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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
08/27/2024
Clerk of the Court
BY: AUSTIN LAM
Deputy Clerk

Attorneys for Plaintiff IRMA ALARCON, as an individual, and on behalf of all employees similarly situated,

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

IRMA ALARCON, as an individual, and on
behalf of all similarly situated employees,

Plaintiff,

v.

MEK ENTERPRISES, INC, a California
corporation; and DOES 1-50, inclusive,

Defendants.

Case No.:

CLASS ACTION

CGC-24-617585

COMPLAINT FOR DAMAGES

1. Failure to Pay All Wages, Including Minimum and Overtime Wages (Labor Code §§ 510, 1194);
2. Failure to Provide Rest Periods (Labor Code §§ 226.7, 512);
3. Failure to Provide Meal Periods (Labor Code §§ 226.7, 512);
4. Failure to Timely Pay Wages Upon Separation of Employment (Labor Code §§ 201, 202, 203);
5. Failure to Issue Accurate Itemized Wage Statements (Labor Code § 1174, 226 (A), (E));
6. Failure to Reimburse Employees for Necessary Business Expenditures (Labor Code § 2802(A)); and
7. Unfair Business Practices (Bus. Prof. Code §§ 17200 et. seq.).

DEMAND FOR JURY TRIAL

1 Plaintiff IRMA ALARCON (“Plaintiff”) on behalf of herself and all others similarly
2 situated, complains and alleges on information and belief, as follows:

3 **INTRODUCTION**

4 1. This is a class action brought on behalf of Plaintiff and the class she seeks to
5 represent (“Plaintiff Class”) pursuant to California Code of Civil Procedure section 382. Plaintiff
6 Class consists of all non-exempt, hourly-paid employees currently and/or formerly employed by
7 Defendant MEK ENTERPRISES, INC. (“Defendant”) as four (4) years prior to the filing of this
8 complaint through judgment. Plaintiff reserves the right to amend this complaint to reflect a
9 different “Class Period” or “Plaintiff Class” as further discovery is conducted.

10 2. Plaintiff individually and on behalf of the class she seeks to represent, seek relief
11 against Defendant for Defendant’s practices of violating the applicable wage orders, the
12 applicable Code of Regulations, and California Labor Codes, including: (1) failure to pay all
13 wages, including minimum wages and overtime wages at the correct regular rate; (2) failure to
14 provide rest periods or payments for missed rest periods at the correct regular rate; (3) failure to
15 provide meal periods or payment for missed meals at the correct regular rate; (4) failure to timely
16 pay wages at separation; (5) failure to keep accurate payroll records; (6) failure to reimburse
17 employees for necessary business expenditures; and (7) unfair business practices as set forth more
18 fully herein. These violations concern current and past employees of Defendants.

19 3. At all relevant times herein, Defendant has consistently maintained and enforced
20 against Plaintiff and the Plaintiff Class the following unlawful policies and practices: (a) willfully
21 refusing to pay Plaintiff and Plaintiff Class for all hours worked, including minimum wages; (b)
22 willfully refusing to pay all overtime wages to Plaintiff and Plaintiff Class for overtime hours
23 worked; (c) willfully refusing to permit Plaintiff and Plaintiff Class from taking meal and/or rest
24 periods; (d) willfully refusing to compensate Plaintiff and certain members of the Plaintiff Class
25 all wages due and owing at the time Plaintiff and Plaintiff Class’ employment with Defendant
26 ended; (e) willfully refusing to furnish to Plaintiff and Plaintiff Class with accurate itemized wage
27 statements upon payment of wages; and (f) willfully refusing to reimburse Plaintiff and Plaintiff
28 Class for necessary business expenditures.

1 4. Plaintiff brings this lawsuit seeking injunctive, restitution, and monetary relief
2 against Defendants, and each of them, on behalf of Plaintiff, individually, and on behalf of all
3 aggrieved and similarly-situated employees to recover, among other things, unpaid wages and
4 benefits, interest, penalties, liquidated damages, attorney's fees, and costs pursuant to California
5 Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 226, subdivision (a), 226.3, 226.7,
6 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, California Code of Civil
7 Procedure 1021.5, and provisions of the applicable IWC Wage Order. Plaintiff reserves the right
8 to name additional representatives throughout the State of California.

9 **JURISDICTION AND VENUE**

10 5. Venue is proper in this judicial district and the County of San Francisco, pursuant
11 to Code of Civil Procedure section 395 and 395.5, because Defendant maintains its office location
12 and transacts business in this county, the obligations and liability arise in this county, and work
13 was performed by Plaintiff and Plaintiff Class made the subject of this action in the County of
14 San Francisco.

15 6. Defendant employed Plaintiff and Plaintiff Class within the State of California and
16 the unlawful acts alleged herein have a direct effect on Plaintiff and the Class Members.

17 7. This Court has personal jurisdiction over Defendants, because Defendants reside
18 in, are incorporated in, have their main place of business in, and/or conduct business in the State
19 of California, and a substantial portion of the acts, omissions, events, and transactions constituting
20 the causes of action alleged herein occurred within the State of California, and more specifically,
21 in the county of San Fransisco. (Code Civ. Proc., § 410.10.)

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8. The California Superior Court has jurisdiction in the matter because the individual claims are under the seventy-five thousand dollar (\$75,000.00) individual jurisdictional threshold and the five million dollar (\$5,000,000.00) aggregate jurisdictional threshold for federal court and, upon information and belief, Plaintiff and Defendant are residents of and/or domiciled in the State of California. Further, there is no federal question at issue as the issues herein is based solely on California Statutes and law including the California Labor Code, Industrial Welfare Commission Wage Orders, Code of Civil Procedure, Rule of Court, and Business and Professions Code. Thus, the above-entitled court maintains appropriate jurisdiction to hear this matter.

THE PARTIES

Plaintiff

9. Plaintiff was employed by the Defendant from in or around June 2022 through on or around July 6, 2024. At all relevant times herein, Plaintiff was employed by Defendant in a non-exempt hourly position, and was entitled to compensation for all hours worked, including but not limited to minimum wage and overtime wages, as well as the aforementioned penalties from Defendant. Plaintiff was employed by Defendant within the four (4) years prior to the commencement of this action.

10. Each of the Plaintiff Class consist of identifiable, current, and/or former similarly situated persons, who were employed by Defendant as non-exempt hourly employees in California during the Class Period.

Defendant

11. Plaintiff is informed and believes, and based thereon alleges, that Defendant operates a moving company in the state of California. On information and belief, and based thereon, Plaintiff alleges that Defendant is conducting business in good standing in California, at all times herein mentioned, has regularly conducted business throughout the State of California.

12. On information and belief, Defendant is, and was, the employer for Plaintiff and Plaintiff Class.

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1 13. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
2 participation in the conduct herein alleged, of the Defendants sued herein as DOES 1 through 50,
3 inclusive, but on information and belief alleges that said Defendants are legally responsible for the
4 payment of wages, and the payment of rest and meal period compensation, to Plaintiff and Plaintiff
5 Class by virtue of their unlawful practices, and therefore sues these Defendants by such fictitious
6 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
7 Defendants when ascertained.

8 14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
9 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
10 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
11 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
12 employer and/or joint venture and/or single business enterprise, integrated enterprise, and/or are
13 agents of one another, are alter egos, joint employers, and conspire with one another to increase
14 profits by engaging in the conduct described in this Complaint.

15 15. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
16 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
17 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
18 below was acting, at least in part, within the course and scope of that authority as such agent,
19 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
20 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant
21 are legally attributable to the other Defendants.

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16. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants sued herein was, at all relevant times, the employer, owner, shareholder, principal, joint venture, proxy, agent, employee, supervisor, representative, manager, managing agent, joint employer and/or alter-ego of the remaining Defendants, and was acting, at least in part, within the course and scope of such employment and agency, with the express and implied permission, consent and knowledge, approval and/or ratification of the other Defendants. The above co-Defendants, managing agents, and supervisors aided, abetted, condoned, permitted, approved, authorized, and/or ratified the unlawful acts described herein.

GENERAL ALLEGATIONS

17. Plaintiff and the Plaintiff Class are, and at all times relevant herein have been, non-exempt employees within the meaning of the California Labor Code and the implementing rules and regulations of IWC California Wage Orders.

18. Plaintiff is informed and believes, and based thereon alleges, that Defendant continues to employ non-exempt employees within California.

19. Plaintiff is informed and believes, and based thereon alleges, that Defendant's policies and practices described herein are common across each of Defendant's job sites within the state of California.

20. Plaintiff is informed and believes, and based thereon alleges, that Defendants instituted a policy and practice against its employees wherein minimum wages and overtime wages due were not paid in compliance with California law. In violation of the Labor Code and IWC Wage Orders, Defendants failed to pay Plaintiff and Class Members' earned wages by failing to pay for all hours worked and failing to pay the proper minimum and overtime rates of pay, among other things. Plaintiff and Class Members were frequently required to work through their rest breaks and meal periods. Defendants failed or refused to provide premium compensation to Plaintiff and Plaintiff Class for all late meal periods, short meal periods, and all missing meal periods.

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21. As a matter of policy and/or practice, Defendant's compensation scheme failed to pay Plaintiff and Plaintiff Class their minimum and overtime wages due to the aforementioned off-the-clock work and failure to include all remuneration, including sick pay, in their regular rate for purposes of calculating overtime pay and meal and rest period premium pay. The failure to pay Plaintiff Class minimum and overtime wages for each hour worked violates, among others, Labor Code sections 1194, 1197, IWC Wage Order(s), and the UCL.

22. Plaintiff is informed and believes, and based thereon alleges, that Defendant was required to provide Plaintiff and Plaintiff Class with a work-free, thirty (30) minute meal period within the first five (5) hours of a shift for workdays in excess of six (6) hours, and a second thirty (30) minute meal period within the tenth (10th) hour of a shift for workdays in excess of ten (10) hours, in compliance with Labor Code section 512. Defendant routinely denied Plaintiff and Plaintiff Class a full, thirty (30) minute off-duty meal period when they worked in excess of six (6) hours within the first five (5) hours of their shifts. Additionally, when Plaintiff and Plaintiff's Class worked shifts of twelve (12) hours or more, they were not provided with a second meal break. On information and belief, neither Plaintiff nor Plaintiff Class waived their lawful meal periods or received compensation from Defendant for their missed meal periods.

23. Additionally, Defendant was obligated to provide Plaintiff and Plaintiff Class with a ten (10) minute rest break for every four (4) hours, or major fraction thereof, worked each day. Defendant prevented Plaintiff and Plaintiff Class from taking rest breaks throughout their shifts in order to complete its jobs more quickly.

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24. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and Plaintiff Class were entitled to receive wages for all hours worked, including minimum, regular, and overtime wages, and that they were not receiving all wages earned for work that was required to be performed. In violation of the Labor Code and IWC Wage Orders, Defendant failed to pay Plaintiff and Plaintiff Class' earned wages by failing to record all hours worked, paying for all hours worked, and paying the proper overtime and double time rates of pay, among other things. Further, Defendant failed to record and/or pay Plaintiff and Plaintiff Class for all hours worked in excess of eight (8) hours and/or twelve (12) hours per workday and failed to pay said hours at the proper overtime and double time rates.

25. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and Plaintiff Class were entitled to receive all required meal periods or payment of one (1) additional hour of pay at Plaintiff and Plaintiff Class' regular rate of pay when they did not receive a timely, uninterrupted off-duty meal period. In violation of the Labor Code and IWC Wage Orders, Defendant had a pattern, practice, and policy of not providing compliant meal periods. Plaintiff and Plaintiff Class were regularly unable to take a duty-free meal period or had their meal periods interrupted as a result of understaffing and a busy workload. In addition to having their meal periods interrupted, Plaintiff and Plaintiff Class were required to return to work before the end of their thirty (30) minute meal periods and continue working to meet Defendant's strict delivery deadlines along with other work-related tasks. Despite returning to work before the end of their thirty (30) minute meal periods, Defendant would alter Plaintiff and Plaintiff Class' time records to reflect a thirty (30) minute meal period. Particularly, Defendant manipulated Plaintiff and Plaintiff Class' time records to reflect a thirty (30) minute meal period, by utilizing an auto-deduct policy in some instances, or by systematically rounding the time punches of Plaintiff and Plaintiff Class in other instances. Specifically, Defendant utilized an auto-deduct policy for meal periods when Plaintiff and Plaintiff Class failed to clock in/out for their meal periods, or received late, interrupted, or missed meal periods.

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1 26. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
2 or should have known that Plaintiff and Plaintiff Class were entitled to receive all paid rest periods
3 or payment of one (1) additional hour of pay at Plaintiff and Plaintiff Class' regular rate of pay
4 when a rest period was missed, interrupted, or shortened. In violation of the Labor Code and IWC
5 Wage Orders, Defendant had a pattern, practice, and policy of not providing paid rest periods.
6 Defendant instructed Plaintiff and Plaintiff Class to forego their rest breaks to meet Defendant's
7 strict delivery deadlines along with other work-related tasks. As a result of Defendant's
8 understaffing and daily work requirements and demands, Plaintiff and Plaintiff Class did not
9 receive all paid rest periods or payment of one (1) additional hour of pay at Plaintiff and Plaintiff
10 Class' regular rate of pay when a paid rest period was missed, truncated, or interrupted.

11 27. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
12 or should have known that Plaintiff and Plaintiff Class were entitled to receive itemized wage
13 statements that accurately showed their actual hours worked, total hours worked, number of hours
14 worked at each hourly rate, gross and net wages earned, and premium wages earned per pay period
15 in accordance with California law. In violation of the Labor Code, Plaintiff and Plaintiff Class
16 were not provided with accurate itemized wage statements.

17 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
18 or should have known that Plaintiff and certain Plaintiff Class were entitled to timely payment of
19 wages due upon separation of employment. In violation of the Labor Code, Plaintiff and certain
20 Class Members did not receive payment of all wages due, within permissible time periods, upon
21 separation of employment.

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1 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
2 or should have known that Plaintiff and Plaintiff Class were entitled to receive business
3 reimbursements for necessary expenditures incurred for maintenance and upkeep of uniforms
4 marked with Defendant's logos. Defendant required Plaintiff and Plaintiff Class to wear uniforms
5 with Defendant's logos on the job. However, Plaintiff and Plaintiff Class were obligated to bear
6 all costs and expenses associated with the upkeep of their uniforms. Defendant's failure to provide
7 maintenance or reimbursement to Plaintiff and Plaintiff Class for expenditures herein mentioned
8 is in violation of the Labor Code.

9 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
10 or should have known that Plaintiff and Plaintiff Class were entitled to receive business
11 reimbursements for necessary expenditures incurred for using their personal vehicles.
12 Specifically, Defendant required Plaintiff and Plaintiff Class to use their personal vehicles to
13 make deliveries or pick up items as instructed by Defendant. However, despite the foregoing,
14 Defendant failed to maintain adequate insurance coverage, reimburse Plaintiff and Plaintiff Class
15 for additional insurance premiums for the use of their personal vehicles to perform job-related
16 tasks as well as pay for any deductible or costs associated with automobile accidents that arose
17 while Plaintiff and Plaintiff Class used their personal vehicles to carry out their job duties.
18 Moreover, Plaintiff and Plaintiff Class never received a mileage reimbursement compliant with
19 the IRS standards mileage rates when Plaintiff and Plaintiff Class used their personal vehicles in
20 the course and scope of their employment.

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1 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
2 or should have known that Plaintiff and Plaintiff Class were entitled to receive business
3 reimbursements for using their personal cellphones. Specifically, Defendant required Plaintiff and
4 Plaintiff Class to use their personal cellphones to carry out their work-related duties, including
5 without limitation, communicate with supervisors regarding scheduling, to clock in/out, view
6 wage statements, view/request sick leave as well as vacation leave. However, despite the
7 foregoing, Plaintiff and Plaintiff Class were not reimbursed for the reasonable percentage of their
8 cellphone bills. Defendant's failure to provide reimbursement to Plaintiff and Plaintiff Class for
9 expenditures herein mentioned is in violation of the Labor Code.

10 32. For at least four (4) years prior to the filing of this action and through to the present,
11 Plaintiff alleges that Defendant consistently maintained and enforced the following unlawful
12 practices and policies against its employees, in violation of California state wage and hour laws.

13 a. Defendant had a consistent policy of not paying Plaintiff and Plaintiff Class
14 for all hours worked;

15 b. Defendant had a consistent policy of requiring Plaintiff Class within the State
16 of California, including Plaintiff, to work at least five (5) hours without a
17 lawful meal period, and failing to pay such employees one (1) hour of pay at
18 the employees' regular rate of compensation for each workday that the meal
19 period was not provided, all in violation of, among others, Labor Code sections
20 201, 202, 226.7, 512, and applicable Industrial Welfare Commission Wage
21 Orders, in one or more of the following manners;

22 i. employees were required to work through their daily meal period(s), or
23 work an unlawful "on-duty meal period;" and

24 ii. employees were restricted in their ability to take a meal period prior to
25 the commencement of their fifth hour of work.

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- 1 c. Defendant had a consistent policy of failing to provide Plaintiff Class within
2 the State of California, including Plaintiff, rest periods of at least (10) minutes
3 per four (4) hours worked or major fraction thereof and failing to pay such
4 employees one (1) hour of pay at the employees' regular rate of compensation
5 for each workday that the rest period is not provided, as required by California
6 state wage and hour laws, in one or more of the following manners:
- 7 i. employees were required to work without being provided a minimum
8 ten (10) minute rest period for every four (4) hours, or major fraction
9 thereof, worked and were not compensated with one hour of pay at their
10 regular rate of pay for each workday that a rest period was not
11 provided; and
 - 12 ii. employees were neither permitted nor authorized to take lawful rest
13 periods or leave the premises for rest periods when allegedly
14 authorized
- 15 d. With respect to the Plaintiff Class who either were discharged, laid off, or
16 resigned, Defendants failed to pay them in accordance with the requirements
17 of Labor Code sections 201, 202, and 203;
- 18 e. Defendant failed to institute policies and procedures that ensured accurate
19 recording of all hours Plaintiff and Plaintiff Class worked during the class
20 period;
- 21 f. Defendant instituted policies and procedures that offset the necessary costs of
22 doing business on its employees. Plaintiff and Plaintiff class were required to
23 use their personal cellphones and personal vehicles as well as maintain their
24 uniforms. Defendant failed to reimburse Plaintiff and Plaintiff's Class for the
25 cost of the use of their personal cellphones and personal vehicles and maintain
26 their uniforms. Defendant required Plaintiff and Plaintiff class to take on the
27 burden of these expenses without reimbursement in violation of Labor Code
28 section 2802.

1 33. Plaintiff is informed and believes, and based thereon alleges, that Defendant
2 willfully failed to pay Plaintiff Class all wages earned, including minimum and overtime wage and
3 compensation for missed meal and rest periods, in a timely manner upon or after termination of
4 their employment with Defendant.

5 34. Plaintiff is informed and believes, and based thereon alleges, that Defendant
6 currently employs, and during the relevant liability period has employed dozens of employees in
7 the State of California in non-exempt positions.

8 35. On information and belief, Plaintiff alleges that Defendant's actions as described
9 throughout this complaint were willful.

10 36. On information and belief, Plaintiff alleges that Defendant willfully failed to pay
11 the legal wages, including minimum and overtime wage, failed to provide legal rest and meal
12 periods, and willfully failed to pay one hour's wages in lieu of rest and meal periods, when each
13 such employee quit or was discharged.

14 37. Plaintiff, on behalf of herself and all other Plaintiff Class, brings this action
15 pursuant to Labor Code sections 201, 202, 203, 204, 210, 218, 218.5, 218.6, 226, 226.3, 226.7,
16 510, 512, 1174, 1194, 1197, and 2802, California Business and Professions Code section 17200 et
17 seq., and Code of Regulations, Title 8, section 11000 et seq., seeking unpaid wages, unpaid rest
18 and meal period compensation, penalties, injunctive, and other equitable relief, and reasonable
19 attorneys' fees and costs.

20 38. Defendant has made it difficult to account with precision for the unlawfully
21 withheld wages for time spent working off the clock and meal and rest period compensation owed
22 to Defendant's non-exempt employees, including Plaintiff, during the liability period, because it
23 did not implement and preserve a sufficient record-keeping method as required for non-exempt
24 employees by California Labor Code sections 226, 1174(d), and section 7 of the California Wage
25 Orders. Defendant has failed to comply with Labor Code section 226, subdivision (a) by itemizing
26 in wage statements all deductions from payment of wages and accurately reporting total hours
27 worked by Plaintiff and the Plaintiff Class. Plaintiff and Plaintiff Class are therefore entitled to

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penalties not to exceed four thousand dollars (\$4,000.00) for each employee pursuant to Labor Code section 226, subdivision (b).

39. Defendant has failed to comply with section 7 of the 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 section 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 Plaintiff Class.

40. Plaintiff, on behalf of herself and Class Members, pursuant to Business and Professions Code sections 17200-17208, also seeks injunctive relief and restitution for the unfair, unlawful, or fraudulent practices alleged in this complaint.

ADMINISTRATIVE PREREQUISITE

41. Prior to filing this Complaint, on August 15, 2024, Plaintiff gave written notice by electronic filing to the Labor Workforce Development Agency ("LWDA") (LWDA Case No.: LWDA-CM-1045680-24 and by certified mail to Defendant of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations as required by Labor Code section 2699.3.

42. A true and correct copy of Plaintiff's letter sent to the LWDA and Defendant, dated August 15, 2024, is attached hereto as "Exhibit A.":

43. An amended notice was filed with the LWDA on August 21, 2024 a true and correct copy of the letter sent to the LWDA and Defendant is attached hereto as "Exhibit B".

44. Under Labor Code Section 2699.3 subdivision (a), a plaintiff may bring a cause of action under PAGA only after giving notice to the LWDA and the employer of the Labor Code sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate or after sixty-five (65) days have passed without notice.

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45. Under Labor Code Section 2699.3 subdivision (a)(2)(c), “Notwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within sixty (60) days of time periods specified in this part.”

46. Therefore, Plaintiff intends on amending his complaint upon the expiration of the sixty-five (65) day period for the LWDA to provide notice of its intent to investigate Plaintiff's claims, if the LWDA fails to provide notice.

CLASS ALLEGATIONS

47. Plaintiff brings this action on behalf of herself and all others similarly situated as a class action pursuant to section 382 of the California Code of Civil Procedure.

48. Plaintiff's proposed class consists of and is defined as follows: all individual who worked for Defendants in a California location as a non-exempt employee during the Class Period.

49. Plaintiff reserves the right under rule 3.765 of the California Rules of Court, to amend or modify the class descriptions with greater specificity or further division into subclasses or limitation to particular issues.

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

A. Numerosity

51. The potential members of each Class defined herein are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Plaintiff Class has not been determined at this time, Plaintiff is informed and believes that Defendant currently employs, and during the relevant time period employed, at least eighty (80) employees worked in hourly positions as Defendant's non-exempt employees in California, who are or have been affected by Defendant's unlawful practices as alleged herein.

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52. Accounting for employee turnover during the relevant periods necessarily increases this number substantially. Upon information and belief, Plaintiff alleges Defendant's employment records would provide information as to the number and location of all employees within the Plaintiff Class. Joinder of all members of the proposed Classes is not practicable.

B. Commonality

53. Common questions of law and fact predominate over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

- a. Whether Plaintiff and Plaintiff Class are entitled to wages from Defendant under applicable IWC Wage Orders, regulations and statutes for hours worked but not paid;
- b. Whether Defendant violated Labor Code sections 226.7 and 512, section 10 of the IWC Wage Orders, and Code of Regulations, Title 8, section 11000 et seq. by failing to provide a lawful meal period to non-exempt employees within the first five (5) hours of their shifts on days they worked in excess of six (6) hours and by failing to compensate said employees one hour's wages in lieu of meal periods;
- c. Whether Defendant violated Labor Code section 226.7, section 11 of the IWC Wage Orders, and Cal. Code Regs., Title 8, section 11000 et seq. by failing to provide daily rest periods to non-exempt employees for every four (4) hours or major fraction thereof worked and by failing to compensate said employees one hour's wages in lieu of rest periods;
- d. Whether Defendant violated sections 201, 202, and 203 of the Labor Code by failing to pay all earned wages and/or premium wages or return unlawfully deducted wages due and owing at the time that any person in the Plaintiff Class employment with Defendant terminated, voluntarily or involuntarily;

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- 1 e. Whether Defendant failed to keep accurate payroll records and provide
2 accurate itemized paystubs in violation of Labor Code section 1174, 226 (A),
3 (E);
4 f. Whether Defendant failed to Reimburse Employees for Necessary Business
5 Expenditures in violation of Labor Code section 2802, subdivision (A);
6 g. Whether Defendant violated section 17200 et seq. of the Business and
7 Professions Code, Labor Code sections 201, 202, 203, 351, 226.7, 512, 1194,
8 1199, 1174, and applicable IWC Wage Orders, which violation constitutes a
9 violation of fundamental public policy; and
10 h. Whether Plaintiff and Class Members are entitled to equitable relief pursuant
11 to Business and Professions Code section 17200 et seq.

12 54. Plaintiff's claims are typical of the claims of the Plaintiff Class. Plaintiff and the
13 Plaintiff Class sustained injuries and damages arising out of and caused by Defendant's common
14 course of conduct in violation of California laws, regulations, and statutes as alleged herein.

15 **C. Adequacy of Representation**

16 55. Plaintiff will fairly and adequately represent and protect the interests of the
17 Plaintiff Class. Counsel is competent and experienced in litigating employment class actions.

18 56. A class action is superior to other available means for the fair and efficient
19 adjudication of this controversy. Individual joinder of all each person in the Plaintiff Class is not
20 practicable, and questions of law and fact common to each Class predominate over any questions
21 affecting only individual members of the Class. Each member of the Plaintiff Class has been
22 damaged and is entitled to recovery by reason of Defendant's unlawful policies and practices
23 alleged in the complaint.

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1 **D. Superiority of Class Action**

2 57. Under the facts and circumstances set forth above, a class action is superior to any
3 other method available for the fair and efficient adjudication of the rights of each class member
4 in as much as joinder of individual, relatively small claims of Class Members is not practical and
5 if each employee were required to file an individual lawsuit, the corporate defendant would
6 necessarily gain an unconscionable advantage as they would be able to exploit and overwhelm
7 the limited resources of each individual plaintiff. Requiring each Class Member to pursue an
8 individual remedy would also discourage the assertion of lawful claims by employees fearful of
9 retaliation and permanent damage to their careers at present and/or subsequent employment.
10 Further, the substantial risk of inconsistent or varying verdicts or adjudications with respect to the
11 individual Class Members against Defendants herein further support class certification.

12 58. Class action treatment will allow those similarly situated persons 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 that are likely to be encountered in the management of this
15 action that would preclude its maintenance as a class action.

16 **FIRST CAUSE OF ACTION**

17 **Failure to Pay All Wages**

18 **(Plaintiff and Plaintiff Class Against All Defendants)**

19 59. Plaintiff realleges and incorporates all previous paragraphs of this complaint as
20 though fully set forth herein.

21 60. Any employee receiving less than the legal minimum wage or legal overtime
22 compensation is entitled to recover in a civil action the amount of unpaid wages, attorneys' fees
23 and costs of suit. (Lab. Code, § 1194, subd. (a).)

24 61. Notwithstanding any other provision of the Labor Code, hourly minimum wage
25 rates are set for all industries according to statute. (Lab. Code, § 1182.12.) Employers must pay
26 employees no less than minimum wage for each hour worked. (Lab. Code, § 1194.)

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62. In any action to recover payment of wages less than the minimum wage an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. (Lab. Code, § 1194.2.)

63. Any work in excess of eight (8) hours in any workday and any work in excess of forty (40) hours in a workweek, shall be compensated at a rate of no less than one and one-half times the regular rate of pay for an employee. (Lab. Code, § 510, subd. (a).) Any work in excess of twelve (12) hours in a workday shall be compensated at the rate of twice the regular rate of pay for an employee. (Lab. Code, § 510, subd. (a).)

64. All wages earned in employment are due and payable twice during each calendar month on dates designated in advance by the employer. (Lab. Code, § 204.)

65. In case of a dispute over wages, the employer shall pay, without condition and promptly under the Labor Code all wages conceded due, leaving to the employee all remedies he/she is otherwise entitled to as to any balance claimed. (Lab. Code, § 206.)

66. At all relevant times herein, Plaintiff and Plaintiff Class were and are paid as non-exempt employees.

67. Plaintiff and Plaintiff Class regularly worked over eight (8) hours per day and forty (40) hours per week. Specifically, Plaintiff and Plaintiff Class routinely worked shifts of nine (9) hours or longer and often times worked seven consecutive days in a given week. However, Defendant failed to pay Plaintiff and Plaintiff Class for all hours worked by failing to record actual hours worked, e.g., time spent working off-the-clock, including, during meal periods among other things. Consequently, Defendant failed to pay Plaintiff and Plaintiff Class all minimum, regular, overtime, and/or double-time wages for all hours worked, including hours in excess of over eight (8) per day and forty (40) per workweek. Pursuant to Labor Code sections, *inter alia*, 204, 510, 1182.12, and 1194, the Plaintiff Class seeks the payment of all minimum, regular, overtime, and/or double-time compensation which they earned and accrued for four (4) years prior to filing this complaint, according to proof.

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1 68. Plaintiff alleges that, Defendant maintained, and has maintained throughout the
2 Class Period, a consistent policy and practice of failing to pay wages, including overtime, and
3 minimum wage due for hours actually worked.

4 69. Plaintiff alleges that Defendant maintained, and has maintained throughout the
5 Class Period, a consistent policy of failing to pay its employees for all hours worked. Specifically,
6 Defendant maintained a policy of failing to record all hours Plaintiff and Plaintiff Class worked
7 for time spent working off-the-clock during their meal periods on their regular work duties.

8 70. Defendant has a practice of not recording or paying Plaintiff and Plaintiff Class
9 for all overtime hours worked. Specifically, Defendant maintained a practice of only paying
10 Plaintiff and Plaintiff Class for forty (40) hours a week even when Plaintiff and Plaintiff Class
11 had worked over than forty (40) hours, and regardless of whether Plaintiff and Plaintiff Class
12 worked in excess of eight (8) hours in a given day, thereby depriving Plaintiff and Plaintiff Class
13 from minimum and overtime wages that they were entitled to.

14 71. Furthermore, as previously mentioned, Plaintiff and Plaintiff Class routinely
15 worked shifts in excess of eight (8) hours and often times worked seven consecutive days in a
16 given week. However, when Plaintiff and Plaintiff Class worked seven consecutive days, they
17 were not paid one- and one-half times their regular rate of pay for the first eight (8) hours worked.

18 72. Additionally, Plaintiff alleges that Plaintiff and Plaintiff Class were not
19 compensated double their regular rate of pay for all hours worked in excess of twelve (12) hours
20 on any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive
21 day of work in a workweek.

22 73. As a result of Defendant's unlawful acts, Plaintiff and Plaintiff Class have been
23 deprived of regular wages, minimum wages, overtime wages, and compensation in amounts to be
24 determined at trial, and are entitled to recovery of such amounts, plus interest and penalties
25 thereon, attorneys' fees, and costs, pursuant to Labor Code sections 1194 and 1199.

26 74. Defendant willfully violated the Labor Code with respect to meeting the
27 requirements of paying all wages earned, including minimum wage, as alleged herein.

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75. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the unpaid wages resulting from Defendant's minimum wage violations including interest thereon, reasonable attorney's fees and costs of suit, penalties, and liquidated damages to the fullest extent permissible including those permitted pursuant to Labor Code sections 1194 and 1194.2 and Code of Civil Procedure section 1021.5 and/or any other statute.

76. WHEREFORE, Plaintiff and Plaintiff Class request relief as described herein and below.

SECOND CAUSE OF ACTION

Failure to Provide Rest Periods

(Plaintiff and Plaintiff Class Against All Defendants)

77. Plaintiff realleges and incorporates all previous paragraphs of this complaint as though fully set forth herein.

78. Labor Code section 226.7 provides that employers authorize and permit all employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours.

79. Labor Code section 226.7, subdivision (b) provides that if an employer fails to provide an employee rest periods in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employees' regular rate of compensation for each workday that the rest period is not provided.

80. Plaintiff alleges that during the class period, Defendant did not permit or authorize Plaintiff and Plaintiff Class to take timely or compliant rest periods. Plaintiff and Plaintiff Class frequently worked over eight (8) hours without receiving any rest breaks due to understaffing, workload, strict delivery schedules, and other work demands. Defendant failed to adequately staff employees to allow Plaintiff and Class Members an opportunity to be provided timely, lawful duty-free rest periods for every four (4) hours of their shift or major fraction thereof. Further, Plaintiff and Plaintiff Class were required to remain on Defendant's premises and not free to leave Defendant's premises during the rest periods.

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1 81. At all times relevant hereto, Plaintiff and Plaintiff Class worked more than four
2 (4) hours in a workday, and ten (10) hours in a workday at times.

3 82. Plaintiff and Plaintiff Class did not voluntarily or willfully waive rest periods.

4 83. Defendant further failed to implement a policy to pay Plaintiff and Plaintiff Class
5 an additional hour of pay at their regular rate of pay for rest periods not authorized or permitted.

6 84. By failing to keep adequate records as required by sections 226 and 1174,
7 subdivision (d) of the Labor Code, Defendant has injured Plaintiff and Plaintiff Class and made
8 it difficult to calculate the unpaid rest period compensation (including wages, interest, and
9 penalties thereon) due and owing to Plaintiff and Plaintiff Class.

10 85. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiff
11 and Plaintiff Class, they have been deprived of compliant rest periods and/or premium wages in
12 lieu thereof in amounts to be determined at trial and are entitled to recovery of such amounts, plus
13 interest and penalties thereon, attorneys fees, costs, to the fullest extent permissible under the
14 Labor Code 226.7, applicable IWC Wage Orders, Code of Civil Procedure section 1021.5.

15 86. WHEREFORE, Plaintiff and Class Members request relief as described herein and
16 below. Plaintiff incorporates all previous paragraphs of this complaint as though fully set forth
17 herein.

18 **THIRD CAUSE OF ACTION**

19 **Failure to Provide Meal Periods**

20 **(Plaintiff and Plaintiff Class Against All Defendants)**

21 87. Plaintiff realleges and incorporates all previous paragraphs of this complaint as
22 though fully set forth herein.

23 88. Labor Code sections 226.7 and 512 and the applicable IWC Wage Order provide
24 that no employer shall employ any person for a work period of more than five (5) hours without
25 providing a meal period of not less than thirty (30) minutes or employ any person for a work
26 period of more than ten (10) hours without a second (2nd) meal period of not less than thirty (30)
27 minutes.

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1 89. Labor Code section 226.7 provides that if an employer fails to provide an
2 employee a meal period in accordance with this section, the employer shall pay the employee one
3 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
4 period is not provided in accordance with this section.

5 90. Defendant maintains, and has maintained throughout the Class Period, a policy
6 and practice of failing to provide lawful work-free meal periods to Plaintiff and Plaintiff Class,
7 for the days on which non-exempt employees work periods in excess of six (6) hours and a second
8 (2nd) meal period on days which non-exempt employees work periods in excess of ten (10) hours.
9 Plaintiff and Plaintiff Class were routinely denied the opportunity to be completely relieved of all
10 work duties for a thirty (30) minute meal period as a result of Defendant's failure to provide
11 adequate staffing. Plaintiff alleges Defendant failed to provide legally compliant meal periods, in
12 addition to impeding, discouraging, dissuading, and/or not relieving employees from all work
13 duties during meal periods, thereby preventing employees from taking legally compliant meal
14 periods. Specifically, Plaintiff and Plaintiff Class worked through their meal periods despite
15 Defendant recording that a meal period was taken, or had their meal periods interrupted or
16 shortened among other things. Further, Plaintiff and Plaintiff Class were required to remain on
17 Defendant's premises and not free to leave Defendant's premises during the meal periods.
18 Defendant failed to provide Plaintiff and Plaintiff Class with compensation for their missed meal
19 periods.

20 91. Plaintiff and Plaintiff Class did not voluntarily or willfully waive meal periods.

21 92. At all times relevant hereto, the Defendants, failed to provide Plaintiff and Plaintiff
22 Class similarly a compliant duty-free meal period as required by Labor Code sections 226.7 and
23 512.

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93. By virtue of the Defendant's unlawful failure to provide meal periods to Plaintiff and Plaintiff Class, Plaintiff and the Plaintiff Class have been deprived of compliant meal periods and/or premium wages in lieu thereof in amounts to be determined at trial and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys fees, costs, to the fullest extent permissible under the Labor Code sections 226.7 and 512, applicable IWC Wage Orders, Code of Civil Procedure section 1021.5, and/or any other statute.

94. WHEREFORE, Plaintiff and Class Members request relief as described herein and below.

FOURTH CAUSE OF ACTION

Failure to Timely Pay Wages Due Upon Separation of Employment

(Plaintiff and Plaintiff Class Against All Defendants)

95. Plaintiff realleges and incorporates all previous paragraphs of this complaint as though fully set forth herein.

96. Labor Code section 201 provides that an employer is required to pay an employee whose employment is terminated by the employer all wages earned and unpaid immediately upon termination.

97. Labor Code section 202 requires an employer pay to an employee who quits his or her employment, all wages earned and unpaid no later than seventy-two (72) hours thereafter.

98. Labor Code section 203 provides that an employer who fails to pay all wages earned and due an employee who is discharged or who quits within the timeframe set forth in sections 201 and 202, the wages of the employee shall continue as a penalty from the due date at the same rate of pay until paid, but not more than thirty (30) days. In other words, the employer owes the employee his or her daily rate of pay at their regular rate of pay for each day the full amount of unpaid wages is not paid, for a penalty of up to thirty (30) days' wages.

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1 99. During the relevant time period, Plaintiff and formerly employed members of the
2 Plaintiff Class resigned or were terminated from their positions with Defendant. Defendant,
3 however, willfully did not pay Plaintiff and Plaintiff Class all wages which were due to them upon
4 their separation of employment immediately upon termination or within seventy-two (72) hours
5 of their resignation as required by Labor Code section 202, subdivision (a). Defendant failed to
6 pay Plaintiff and Plaintiff Class all minimum wages and overtime wages due, which were earned
7 throughout their employment. Defendant also failed to pay premium wages for times Plaintiff and
8 Class Members were not provided meal and/or rest breaks.

9 100. Under Labor Code sections 201, 202, and 203, Plaintiff and Plaintiff Class are
10 entitled to waiting time penalties for not having been paid all wages due them upon their
11 separation from employment.

12 101. Plaintiff and Plaintiff Class who terminated employment within four (4) years of
13 the filing of the original Complaint until the date of entry of judgment, without being paid the
14 proper payments are entitled to thirty (30) days of pay at their regular rate of pay as waiting time
15 penalties.

16 102. WHEREFORE, Plaintiff and the Plaintiff Class request relief as described herein
17 and below.

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1 **FIFTH CAUSE OF ACTION**

2 **Failure to Issue Accurate Wage Statements**

3 **(Plaintiff and Plaintiff Class Against All Defendants)**

4 103. Plaintiff realleges and incorporates by reference and realleges all previous
5 paragraphs of this complaint as though fully set forth herein.

6 104. Labor Code section 1174, subdivision (d), requires an employer to keep at a central
7 location in California or at the plant or establishment at which the employee is employed, payroll
8 records showing the hours worked daily, and the wages paid to, each employee. Labor Code
9 section 226, subdivision (a) requires an employer to provide employees—either as a detachable
10 part of the check, draft, or voucher paying the employee's wages, or separately when wages are
11 paid by personal check or cash—an accurate itemized wage statement in writing.

12 105. Labor Code section 226, subdivision (e) provides that if an employer knowingly
13 and intentionally fails to provide a statement itemizing, inter alia, the gross and net wages earned,
14 the total hours worked by the employee and the applicable hourly overtime rates, causing the
15 employee injury, then the employee is entitled to recover the greater of all actual damages or fifty
16 dollars (\$50.00) for the initial violation and one hundred dollars (\$100.00) for each subsequent
17 violation, up to four thousand dollars (\$4,000.00). Plaintiff is informed and believes that
18 Defendant willfully failed to make or keep accurate records for Plaintiff and Plaintiff Class.

19 106. IWC Wage Orders require that every employer shall keep accurate information
20 with respect to each employee, including time records showing when each employee begins and
21 ends each work periods, the total daily hours worked by each employee and the total hours worked
22 in each payroll period, and applicable rates of pay. Plaintiff alleges that Defendant willfully and
23 intentionally failed to make and/or keep records which accurately reflect the hours worked by
24 Plaintiff and Plaintiff Class. Specifically, Plaintiff believes that Defendant's records do not
25 accurately reflect all hours worked due to Plaintiff and Plaintiff Class working during their
26 recorded meal and/or rest breaks.

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Furthermore, Defendant's records do not reflect all hours worked, specifically the hours Plaintiff and Plaintiff Class were required to work off the clock when Defendant intentionally did not pay for hours worked more than forty (40) hours a week or in excess of eight (8) hours in a day. Additionally, Plaintiff and Plaintiff Class were entitled to overtime wages of one and a half times their regular rate of pay for said off-the-clock work.

107. An employee is deemed to suffer injury if the employer fails to provide an accurate wage statement containing all of the required information set forth in Labor Code section 226, subdivision (a). (Lab. Code, § 226, subd. (e)(2).) In addition, the omission of time worked, proper rates of pay, records of missed meal and rest breaks, and/or premium pay make it difficult for employees to determine whether they were paid all wages due without complicated calculations and/or reconstruction of records required to be maintained by the employer.

108. Plaintiff is informed and believes that Defendant's failure to keep accurate payroll records, as described above, violated Labor Code sections 1174, subdivision (d) and 226, subdivision (a), and the applicable wage order.

109. Plaintiff is informed and believes that Defendant's failure to keep and maintain accurate records and information, as described above, was knowing and willful, and Plaintiff and the Plaintiff Class are entitled to statutory penalties pursuant to Labor Code sections 226 and 1174.5.

110. WHEREFORE, Plaintiff and Plaintiff Class request relief as described herein and below.

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1 **SIXTH CAUSE OF ACTION**

2 **Failure to Reimburse Employees for Necessary Business Expenditures**

3 **(Plaintiff and Plaintiff Class Against All Defendants)**

4 111. Plaintiff realleges and incorporates by reference all preceding paragraphs of this
5 complaint as though fully set forth herein.

6 112. Under California Labor Code section 2802, subdivision (a), an employer is legally
7 to reimburse its employees for necessary business expenditures incurred as a result of performing
8 their work.

9 113. California Labor Code section 2802 states, “An employer shall indemnify his or
10 her employee for all necessary expenditures or losses incurred by the employee in direct
11 consequence of the discharge of his or her duties...”

12 114. Plaintiff and Plaintiff Class were not reimbursed by Defendant for necessary
13 expenditures as a direct consequence of the discharge of their duties.

14 115. Plaintiff and Plaintiff Class further allege that during the course of their
15 employment they were required by Defendant to make use of their personal cellphones, to without
16 limitation, communicate with their supervisors, send timesheets to managers, among other things.
17 However, despite the foregoing, Defendant failed to reimburse Plaintiff and Plaintiff Class with
18 a reasonable percentage of their cellphone bills. Thus, the Defendants’ policy of having Plaintiff
19 and Plaintiff Class make use of their personal cellphones in order to carry out their employee
20 duties, without reimbursement for said expenditure constitutes a violation of Labor Code section
21 2802.

22 116. Plaintiff and Plaintiff Class further allege that during the course of their
23 employment they were required by Defendant to make use of their personal vehicles to make
24 deliveries for Defendant, and were not reimbursed for doing so. Thus, the Defendants’ policy of
25 having Plaintiff and Plaintiff Class make use of their personal vehicles in order to carry out their
26 employee duties, without reimbursement for said expenditure constitutes a violation of Labor
27 Code section 2802.

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1 117. Additionally, Plaintiff and Plaintiff Class, allege that during the course of their
2 employment, Defendant controlled their appearance by requiring them to wear uniforms during
3 their shifts, marked with the Defendant's company logo. Further, throughout the Class Period,
4 Plaintiff and Plaintiff Class, were obligated to bear all costs and expenses associated with the
5 upkeep of their uniforms. Thus, the Defendants' policy of requiring Plaintiff and Plaintiff Class
6 to wear company uniforms with company logos, without providing maintenance or
7 reimbursement for said expenditure constitutes a violation of California Labor Code section 2802.

8 118. As hereinabove mentioned, Defendant failed to indemnify Plaintiff and Plaintiff
9 Class for all necessary expenditures or losses incurred by Plaintiff and Plaintiff Class in-direct
10 consequence of the discharge of their duties. Specifically, Defendant's failure to indemnify
11 Plaintiff and Plaintiff Class for expenditures they incurred on their behalf, including, but not
12 limited to, use of their personal cellphones and their personal vehicles in direct consequence of
13 the discharge of their duties to Defendant, as well as maintaining their uniforms that Defendant
14 required Plaintiff and Plaintiff Class wear during their shifts.

15 119. Defendant knowingly, willingly and intentionally attempted to offset the cost of
16 doing business on the Plaintiff and Plaintiff Class. Defendant had a corporate practice of requiring
17 Plaintiff and Plaintiff Class to shoulder the burden of Defendant's cost of doing business by
18 failing to reimburse Plaintiff and Plaintiff Class for necessary business expenditures.

19 120. Defendant has not reimbursed Plaintiff and Plaintiff Class for all expenditures.
20 Plaintiff and Plaintiff Class are therefore entitled to be paid damages, attorneys' fees and costs,
21 and interest pursuant to Labor Code section 2802, subdivisions (b) and (c), as well as all statutory
22 penalties against Defendant in accordance with Labor Code section 2802, subdivision (d).

23 121. Accordingly, Plaintiff and Plaintiff Class are entitled to an award of "necessary
24 expenditures or losses" shall include all reasonable costs, including, but not limited to, attorney's
25 fees and interest.

26 122. WHEREFORE, Plaintiff and the Plaintiff Class request relief as described herein
27 and below.

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1 130. The victims of these unlawful, unfair, and/or fraudulent business practices include,
2 but are not limited to, Plaintiff, putative class members, competing labor services in the State of
3 California, and the general public. Plaintiff is informed and believes, and thereon alleges, that
4 Defendant performed the above-mentioned acts with the intent of gaining an unfair competitive
5 advantage and thereby injuring Plaintiff, putative class members, other competitors, and the
6 general public.

7 131. Plaintiff's success in this action will enforce important rights affecting the public
8 interest and public policy. In this regard, Plaintiff sues on behalf of the public as well as on behalf
9 of herself.

10 132. Business and Professions Code sections 17203 provides that a court may make such
11 orders or judgments as may be necessary to prevent the use or employment by any person of any
12 practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to
13 prevent Defendants from repeating their unlawful, unfair, and fraudulent business acts and
14 business practices alleged above.

15 133. Business and Professions Code section 17203 provides that the Court may restore
16 to any person in interest any money or property that may have been acquired by means of such
17 unfair competition. Plaintiff and the Plaintiff Class are entitled to restitution pursuant to Business
18 and Professions Code section 17203 for wages and payments unlawfully withheld from employees,
19 including the fair value of the meal and rest periods and other losses alleged herein, during the
20 four-year period prior to the filing of this complaint. All remedies are cumulative pursuant to
21 Business and Professions Code section 17205.

22 134. Business and Professions Code section 17202 provides: "Notwithstanding section
23 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
24 forfeiture, or penal law in a case of unfair competition." Plaintiff and Plaintiff Class are entitled to
25 enforce all applicable penalty provisions of the Labor Code pursuant to Business and Professions
26 Code section 17202.

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1 135. The actions of Defendant as alleged within this Complaint constitute false,
2 fraudulent, unlawful, unfair, and deceptive business practices, within the meaning of Business and
3 Professions Code section 17200 et seq.

4 136. Plaintiff and the Plaintiff Class are entitled to other equitable relief against such
5 unlawful practices in order to prevent future damage, for which there is no adequate remedy at
6 law, and to avoid a multiplicity of lawsuits.

7 137. As a result of its unlawful acts, Defendant has reaped and continue to reap unfair
8 benefits and unlawful profits at the expense of Plaintiff and Plaintiff Class. Defendant should be
9 required to restore to Plaintiff and Class Members the wrongfully withheld wages pursuant to
10 Business and Professions Code section 17203. Plaintiff is informed and believes, and thereon
11 alleges, that Defendant has been unjustly enriched through Defendant's unlawful, unfair, and
12 fraudulent business practices as alleged throughout this Complaint. Plaintiff is informed and
13 believes, and based thereon alleges, that Plaintiff and Plaintiff Class are prejudiced by Defendant's
14 unfair trade practices.

15 138. As a direct and proximate result of Defendant's unfair business practices, Plaintiff,
16 and Plaintiff Class are entitled to equitable including full restitution of all wages which have been
17 unlawfully withheld from Plaintiff and Plaintiff Class as a result of the business acts and practices
18 described herein.

19 139. Plaintiff requests injunctive relief pursuant to Business and Professions Code
20 section 17203 to enjoin Defendant from continuing the unfair/unlawful business practices alleged
21 herein.

22 140. Plaintiff herein takes upon enforcement of these laws and lawful claims. There is a
23 financial burden involved in pursuing this action. The action is seeking to vindicate a public right,
24 and it would be against the interests of justice to penalize Plaintiff by forcing Plaintiff to pay
25 attorneys' fees from the recovery in this action. Attorneys' fees are appropriate pursuant to Code
26 of Civil Procedure section 1021.5 and others.

27 141. WHEREFORE, Plaintiff and Plaintiff Class request relief as described herein and
28 below and as deemed just.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff and Class Members pray for judgment as follows:

- 3 1. That the Court determine that this action may be maintained as a class action;
- 4 2. That Plaintiff be appointed the representative of each proposed Class, as appropriate;
- 5 3. That the attorneys of record for Plaintiff whose name appears in this complaint be
- 6 appointed class counsel;
- 7 4. For compensatory damages in an amount according to proof with interest thereon;
- 8 5. For economic and/or special damages in an amount according to proof with interest
- 9 thereon;
- 10 6. That Defendant be found to have engaged in unfair competition in violation of
- 11 Business and Professions Code section 17200 *et seq.*;
- 12 7. That Defendant be ordered to make restitution to each Class Member due to its unfair
- 13 competition, pursuant to Business and Professions Code sections 17203 and 17204;
- 14 8. For penalties to the extent permitted pursuant to the Labor Code, Orders of the
- 15 Industrial Welfare Commission, including, but not limited to, waiting time penalties
- 16 under Labor Code section 203, and penalties under Labor Code sections 226,
- 17 subdivision (e), 226.3, 210, 226.7, and 1174.5;
- 18 9. For attorneys' fees, interest, and costs of suit under Labor Code sections 218.5, 1194
- 19 and other applicable provisions of law outside the Labor Code; and
- 20 10. For such other and further relief as the Court deems just and proper.

21

22 Dated: August 27, 2024

23 **MAHONEY LAW GROUP, APC**

24 

25 _____
26 Kelli R. McTague, Esq.
27 Berkeh Alemzadeh, Esq.
28 Attorneys for Plaintiff IRMA ALARCON and on
behalf of all employees similarly situated

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DEMAND FOR JURY TRIAL

Plaintiff IRMA ALARCON hereby demands a jury trial on all issues so triable.

Dated: August 27, 2024

MAHONEY LAW GROUP, APC



Kelli R. McTague, Esq.

Berkeh Alemzadeh, Esq.

Attorneys for Plaintiff IRMA ALARCON and on
behalf of all employees similarly situated

EXHIBIT A



Kelli McTague
(562) 590-5550 phone
(562) 590-8400 facsimile
kmctague@mahoney-law.net

August 15, 2024

VIA ELECTRONIC FILLING

LABOR AND WORKFORCE DEVELOPMENT AGENCY

Attn: PAGA Administrator

<https://dir.tfaforms.net/207>

VIA U.S. CERTIFIED MAIL # 70192280000202144743

Mek Enterprises, Inc.

11491 Woodside Ave.

Santee, CA 92701

VIA U.S. CERTIFIED MAIL # 70192280000202144736

Mek Enterprises, Inc.

Attn: Marc Kranz

3517 Camino Del Rio South, Ste. 215,

San Diego, CA 92108

VIA U.S. CERTIFIED MAIL # 70192280000202144729

Mek Enterprises, Inc.

400 McAllister St.

San Francisco, CA 94102

Re: Alaron v. Mek Enterprises, Inc.

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

To: Mek Enterprises, Inc. and the California Labor and Workforce Development Agency
("LWDA")

From: Irma Alarcon ("Employee"), through her counsel, Mahoney Law Group, APC.

Statement of Representation

Please note that this firm, Mahoney Law Group, APC, represents Employee.

Labor Code Sections Alleged to Have Been Violated

Ms. Alarcon alleges that Employer Mek Enterprises, Inc. ("Employer") violated

California Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1174, 1194, and 2802.

Facts and Theories Supporting the Allegations

Failure to Record and Pay for all Hours Worked (Labor Code Sections 201, 202, 203, 226, 510, 512, 558, 558.1, 1194, and 1194.2)

Employee worked full-time for Employer from about June of 2022 through July 6, 2024, as a delivery driver. Employee alleges that Employer regularly and willfully failed to record all of Employee's hours, including minimum and overtime wages. Employer regularly and willfully failed to record all hours Employee worked where she was entitled to overtime wages, thereby depriving Employee of minimum and overtime wages she is owed. Employer has a policy and practice of not paying its employees for any hours worked in a week over forty (40) hours. Employee further alleges, that Employee would regularly work through her meal breaks and Employer would automatically record that Employee had taken a meal break despite not receiving a meal period. As a result, Employee was not paid for time spent on duty working during her meal breaks. Employer knew or should have known that Employee worked these "off the clock" hours, but Employer failed to *report* these hours on Employee's wage statements, and failed to *pay* Employee for these hours worked. When Employee's employment with Employer was terminated, Employer willfully failed to pay Employee all wages Employee earned working for Employer (including wage premiums for meal and rest period violations), and Employer has yet to pay Employee these wages. On information and belief, Employee alleges that these practices were common to other employees. These practices violate Labor Code sections 201, 202, 226, 510, 512, 558, 558.1, 1194, 1194.2, and are subject to penalties under Labor Code section 203, which have not been paid.

Failure to Authorize and Permit Rest Periods; Failure to Report Wages Due for Failing to Authorize and Permit Rest Periods; and Failing to Pay Wages for Failing to Authorize and Permit Rest Periods (Labor Code Sections 201, 202, 203, 226, and 226.7)

Employee alleges that Employer willfully failed to authorize and permit Employee to take duty-free rest periods. Employee regularly worked shifts lasting eight or more hours without being relieved of duty for her ten-minute rest periods. Employer had a practice of requiring Employee to remain on duty at all times and attend to Employer's business needs. Employer failed to *report* the wage premiums due to Employee, for rest period violations, on Employee's wage statements. Employer also failed to *pay* Employee premium wages for these rest period violations. On information and belief, Employee alleges that these practices were common to other employees. These practices violate Labor Code sections 201, 202, 203, 226, 226.7, 558, and 558.1.

Failure to Provide Meal Periods; Failure to Report Wages Due for Failing to Provide Meal Periods; and Failing to Pay Wages for Failing to Provide Meal Periods (Labor Code Sections 201, 202, 203, 226, 226.7, 510, 512, 558, 558.1, 1194, and 1194.2)

Employee further alleges that Employer regularly failed to provide thirty-minute, duty-free meal periods to Employee when Employee worked shifts longer than five hours, by requiring Employee to remain on duty and tend to Employer's business needs. Additionally, when Employee did receive a meal period, it was not duty-free as she would consistently

continue working while on her meal period. Employer failed to *report* the wage premiums due to Employee, for meal period violations, on Employee's wage statements, and all hours worked. Employer also failed to *pay* Employee wage premiums for these meal period violations, and for all hours worked. On information and belief, Employee alleges that these practices were common to other employees. These practices violate Labor Code sections 201, 202, 203, 226, 226.7, 510, 558, 558.1, 1194, and 1194.2.

Failure to Keep Accurate Payroll Records (Labor Code Section 226, 226.3, 1174, and 1174.5)

Labor Code section 226, subdivision (a), requires employers to furnish employees with accurate itemized wage statements reflecting the total hours worked, gross and net wages, applicable hourly rates, and corresponding number of hours worked at each hourly rate. Labor Code section 1174 further requires employers to keep accurate payroll records that include "the hours worked daily" by employees.

Employer failed to maintain complete and accurate payroll records and failed to provide Employee with complete and accurate wage statements. Specifically, Employee received wage statements that failed to include, without limitation, all rest and meal break premiums earned per pay period, compensation for actual hours worked at the appropriate rate, number of hours worked at each hourly rate, the correct overtime rate, and gross and net wages earned. Employee alleges that these practices were common to other employees. This conduct is in violation of Labor Code sections 226, 226.3, 1174, and 1174.5.

Employer Failed to Reimburse Employee and Other Aggrieved Employees for Necessary Business Expenditures (Labor Code Section 2802)

Pursuant to Labor Code section 2802, "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." "If an employee is required to use his/her personal cellphone to carry out work related duties, then he or she is incurring an expense for the purpose of section 2802. IT does not matter whether the phone bill is paid for by a third person, or at all...it is irrelevant whether the employee changed plans to accommodate work related cellphone usage...To show liability under section 2802, an employee need only show that he or she was required to use a personal cellphone to carry out work related duties, and he or she was not reimbursed." *Cochran v. Schwan's home Service, Inc.* 228 Cal App. 4th 1137 at 1144-45 (August 12, 2014) (reversing denial of class certification in cell phone reimbursement class action).

Employer failed to reimburse Employee and other aggrieved employees for necessary business expenses incurred in the course of performing their job duties. Specifically, Employer required Employee and other aggrieved employees to use their personal cellphones to carry out their work-related duties, including without limitation to clock in and out for their shifts and to send their timesheets to management. However, Employee and other aggrieved employees were not reimbursed for the reasonable percentage of their cellphone bills.

Employee and other aggrieved employees were regularly required to shoulder the burden of Employer's cost of doing business. For example, Employer required Employee and other aggrieved employees to wear uniforms, including a shirt bearing Employer's name and/or logo.

Employer also required Employee and other aggrieved employees to wash and maintain said uniforms on their own time and at their own expense. Employer failed to provide any reimbursement to Employee and other aggrieved employees for the cost of washing and maintaining their uniforms in violation of Labor Code section 2802. Thus, Employer's failure to reimburse said expenditures constitutes a violation of Labor Code section 2802 and is actionable under PAGA.

Conclusion

Should the LWDA decline to investigate the violations alleged in this letter, Mr. Fuentes intends to bring a PAGA action, and seek civil penalties on behalf of the LWDA, herself, and other employees. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'K. McTague', with a stylized flourish at the end.

Kelli R. McTague, Esq.
MAHONEY LAW GROUP, APC

EXHIBIT B

Vanessa Aceves

From: Kelli McTague
Sent: Wednesday, August 21, 2024 2:26 PM
To: Vanessa Aceves
Subject: FW: Thank you for your Amended PAGA Claim Notice Submission.

Amended PAGA claim submission for Alaron v. Mek Enterprises.

Kind regards,

Kelli R. McTague, Esq.
MAHONEY LAW GROUP, APC
249 E. Ocean Boulevard, Suite 814
Long Beach, CA 90802
Phone: 562.590.5550 Fax: 562.590.8400
Email: kmctague@mahoney-law.net Website: www.mahoney-law.net

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-----Original Message-----

From: DIR PAGA Unit <no-reply@formassembly.com>
Sent: Wednesday, August 21, 2024 2:24 PM
To: Kelli McTague <KMctague@mahoney-law.net>
Subject: Thank you for your Amended PAGA Claim Notice Submission.

08/21/2024 02:23:49 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Amended PAGA Claim Notice

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: https://urldefense.proofpoint.com/v2/url?u=http-3A__labor.ca.gov_Private-5FAttorneys-5FGeneral-5FAct.htm&d=DwlFaQ&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpgnVfiiMM&r=Fq1KTFTpefJwX8Gjlvpxp6EDI0r0qiko-mtyul6_YMs&m=9NxjCfYWBbHf3uW7b5e9AWzWNfaOdIHqXdix3RunZ2fCdWb7bCzIFNh9JsNq2a5M&s=XxsCqiAaeZi29SttNyCLBabSX4GHBhUfbf2A9jX9cE4&e=