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

**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

FIRST AMENDED CLASS AND REPRESENTATIVE 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**
8. **Unfair Competition and**
9. **Violation of the Private Attorneys General Act of 2004**

DEMAND FOR JURY TRIAL

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

7 **JURISDICTION AND VENUE**

8 1. This court possesses original subject matter jurisdiction over this matter. Venue is
9 proper in the County of Los Angeles pursuant to California Code of Civil Procedure section 395.5
10 because DEFENDANTS transact business within this judicial district, DEFENDANTS employed
11 PLAINTIFF to work in this judicial district and some of the acts, omissions, and conduct alleged by
12 PLAINTIFF herein occurred in this this judicial district. *See also Crestwood Behavioral Health,*
13 *Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a PAGA action is proper in any county
14 where the defendants committed Labor Code violations against some of its employees). Venue is
15 also proper pursuant to section 393 of the California Code of Civil Procedure because the cause, or
16 some part of the cause, arose in the County of Los Angeles.

17 **THE PARTIES**

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

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

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

2 5. DEFENDANTS own, operate, manage and/or staff its employees to work at the
3 home offices / offices, facilities and/or other location(s) in California, including but not limited to
4 the home offices / offices, facilities and/or other locations in including but not limited to, Diamond
5 Bar and other cities throughout California. DEFENDANTS operate under including but not limited
6 to, the name(s) "Cengage Learning," "Cengage Learning, Inc.," "Ed2go," "Education to Go,"
7 "Cengage Group," and/or "Cengage." DEFENDANTS, through its various locations, serve the
8 education/educational services and/or education technology industry.

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

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

25 **JOINT LIABILITY**

26 8. Under California law, the definition of the terms "to employ" are broadly construed
27 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
28 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)
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1 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49
2 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
3 was to reach situations in which multiple entities control different aspects of the employment
4 relationship. Supervision of the work, in the specific sense of exercising control over how services
5 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
6 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
7 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
8 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
9 California, applying a less stringent standard to what constitutes sufficient control by a business
10 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
11 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative
12 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
13 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
14 employment,” *Id.* at 875 [emphasis added].

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

22 10. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
23 DEFENDANTS operated as a single integrated enterprise with common ownership and
24 centralized human resources. As a result, DEFENDANTS utilized the same unlawful policies and
25 practices across all of their locations/facilities and subjected all of the Class Members to these same
26 policies and practices regardless of the location(s) where they worked. Among other things,
27 PLAINTIFF is informed and believes that: (1) there is common ownership in, and financial control,
28 in DEFENDANTS’ companies, (2) DEFENDANTS⁴ utilize common management, who have control
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1 over the day-to-day operations and employment matters, including the power to hire and fire, set
2 schedules, issue employee policies, and determine rates of compensation across its locations in
3 California; (3) DEFENDANTS utilize the same policies and procedures for all California
4 employees, including issuing the same employee handbooks and other form agreements; (4)
5 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee
6 employment matters; and, (6) DEFENDANTS share employees.

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

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

1 Aggrieved Employees.

2 13. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
3 and working conditions of PLAINTIFF and Class Members and Aggrieved Employees. As such,
4 DEFENDANTS collectively held the right to control virtually every aspect of PLAINTIFF's and
5 the Class Members and Aggrieved Employees' employment, including the instrumentality that
6 resulted in the illegal conduct for which PLAINTIFF seeks relief in this Complaint.

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

10 **CLASS ALLEGATIONS**

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

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

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

22 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
23 because common questions of law and fact predominate over individual issues.
24 Common questions include, but are not limited to, the following: (1) whether
25 DEFENDANTS understated hours worked and failed to pay all amounts due to
26 PLAINTIFF and the Class Members for wages earned, including minimum and
27 overtime wages, under California law; (2) whether DEFENDANTS provided
28 PLAINTIFF and the Class Members with all meal periods or premium payments

1 in lieu thereof in compliance with California law; (3) whether DEFENDANTS
2 provided PLAINTIFF and the Class Members with all rest periods or premium
3 payments in lieu thereof, in compliance with California law; (4) whether
4 DEFENDANTS provided PLAINTIFF and Class Members with accurate,
5 itemized wage statements in compliance with California law, displaying,
6 including but not limited to, the total hours worked during the pay period; (5)
7 whether DEFENDANTS timely paid PLAINTIFF and the Class Members all
8 wages due upon separation of employment; (6) whether DEFENDANTS failed
9 to reimburse PLAINTIFF and the Class Members for all business expenses; and
10 (7) whether DEFENDANTS violated California Business and Professions Code
11 sections 17200, *et seq.*

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

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

22 e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the
23 Class Members. PLAINTIFF has no interests adverse to the interests of the other
24 Class Members. Counsel who represent PLAINTIFF are competent and
25 experienced in litigating similar class action cases and are California lawyers in
26 good standing. Counsel for PLAINTIFF have the experience and resources to
27 vigorously prosecute this case.

28 f. Superiority. A class action is superior to other available means for the fair and

1 efficient adjudication of this controversy since individual joinder of all members
2 of the class is impractical. Class action treatment will permit a large number of
3 similarly situated persons to prosecute their common claims in a single forum
4 simultaneously, efficiently, and without the unnecessary duplication of effort
5 and expense that numerous individual actions would engender. Furthermore, as
6 the damages suffered by each individual member of the Class may be relatively
7 small, the expenses and burden of individual litigation would make it difficult
8 or impossible for individual members of the Class to redress the wrongs done to
9 them, while an important public interest will be served by addressing the matter
10 as a class action. The cost to the court system of adjudication of such
11 individualized litigation would be substantial. Individualized litigation would
12 also present the potential for inconsistent or contradictory judgments. Finally,
13 the alternative of filing a claim with the California Labor Commissioner is not
14 superior, given the lack of discovery in such proceedings, the fact that there are
15 fewer available remedies, and the losing party has the right to a trial de novo in
16 the Superior Court.

17 **FACTUAL AND LEGAL ALLEGATIONS**

18 16. During the relevant period, PLAINTIFF, and each of the Class Members and
19 Aggrieved Employees, worked for DEFENDANTS in the State of California. At all times referenced
20 herein, DEFENDANTS exercised control over PLAINTIFF and Class Members and Aggrieved
21 Employees and suffered and/or permitted them to work.

22 17. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job
23 title(s) of enrollment representative and/or a similar title(s) and/or job position(s) from in or around
24 2020 through in or around August 2024.

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

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

2 20. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
3 PLAINTIFF and Class Members and Aggrieved Employees for all hours worked, resulting in the
4 underpayment of minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF
5 and Class Members and Aggrieved Employees for all hours worked by virtue of, DEFENDANTS'
6 automatic deduction and time rounding policies, and failure to relieve employees of all
7 duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or
8 improper meal periods, as explained below.

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

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

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

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

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

8 26. Based on information and belief, DEFENDANTS rounded other Class Members and
9 Aggrieved Employees' total hours worked to at least the nearest quarter, half and/or whole hour
10 during most, if not all pay periods during their respective employments.

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

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

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

1 Members and Aggrieved Employees.

2 30. PLAINTIFF and other Class Members and Aggrieved Employees were required to
3 perform other off-the-clock work for which they were not compensated. For example, based on
4 information and belief, at times, DEFENDANTS' biometric/electronic/employee time-keeping
5 system malfunctioned such that Class Members and Aggrieved Employees were required to either
6 reinitiate and/or otherwise troubleshoot the system prior to being able to clock in and/or were unable
7 to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting in off-
8 the-clock work and the underpayment of wages owed to Class Members and Aggrieved Employees.
9 Based on information and belief, Class Members and Aggrieved Employees experienced the same
10 issues when clocking out for shifts and/or back in for meal periods. This time spent under
11 DEFENDANTS' control was not recorded and not compensated and resulted in unpaid minimum
12 wages owed to Class Members and Aggrieved Employees.

13 31. Based on information and belief, DEFENDANTS failed to compensate Class
14 Members and Aggrieved Employees for all time spent completing DEFENDANTS' required
15 trainings and/or courses (e.g., education-related courses) and/or testings and/or certifications (e.g.,
16 education/teaching certifications).

17 32. Based on information and belief, DEFENDANTS failed to pay Class Members and
18 Aggrieved Employees the applicable minimum wage for the county and/or city within which the
19 Aggrieved Employee worked in California.

20 33. Moreover, based on information and belief, DEFENDANTS failed to pay
21 PLAINTIFF and/or other Class Members and Aggrieved Employees split shift premium wages
22 when they worked split shifts during the relevant period. For example, based on information and
23 belief, at times, DEFENDANTS required PLAINTIFF and/or other Class Members and Aggrieved
24 Employees to work two separate shifts in the same day. Based on information and belief,
25 DEFENDANTS failed to pay PLAINTIFF and/or other Class Members and Aggrieved Employees
26 split shift compensation whenever PLAINTIFF's and/or other Class Members and Aggrieved
27 Employees' work schedules were interrupted by non-paid non-working periods established by
28 DEFENDANTS, which resulted in a violation of the applicable Wage Order (See section 4 of all

1 applicable Wage orders, "When an employee works a split shift, one (1) hour's pay at the minimum
2 wage shall be paid in addition to the minimum wage for that workday...). See, also, Cal. Code Regs.
3 Tit. 8, § 11050 (when an employee works a split shift, one (1) hour's pay at the minimum wage shall
4 be paid in addition to the minimum wage for that workday, except when the employee resides at the
5 place of employment). DEFENDANTS also failed to separately itemize these split shift premium
6 wages on PLAINTIFF's and/or other Class Members and Aggrieved Employees' wage statements,
7 in violation of Labor Code sections 510, 1194 and all applicable IWC Wage Orders. See,
8 https://www.dir.ca.gov/dlse/split_shift.htm. (The employer must itemize the premium payment on
9 the pay stub provided to the employee, and it should be shown as a separate category such as "Split
10 Shift Premium" and should not be lumped into another category such as wages, bonus, etc.
11 DEFENDANTS failed to separately account for the split shift premiums earned by PLAINTIFF
12 and/or other Class Members and Aggrieved Employees on their wage statements.

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

18 35. Based on further information and belief, DEFENDANTS implemented a time-
19 rounding system that as applied systematically deprived PLAINTIFF and other Class Members and
20 Aggrieved Employees of compensable time because the time-rounding system implemented by
21 DEFENDANTS would almost always, if not always, result in understating actual compensable work
22 time.

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

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

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

11 39. Based on information and belief, DEFENDANTS failed and continue to fail to pay
12 Class Members and Aggrieved Employees two times their regular rate of pay for time worked
13 beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh
14 consecutive day of work in a work week, in violation of California's overtime laws.

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

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

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

6 43. For example, based on information and belief, at times, Class Members and
7 Aggrieved Employees were forced to skip their owed meal periods completely, take late meal
8 periods in order to complete assigned job duties and/or were interrupted during purported meal
9 periods and/or had meal periods cut short and/or restricted to DEFENDANTS' premises/their
10 assigned work stations and/or were otherwise required to remain on-duty during unpaid meal periods
11 due to the need to continue assigned job duties.

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

17 45. Based on information and belief, DEFENDANTS implemented policies and/or
18 practices that failed to relieve Class Members and Aggrieved Employees of all duties and
19 DEFENDANTS' control during unpaid meal periods.

20 46. Based on information and belief, DEFENDANTS required Class Members and
21 Aggrieved Employees to complete off-the-clock work prior to their scheduled shift time which
22 DEFENDANTS failed to take into account when scheduling meal periods for Class Members and
23 Aggrieved Employees. Based on information and belief, meal periods were late, in part due to
24 unaccounted pre-shift off-the-clock work.

25 47. Based on information and belief, despite DEFENDANTS' failure to provide lawful
26 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
27 times of PLAINTIFF's and other Class Members and Aggrieved Employees' meal periods and/or
28 automatically deducting at least thirty minutes (oftentimes at least sixty minutes) per shift for missed

1 and/or otherwise unlawful meal periods despite having actual and/or constructive knowledge that
2 PLAINTIFF and other Class Members and Aggrieved Employees did not receive lawful meal
3 periods.

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

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

11 50. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
12 records of the true start and end times of PLAINTIFF's and Class Members and Aggrieved
13 Employees' meal periods. Based on information and belief, to the extent meal period were recorded,
14 DEFENDANTS illegally rounded the start and end times of purported meal periods resulting in
15 PLAINTIFF and other Class Members and Aggrieved Employees not being paid for all time worked
16 as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th
17 58.

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

22 52. DEFENDANTS failed to pay PLAINTIFF and other Class Members and Aggrieved
23 Employees, an additional hour of wages at their respective regular rates of compensation for each
24 workday a lawful meal period was not provided. DEFENDANTS either failed to pay a meal period
25 premium at all for each workday a lawful meal period was not provided and/or failed to pay the
26 proper meal period premium for failure to incorporate all non-discretionary remuneration, including
27 but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into
28 the regular rate or compensation for purposes of calculating the owed meal period premium.

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

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

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

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

17 57. Also, based on information and belief, DEFENDANTS had no policy and/or practice
18 as to the proper timing and/or duty-free nature of rest periods. For example, based on information
19 and belief, DEFENDANTS failed to allow PLAINTIFF and other Class Members and Aggrieved
20 Employees to take off-duty rest periods that were insofar as practicable in the middle of the work
21 period, as required by law.

22 58. Based on information and belief, DEFENDANTS did not pay Class Members and
23 Aggrieved Employees any rest period premiums during their respective employments and/or did not
24 pay Class Members and Aggrieved Employees a proper rest period premium for each missed and/or
25 otherwise legally non-compliant rest period.

26 59. For example, DEFENDANTS' wage statements for PLAINTIFF do not show the
27 payment of a single rest period premium during PLAINTIFF's employment despite DEFENDANTS
28 having actual and/or constructive knowledge that PLAINTIFF was required to work through his

1 owed rest periods and/or was not allowed to take legally compliant rest periods, in violation of
2 California rest period law.

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

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

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

15 63. Based on information and belief, DEFENDANTS implemented policies and/or
16 practices that failed to relieve PLAINTIFF and other Class Members and Aggrieved Employees of
17 all duties and DEFENDANTS' control during rest periods.

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

21 65. As described herein, DEFENDANTS failed to pay a rest period premium for each
22 day in which PLAINTIFF and Class Members and Aggrieved Employees experienced a
23 missed/unlawful rest period in violation of California law. DEFENDANTS either failed to pay a
24 rest period premium at all for each workday a proper rest period was not provided and/or failed to
25 pay the proper rest period premium for failure to incorporate all non-discretionary remuneration,
26 including but not limited to, bonuses, shift differential pay, and/or other non-discretionary
27 compensation into the regular rate of compensation for purposes of calculating the owed rest period
28 premium.

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

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

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

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

26 70. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Class
27 Members and Aggrieved Employees that were not accurate and did not include all of the statutorily
28 required information. As such, DEFENDANTS violated Labor Code section 226.

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

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

14 73. Based on information and belief, DEFENDANTS failed to timely provide all owed
15 wages immediately upon discharge of employment. Based on information and belief, at times, Class
16 Members and Aggrieved Employees experienced breaks in employment caused by DEFENDANTS
17 whereby Class Members and Aggrieved Employees would not be called in for work for longer than
18 a single pay period due to including but not limited to DEFENDANTS' lack of work or lack of
19 assignments. Such instances qualify as a discharge of employment. Yet, DEFENDANTS failed to
20 timely pay all owed wages at the end of such periods of employment, in violation of including but
21 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 and Aggrieved Employees to incur
26 business expenses as a direct consequence of the performance of their job duties without providing
27 reimbursement, in violation of Labor Code section 2802. Based on information and belief,
28 PLAINTIFF and Class Members and Aggrieved Employees were improperly required to provide

1 and maintain work tools that are supposed to be the responsibility of the employer.

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

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

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

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

1 Employees' increased utility and internet expenses were expenses for which DEFENDANTS were
2 required to reimburse Class Members and Aggrieved Employees a reasonable percentage based on
3 their required business use because said expenses were necessarily incurred by Class Members and
4 Aggrieved Employees as a direct consequence of the discharge of their duties of employment.
5 However, DEFENDANTS failed to reimburse Class Members and Aggrieved Employees at all
6 and/or in full for these business expenses incurred as a result of being required to work from their
7 homes, in violation of California law.

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

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

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

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

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

FIRST CAUSE OF ACTION

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

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

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

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

88. DEFENDANTS violated California’s minimum wage laws by failing to compensate PLAINTIFF and the Class Members for all hours worked 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 minimum wages.

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

90. Based on information and belief, DEFENDANTS had actual or constructive knowledge that its time-rounding policies and practices, auto-deduction policies and practices for meal periods, failure to relieve employees of all duties and employer control during unpaid meal periods, policy and practice of payment according to scheduled work time rather than actual work

1 time, and/or other mandated off-the-clock work resulted in the underpayment of minimum wages
2 owed to PLAINTIFF and other Class Members.

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

6 **SECOND CAUSE OF ACTION**

7 **Recovery of Unpaid Overtime Wages**

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

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

10 93. Employees in California must be paid overtime, equal to one and one-half times the
11 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
12 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
13 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
14 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
15 consecutive day of work in a workweek, unless they are exempt.

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

22 95. Based on information and belief, DEFENDANTS failed to pay twice Class
23 Members' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for
24 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in
25 violation of California's overtime laws.

26 96. Based on information and belief, DEFENDANTS further violated California's
27 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
28 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
PLAINTIFF ALEXANDER COWLEY-MALKI'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION
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1 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
2 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
3 other Class Members.

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

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

8 **THIRD CAUSE OF ACTION**

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

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

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

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

27 102. As explained above, PLAINTIFF and other Class Members were consistently unable
28 to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being

1 forced to take late meal periods, interrupted meal periods, and/or work through part or all of their
2 meal periods due to understaffing, the nature and constraints of their job duties, and/or commentary
3 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
4 completely.

5 103. Based on information and belief, DEFENDANTS had and continue to have a policy
6 of rounding the start and end times of employees' meal periods and/or automatically deducting thirty
7 minutes and/or sixty minutes per shift despite having actual and/or constructive knowledge that
8 PLAINTIFF and Class Members did not receive compliant meal periods.

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

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

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

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

24 **FOURTH CAUSE OF ACTION**

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

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

27 109. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
28 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours

1 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
2 “insofar as practicable.” In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the
3 California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts
4 from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10
5 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029).
6 The rest period requirement obligates employers to permit and authorize employees to take off-duty
7 rest periods, meaning employers must relieve employees of all duties and relinquish control over
8 how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257.

9 110. If the employer fails to provide any required rest period, the employer must pay the
10 employee one hour of pay at the employee’s regular rate of compensation for each workday the
11 employer did not provide at least one legally required rest period, pursuant to Labor Code section
12 226.7.

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

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

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

26 114. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
27 period premium to PLAINTIFF and other Class Members for each workday in which there was a
28 missed or otherwise unlawful rest period. Based on further information and belief, when a rest

1 premium was paid, DEFENDANTS failed to include non-discretionary compensation including but
2 not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
3 regular rate of compensation for purposes of determining the owed rest period premium.

4 115. DEFENDANTS are therefore liable to PLAINTIFF and the Class Members for one
5 hour of additional pay at the regular rate of compensation for each workday that a required rest
6 period was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage
7 Order, plus pre-judgment interest, plus attorneys' fees and costs, all in an amount to be proved at
8 trial.

9 **FIFTH CAUSE OF ACTION**
10 **Failure to Furnish Accurate Itemized Wage Statements**
11 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

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

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

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

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

1 earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect
2 during the pay period and the corresponding number of hours worked at each hourly rate by the
3 employee, in violation of Labor Code section 226(a)(9).

4 119. Moreover, due to violations detailed above, including but not limited to,
5 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide
6 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
7 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
8 PLAINTIFF and other Class Members with accurate, itemized wage statements that listed the gross
9 and net wages earned and the correct applicable rates of pay for all hours worked. Based on
10 information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
11 compensation earned during the pay period into the regular rate of pay for purposes of calculating
12 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
13 overtime worked by PLAINTIFF and other Class Members.

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

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

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

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

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

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

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

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

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

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

2 130. Pursuant to California Labor Code § 226(h), PLAINTIFF and Class Members are
3 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
4 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
5 provide currently employed Class Members with inaccurate wage statements in violation of
6 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
7 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
8 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
9 with California Labor Code § 226(a).

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

13 **SIXTH CAUSE OF ACTION**

14 **Failure to Timely Pay All Wages Due Upon Separation of Employment** 15 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

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

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

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

25 135. Based on information and belief, DEFENDANTS failed and continue to fail to timely
26 pay final wages to PLAINTIFF and Class Members upon separation of employment in violation of
27 Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF and Class
28 Members do not include all wages owed as they are devoid of, including but not limited to, all owed
minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or

1 paid time off wages at the properly accrued rates.

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

5 ///

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

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

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

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

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

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

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

4 143. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members
5 are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable
6 attorneys' fees, and costs of suit.

7 **EIGHTH CAUSE OF ACTION**

8 **Unfair Competition**

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

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

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

25 146. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
26 California Labor Code, DEFENDANTS have gained a competitive advantage over other
27 comparable companies doing business in the State of California that comply with their obligations
28 to authorize or permit rest periods and meal periods or pay proper meal and rest period premiums
in lieu thereof, to properly accrue and pay sick time benefits, to provide complete and accurate

1 itemized wage statements, to reimburse employees for all business expenses, to pay all owed
2 minimum and overtime wages and to pay all wages due upon separation of employment of their
3 employees.

4 147. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFF
5 and Class Members have suffered injury in fact and lost money or property, as described in more
6 detail above. Pursuant to California Business and Professions Code section 17200, *et seq.*,
7 PLAINTIFF and Class Members are entitled to restitution of all wages and other monies rightfully
8 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of their
9 unlawful and unfair business practices.

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

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

16
17 **NINTH CAUSE OF ACTION**
18 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
19 **2698, *ET SEQ.***
20 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
21 **DEFENDANTS)**

22 150. PLAINTIFF brings this action under the Private Attorneys General Act of 2004,
23 Labor Code sections 2698, *et seq.*, ("PAGA"), as a representative action on behalf of PLAINTIFF,
24 the State of California and Aggrieved Employees, regarding violations of the California Labor Code
25 as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

26 All current and former non-exempt employees that worked either directly or via a staffing
27 agency for any DEFENDANTS at any location in California at any time from one year plus
28 65 days from the filing of the initial Complaint through the present ("PAGA Period").

151. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory

1 limitations period and suffered all of the Labor Code violations set forth herein. Accordingly,
2 PLAINTIFF seeks to recover on behalf of the State of California and all Aggrieved Employees, the
3 civil penalties provided by PAGA, plus reasonable attorney's fees and costs. PLAINTIFF has
4 standing to bring a PAGA cause of action on behalf of PLAINTIFF, the State of California, and all
5 Aggrieved Employees, as PLAINTIFF was jointly employed by DEFENDANTS and is thereby
6 affected by all of the alleged violations.

7 **COMPLIANCE WITH PAGA'S NOTIFICATION REQUIREMENTS**

8 152. On August 13, 2024, PLAINTIFF, through counsel, gave written notice by online
9 filing with the California Labor and Workforce Development Agency ("LWDA") informing it that
10 DEFENDANTS failed to comply with California's labor laws with regard to the allegations alleged
11 in this Complaint ("PAGA Notice").

12 153. The LWDA did not provide notice of its intention to investigate DEFENDANTS'
13 violations after expiration of the statutorily-mandated waiting-time period(s), or at any time. To the
14 extent any of the alleged violations were curable, DEFENDANTS failed to cure within the time
15 allotted by PAGA. Accordingly, PLAINTIFF has exhausted the administrative remedies as required
16 by Labor Code section 2699.3. Consequently, PLAINTIFF's right to file the instant lawsuit against
17 DEFENDANTS has duly accrued.

18 154. PLAINTIFF seeks to recover the PAGA civil penalties through a representative
19 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
20 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

21 155. From one year prior to PLAINTIFF's filing of the required PAGA notice with the
22 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated California
23 Labor Code sections, 98.6, 201-203, 208, 210, 216, 221-223, 225.5, 226, 226.7, 245-248.6, 256,
24 432, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
25 1199, 2699, 2699.3, 2802, 2810.5, and all applicable Wage Orders.

26 156. As set forth above, DEFENDANTS have committed numerous violations of the
27 California Labor Code due to including but not limited to their failure to pay all owed minimum
28 wages and all owed overtime wages, failure to provide lawful meal and rest periods or compensation

1 in lieu thereof, failure to provide accurate wage statements, failure to reimburse business expenses,
2 and failure to pay all wages owed upon separation of employment as alleged above. PAGA penalties
3 are in addition to any other relief available under the Labor Code.

4 157. Additionally, DEFENDANTS have violated the following Labor Code sections and
5 provisions of the applicable Wage Order as to the PLAINTIFF and other Aggrieved Employees.

6 **Failure to Keep Accurate Records**

7 158. California Labor Code § 1174 requires employers to keep “accurate and complete”
8 payroll records showing, among other things, the hours worked daily by all non-exempt employees.
9 All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the
10 times during which all owed meal periods were provided each day.

11 159. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate
12 and complete records as required by law, including but not limited to the following records: total
13 daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other
14 Aggrieved Employees began and ended each work period, time records of meal periods, and
15 accurate itemized wage statements.

16 160. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
17 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
18 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
19 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
20 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
21 period during which the referenced statutes and Wage Order provisions were violated.

22 **Statutory Wage Violations**

23 161. California Labor Code section 223 makes it unlawful for an employer to secretly pay
24 wages lower than required by statute while purporting to pay legal wages. As described above,
25 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
26 earned minimum and overtime compensation for all hours worked which resulted in the payment of
27 less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
28 statutory wages, including, but not limited to, minimum and overtime wages, to which they were

1 entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other Aggrieved
2 Employees lower wages than those they were entitled to while purporting that PLAINTIFF and
3 other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Aggrieved
4 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
5 Labor Code § 2699(f)-(g).

6 **Refusal to Make Payment**

7 162. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
8 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
9 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
10 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
11 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
12 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
13 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
14 each Aggrieved Employee, for each pay period during which the statute provisions were violated.¹

15 **Reporting Time Pay Violations.**

16 163. Section 5 of all applicable IWC Wage Orders, provides as follows:

17 164. (A) Each workday an employee is required to report for work and does report, but is
18 not put to work or is furnished less than half said employee's usual or scheduled day's work, the
19 employee shall be paid for half the usual or scheduled day's work, but in no event for less than two
20 (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less
21 than the minimum wage. (B) If an employee is required to report for work a second time in any one
22 workday and is furnished less than two (2) hours of work on the second reporting said employee
23 shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the
24 minimum wage.

25 165. PLAINTIFF was not paid reporting time wages in accordance with California law,

27 ¹ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

1 including but not limited to the applicable IWC Wage Order. For example, based on information
2 and belief, at times, PLAINTIFF and/or other Aggrieved Employees reported to work for a
3 scheduled shift but were sent home and/or were not put to work and were not paid all owed reporting
4 time pay wages in accordance with California law.

5 166. Based on information and belief, DEFENDANTS have a policy and practice of
6 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,
7 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS' failure to
8 pay all reporting time wages to PLAINTIFF and Aggrieved Employees violated and continues to
9 violate the applicable Wage Order, and the California Labor Code, including but not limited to
10 section 1198.

11 **Violation of Labor Code Section 208**

12 167. Labor Code Section 208 provides: Every employee who is discharged shall be paid
13 at the place of discharge, and every employee who quits shall be paid at the office or agency of the
14 employer in the county where the employee has been performing labor. All payments shall be made
15 in the manner provided by law.

16 168. Based on information and belief, DEFENDANTS have a policy and practice of
17 failing to provide Aggrieved Employees who are terminated with their final paychecks at the place
18 of discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the
19 office or agency of DEFENDANTS in the county where the work was performed, in violation of
20 Labor Code Section 208.

21 **Unlawful Deductions**

22 169. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from
23 an employee any part of wages theretofore paid by said employer to said employee." Based on
24 information and belief, DEFENDANTS made unlawful deductions from Aggrieved Employees
25 paychecks during the relevant period.

26 170. For example, as explained herein, DEFENDANTS regularly failed to reimburse
27 PLAINTIFF for business expenses incurred by PLAINTIFF each pay period, thereby deducting
28 business costs from PLAINTIFF's earned wages each pay period, in violation of including but not
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1 limited to, Labor Code Section 221, and further failing to itemize these deductions for business
2 costs, on PLAINTIFF's wage statements, in violation of Labor Code section 226(a)(4).

3 171. Such a practice is in violation of including but not limited to, Labor Code Sections
4 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

5 172. Each violation results in a separate civil penalty, for each Aggrieved Employee, for
6 each pay period during which the statute provisions were violated. See Lab. Code §225.5
7 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
8 provided in this article, every person who unlawfully withholds wages due any employee in
9 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure
10 to pay each employee").

11 **Business Expense Violations**

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

18 174. Among other things, under California law, when employees must use their personal
19 cellphones for work-related purposes, the employer must reimburse them for a reasonable
20 percentage of their cell phone bills. See *Cochran v. Schwan's Home Services, Inc.* (2014) 228
21 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
22 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
23 *Id.* 1144-1145.

24 175. Further, "any contract or agreement, express or implied, made by any employee to
25 waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive
26 any employee or his personal representative of any right or remedy to which he is entitled to under
27 the laws of this State." See Cal. Lab. Code section 2804.

28 176. As described above, PLAINTIFF³⁸ and the Aggrieved Employees were improperly
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1 required to pay for business expenses that are legally the responsibility of the employer, including
2 but not limited to costs associated with the purchase and/or maintenance of
3 uniforms/clothing/safety/protective equipment, personal tools, and costs associated with the use of
4 personal vehicles and/or the use of Aggrieved Employees' personal mobile phones/personal
5 computers, and data usage for work-related purposes.

6 177. DEFENDANTS' failure to provide PLAINTIFF and the Aggrieved Employees with
7 full reimbursement for all reasonable expenses associated with carrying out their duties required
8 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business
9 expenses in violation of Labor Code section 2802.

10 178. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and other Aggrieved
11 Employees have suffered injury in that they were not completely reimbursed as mandated by
12 California law.

13 179. DEFENDANTS' failure to provide PLAINTIFF and the Aggrieved Employees with
14 full reimbursement for all reasonable expenses associated with carrying out their duties required
15 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business
16 expenses in violation of Labor Code section 2802.

17 180. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Aggrieved
18 Employees have suffered injury in that they were not completely reimbursed as mandated by
19 California law.

20 181. Despite being aware of these business expenses, DEFENDANTS failed to reimburse
21 PLAINTIFF and other Aggrieved Employees for such expenses in violation of California Labor
22 Code § 2802. In turn, there constitutes a PAGA violation based on violations of California Labor
23 Code § 2802 and the applicable Wage Order.

24 **Standard Conditions of Labor Violations**

25 182. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
26 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
27 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
28 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'

1 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
2 and minimum/overtime wages result in separate violations of sections 1198 and 1199, which subject
3 DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

4 **Sick Leave Violations**

5 183. DEFENDANTS violated California's paid sick leave laws including, Labor Code
6 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
7 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
8 DEFENDANTS' failure to account for actual hours worked (as explained above), and/or failure to
9 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but
10 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
11 compensation into the sick leave pay rate calculation.

12 184. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
13 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
14 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
15 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
16 Aggrieved Employees' intelligent exercise of their paid sick leave.

17 185. But for this failure, PLAINTIFF and other Aggrieved Employees would have used
18 their paid sick leave at least prior to their respective separations, for as on several occasions
19 thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate
20 compensation.

21 186. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
22 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
23 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
24 were entitled to the maximum number of hours accruable.

25 187. Upon information and belief, DEFENDANTS failed and continue to fail to comply
26 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with
27 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
28 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays

1 wages.

2 188. These practices violated California's sick leave laws, Labor Code section 245, *et seq.*

3 189. On information and belief, PLAINTIFF alleges that all of these practices were
4 experienced and continue to be experienced by other Aggrieved Employees.

5 190. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the
6 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
7 seeks injunctive relief, attorney's fees, declaratory relief, and penalties as permitted by law.

8 **Failure to Pay Vested Vacation/Paid Time Off**

9 191. California Labor Code section 227.3 provides that when an employer policy provides
10 for paid vacations and/or paid time off, and an employee is terminated without having taken off his,
11 her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the
12 employee's final rate in accordance with such contract of employment or employer policy respecting
13 eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time
14 off upon termination.

15 192. Based on information and belief, DEFENDANTS had and continue to have a
16 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
17 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
18 (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-
19 discretionary compensation, including but not limited to, shift differentials) to Aggrieved
20 Employees upon separation of employment, in violation of California law, including but not limited
21 to, Labor Code section 227.3.

22 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

23 *Unlawful Agreements.*

24 193. Labor Code section 432.5 provides that "no employer...shall require any employee
25 or applicant for employment to agree, in writing, to any term or condition which is known by such
26 employer...to be prohibited by law." Based on information and belief, DEFENDANTS required
27 Aggrieved Employees to agree in writing to unlawful conditions of employment including but not
28 limited to, unlawful non-solicitation/non-compete agreements, unlawful confidentiality and/or

1 nondisclosure agreements, unlawful releases and/or waivers, including but not limited to, unlawful
2 meal period waivers, unlawful commissions agreements, unlawful forum selection clauses and/or
3 choice of law provisions/agreements and/or unlawful criminal and/or financial checks as a condition
4 of obtaining and/or continuing employment in violation of Labor Code section 432.5.

5 194. Labor Code section 432.6(a), provides that “a person shall not, as a condition of
6 employment, continued employment, or the receipt of any employment-related benefit, require any
7 applicant for employment or any employee to waive any right...”Based on information and belief,
8 DEFENDANTS required Aggrieved Employees to sign meal period waivers that were universally
9 signed as a condition of employment, including but not limited to, during the onboarding process.
10 By requiring Aggrieved Employees to sign unlawful meal period waivers as a condition of obtaining
11 and/or maintaining employment, DEFENDANTS violated Labor Code section 432.5. Further, these
12 invalid waivers are otherwise unlawful under Labor Code section 432.6.

13 195. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
14 condition of employment, DEFENDANTS violated including but not limited to, Labor Code section
15 432.5.

16 **Violation of Labor Code Section 432.6**

17 196. Based on information and belief, DEFENDANTS required Aggrieved Employees to
18 sign meal period waivers that were universally signed as a condition of employment, including but
19 not limited to, during the onboarding process. Further, these invalid waivers are otherwise unlawful
20 under Labor Code section 432.6.

21 197. Labor Code Section 432.6(a) provides: “[A] person shall not, as a condition of
22 employment, continued employment, or the receipt of any employment-related benefit, require any
23 applicant for employment or any employee to waive any right...”

24 198. Labor Code Section 432.6(b) provides in pertinent part:

25 199. “An employer shall not threaten, retaliate, or discriminate against, or terminate any
26 applicant for employment or any employee because of the refusal to the waiver of any right...”

27 200. Based on information and belief, DEFENDANTS require/required Aggrieved
28 Employees to waive their right to first and/or second meal periods as a condition of working for

1 DEFENDANTS in violation of California law. As such, DEFENDANTS violated including but not
2 limited to, Labor Code section 432.6 by virtue of including but not limited to, requiring Aggrieved
3 Employees to sign invalid meal period waivers as a condition of employment and/or for threatening,
4 retaliating and/or discriminating against and/or terminating Aggrieved Employees because of their
5 refusal to waive their meal period rights.

6 Unlawful Inquires into Criminal History

7 201. Labor Code section 432.7 prohibits an employer from asking applicants about past
8 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
9 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in
10 convictions on its employment application, in violation of California law.

11 202. Upon information and belief, DEFENDANTS, in violation of California law,
12 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
13 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
14 employment and/or otherwise impermissibly inquired into criminal history on its employment
15 application in violation of California law.

16 203. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
17 Code section 432.7. By asking about convictions at the application phase or prior to extending an
18 employment offer, DEFENDANTS violated California’s Fair Chance Act, and thereby violated
19 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
20 disclose arrests and/or convictions as a condition of employment.

21 Violation of California’s Whistleblowing Laws

22 204. Labor Code section 1102.5 prohibits including but not limited to, an employer from
23 retaliating against an employee for among other things, disclosing information “or because the
24 employer believes the employee disclosed or may disclose information, to a government or law
25 enforcement agency” that the employee has reasonable cause to believe constitutes a violation of
26 the law.

27 205. Labor Code section 98.6 protects employees from, including but not limited to,
28 discrimination and retaliation for complaining about unpaid wages and/or filing or threatening to

1 file a claim for Labor Code violations with the California Labor Commissioner.

2 206. On August 2, 2024, Plaintiff, through counsel, sent a notice of legal representation
3 in connection with PLAINTIFF's employment along with a written request for payroll and personnel
4 records to DEFENDANTS.

5 207. On or around August 12, 2024, DEFENDANTS terminated PLAINTIFF's
6 employment.

7 208. PLAINTIFF is informed and believes and based thereon alleges that DEFENDANTS
8 terminated PLAINTIFF because DEFENDANTS believed PLAINTIFF disclosed or may disclose
9 information, to a government or law enforcement agency (e.g., the Labor and Workforce
10 Development Agency that received PLAINTIFF's PAGA Notice) that PLAINTIFF has reasonable
11 cause to believe constitutes a violation of the law.

12 209. In other words, DEFENDANTS believed PLAINTIFF intended to file PLAINTIFF's
13 PAGA Notice and/or this lawsuit/complaint for unpaid wages with a government or law
14 enforcement agency upon receipt of PLAINTIFF's August 2, 2024 notice of legal representation
15 and written request for records, and DEFENDANTS terminated PLAINTIFF's employment in
16 retaliation therefore, immediately thereafter, on or around August 12, 2024, in violation of
17 California's whistleblowing laws, including without limitation, Labor Code sections 98.6 and/or
18 1102.5.

19 210. Based on information and belief, DEFENDANTS have a policy and practice of
20 discriminating and/or retaliating against Aggrieved Employees for disclosing or threatening to
21 disclose information to government and/or law enforcement about DEFENDANTS' unlawful
22 employment practices and/or practices Aggrieved Employees reasonably believed to be unlawful,
23 in violation of including but not limited to, Labor Code sections 98.6 and/or 1102.5.

24 211. Under the provisions of PAGA and the above mentioned Labor Code sections,
25 including but not limited to Labor Code sections 98.6, 201-203, 208, 210, 216, 221-223, 225.5, 226,
26 226.7, 227.3, 245-248.6, 256, 432, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5,
27 1194, 1197, 1197.1, 1198, 1199, 2699, 2699.3, 2802, 2810.5, and all applicable Wage Orders as
28 well as all interpretations of these laws by California Courts and administrative bodies, as well as

1 any other law that is enforceable through PAGA, DEFENDANTS are liable for the following
2 penalties:

- 3 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
4 relevant California Labor Code provisions listed herein only if permitted by the
5 PAGA statute, pursuant to Labor Code section 2699(a); and
- 6 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
7 violations without a civil penalty recoverable under the PAGA, all in the default
8 amounts provided by Labor Code section 2699(f).

9 212. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
10 PLAINTIFF is entitled to recover civil penalties, costs, and attorney's fees.

11
12 **PRAYER FOR RELIEF**

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

- 15 1. For an order that the action be certified as a class action;
- 16 2. For an order that PLAINTIFF be appointed as class representative;
- 17 3. For an order that counsel for PLAINTIFF be appointed as class counsel;
- 18 4. For compensatory damages according to proof;
- 19 5. For liquidated damages according to proof;
- 20 6. For penalties according to proof;
- 21 7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully
22 withheld from PLAINTIFF and the Class Members;
- 23 8. For an order finding DEFENDANTS have engaged in unfair competition in violation of
24 section 17200, *et seq.*, of the California Business and Professions Code;
- 25 9. For an order enjoining DEFENDANTS from further acts of unfair competition;
- 26 10. For pre-judgment interest as permitted by law;
- 27 11. For attorney's fees and costs reasonably incurred;
- 28 12. For civil penalties under Labor Code Section 2699; and

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

2

3 Dated: November 5, 2024

CROSNER LEGAL, PC

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By: 

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Jamie K. Serb, Esq.

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Brandon Brouillette, Esq.

Zachary M. Crosner, Esq.

Attorneys for

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Plaintiff,

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ALEXANDER COWLEY-MALKI

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11

DEMAND FOR JURY TRIAL

12

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

13

14

Dated: November 5, 2024

CROSNER LEGAL, PC

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By: 

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Jamie K. Serb, Esq.

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Brandon Brouillette, Esq.

Zachary M. Crosner, Esq.

Attorneys for

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Plaintiff,

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ALEXANDER COWLEY-MALKI

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