**

22 **(Labor Code §§ 1194, 1197, 1197.1, 1198, 119, IWC Wage Order 9 By Plaintiff Against**
23 **Defendant and Does 1 through 100)**

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

26 71. *Labor Code* § 1197 states the California requirement that employees must be
27 paid at least the minimum wage fixed by the Commission, and any payment of less than the
28 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving

1 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of
2 the full amount of this minimum wage.” IWC Wage Order 9-2001 also obligates employers to
3 pay each employee minimum wages for all hours worked. These minimum wage standards
4 apply to each hour employees worked for which they were not paid. Therefore, an employer’s
5 failure to pay for any particular hour of time worked by an employee is unlawful, even if
6 averaging an employee’s total pay over all hours worked, paid or not, results in an average
7 hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324
8 (2005).

9 72. Here, Plaintiff and Class members were required to engage in off the clock
10 activities and they were not paid for this off-the-clock time. Defendant failed to pay Plaintiff
11 and the Class for these off-the clock activities and as result thereof, Plaintiff and the Class were
12 not paid minimum wages that was due to them. Further, Defendant’s failure to afford meal/rest
13 breaks also resulted in Plaintiff and the Class not being paid minimum wages that was due to
14 them.

15 73. California Labor Code section 558 provides in pertinent part:

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

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

22 (2) For each subsequent violation, one hundred dollars (\$100) for each
23 underpaid employee for each pay period for which the employee was
24 underpaid in addition to an amount sufficient to recover underpaid
wages.

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

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

1 74. *Labor Code* § 1194 provides, in part, that any employee receiving less than the
2 legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum
3 wage, including interest thereon, reasonable attorney's fees, and costs of suit.

4 75. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
5 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
6 *Code* § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid
7 for all hours worked under *Labor Code* § 1194, the employee may recover minimum wages for
8 the time associated with the overtime for which they received no compensation. *See Sillah v.*
9 *Command Int'l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees
10 suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also
11 showed they were paid less than minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*,
12 225 F. Supp. 3d 1115, 1132-33 (N.D. Cal. 2016).

13 76. Plaintiff and the other Class Members suffered and continue to suffer losses
14 related to the use and enjoyment of compensation due and owing to them as a direct result of
15 Defendant's unlawful acts and Labor Code violations in an amount to be shown according to
16 proof at trial and within the jurisdictional limitations of this Court.

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

21 **THIRD CAUSE OF ACTION**

22 **FAILURE TO PAY FOR MEAL BREAKS**

23 **(Labor Code § 226.7 and IWC Wage Order No. 9 By Plaintiff Against Defendant and**
24 **Does 1 through 100)**

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

27 79. California Labor Code §226.7(a) prohibits an employer from requiring an
28 employee to work during any meal period mandated by Industrial Wage Order No. 2. Section

1 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
2 employee to work during a meal or rest break or recovery period mandated pursuant to an
3 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
4 Commission..."

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

7 81. IWC Order No. 9-2001(11)(A) provides, in relevant part: "No employer shall
8 employ any person for a work period of more than five (5) hours without a meal period of not
9 less than 30-minutes, except that when a work period of not more than six (6) hours will
10 complete the day's work the meal period may be waived by mutual consent of the employer and
11 the employee."

12 82. IWC Order No. 9-2001 (11)(c) further provides, in relevant part: "Unless the
13 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
14 considered an 'on duty' meal period and counted as time worked."

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

16 An employer may not employ an employee for a work period of more than five
17 hours per day without providing the employee with a meal period of not less
18 than 30-minutes, except that if the total work period per day of the employee is
19 no more than six hours, the meal period may be waived by mutual consent of
20 both the employer and employee. An employer may not employ an employee
21 for a work period of more than 10 hours per day without providing the
22 employee with a second meal period of not less than 30-minutes, except that if
the total hours worked is no more than 12 hours, the second meal period may
be waived by mutual consent of the employer and the employee only if the first
meal period was not waived.

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

1 85. At times Plaintiff and Class members' meal breaks were interrupted, afforded
2 late and/or not afforded at all. On days when Plaintiff and Class members worked between 10-
3 12 hours, they were not afforded second meal breaks.

4 86. As alleged herein, Plaintiff and the members of the Class were routinely
5 required to work through their meal period at the fifth hour of their shifts with Defendant's
6 endorsement, encouragement, knowledge and acquiescence.

7 87. Under California law, employers must also record their employees' meal
8 periods: "Every employer shall keep accurate information with respect to each employee,
9 including the following: ... Meal periods ... shall also be recorded. Meal periods during which
10 operations cease ... need not be recorded." IWC Order No. 9, § (7)(A)(3). Where the employer
11 has failed to keep records required by statute, the consequences of such failure should fall on
12 the employer, not the employee. In such a situation, imprecise evidence by the employee can
13 provide a sufficient basis for liability." *Hernandez v. Mendoza*, 199 Cal. App. 3d 721, 727
14 (1988). Inasmuch as Defendant had an obligation under the record-keeping requirements of the
15 Wage Order to track meal periods unless "all work ceases", Defendant knew or should have
16 known its employees were regularly not afforded proper meal periods during the Class Period.

17 88. Defendant has a policy or practice of failing to ensure that Plaintiff and
18 members of the Class take the meal periods required by California Labor Code §226.7 and
19 IWC Wage Order No. 9-2001 §11.

20 89. By their actions in not affording Plaintiff and Class Members proper meal
21 periods, Defendant violated Cal. Lab. Code §226.7(b) and section 11 of Wage Order No. 9 in
22 the amount of one additional hour of pay at the employee's regular rate of compensation for
23 each work period during each day in which Defendant failed to provide employees with
24 statutory timely off-duty meal periods.

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

28

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

92. As a direct and proximate result of Defendant's unlawful conduct as alleged herein, Plaintiff and members of the Class have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover economic and statutory damages, attorneys' fees and penalties and other appropriate relief due to Defendant's violations of the California Labor Code and the applicable IWC Wage Orders.

FOURTH CAUSE OF ACTION

FOR FAILURE TO PROVIDE REST PERIODS

**(Labor Code § 226.7 and IWC Wage Order No. 9 By Plaintiff Against Defendant and
Does 1 through 100)**

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

94. Labor Code § 226.7 and Wage Order No. 9 provide that employers shall authorize and permit all employees to take rest periods at the rate of ten minutes net rest time per four hours of work, or major fraction thereof.

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

96. Defendant has intentionally and improperly denied uninterrupted rest periods to Plaintiff and the Class in violation of Labor Code § 226.7 and IWC Wage Order No. 9.

97. Additionally, Plaintiff and Class members were not afforded third rest breaks on days when they worked between 10-12 hours.

98. At all times relevant hereto, Defendant failed to provide rest periods as required by Labor Code § 226.7 and Wage Order No. 9.

1 99. By virtue of Defendant's unlawful failure to provide rest periods to Plaintiff and
2 the Class, Plaintiff and the Class have suffered, and will continue to suffer, damages in amounts
3 which are presently unknown to Plaintiff and the Class, but which exceed the jurisdictional
4 limits of the Court and which will be ascertained according to proof at trial.

5 **FIFTH CAUSE OF ACTION**

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

7 **ITEMIZED STATEMENTS**

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

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

11 101. Pursuant to IWC Wage Order No. 9, Defendant was the employer of Plaintiff
12 and the Class.

13 102. Pursuant to California Labor Code sections 226, and Wage Order 9-2001 section
14 7, Defendant is required to maintain and provide accurate records relating to employee
15 compensation including all formulas and production records used to calculate wages due.

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

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

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

1 106. Throughout the Class Period, Defendant intentionally and knowingly provided
2 Plaintiff and other members of the Class with weekly itemized wage statements containing
3 inaccurate information regarding the wages earned by Plaintiff and members of the Class in
4 that the payments owed to Plaintiff and the members of the Class for overtime wages due to off
5 the clock work, minimum wages, premium pay for meal/rest breaks, vested paid time off/sick
6 pay, wages for all hours worked, were not included in gross wages earned by Plaintiff and
7 members of the Class. Further, Defendant failed to furnish Plaintiff and the Class, upon
8 payment of wages, itemized statements accurately showing the number of hours worked and
9 the rates paid.

10 107. Further, the address on Plaintiff's and Class members' paystubs do not match
11 the Defendant's address listed on the California Secretary of State website.

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

14 109. Plaintiff and members of the Class were damaged by these failures because,
15 among other things, the failures led them to believe that they were not entitled to overtime
16 wages, premium pay for meal/rest breaks not properly afforded, vested vacation paid time
17 off/sick pay and wages for all hours worked, even though they were so entitled and these
18 failures hindered them from determining the amounts of wages owed to them.

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

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

24 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

115. Plaintiff and the Class were discharged and/or resigned from Defendant's employ and Defendant willfully failed to pay Plaintiff and the Class wages due them for overtime, minimum wages, meal/rest breaks not properly afforded, vested paid time off/sick pay and pay for all hours worked.

116. Further, Plaintiff's last paystub shows that the regularly scheduled pay date was September 15, 2023, which was 2 days late. Also, Plaintiff did not receive his last pay on the same date as his termination. He was terminated on September 13, 2023, but did not receive his last pay until 3 months later in December 2023.

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

SEVENTH CAUSE OF ACTION

REIMBURSEMENT OF BUSINESS EXPENSES

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

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

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

120. At all times relevant herein, Defendant was aware that Plaintiff and Class members were using their cell phones and purchasing chargers and battery packs for business, but failed to indemnify Plaintiff and Class members for all their business-related expenses, including wear and tear expenses, in accordance with Labor Code §2802. Plaintiff and the Class were required to use their cell phones for work-related activities both on and off the

1 clock. Plaintiff is informed and believes and thereon alleges that at all relevant times,
2 Defendant maintained a practice of not reimbursing Plaintiff and Class Members for their
3 work-related expenses that they incurred in using their cell phones and for purchases of
4 chargers and battery packs for work-related purposes.

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

8 122. Pursuant to Labor Code §2802, Plaintiff and Class Members are entitled to
9 recover the full amount of their unreimbursed business expenses, reasonable attorneys' fees and
10 costs of suit.

11 **EIGHTH CAUSE OF ACTION**

12 **(Failure to Provide Uniform Maintenance Allowance in Violation of Cal. Labor Code** 13 **§2802 By Plaintiffs Against Defendant and Does 1 through 100)**

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

16 124. Under California law, if an employer requires employees to wear a uniform, the
17 employer must pay for and maintain the uniform for the employee. Labor Code
18 §2802.

19 125. An employer may never impose a financial burden on employees, with respect
20 to paying for and maintaining clothing, which would reduce the employees' wage rate below
21 the minimum wage.

22 126. Here, Defendant required Plaintiff and Class members to wear uniforms
23 consisting of shirts, pants, steel toe boots and hats. Plaintiff was promised that he would be
24 reimbursed for his purchase of steel toe boots, but Defendant failed to do so. Further, Plaintiff
25 and Class members were required to maintain their uniforms themselves.

26 127. Defendant failed to reimburse Plaintiff and members of the Class for their
27 uniforms and uniform maintenance.
28

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

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

NINTH CAUSE OF ACTION

**FAILURE TO PAY VESTED PAID TIME OFF/SICK PAY ON SEPARATION OF
EMPLOYMENT**

(Cal. Labor Code § 227.3 – By Plaintiffs against Defendant and Does 1 through 100)

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

131. California law, including Labor Code § 227.3 dictates that when an employer has a paid time off policy, the pay constitutes additional wages for services performed and it must pay out all accrued but unused paid time off upon termination. Once a proportionate right to paid vacation vests as labor is rendered, an employer may not adopt policies that require forfeiture of vested paid time off without compensation. (*Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774, 784 [“The right to a paid vacation, when offered in an employer's policy or contract of employment, constitute deferred wages for services rendered”]; *Rhea v. General Atomics* (2014) 227 Cal. App. 4th 1560, 1571 [“California law prohibits an employer from requiring the forfeiture of vacation time”].)

132. As a matter of policy, Defendant did not provide vested paid time off/sick pay on termination of employment.

133. Defendant's paid time off policy, which applies to all of its employees in California, violates California law because it fails to pay out all of the employees' vested and unused paid time off/sick pay on termination.

134. Plaintiff and Class members did not receive the proper protections and benefits of the laws governing payment of PTO/sick pay upon separation of employment.

135. Pursuant to Labor Code § 227.3, an employer that has implemented paid time off, or compensated time off policy must, upon an employee's separation from employment, pay to the employee all vested, but unused paid time off at his final rate of pay.

136. Here, Plaintiff did not use all his PTO prior to his termination.

137. As a result, Defendants failed to pay Plaintiff and Class members all vested, but unused PTO/sick pay upon separation from employment, thereby receiving an economic benefit.

138. Plaintiff is informed and believes and based thereon alleges Defendant's willful failure to pay all PTO wages due and owing to Plaintiff and Class members upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and Class members are also entitled to compensation pursuant to Labor Code sections 201-203.

139. Plaintiff and members of the Class have been damaged by Defendant's PTO policy because they have been forced to forfeit earned PTO/sick wages.

140. As a direct and proximate result of Defendant's unlawful conduct, Plaintiff and members of the Class have sustained damages, including loss of earnings in an amount to be established at trial, in addition to prejudgment interest, costs, and attorneys' fees pursuant to applicable law.

TENTH CAUSE OF ACTION

FAILURE TO PAY FOR ALL HOURS WORKED

**(Cal. Labor Code § 204; IWC Wage Order No. 9 By Plaintiffs against Defendant and
Does 1 through 100)**

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

142. At all times relevant to this action, Plaintiff and members of the Class were employed by M and S within the meaning of the California Labor Code.

143. California Labor Code section 204 requires an employer, such as M and S, to pay employees for all work performed on the job.

1 144. Section 4 of IWC Wage Order No. 9 requires that employers pay employees for
2 all hours worked, including time spent being trained.

3 145. At all times relevant herein, Defendant was required to compensate their non-
4 exempt employees for all hours worked pursuant to Wage Order No. 9, and Cal. Labor Code
5 §§200, 223, 226, 500, 510, 1197, 1198.

6 146. During the class period, Defendant had, and continues to have, a policy and
7 practice of failing to compensate its employees for all hours worked.

8 147. Defendant had, and continues to have, a policy and practice of requiring,
9 suffering, or otherwise permitting employees to attend training for 24 hours while off the clock
10 without compensating them for all of the time spent training.

11 148. By requiring Plaintiff and Class members to attend mandatory training without
12 compensation as alleged above, Defendant willfully has violated and continues to violate the
13 provisions of California Labor Code section 204.

14 149. Defendant has knowingly and willfully refused to perform its obligations to
15 compensate Plaintiff and the Class for all hours worked.

16 150. As a result of the unlawful acts of Defendant, Plaintiff and Class members have
17 been deprived of compensation in amounts to be determined at trial and are entitled to
18 recovery of such amounts, in addition to penalties, plus interest thereon, attorneys' fees, and
19 costs, under Labor Code section 1194.

20 **ELEVENTH CAUSE OF ACTION**

21 **FAILURE TO ADOPT STANDARDS THAT MINIMIZE EXCESSIVE INDOOR**

22 **HEAT**

23 ***(Labor Code § 6720, Wage Order No. 9 By Plaintiffs against Defendant and Does 1***
24 ***through 100)***

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

27 152. California *Labor Code* § 6720 sets forth requirements for adapting a standard
28 that minimizes heat-related illness and injury among workers working in indoor places. The

1 provision states the following: “[t]he standard shall be based on environmental temperatures,
2 work activity levels, and other factors.”

3 153. Wage Order 9 section 15(A) provides the following: “The temperature
4 maintained in each work area shall provide reasonable comfort consistent with industry-wide
5 standards for the nature of the process and the work performed.” Section 15(B) states “[i]f
6 excessive heat or humidity is created by the work process, the employer shall take all feasible
7 means to reduce such excessive heat or humidity to a degree providing reasonable comfort.”

8 154. Defendant failed to comply with *California Labor Code* §§ 6720 and Wage
9 Order 9, by maintaining an excessively hot working environment. Defendant’s warehouse did
10 not have proper ventilation and/or air conditioning and the temperature inside the warehouse
11 was excessively hot.

12 155. Defendant failed to adopt standards to reduce heat-related illnesses, and as a
13 result, Defendant has failed to maintain a safe indoor working environment.

14 156. Plaintiff and Class Members request recovery of wages and penalties according
15 to proof, as well as interest, attorneys’ fees and costs pursuant to the California Labor Code.

16 **TWELFTH CAUSE OF ACTION**

17 **FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS**

18 **(Labor Code §1198.5 By Plaintiffs Against Defendant and Does 1 through 100)**

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

21 158. California Labor Code Section 1198.5 provides:

- 22
- 23 (a) Every current and former employee, or his or her representative, has the
24 right to inspect and receive a copy of the personnel records that the
25 employer maintains relating to the employee’s performance or to any
26 grievance concerning the employee.
- 27 (b) The employer shall make the contents of those personnel records available
28 for inspection to the current or former employee, or his or her
representative, at reasonable intervals and at reasonable times, but not later
than 30 calendar days from the date the employer receives a written request,
unless the current or former employee, or his or her representative, and the

1 employer agree in writing to a date beyond 30 calendar days to inspect the
2 records, and the agreed-upon date does not exceed 35 calendar days from
3 the employer's receipt of the written request to inspect the records. Upon a
4 written request from a current or former employee, or his or her
5 representative, the employer shall also provide a copy of the personnel
6 records,..... later than 30 calendar days from the date the employer receives
7 the request...

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

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

15 159. Additionally, pursuant to Wage Order 9, at section 7 re: Records, employers are
16 required to keep accurate payroll records on each employee, and such records must be made
17 readily available for inspection by the employee upon reasonable request. The employer must
18 also maintain accurate production records.

19 160. On or about August 22, 2024, Plaintiff's counsel issued a written request to
20 Defendant for copies of his personnel records. Defendants failed to produce Plaintiff's
21 personnel file.

22 161. Under California Labor Code Sections 226, 432 and 1198.5, such records were
23 to include all records relating to Plaintiff's hours worked, wage statements and compensation.
24 Plaintiff's counsel and Defendant did not enter into an agreement to enlarge the time for
25 Defendant's compliance, and Defendant has failed and refused to permit Plaintiff copies of his
26 records.

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

**(Unfair Competition in Violation of Business & Professions Code §§ 17200 *et seq.* By
Plaintiffs Against Defendant and Does 1 through 100)**

164. Pursuant to IWC Wage Orders No. 9, Defendant was the employer of Plaintiff and the Class. Defendant is also a "person" as that term is defined in Business & Professions Code §17021.

166. By and through the unfair and unlawful business practices described herein, Defendant has obtained valuable property, money and services from the Plaintiff and the Class and has deprived them of valuable rights and benefits guaranteed by law all to the detriment of Plaintiff and the Class.

33

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

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

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

PRAYER FOR RELIEF

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

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

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

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

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

1 5. For compensatory damages in the amount of Plaintiff and Class members'
2 uniform maintenance expenses, costs and attorneys' fees pursuant to Cal. Code Civ. Proc.
3 §2802(c);

4 6. For all PTO/sick wages owed;

5 7. For compensatory damages in the amount of unpaid wages due to failure to pay
6 for all hours worked in accordance with California labor and employment law;

7 8. For injunctive relief requiring Defendant to comply with Labor Code
8 1198.5(b)(1);

9 9. A declaratory judgment that Defendant has knowingly and intentionally violated
10 the following provision of law: Labor Code section 6720, for failing to adopt standards that
11 minimize excessive indoor heat;

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

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

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

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

22 14. For an award to Plaintiff and Class Members for an additional hour of pay at the
23 employee's regular rate of compensation for each day that cool-down periods were not
24 provided during the Class Period;

25 15. For prejudgment interest accrued on all due and unpaid overtime and minimum
26 wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and
27 1194(a), according to proof;

1 16. For civil penalties pursuant to *Cal. Labor Code* §1198 and Wage Order 9-
2 2001(14);

3 17. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, 2751,
4 according to proof;

5 18. For reasonable costs, including attorneys' fees, in an amount according to proof
6 pursuant to, *inter alia*, *Cal. Labor Code* §§ 1194, 218.5, 1198. 5, 2802 and/or *Cal. Code of Civ.*
7 *Proc.* §1021.5;

8 19. For an award of restitution of wages to Plaintiff and Class Members in an
9 amount equal to the amount of wages owed and unpaid, according to proof;

10 20. For injunctive relief ordering the continuing unfair business acts and practices to
11 cease, as the Court deems just and proper;

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

14 22. For punitive and exemplary damages in a sum to be determined at trial; and

15 23. For such other and further relief as the Court deems just and proper.

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff Kaileb Douglas Harper hereby respectfully requests a trial by jury for all
18 claims and issues raised in his Complaint that may be entitled to a jury trial.

19
20 LIPELES LAW GROUP, APC

21 Date: August 22, 2024

22
23 By: 

24 _____
25 Thomas H. Schelly
26 Attorneys for Plaintiff
27 Kaileb Douglas Harper
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