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As an individual and on behalf of all other similarly situated Class Members

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ALEXANDER COWLEY-MALKI, as an
individual and on behalf of all other
similarly situated Class Members,

Plaintiff,

v.

CENGAGE LEARNING, INC., a
Delaware Corporation; and DOES 1-100,
inclusive,

Defendants.

Case No.: **24STCV24576**

CLASS ACTION COMPLAINT FOR:

- 1. Recovery of Unpaid Minimum Wages and Liquidated Damages**
- 2. Recovery of Unpaid Overtime Wages**
- 3. Failure to Provide Meal Periods or Compensation in Lieu Thereof**
- 4. Failure to Provide Rest Periods or Compensation in Lieu Thereof**
- 5. Failure to Furnish Accurate Itemized Wage Statements**
- 6. Failure to Timely Pay All Wages Due Upon Separation of Employment**
- 7. Failure to Reimburse Business Expenses and**
- 8. Unfair Competition**

DEMAND FOR JURY TRIAL

1 Plaintiff, ALEXANDER COWLEY-MALKI (“PLAINTIFF”), as an individual and on
2 behalf of all other similarly situated Class Members (as defined below), hereby files this Complaint
3 against Defendants CENGAGE LEARNING, INC., a Delaware Corporation; and DOES 1-100,
4 inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and
5 believes and thereon alleges as follows:

6 **JURISDICTION AND VENUE**

7 1. This court possesses original subject matter jurisdiction over this matter. Venue is
8 proper in the County of Los Angeles pursuant to California Code of Civil Procedure section 395.5
9 because DEFENDANTS transact business within this judicial district, DEFENDANTS employed
10 PLAINTIFF to work in this judicial district and some of the acts, omissions, and conduct alleged by
11 PLAINTIFF herein occurred in this this judicial district. Venue is also proper pursuant to section
12 393 of the California Code of Civil Procedure because the cause, or some part of the cause, arose in
13 the County of Los Angeles.

14 **THE PARTIES**

15 2. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
16 California and a citizen of the State of California. PLAINTIFF was employed by DEFENDANTS
17 in the State of California as a non-exempt employee during the Class Period (defined below).

18 3. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job
19 title(s) of enrollment representative and/or a similar title(s) and/or job position(s) from in or around
20 2020 through in or around August 2024. PLAINTIFF regularly worked at least eight (8) hours per
21 day, at least five (5) days per week, at times working more than eight (8) hours in a workday and/or
22 more than forty hours in a workweek. DEFENDANTS paid PLAINTIFF an hourly rate for time
23 counted by DEFENDANTS as hours worked.

24 4. Defendant, CENGAGE LEARNING, INC., is a Delaware Corporation that, at all
25 relevant times, was authorized to do business within the State of California and is doing business in
26 the State of California.

27 5. DEFENDANTS own, operate, manage and/or staff its employees to work at the
28 home offices / offices, facilities and/or other location(s) in California, including but not limited to

the home offices / offices, facilities and/or other locations in including but not limited to, Diamond Bar and other cities throughout California. DEFENDANTS operate under including but not limited to, the name(s) “Cengage Learning,” “Cengage Learning, Inc.,” “Ed2go,” “Education to Go,” “Cengage Group,” and/or “Cengage.” DEFENDANTS, through its various locations, serve the education/educational services and/or education technology industry.

6. The true names and capacities of the DOE Defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Doe Defendants when such identities become known.

7. PLAINTIFF is further informed and believes that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, and that at all relevant times, each Defendant knew or should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

JOINT LIABILITY

8. Under California law, the definition of the terms “to employ” are broadly construed under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3) to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control was to reach situations in which multiple entities control different aspects of the employment

1 relationship. Supervision of the work, in the specific sense of exercising control over how services
2 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
3 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
4 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
5 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
6 California, applying a less stringent standard to what constitutes sufficient control by a business
7 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
8 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative
9 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
10 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
11 employment,” *Id.* at 875 [emphasis added].

12 9. During PLAINTIFF’s employment by DEFENDANTS, PLAINTIFF and the Class
13 Members (defined below) were jointly employed by DEFENDANTS for purposes of the Wage
14 Orders, under the alternative definitions of “to employ” adopted by the California Supreme Court
15 in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control over wages,
16 hours and working conditions of PLAINTIFF and the Class Members; (2) suffered or permitted
17 PLAINTIFF and Class Members to work for them; and (3) engaged PLAINTIFF and Class
18 Members to work for them.

19 10. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
20 DEFENDANTS operated as a single integrated enterprise with common ownership and
21 centralized human resources. As a result, DEFENDANTS utilized the same unlawful policies and
22 practices across all of their locations/facilities and subjected all of the Class Members to these same
23 policies and practices regardless of the location(s) where they worked. Among other things,
24 PLAINTIFF is informed and believes that: (1) there is common ownership in, and financial control,
25 in DEFENDANTS’ companies, (2) DEFENDANTS utilize common management, who have control
26 over the day-to-day operations and employment matters, including the power to hire and fire, set
27 schedules, issue employee policies, and determine rates of compensation across its locations in
28 California; (3) DEFENDANTS utilize the same policies and procedures for all California

1 employees, including issuing the same employee handbooks and other form agreements; (4)
2 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee
3 employment matters; and, (6) DEFENDANTS share employees.

4 11. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
5 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Class Members
6 upon whose behalf PLAINTIFF brings these allegations and causes of action, in that
7 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Class Members' wages,
8 hours and working conditions, and/or suffered or permitted PLAINTIFF and the Class Members to
9 work so as to be considered the joint employers of PLAINTIFF and the Class Members.

10 12. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
11 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
12 time-keeping practices, meal and rest periods, reimbursement of business expenses and other
13 working conditions that were distributed to, and/or applied to PLAINTIFF and the Class Members,
14 and further that DEFENDANTS uniformly compensated and controlled the wages of PLAINTIFF
15 and the Class Members in a uniform manner. DEFENDANTS collectively represented to
16 PLAINTIFF and the Class Members that each was an "at-will" employee of DEFENDANTS, and
17 that DEFENDANTS collectively retained the right to terminate PLAINTIFF's and Class Members'
18 employment with or without cause. Upon information and belief, DEFENDANTS further
19 collectively represented to PLAINTIFF and Class Members in writing the details of their
20 compensation, and the manner in which they were to take meal and rest periods, the procedures
21 required by DEFENDANTS collectively for recordation of hours worked and the policies applicable
22 to PLAINTIFF and Class Members by which DEFENDANTS collectively would evaluate the wage
23 rates of PLAINTIFF and Class Members.

24 13. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
25 and working conditions of PLAINTIFF and Class Members. As such, DEFENDANTS collectively
26 held the right to control virtually every aspect of PLAINTIFF's and the Class Members'
27 employment, including the instrumentality that resulted in the illegal conduct for which PLAINTIFF
28 seeks relief in this Complaint.

14. PLAINTIFF is informed and believes that DEFENDANTS exercised the same control over, applied the same policies and practices, and engaged in the same acts and omissions with regard to the other Class Members.

CLASS ALLEGATIONS

15. PLAINTIFF brings this action on behalf of PLAINTIFF, and all others similarly situated as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF seeks to represent are defined as follows and referred to as the “Class” or “Class Members”:

All current and former non-exempt employees that worked either directly or via a staffing agency for any one or more of the DEFENDANTS at any location in California at any time within the four years prior to the filing of the initial Complaint (“Class Period”).

a. Numerosity. While the exact number of Class Members is unknown to PLAINTIFF at this time, the Class is so numerous that the individual joinder of all members is impractical under the circumstances of this case. PLAINTIFF is informed and believes the Class consists of at least 50 individuals.

b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment because common questions of law and fact predominate over individual issues. Common questions include, but are not limited to, the following: (1) whether DEFENDANTS understated hours worked and failed to pay all amounts due to PLAINTIFF and the Class Members for wages earned, including minimum and overtime wages, under California law; (2) whether DEFENDANTS provided PLAINTIFF and the Class Members with all meal periods or premium payments in lieu thereof in compliance with California law; (3) whether DEFENDANTS provided PLAINTIFF and the Class Members with all rest periods or premium payments in lieu thereof, in compliance with California law; (4) whether DEFENDANTS provided PLAINTIFF and Class Members with accurate, itemized wage statements in compliance with California law, displaying, including but not limited to, the total hours worked during the pay period; (5)

1 whether DEFENDANTS timely paid PLAINTIFF and the Class Members all
2 wages due upon separation of employment; (6) whether DEFENDANTS failed
3 to reimburse PLAINTIFF and the Class Members for all business expenses; and
4 (7) whether DEFENDANTS violated California Business and Professions Code
5 sections 17200, *et seq.*

6 c. Ascertainable Class. The proposed Class is ascertainable as members can be
7 identified and located using information in DEFENDANTS' business, payroll
8 and personnel records.

9 d. Typicality. PLAINTIFF's claims are typical of the claims of the Class Members.
10 PLAINTIFF suffered a similar injury as members of the Class as a result of
11 DEFENDANTS' common practices regarding, *inter-alia*, failure to calculate
12 and pay all owed minimum and overtime wages, failure to provide proper meal
13 periods and rest periods or premium compensation in lieu thereof, failure to
14 provide accurate wage statements, failure to reimburse business expenses, and
15 failure to timely pay all wages due upon separation of employment.

16 e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the
17 Class Members. PLAINTIFF has no interests adverse to the interests of the other
18 Class Members. Counsel who represent PLAINTIFF are competent and
19 experienced in litigating similar class action cases and are California lawyers in
20 good standing. Counsel for PLAINTIFF have the experience and resources to
21 vigorously prosecute this case.

22 f. Superiority. A class action is superior to other available means for the fair and
23 efficient adjudication of this controversy since individual joinder of all members
24 of the class is impractical. Class action treatment will permit a large number of
25 similarly situated persons to prosecute their common claims in a single forum
26 simultaneously, efficiently, and without the unnecessary duplication of effort
27 and expense that numerous individual actions would engender. Furthermore, as
28 the damages suffered by each individual member of the Class may be relatively

1 small, the expenses and burden of individual litigation would make it difficult
2 or impossible for individual members of the Class to redress the wrongs done to
3 them, while an important public interest will be served by addressing the matter
4 as a class action. The cost to the court system of adjudication of such
5 individualized litigation would be substantial. Individualized litigation would
6 also present the potential for inconsistent or contradictory judgments. Finally,
7 the alternative of filing a claim with the California Labor Commissioner is not
8 superior, given the lack of discovery in such proceedings, the fact that there are
9 fewer available remedies, and the losing party has the right to a trial de novo in
10 the Superior Court.

11 **FACTUAL AND LEGAL ALLEGATIONS**

12 16. During the relevant period, PLAINTIFF, and each of the Class Members, worked for
13 DEFENDANTS in the State of California. At all times referenced herein, DEFENDANTS exercised
14 control over PLAINTIFF and Class Members and suffered and/or permitted them to work.

15 17. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job
16 title(s) of enrollment representative and/or a similar title(s) and/or job position(s) from in or around
17 2020 through in or around August 2024.

18 18. PLAINTIFF regularly worked at least eight (8) hours per day, at least five (5) days
19 per week, at times working more than eight (8) hours in a workday and/or more than forty hours in
20 a workweek.

21 19. At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an
22 hourly basis for time counted by DEFENDANTS as hours worked.

23 20. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
24 PLAINTIFF and Class Members for all hours worked, resulting in the underpayment of minimum
25 and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Class Members for all
26 hours worked by virtue of, DEFENDANTS' automatic deduction and time rounding policies, and
27 failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise
28 unlawful practices for missed or improper meal periods, as explained below.

1 21. Based on information and belief, DEFENDANTS implemented a policy and/or
2 practice of rounding meal period start and end times and/or automatically deducting at least thirty
3 (often at least sixty) minutes per shift for meal periods, despite having actual and/or constructive
4 knowledge that PLAINTIFF and other Class Members were subject to DEFENDANTS' control
5 during purported meal periods and/or were otherwise not afforded lawful meal periods, depriving
6 PLAINTIFF and Class Members of all wages owed.

7 22. Based on information and belief, Class Members were not paid for all hours worked
8 due to DEFENDANTS' policy and/or practice of rounding time entries or paying according to
9 scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies
10 and/or practices.

11 23. For example, DEFENDANTS issued wage statement(s) to PLAINTIFF that evidence
12 DEFENDANTS rounded PLAINTIFF's total hours worked to at least the nearest quarter, half and/or
13 whole hour, resulting in DEFENDANTS' failure to compensate PLAINTIFF for all hours worked
14 and the underpayment of wages owed to PLAINTIFF.

15 24. For example, DEFENDANTS issued wage statements to PLAINTIFF that
16 demonstrate DEFENDANTS rounded PLAINTIFF's total hours worked to at least the nearest
17 quarter, half, and/or whole hour, resulting in DEFENDANTS' failure to compensate PLAINTIFF
18 for all hours worked and the underpayment of wages owed to PLAINTIFF.

19 25. For example, DEFENDANTS' wage statements issued to PLAINTIFF for including
20 but not limited to, the following pay periods, evidence DEFENDANTS rounded PLAINTIFF's total
21 hours worked to at least the nearest quarter, half, and/or whole hour, resulting in DEFENDANTS'
22 failure to compensate PLAINTIFF for all hours worked and the underpayment of wages owed to
23 PLAINTIFF: January 21, 2024 through February 3, 2024, showing precisely 66 regular hours
24 worked and precisely 4 overtime hours worked; June 23, 2024 through July 6, 2024 showing exactly
25 61.5 regular hours worked and exactly 3.5 overtime hours worked; and August 4, 2024 through
26 August 17, 2024 showing exactly 37.5 regular hours worked and exactly 2.5 overtime hours worked.

27 26. Based on information and belief, DEFENDANTS rounded other Class Members'
28 total hours worked to at least the nearest quarter, half and/or whole hour during most, if not all pay

1 periods during their respective employments.

2 27. Based on information and belief, Class Members were not compensated for all time
3 spent booting and/or initiating and/or reinitiating DEFENDANTS' computer/electronic
4 timekeeping system, resulting in pre-shift off-the-clock work and/or off-the-clock work during
5 unpaid meal periods and the underpayment of minimum wages and overtime wages owed to Class
6 Members.

7 28. For example, prior to being able to clock in for the start of his scheduled shift each
8 workday, PLAINTIFF was required to start and/or boot DEFENDANTS' computer systems and/or
9 software and/or use a two-step authentication process to log in so as to have the systems running at
10 the start of the scheduled shift. As such, PLAINTIFF spent at least approximately five (5) to ten
11 (10) minutes before each scheduled shift preparing different work applications and/or undergoing
12 DEFENDANTS' authentication/verification processes in order to clock in and begin his shift. This
13 pre-shift work was off-the-clock and uncompensated resulting in unpaid minimum and overtime
14 wages.

15 29. Based on information and belief, at times, Class Members were required to complete
16 off-the-clock work outside of scheduled shifts due to including but not limited to, work-related
17 phone calls and/or messages they received to their phones/mobile devices and were required to
18 respond to, including but not limited to, communications from supervisors regarding scheduling
19 and/or other work tasks, resulting in the underpayment of wages owed to Class Members.

20 30. PLAINTIFF and other Class Members were required to perform other off-the-clock
21 work for which they were not compensated. For example, based on information and belief, at times,
22 DEFENDANTS' biometric/electronic/employee time-keeping system malfunctioned such that
23 Class Members were required to either reinitiate and/or otherwise troubleshoot the system prior to
24 being able to clock in and/or were unable to clock in at all for the start of their shifts and/or clock
25 back in from meal periods, resulting in off-the-clock work and the underpayment of wages owed to
26 Class Members. Based on information and belief, Class Members experienced the same issues when
27 clocking out for shifts and/or back in for meal periods. This time spent under DEFENDANTS'
28 control was not recorded and not compensated and resulted in unpaid minimum wages owed to

1 Class Members.

2 31. Based on information and belief, DEFENDANTS failed to compensate Class
3 Members for all time spent completing DEFENDANTS' required trainings and/or courses (e.g.,
4 education-related courses) and/or testings and/or certifications (e.g., education/teaching
5 certifications).

6 32. Based on information and belief, DEFENDANTS failed to pay Class Members the
7 applicable minimum wage for the county and/or city within which the NON-EXEMPT
8 AGGRIEVED EMPLOYEE worked in California.

9 33. Moreover, based on information and belief, DEFENDANTS failed to pay
10 PLAINTIFF and/or other Class Members split shift premium wages when they worked split shifts
11 during the relevant period. For example, based on information and belief, at times, DEFENDANTS
12 required PLAINTIFF and/or other Class Members to work two separate shifts in the same day.
13 Based on information and belief, DEFENDANTS failed to pay PLAINTIFF and/or other Class
14 Members split shift compensation whenever PLAINTIFF's and/or other Class Members' work
15 schedules were interrupted by non-paid non-working periods established by DEFENDANTS, which
16 resulted in a violation of the applicable Wage Order (See section 4 of all applicable Wage orders,
17 "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in
18 addition to the minimum wage for that workday...). See, also, Cal. Code Regs. Tit. 8, § 11050 (when
19 an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition
20 to the minimum wage for that workday, except when the employee resides at the place of
21 employment). DEFENDANTS also failed to separately itemize these split shift premium wages on
22 PLAINTIFF's and/or other Class Members' wage statements, in violation of Labor Code sections
23 510, 1194 and all applicable IWC Wage Orders. See, https://www.dir.ca.gov/dlse/split_shift.htm.
24 (The employer must itemize the premium payment on the pay stub provided to the employee, and it
25 should be shown as a separate category such as "Split Shift Premium" and should not be lumped
26 into another category such as wages, bonus, etc. DEFENDANTS failed to separately account for
27 the split shift premiums earned by PLAINTIFF and/or other Class Members on their wage
28 statements.

1 34. Based on information and belief, DEFENDANTS failed to pay Class Members for
2 time they were required to spend completing orientation, policy questionnaires, and/or time spent
3 completing the onboarding process including but not limited to reviewing various documents and
4 policies provided by DEFENDANTS. Based on information and belief, this work time was
5 completed off-the-clock and was not compensated.

6 35. Based on further information and belief, DEFENDANTS implemented a time-
7 rounding system that as applied systematically deprived PLAINTIFF and other Class Members of
8 compensable time because the time-rounding system implemented by DEFENDANTS would
9 almost always, if not always, result in understating actual compensable work time.

10 36. For example, as explained herein, DEFENDANTS issued wage statements to
11 PLAINTIFF that demonstrate DEFENDANTS rounded PLAINTIFF's total hours worked to at least
12 the nearest quarter, half and/or whole hour during most if not all pay periods during PLAINTIFF's
13 employment, resulting in DEFENDANTS' failure to compensate PLAINTIFF for all hours worked
14 and the underpayment of wages owed to PLAINTIFF.

15 37. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
16 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
17 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
18 minimum wages owed to PLAINTIFF and Class Members as well as unpaid overtime wages for
19 those Class Members who worked more than eight (8) hours in a day and/or more than forty (40)
20 hours in a week.

21 38. Based on information and belief, DEFENDANTS had actual and/or constructive
22 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to
23 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
24 underpayment of minimum wages owed to PLAINTIFF and other Class Members, in violation of
25 California's minimum and overtime wage laws.

26 39. Based on information and belief, DEFENDANTS failed and continue to fail to pay
27 Class Members two times their regular rate of pay for time worked beyond twelve (12) hours per
28 workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a

1 work week, in violation of California's overtime laws.

2 40. Based on information and belief, DEFENDANTS failed to incorporate all non-
3 discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or
4 other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s),
5 resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other
6 Class Members.

7 41. **Meal Period Violations.** PLAINTIFF and other Class Members consistently worked
8 shifts of at least five and one-half hours or more, entitling them to at least one meal period. However,
9 PLAINTIFF and other Class Members would not receive legally compliant thirty (30) minute first
10 and second meal periods. Based on information and belief, Class Members were consistently unable
11 to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late
12 meal periods, interrupted meal periods, and/or work through part or all their meal periods due to
13 understaffing, the nature and constraints of their job duties and/or commentary from supervisors
14 pressuring them to take non-compliant meal periods or skip meal periods completely.

15 42. Based on information and belief, other Class Members were consistently suffered
16 and permitted to take meal periods past the fifth hour of work and/or had their meal periods
17 interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise on duty due to
18 commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or
19 the need to meet DEFENDANTS' goals and expectations.

20 43. For example, based on information and belief, at times, Class Members were forced
21 to skip their owed meal periods completely, take late meal periods in order to complete assigned job
22 duties and/or were interrupted during purported meal periods and/or had meal periods cut short
23 and/or restricted to DEFENDANTS' premises/their assigned work stations and/or were otherwise
24 required to remain on-duty during unpaid meal periods due to the need to continue assigned job
25 duties.

26 44. Based on information and belief, Class Members were consistently suffered and
27 permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted,
28 cut short, restricted to DEFENDANTS' premises and/or otherwise on duty due to commentary from

1 supervisors, understaffing, the nature and constraints of their job duties, and/or the need to meet
2 DEFENDANTS' goals and expectations.

3 45. Based on information and belief, DEFENDANTS implemented policies and/or
4 practices that failed to relieve Class Members of all duties and DEFENDANTS' control during
5 unpaid meal periods.

6 46. Based on information and belief, DEFENDANTS required Class Members to
7 complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take
8 into account when scheduling meal periods for Class Members. Based on information and belief,
9 meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

10 47. Based on information and belief, despite DEFENDANTS' failure to provide lawful
11 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
12 times of PLAINTIFF's and other Class Members' meal periods and/or automatically deducting at
13 least thirty minutes (oftentimes at least sixty minutes) per shift for missed and/or otherwise unlawful
14 meal periods despite having actual and/or constructive knowledge that PLAINTIFF and other Class
15 Members did not receive lawful meal periods.

16 48. Moreover, per DEFENDANTS' uniform policy and practice, Class Members who
17 worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute
18 second meal period.

19 49. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
20 other Class Members as to the timing and duty-free nature of meal periods. Based on further
21 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor
22 did DEFENDANTS have any sort of compliant policy in practice.

23 50. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
24 records of the true start and end times of PLAINTIFF's and Class Members' meal periods. Based
25 on information and belief, to the extent meal period were recorded, DEFENDANTS illegally
26 rounded the start and end times of purported meal periods resulting in PLAINTIFF and other Class
27 Members not being paid for all time worked as well as late and/or shortened meal periods. *See*
28 *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

1 51. Based on information and belief, DEFENDANTS had actual and/or constructive
2 knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which
3 were free of DEFENDANTS' control owed to PLAINTIFF and other Class Members, in violation
4 of California's meal period laws.

5 52. DEFENDANTS failed to pay PLAINTIFF and other Class Members, an additional
6 hour of wages at their respective regular rates of compensation for each workday a lawful meal
7 period was not provided. DEFENDANTS either failed to pay a meal period premium at all for each
8 workday a lawful meal period was not provided and/or failed to pay the proper meal period premium
9 for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses,
10 shift differential pay and/or other non-discretionary compensation into the regular rate or
11 compensation for purposes of calculating the owed meal period premium.

12 53. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide
13 PLAINTIFF and other Class Members with legally compliant rest periods at a rate of every four (4)
14 hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the
15 work period, as required by law.

16 54. PLAINTIFF and other Class Members were not adequately informed, authorized,
17 instructed about, nor permitted an opportunity to take proper rest periods per California law. Based
18 on information and belief, DEFENDANTS had no policy in place nor instruction as to the taking of
19 duty-free rest periods.

20 55. Based on information and belief, DEFENDANTS did not have a have a compliant
21 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
22 practice.

23 56. For example, based on information and belief, Class Members were at times unable
24 to take compliant rest periods due to their need to complete assigned job duties and/or was unable
25 to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods restricted
26 to DEFENDANTS' premises/their assigned work locations/workstations.

27 57. Also, based on information and belief, DEFENDANTS had no policy and/or practice
28 as to the proper timing and/or duty-free nature of rest periods. For example, based on information

1 and belief, DEFENDANTS failed to allow PLAINTIFF and other Class Members to take off-duty
2 rest periods that were insofar as practicable in the middle of the work period, as required by law.

3 58. Based on information and belief, DEFENDANTS did not pay Class Members any
4 rest period premiums during their respective employments and/or did not pay Class Members a
5 proper rest period premium for each missed and/or otherwise legally non-compliant rest period.

6 59. For example, DEFENDANTS' wage statements for PLAINTIFF do not show the
7 payment of a single rest period premium during PLAINTIFF's employment despite DEFENDANTS
8 having actual and/or constructive knowledge that PLAINTIFF was required to work through his
9 owed rest periods and/or was not allowed to take legally compliant rest periods, in violation of
10 California rest period law.

11 60. Also, based on information and belief, DEFENDANTS had no policy and/or practice
12 as to the proper timing and/or duty-free nature of rest periods. For example, based on information
13 and belief, DEFENDANTS failed to allow PLAINTIFF and other Class Members to take off-duty
14 rest periods that were insofar as practicable in the middle of the work period, as required by law.

15 61. Based on information and belief, Class Members' rest periods were interrupted, cut
16 short, on duty, restricted to work premises and/or late due to understaffing, the nature and constraints
17 of their job duties, and/or due to commentary from supervisors/managers pressuring them to skip
18 rest periods completely or otherwise take non-compliant rest periods.

19 62. Moreover, based on information and belief, DEFENDANTS failed to provide any
20 form of a third rest period on shifts lasting longer than ten hours.

21 63. Based on information and belief, DEFENDANTS implemented policies and/or
22 practices that failed to relieve PLAINTIFF and other Class Members of all duties and
23 DEFENDANTS' control during rest periods.

24 64. Based on information and belief, Class Members were pressured to complete their
25 work duties according to a designated schedule such that rest periods were only taken once tasks
26 were completed, and/or as time permitted.

27 65. As described herein, DEFENDANTS failed to pay a rest period premium for each
28 day in which PLAINTIFF and Class Members experienced a missed/unlawful rest period in

1 violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each
2 workday a proper rest period was not provided and/or failed to pay the proper rest period premium
3 for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses,
4 shift differential pay, and/or other non-discretionary compensation into the regular rate of
5 compensation for purposes of calculating the owed rest period premium.

6 **66. Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
7 provide PLAINTIFF and other Class Members with accurate wage statements that complied with
8 Labor Code section 226. As DEFENDANTS failed to provide PLAINTIFF and Class Members with
9 meal and rest periods that complied with Labor section 226.7, the wage statements DEFENDANTS
10 issued to PLAINTIFF and Class Members failed and continue to fail to correctly set forth the gross
11 wages earned, the total hours worked, the net wages earned, and all applicable hourly rates in effect
12 during the pay period and the corresponding number of hours worked at each hourly rate by the
13 employee.

14 **67.** DEFENDANTS issued wage statements to PLAINTIFF and Class Members that also
15 failed to indicate the earned gross and net wages earned during the pay period, the correct applicable
16 rates of pay for all hours worked, and the total hours worked by PLAINTIFF and Class Members
17 (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve Class
18 Members of all duties and employer control during unpaid meal periods, payment according to
19 scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies
20 and practices) which results in a violation of Labor Code section 226(a).

21 **68.** As described herein, based on information and belief, DEFENDANTS also failed to
22 incorporate all forms of non-discretionary compensation earned during the pay period into the
23 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
24 of overtime worked by PLAINTIFF and other Class Members.

25 **69.** Moreover, based on information and belief, DEFENDANTS issued wage statements
26 to PLAINTIFF and Class Members that further violate Labor Code section 226(a), by among other
27 things, failing to list the correct name and/or address of the legal entity that is the employer.

28 **70.** As a result, DEFENDANTS issued wage statements to PLAINTIFF and Class

1 Members that were not accurate and did not include all of the statutorily required information. As
2 such, DEFENDANTS violated Labor Code section 226.

3 71. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
4 information and belief, DEFENDANTS failed to timely pay Class Members all wages that were due
5 and owing upon termination or resignation. Based on information and belief, DEFENDANTS
6 untimely provide final wages to Class Members without regard to the timing requirements of Labor
7 Code sections 201-202.

8 72. Upon separation of employment, Class Members' final paychecks were not timely
9 provided and/or were not timely provided with all owed vacation pay and/or paid time off.
10 Moreover, PLAINTIFF's and Class Members' final paychecks, once provided, did not include all
11 wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime
12 wages, premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the
13 properly accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the
14 final rate including non-discretionary compensation, including but not limited to, shift differentials).

15 73. Based on information and belief, DEFENDANTS failed to timely provide all owed
16 wages immediately upon discharge of employment. Based on information and belief, at times, Class
17 Members experienced breaks in employment caused by DEFENDANTS whereby Class Members
18 would not be called in for work for longer than a single pay period due to including but not limited
19 to DEFENDANTS' lack of work or lack of assignments. Such instances qualify as a discharge of
20 employment. Yet, DEFENDANTS failed to timely pay all owed wages at the end of such periods
21 of employment, in violation of including but not limited to Labor Code section 201-202.

22 74. These violations subject DEFENDANTS to civil penalties under Labor Code section
23 203, 210, and/or 256.

24 75. **Unreimbursed Business Expenses.** Based on information and belief,
25 DEFENDANTS required PLAINTIFF and Class Members to incur business expenses as a direct
26 consequence of the performance of their job duties without providing reimbursement, in violation
27 of Labor Code section 2802. Based on information and belief, PLAINTIFF and Class Members
28 were improperly required to provide and maintain work tools that are supposed to be the

1 responsibility of the employer.

2 76. Based on information and belief, DEFENDANTS shifted the costs of doing business
3 onto Class Members by requiring them to pay for business expenses, including but not limited to,
4 uniforms/work clothing/work shoes/personal protective/safety gear and the use of Class Member'
5 personal cell phones/mobile devices, internet and/or data usage for work related purposes, including
6 but not limited to, to receive and respond to work related messages and/or phone calls. For example,
7 based on information and belief, Class Members were required to receive and respond to work-
8 related calls and/or messages from including but not limited to supervisors and/or other Class
9 Members regarding scheduling and/or other work tasks and/or were required to download and use
10 work-related applications on their personal cell phones/mobile devices but were not reimbursed by
11 DEFENDANTS at all and/or in full for these business expenses.

12 77. For example, prior to being able to clock in for a scheduled shift each workday,
13 DEFENDANTS required PLAINTIFF to use a two-step authentication process using his personal
14 cell phone/mobile device to log into DEFENDANTS' computer system(s) and/or timekeeping
15 system so as to have the system(s) running at the start of the scheduled shift, however,
16 DEFENDANTS did not provide PLAINTIFF with any and/or full reimbursement for the business
17 expenses PLAINTIFF incurred in connection with being required to use his personal cell
18 phone/mobile device to carry out his assigned job duties.

19 78. Based on information and belief, DEFENDANTS failed to reimburse Class Members
20 for expenses associated with having to purchase and/or maintain their own hand tools and/or
21 equipment required to perform their assigned job duties.

22 79. Based on information and belief, DEFENDANTS required Class Members to work
23 remotely, including but not limited to, from their homes. As a result of working from home, Class
24 Members were required to use their home internet, electricity, and other utilities in the discharge of
25 their job duties. Based on information and belief, DEFENDANTS lacked and continue to lack a
26 policy to reimburse employees who regularly increased utility expenses as a result of working from
27 home. Class Members' increased utility and internet expenses were expenses for which
28 DEFENDANTS were required to reimburse Class Members a reasonable percentage based on their

1 required business use because said expenses were necessarily incurred by Class Members as a direct
2 consequence of the discharge of their duties of employment. However, DEFENDANTS failed to
3 reimburse Class Members at all and/or in full for these business expenses incurred as a result of
4 being required to work from their homes, in violation of California law.

5 80. Based on information and belief, DEFENDANTS fail and continue to fail to
6 reimburse Class Members for expenses Class Members incurred in connection with
7 DEFENDANTS' mandated testing and/or licensing requirements, and/or expenses incurred in
8 obtaining certifications and/or re-certifications as required by DEFENDANTS.

9 81. As explained above, based on information and belief, Class Members were not
10 reimbursed for the cost of using their personal vehicle(s) and/or personal phone(s)/personal
11 device(s) for work-related purposes and/or the cost of purchasing and/or maintaining work
12 uniforms/work clothing/work shoes, personal protective/safety gear.

13 82. Based on information and belief, DEFENDANTS regularly failed to reimburse and
14 indemnify Class Members for business expenses. Pursuant to California Labor Code section 2802,
15 PLAINTIFF and Class Members were entitled to be reimbursed for all reasonable expenses
16 associated with carrying out DEFENDANTS' orders and/or carrying out the duties assigned by
17 DEFENDANTS.

18 83. DEFENDANTS' failure to provide Class Members with full reimbursement for all
19 reasonable expenses associated with carrying out their duties required that Class Members
20 subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

21 84. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
22 engaged in these same herein described unlawful practices and that DEFENDANTS applied these
23 same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

24 **FIRST CAUSE OF ACTION**

25 **Recovery of Unpaid Minimum Wages and Liquidated Damages**
26 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

27 85. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

28 86. It is fundamental that an employer must pay its employees for all time worked.
California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages.

1 Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 224 only
2 permits deductions from wages when the employer is required or empowered to do so by state or
3 federal law or when the deduction is expressly authorized in writing by the employee for specified
4 purposes that do not have the effect of reducing the agreed upon wage. Labor Code section 223
5 prohibits the pay of less than a statutory or contractual wage scale.

6 87. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage
7 Commission (“IWC”) Wage Orders, an employer must pay its employees for all hours worked, up
8 to 40 hours per week or 8 hours per day, at a regular rate no less than the mandated minimum wage.
9 Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
10 period is unlawful.

11 88. DEFENDANTS violated California’s minimum wage laws by failing to compensate
12 PLAINTIFF and the Class Members for all hours worked by virtue of, among other things,
13 DEFENDANTS’ time rounding, automatic deduction for meal periods, off-the-clock/unpaid work
14 completed during meal periods, other pre-shift, post-shift and/or otherwise off-the-clock work,
15 and/or payment according to scheduled hours worked rather than actual hours worked (described
16 above), which resulted in the failure to account for all hours worked and thus the denial of minimum
17 wages.

18 89. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
19 Class Members for all hours worked.

20 90. Based on information and belief, DEFENDANTS had actual or constructive
21 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
22 meal periods, failure to relieve employees of all duties and employer control during unpaid meal
23 periods, policy and practice of payment according to scheduled work time rather than actual work
24 time, and/or other mandated off-the-clock work resulted in the underpayment of minimum wages
25 owed to PLAINTIFF and other Class Members.

26 91. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFF and the Class
27 Members are entitled to recover all unpaid minimum wages and liquidated damages thereon, plus
28 attorney's fees and costs, in an amount to be proved at trial.

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3 92. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

94. PLAINTIFF and the Class Members worked overtime hours for which they were not compensated by DEFENDANTS by virtue of, among other things, DEFENDANTS' time rounding, automatic deduction for meal periods, off-the-clock/unpaid work completed during meal periods, other pre-shift, post-shift and/or otherwise off-the-clock work, and/or payment according to scheduled hours worked rather than actual hours worked (described above), which resulted in the failure to account for all hours worked and thus the denial of all owed overtime wages.

96. Based on information and belief, DEFENDANTS further violated California's overtime wage laws by failing to incorporate all non-discretionary compensation, including but not limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and other Class Members.

27 97. DEFENDANTS' conduct described above is in violation of California Labor Code
28 sections 510 and 1194 and all applicable Wage Orders.

1 98. PLAINTIFF and the Class Members are entitled to recover all unpaid overtime
2 wages, plus attorney's fees and costs, in an amount to be proved.

3 **THIRD CAUSE OF ACTION**

4 **Failure to Provide Meal Periods or Compensation in Lieu Thereof
(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

5 99. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

6 100. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
7 DEFENDANTS were required to provide PLAINTIFF and the Class Members with one 30-minute
8 meal break free from all duties and employer control for all shifts longer than 5 hours, and a second
9 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be
10 waived, but only under the following circumstances: (1) if an employee's total work period in a day
11 is over five (5) hours but no more than six (6) hours, the required meal period may be waived by
12 mutual consent of the employer and employee, and (2) if an employee's total work period in a day
13 is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be
14 waived by mutual consent of the employer and employee, but only if the first meal period was not
15 waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their
16 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
17 done so.

18 101. Employers must pay employees an additional hour of wages at the employees'
19 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
20 meal period, first meal period provided after five (5) hours, second meal period provided after 10
21 hours). Lab. Code § 226.7.

22 102. As explained above, PLAINTIFF and other Class Members were consistently unable
23 to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being
24 forced to take late meal periods, interrupted meal periods, and/or work through part or all of their
25 meal periods due to understaffing, the nature and constraints of their job duties, and/or commentary
26 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
27 completely.

28 103. Based on information and belief, DEFENDANTS had and continue to have a policy

1 of rounding the start and end times of employees' meal periods and/or automatically deducting thirty
2 minutes and/or sixty minutes per shift despite having actual and/or constructive knowledge that
3 PLAINTIFF and Class Members did not receive compliant meal periods.

4 104. Moreover, based on information and belief, Class Members did not receive a timely,
5 uninterrupted second meal period when working shifts over ten (10) hours in a workday.

6 105. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
7 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
8 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in
9 violation of California's meal period laws.

10 106. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
11 periods in violation of California law and/or failed to pay the proper meal period premium for failure
12 to incorporate all non-discretionary remuneration including but not limited to, bonuses, shift
13 differential pay and/or other non-discretionary compensation into the regular rate or compensation
14 for purposes of calculating the owed meal period premium.

15 107. As a result, under Labor Code section 226.7, PLAINTIFF and the Class Members
16 are entitled to one additional hour's pay at the employee's regular rate of compensation for each day
17 a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and costs,
18 all in an amount to be proved at trial.

19 **FOURTH CAUSE OF ACTION**

20 **Failure to Provide Rest Periods or Compensation in Lieu Thereof (By PLAINTIFF and the Class Members Against all DEFENDANTS)**

21 108. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

22 109. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
23 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
24 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
25 "insofar as practicable." In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the
26 California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts
27 from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10
28 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029).

1 The rest period requirement obligates employers to permit and authorize employees to take off-duty
2 rest periods, meaning employers must relieve employees of all duties and relinquish control over
3 how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257.

4 110. If the employer fails to provide any required rest period, the employer must pay the
5 employee one hour of pay at the employee's regular rate of compensation for each workday the
6 employer did not provide at least one legally required rest period, pursuant to Labor Code section
7 226.7.

8 111. PLAINTIFF and the Class Members did not receive legally compliant, timely 10-
9 minute rest periods for every four (4) hours worked or major fraction thereof. As explained above,
10 any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject to
11 DEFENDANTS' control due to the nature and constraints of Class Members' job duties,
12 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Class Members to
13 skip rest periods completely or otherwise take non-compliant rest periods.

14 112. Based on information and belief, DEFENDANTS implemented policies and/or
15 practices that failed to relieve PLAINTIFF and other Class Members of all duties and employer
16 control during rest periods. Based on further information and belief, Class Members were pressured
17 to complete their work duties according to a designated schedule such that rest periods were only
18 taken once tasks were completed, and/or as time permitted.

19 113. As a result, PLAINTIFF and Class Members did not receive legally compliant first,
20 second, or third rest periods as required by California law.

21 114. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
22 period premium to PLAINTIFF and other Class Members for each workday in which there was a
23 missed or otherwise unlawful rest period. Based on further information and belief, when a rest
24 premium was paid, DEFENDANTS failed to include non-discretionary compensation including but
25 not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
26 regular rate of compensation for purposes of determining the owed rest period premium.

27 115. DEFENDANTS are therefore liable to PLAINTIFF and the Class Members for one
28 hour of additional pay at the regular rate of compensation for each workday that a required rest

1 period was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage
2 Order, plus pre-judgment interest, plus attorneys' fees and costs, all in an amount to be proved at
3 trial.

4 **FIFTH CAUSE OF ACTION**

5 **Failure to Furnish Accurate Itemized Wage Statements**
6 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

7 116. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

8 117. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFF and the Class
9 Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized
10 wage statement accurately stating the following:

11 (1) gross wages earned, (2) total hours worked by the employee,
12 except for any employee whose compensation is solely based on a
13 salary and who is exempt from payment of overtime under
14 subdivision (a) of Section 515 or any applicable order of the Industrial
15 Welfare Commission, (3) the number of piece-rate units earned and
16 any applicable piece rate if the employee is paid on a piece-rate basis,
17 (4) all deductions, provided that all deductions made on written orders
18 of the employee may be aggregated and shown as one item, (5) net
19 wages earned, (6) the inclusive dates of the period for which the
20 employee is paid, (7) the name of the employee and his or her social
21 security number, except that by January 1, 2008, only the last four
22 digits of his or her social security number or an employee
23 identification number other than a social security number may be
24 shown on the itemized statement, (8) the name and address of the
25 legal entity that is the employer, and (9) all applicable hourly rates in
26 effect during the pay period and the corresponding number of hours
27 worked at each hourly rate by the employee.

28 118. As DEFENDANTS failed to provide PLAINTIFF and other Class Members with
meal and rest periods that complied with Labor Code section 226.7, the wage statements
DEFENDANTS issued to PLAINTIFF and other Class Members failed and continue to fail to
correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the
total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages
earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect
during the pay period and the corresponding number of hours worked at each hourly rate by the
employee, in violation of Labor Code section 226(a)(9).

119. Moreover, due to violations detailed above, including but not limited to,
DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide

1 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
2 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
3 PLAINTIFF and other Class Members with accurate, itemized wage statements that listed the gross
4 and net wages earned and the correct applicable rates of pay for all hours worked. Based on
5 information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
6 compensation earned during the pay period into the regular rate of pay for purposes of calculating
7 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
8 overtime worked by PLAINTIFF and other Class Members.

9 120. As explained above, wage statements issued by DEFENDANTS failed to list the
10 “total hours worked” by PLAINTIFF and Class Members (by virtue of rounded time entries,
11 automatic deduction for meal periods/failure to relieve Class Members of all duties and employer
12 control during unpaid meal periods, payment according to scheduled hours worked rather than actual
13 hours worked, and/or other off-the-clock work policies and practices all described in greater detail
14 *supra*), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on
15 a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v.*
16 *Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

17 121. Based on information and belief, wage statements issued by DEFENDANTS failed
18 to list all applicable hourly rates in effect during the pay period and the corresponding number of
19 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).
20 For example, as described herein, based on information and belief, DEFENDANTS failed to
21 incorporate all forms of non-discretionary compensation earned during the pay period into the
22 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
23 of overtime worked by Class Members.

24 122. Separately, and independent from the above allegations, DEFENDANTS issued
25 wage statements to PLAINTIFF and Class Members that violate Labor Code section 226(a)(8), by
26 failing to list the correct name and/or address of the legal entity that is the employer.

27 123. Based on information and belief, wage statements issued by DEFENDANTS failed
28 to list the inclusive dates of the pay period for which the Class Member is being paid.

1 124. DEFENDANTS' failure to accurately list all hours worked on all wage statements
2 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Class
3 Members over whether they received all wages owed to them.

4 125. As a result, PLAINTIFF and other Class Members have suffered injury as they could
5 not easily determine whether they received all wages owed to them and whether they were paid for
6 all hours worked.

7 126. Moreover, as a result of DEFENDANTS' failure to list the correct name and/or
8 address of the legal entity that is the employer, PLAINTIFF and Class Members have suffered injury
9 as they could not contact their employer regarding any question(s) they had about wages paid.

10 127. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
11 Class Members with accurate, itemized wage statements.

12 128. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Class Members
13 have suffered injury. The absence of accurate information on their wage statements has prevented
14 earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
15 mathematical computations to determine the amount of wages owed, and will cause difficulty and
16 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
17 submission of inaccurate information about wages and amounts deducted from wages to state and
18 federal government agencies. As a result, PLAINTIFF and Class Members are required to
19 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
20 and pay records than if DEFENDANT had complied with its legal obligations.

21 129. Pursuant to California Labor Code section 226(e), PLAINTIFF and Class Members
22 are entitled to recover fifty dollars per employee for the initial pay period in which a Section 226
23 violation occurred and one hundred dollars per employee per violation for each subsequent pay
24 period, not to exceed an aggregate penalty of four thousand dollars per employee.

25 130. Pursuant to California Labor Code § 226(h), PLAINTIFF and Class Members are
26 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
27 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
28 provide currently employed Class Members with inaccurate wage statements in violation of

1 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
2 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
3 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
4 with California Labor Code § 226(a).

5 131. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFF and Class
6 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable
7 attorneys' fees, and costs of suit.

8 **SIXTH CAUSE OF ACTION**
9 **Failure to Timely Pay All Wages Due Upon Separation of Employment**
10 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

11 132. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

12 133. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
13 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
14 payable immediately."

15 134. California Labor Code section 202(a) provides, in relevant part, that "[i]f an
16 employee not having a written contract for a definite period quits his or her employment, his or her
17 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
18 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
19 to his or her wages at the time of quitting."

20 135. Based on information and belief, DEFENDANTS failed and continue to fail to timely
21 pay final wages to PLAINTIFF and Class Members upon separation of employment in violation of
22 Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF and Class
23 Members do not include all wages owed as they are devoid of, including but not limited to, all owed
24 minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or
25 paid time off wages at the properly accrued rates.

26 136. Under Labor Code section 203, PLAINTIFF and the Class Members who are no
27 longer employed by DEFENDANTS are entitled to recover waiting time penalties of up to 30 days'
28 pay, plus attorney's fees and costs, in an amount to be proved at trial.

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SEVENTH CAUSE OF ACTION
Failure to Reimburse Business Expenses
(By PLAINTIFF and the Class Members Against all DEFENDANTS)

137. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

138. California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable Wage Orders section 9(b). Furthermore, “for purposes of [section 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

139. Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

140. As described above, PLAINTIFF and the Class Members were improperly required to pay for business expenses that are legally the responsibility of the employer.

141. DEFENDANTS’ failure to provide PLAINTIFF and the Class Members with full reimbursement for all reasonable expenses associated with carrying out their duties required that PLAINTIFF and the Class Members subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

142. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and the Class Members have suffered injury in that they were not completely reimbursed as mandated by California law.

143. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable

1 attorneys' fees, and costs of suit.

2 **EIGHTH CAUSE OF ACTION**

3 **Unfair Competition**

4 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

5 144. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

6 145. DEFENDANTS' unlawful conduct alleged herein constitutes unfair competition
7 within the meaning of California Business and Professions Code section 17200 *et seq.* This unfair
8 conduct includes all unlawful conduct alleged herein, including but not limited to: DEFENDANTS'
9 failure to pay minimum and overtime wages by virtue of its illegal policies and practices;
10 DEFENDANTS' failure to authorize or permit, or provide, all required meal and rest periods or pay
11 proper premiums in lieu thereof; DEFENDANTS' failure to furnish complete and accurate itemized
12 wage statements; DEFENDANTS' failure to reimburse business expenses; DEFENDANTS' failure
13 to timely pay all wages owed upon separation of employment; and DEFENDANTS' failure to
14 provide paid sick leave (or paid time off in lieu thereof) at the properly accrued rates (due to,
15 including but not limited to, DEFENDANTS' failure to incorporate all non-discretionary
16 compensation into the sick pay calculation and failure to base the accrued sick leave on the correct
17 number of hours worked as a result of DEFENDANTS' time-rounding/auto deduction policies and
18 practices).

19 146. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
20 California Labor Code, DEFENDANTS have gained a competitive advantage over other
21 comparable companies doing business in the State of California that comply with their obligations
22 to authorize or permit rest periods and meal periods or pay proper meal and rest period premiums
23 in lieu thereof, to properly accrue and pay sick time benefits, to provide complete and accurate
24 itemized wage statements, to reimburse employees for all business expenses, to pay all owed
25 minimum and overtime wages and to pay all wages due upon separation of employment of their
26 employees.

27 147. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFF
28 and Class Members have suffered injury in fact and lost money or property, as described in more

1 detail above. Pursuant to California Business and Professions Code section 17200, *et seq.*,
2 PLAINTIFF and Class Members are entitled to restitution of all wages and other monies rightfully
3 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of their
4 unlawful and unfair business practices.

5 148. PLAINTIFF also seeks an injunction against DEFENDANTS on behalf of the Class
6 Members, enjoining DEFENDANTS and any and all persons acting in concert with them from
7 engaging in each of the unlawful practices and policies set forth herein.

8 149. PLAINTIFF also seeks an award of attorney's fees pursuant to Code Civ. Proc
9 Section 1021.5 and as permitted by law, and an award for costs reasonably incurred, as permitted
10 by law.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, PLAINTIFF prays for relief and judgment, on behalf of PLAINTIFF and
13 Class Members as follows:

- 14 1. For an order that the action be certified as a class action;
- 15 2. For an order that PLAINTIFF be appointed as class representative;
- 16 3. For an order that counsel for PLAINTIFF be appointed as class counsel;
- 17 4. For compensatory damages according to proof;
- 18 5. For liquidated damages according to proof;
- 19 6. For penalties according to proof;
- 20 7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully
21 withheld from PLAINTIFF and the Class Members;
- 22 8. For an order finding DEFENDANTS have engaged in unfair competition in violation of
23 section 17200, *et seq.*, of the California Business and Professions Code;
- 24 9. For an order enjoining DEFENDANTS from further acts of unfair competition;
- 25 10. For pre-judgment interest as permitted by law;
- 26 11. For attorney's fees and costs reasonably incurred; and

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12. For such other and further relief that the Court deems just and proper.

Dated: September 20, 2024

CROSNER LEGAL, PC

By: 

Jamie K. Serb, Esq.
Brandon Brouillette, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiff,
ALEXANDER COWLEY-MALKI

1 **DEMAND FOR JURY TRIAL**

2 PLAINTIFF demands a trial by jury on all claims so triable.

3
4 Dated: September 20, 2024

CROSNER LEGAL, PC

5
6 By: 
7 Jamie K. Serb, Esq.
8 Brandon Brouillette, Esq.
9 Zachary M. Crosner, Esq.
Attorneys for Plaintiff,
ALEXANDER COWLEY-MALKI