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Attorney for Plaintiff,
WILLIAM ROSE

**SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF SANTA CRUZ**

WILLIAM ROSE, an individual, on his
own behalf and on behalf of all others
similarly situated,

Plaintiff,

v.

SCARBOROUGH LUMBER AND
BUILDING SUPPLY, INC., DBA ACE
HARDWARE, a California corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No.: 24CV02298

[Assigned for all purposes to Hon. Syda Kosofsky
Cogliati, in Dept. 5]

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1. FAILURE TO PAY MINIMUM WAGES** (Cal. *Labor Code* §§1194, 1194.2, 1997, 1197.1, 1198; IWC Wage Order No. 7);
- 2. FAILURE TO PROVIDE TIMELY OFF DUTY MEAL PERIODS** (Cal. *Labor Code* §§ 226.7, 512; IWC Wage Order No. 7);
- 3. FAILURE TO PROVIDE TIMELY OFF DUTY REST PERIODS** (Cal. *Labor Code* §§ 226.7, 512; IWC Wage Order No. 7);
- 4. FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS** (Cal. *Labor Code* §226; IWC Wage Order No. 7);
- 5. FAILURE TO PAY WAGES DUE ON TERMINATION** (Cal. *Labor Code* §§ 201-203);
- 6. FAILURE TO REIMBURSE BUSINESS EXPENSES** (Cal. *Labor Code* § 2802);

- 1 7. FAILURE TO PROVIDE UNIFORM
2 MAINTENANCE ALLOWANCE (Cal.
3 Labor Code §2802);
4 8. FAILURE TO PAY FOR ALL HOURS
5 WORKED (Cal. Labor Code § 204; IWC
6 Wage Order No. 7);
7 9. FAILURE TO ALLOW INSPECTION
8 OF EMPLOYMENT RECORDS (Cal.
9 Labor Code §1198.5);
10 10. UNFAIR COMPETITION (Cal. Bus. &
11 Prof. Code §§17200 et seq.); and
12 11. PRIVATE ATTORNEY GENERAL ACT
13 (“PAGA”)

14 **DEMAND FOR JURY TRIAL**

15 Action Filed: August 13, 2024
16 Trial Date: Not Set
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All allegations in this First Amended Complaint are based upon information and belief except for those allegations which pertain to the Plaintiff named herein and his counsel. Each allegation has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

WILLIAM ROSE (“Plaintiff”) alleges the following:

1. This is a class action brought under California law by an individual who was employed by Scarborough Lumber and Building Supply, Inc. dba Ace Hardware (“ACE”) (along with DOES 1 through 100, collectively “Defendants”). Plaintiff brings this action on behalf of himself and others similarly situated to recover wages from Defendant due to Defendant’s systematic failure to pay minimum wages, failure to provide meal breaks (or pay the statutory compensation due), failure to provide rest breaks (or pay the statutory compensation due), failure to issue accurate wage statements, failure to pay wages due on termination, failure to reimburse business expenses, failure to pay a uniform maintenance allowance, failure to pay for all hours worked and failure to allow inspection of employment records.

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

5 3. Plaintiff, like his co-workers whom Defendant also employed during the
6 applicable limitations period, spend their workdays in Scotts Valley, California, under illegal and
7 highly regimented circumstances. That regimen results from Defendant's insistence to strictly
8 monitor and curtail labor costs, which Defendant accomplishes by not paying for all labor costs,
9 minimum wages, refusing to provide proper meal periods, refusing to provide proper rest periods,
10 not paying the required extra hour for missed meal/rest breaks, failing to pay all wages due on
11 termination, failing to reimburse business expenses, failing to provide a uniform maintenance
12 allowance, failing to pay for all hours worked, failing to allow inspection of employment records,
13 and by using other unlawful stratagems to ensure that labor costs remain artificially low.

14 4. Plaintiff brings this class action to recover, among other things, wages and
15 penalties from unpaid wages earned and due, including but not limited to, minimum wages,
16 missed meal/rest break wages, penalties for failure to provide accurate itemized wage statements,
17 wages owed on termination, unreimbursed business expenses, unreimbursed uniform
18 maintenance allowance, wages for all hours worked, failure to allow inspection of employment
19 records and interest, attorneys' fees, costs, and expenses.

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

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

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7. Plaintiff now seeks to amend his Complaint to add a cause of action pursuant to PAGA under Labor Code §§ 2699, et seq.

JURISDICTION AND VENUE

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

9. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and 395.5, because the claims made, and the *Labor Code* violations as against the persons identified herein, occurred in the County of Santa Cruz and because Defendant owned and operated its business in the County of Santa Cruz.

THE PARTIES

PLAINTIFF

10. At all times relevant hereto, Plaintiff was:

- (a) An individual over age 18 and a resident of Santa Cruz County, California;
- (b) Employed as an hourly employee for Defendant in Scotts Valley, California;
- (c) Did not receive minimum wages as required by *Labor Code* §§1194, 1194.2, 1997, 1197.1, 1198 and the applicable Wage Orders;
- (d) Did not receive the meal periods required by *Labor Code* §266.7 and the applicable Wage Orders;
- (e) Did not receive the rest periods required by *Labor Code* §266.7 and the applicable Wage Orders;
- (f) Did not receive accurate wage statements as mandated by *Labor Code* §226;
- (g) Was not paid all wages due on termination as required by *Labor Code* §§201-203;

- 1 (h) Was not reimbursed necessary business expenses as required by *Labor*
2 *Code* §2802;
3 (i) Was not provided a uniform maintenance allowance as required by *Labor*
4 *Code* §2802;
5 (j) Was not paid for all hours worked as required by *Labor Code* §204; and
6 (k) Was not provided his personnel records. Each of these was a violation of
7 the *Labor Code*.

8 **DEFENDANT**

9 11. Plaintiff is informed and believes, and based on that information and belief,
10 alleges, Defendant ACE is, and at all times mentioned herein was:

- 11 (a) A California corporation, with a principal place of business at 20 El Pueblo
12 Road, Scotts Valley, California 95066. Defendant has been authorized to
13 do business and has been doing business in the County of Santa Cruz;
14 (b) The former employer of Plaintiff and the current and former employer of
15 the putative Class members;
16 (c) Paid Plaintiff and all Class Members on an hourly basis;
17 (d) Failed to pay Plaintiff and all putative Class members minimum wages;
18 (e) Failed to provide Plaintiff and all putative Class members with meal/rest
19 periods and failed to provide Plaintiff and all putative Class members with
20 accurate itemized wage statements;
21 (f) Failed to pay Plaintiff and all putative Class members all wages due on
22 termination;
23 (g) Failed to reimburse Plaintiff and all putative Class members for their
24 necessary business expenses;
25 (h) Failed to provide Plaintiff and all putative Class members a uniform
26 maintenance allowance;
27 (i) Failed to pay Plaintiff and all putative Class members for all hours worked;
28 and

(j) Failed to provide their personnel records. Each of these was a violation of the *Labor Code*.

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

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

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

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

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

CLASS ALLEGATIONS

A. The Definition of the Class

17. The Class (“the Class”) is defined as follows:

(a) “All current and former employees who were hourly paid employees of Defendant and worked for Defendant in California at any time during the period commencing on the date that is four (4) years prior to the filing of this Complaint and continuing through the present date (the “Class Period”).”.

(b) “All persons who were hourly paid employees of Defendant and worked for Defendant in California and left the employ of Defendant at any time during the period commencing on the date that is within one (1) year prior to the filing of this Complaint and continuing through the present date (the “Class Period”).” Plaintiff reserves his right under Rule 3.765 of the California Rules of Court to amend or modify the Class description with greater specificity or further division into subclasses or limitation to particular issues.

B. Maintenance of the Action

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

C. The Class Requisites

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

/ / /

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

3 (a) The persons who comprise the Class are so numerous that the joinder of all
4 those persons is impracticable, and the disposition of their claims as a Class
5 will benefit the parties and the Court;

6 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
7 that are raised in this First Amended Complaint are common to the Class and
8 will apply uniformly to every Class member;

9 (c) The claims of the representative Plaintiff are typical of the claims of each
10 Class member. Plaintiff, like all Class members, has sustained damages
11 arising from Defendant's violations of the laws of the State of California.
12 Plaintiff, and the Class members, were and are similarly or identically
13 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
14 pattern of misconduct engaged in by the Defendant;

15 (d) The representative Plaintiff has, and will continue to, fairly and adequately
16 represent and protect the interests of the Class and has retained counsel who
17 are competent and experienced in class action litigation. There are no
18 material conflicts between the claims of the representative Plaintiff and the
19 Class members that would make class certification inappropriate. Counsel
20 for the Class will vigorously assert the claims of all Class members.

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

27 22. The Court should permit the action to be maintained as a class action under *Code*
28 *of Civil Procedure* § 382 because:

- 1 (a) The questions of law and fact common to the Class predominate over any
2 question affecting only individual members:
- 3 (b) A class action is superior to any other available method for fairly and
4 efficiently adjudicating the claims of the Class;
- 5 (c) The Class members are so numerous that it is impractical to bring all of
6 them before the Court;
- 7 (d) Plaintiff and other Class members will not be able to obtain effective and
8 economic legal redress unless the action is maintained as a class action;
- 9 (e) There is a community of interest in obtaining appropriate legal and
10 equitable relief for the statutory violations, and in obtaining adequate
11 compensation for the damages and injuries for which Defendant is
12 responsible in an amount sufficient to adequately compensate the Class
13 members;
- 14 (f) Without Class certification, the prosecution of separate actions by
15 individual Class members would create a risk of:
- 16 i. Inconsistent or varying adjudications for individual Class members
17 that would establish incompatible standards of conduct for
18 Defendant; and/or,
- 19 ii. Adjudication for individual Class members that would, as a practical
20 matter, dispose of other non-party members' interests, or that would
21 substantially impair or impede the non-parties' ability to protect their
22 interests, by, for example, potentially exhausting the funds available
23 from Defendant, and
- 24 (g) Defendant has acted or refused to act on grounds generally applicable to the
25 Classes, making final injunctive relief appropriate for the Class, as a whole.

26 23. Plaintiff contemplates eventually issuing notice to the proposed Class Members
27 that would set forth the subject and nature of the action. The Defendant's own business records
28 may be utilized for assisting to prepare and issue the contemplated notice.

24. To the extent that any further notices may be required, Plaintiff would contemplate using additional media and/or mailing.

GENERAL ALLEGATIONS

25. At all times material hereto, Defendant ACE has been and is, a hardware store.

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

27. The employment by Defendant of the Class Members, and each them, is governed by Industrial Welfare Commission Wage Order 7, which covers those persons employed in the mercantile industry.

THE CONDUCT

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

29. Starting on or about January 3, 2024, and continuing to March 22, 2024, Defendant employed Plaintiff on an hourly basis as a Plumbing Advisor in Scotts Valley, California.

30. While employed by Defendant as a Plumbing Advisor, Plaintiff was paid approximately \$17.00 per hour.

OFF-THE-CLOCK WORK

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

32. Defendant required Plaintiff and the Class to regularly perform compensable tasks pre- and post-shift off-the-clock for which they did not receive any compensation. Specifically, at all times relevant, Plaintiff and Class members consistently worked hours for which they were not paid because Plaintiff and the Class members were required to wait in line to clock in/out for their shifts for 2 minutes 3 to 4 times per week.

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33. Further, Plaintiff and Class members helped customers prior to clocking in for between 5-10 minutes 3 times per week. Defendant was aware of Plaintiff and Class members' off-the-clock work.

34. As a result, and because they improperly treated such pre- and post-shift time as non-compensable, Defendant failed to compensate Plaintiff and the Class for such time.

FAILURE TO PAY MINIMUM WAGES

35. Under California law, non-exempt employees, as defined by IWC Wage Order No. 7, are entitled to minimum wages. Labor Code Section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code Section 1194 entitles “any employee receiving less than the legal minimum wage...is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage Order No. 7 obligates employers to pay each employee minimum wages for all hours worked.

36. These minimum wage standards apply to each hour employees worked or were subject to control by the employer for which they were not paid. Therefore, an employer's failure to pay for any particular hour of time worked by an employee or subject to the employer's control is unlawful, even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

37. Plaintiff and the Class were not paid minimum wages due to Defendant's failure to afford proper meal/rest breaks and off-the-clock work.

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

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FAILURE TO AFFORD MEAL BREAKS

39. Under California law, non-exempt employees, as defined by IWC Wage Order No. 7, are entitled to premium wages for overtime worked, a 30-minute lunch period for every 5 hours worked, or a major fraction thereof. Non-exempt employees are entitled to one-hour pay at their regular pay rate for each day the requisite meal periods are not provided.

40. Plaintiff and Class members' meal breaks were routinely not afforded. Although Plaintiff and some Class members worked 5-hour shifts, they routinely went over their shift time by approximately 2-5 minutes.

41. Defendant's policies and procedures were applied to all non-exempt employees in California and resulted in non-exempt employees working time which was not compensated by any wages in violation of Labor Code sections 510, 1194 and the IWC Wage Order No. 7. As a result, Defendant owes wages at the legal minimum wage rate for unpaid minimum wages to each of their California non-exempt employees whose daily hours were reduced, and their meals periods were not afforded.

REST PERIODS ON DUTY AND/OR INTERRUPTED

42. Plaintiff and Class members' rest breaks were required to carry walkie-talkies during work hours. They were required to keep the walkie-talkies on during rest breaks. Further, Plaintiff and Class members' rest breaks were interrupted at least two times per week.

FAILURE TO ISSUE ACCURATE WAGE STATEMENTS

43. As a result of Defendant's failure to pay employees at required minimum wage rates and premium pay for failure to afford compliant meal/rest breaks, the wage statements issued to the employees did not comply with *Labor Code* §226 and the California Industrial Welfare Commission ("IWC") Wage Order No. 7 in that they did not accurately reflect all wages earned and due and owing.

FAILURE TO PAY WAGES DUE ON TERMINATION

44. As a further result of Defendant's failure to pay employees at required minimum wage rates and afford proper meal/rest breaks, when the employees left their employ, they were not timely paid all wages due to them.

1 45. Further, it was the practice of Defendant to not pay employees the final
2 paychecks within the time periods mandated by Labor Code §§201, 202 and the IWC Wage
3 Order No. 7.

4 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

5 46. Defendant failed to reimburse Plaintiff and Class members for their necessary
6 business expenses, such as box cutters.

7 **FAILURE TO PAY UNIFORM MAINTENANCE ALLOWANCE**

8 47. Defendant failed to pay Plaintiff and Class members for their uniforms and the
9 maintenance of their uniforms. Defendant required Plaintiff and Class members to wear uniforms
10 consisting of uniform shirts with the ACE logo. Plaintiff and Class members paid for the uniforms
11 and maintenance of their uniforms themselves and were not reimbursed therefor.

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

13 48. Defendant failed to pay Plaintiff and Class members for all hours worked.
14 Defendant required Plaintiff and Class members to attend required training and orientation for 2
15 hours, outside of work hours. Plaintiff and Class members were not paid for any
16 training/orientation time outside of work hours.

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

18 49. Defendant failed to allow Plaintiff to timely inspect his records and payroll files.

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PAY MINIMUM WAGES DUE**

21 **(IWC Wage Order No. 7; Labor Code §§ 1194, 1194.2, 1997, 1197.1, 1198 By Plaintiffs**
22 **Against Defendant and Does 1 through 100)**

23 50. Plaintiff and the Class reallege and incorporate by reference all of the allegations
24 set forth in this First Amended Complaint.

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1 51. Labor Code §§ 1194(a) states: “Notwithstanding any agreement to work for a
2 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
3 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
4 of the full amount of this minimum wage or overtime compensation, including interest thereon,
5 reasonable attorney's fees, and costs of suit.”

6 52. *Labor Code* § 1197 states the California requirement that employees must be paid
7 at least the minimum wage fixed by the Commission, and any payment of less than the minimum
8 wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving less than the
9 legal minimum wage...entitled to recover in a civil action the unpaid balance of the full amount
10 of this minimum wage.” IWC Wage Order 7-2001 also obligates employers to pay each employee
11 minimum wages for all hours worked. These minimum wage standards apply to each hour
12 employees worked for which they were not paid. Therefore, an employer’s failure to pay for any
13 particular hour of time worked by an employee is unlawful, even if averaging an employee’s total
14 pay over all hours worked, paid or not, results in an average hourly wage above minimum wage.
15 *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

16 53. Pursuant to IWC Wage Order No. 7, Defendant is required to pay the members of
17 the Class for all hours worked, meaning the time during which an employee is subject to the
18 control of an employer, including all the time the employee is suffered or permitted to work,
19 whether or not required to do so.

20 54. Furthermore, pursuant to *Labor Code* § 1198, “[t]he maximum hours of work and
21 the standard conditions of labor fixed by the commission shall be the maximum hours of work
22 and the standard conditions of labor for employees. The employment of any employee for longer
23 hours than those fixed by the order or under conditions of labor prohibited by the order is
24 unlawful.”

25 55. Defendant failed to satisfy minimum wage requirements because they improperly
26 failed to afford Plaintiff and Class members meal/rest breaks in violation of *Labor Code* §§ 226.7,
27 1197, 1198 and IWC Wage Order No. 7. Further, Defendant failed to satisfy minimum wage
28 requirements because they required Plaintiff and Class members to engage in off the clock work.

1 56. Defendant's pattern, practice, and uniform administration of corporate policy
2 regarding illegal employee compensation as described herein is unlawful and creates an
3 entitlement, pursuant to Labor Code § 218, to recovery by Plaintiff and the members of the Class,
4 in a civil action, of the unpaid balance of the full amount of wages owing, calculated at the
5 appropriate rate.

6 57. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
7 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
8 *Code* § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid for
9 all hours worked under *Labor Code* § 1194, the employee may recover minimum wages for the
10 time associated with the overtime for which they received no compensation. *See Sillah v.*
11 *Command Int'l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing
12 for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed
13 they were paid less than minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*, 225 F. Supp.
14 3d 1115, 1132-33 (N.D. Cal. 2016).

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

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

22 **SECOND CAUSE OF ACTION**

23 **FOR FAILURE TO PROVIDE TIMELY OFF-DUTY MEAL PERIODS**

24 **(IWC Wage Order No. 7; Labor Code §§ 226.7, 512 By Plaintiffs Against Defendant and**
25 **Does 1 through 100)**

26 60. Plaintiff and the Class reallege and incorporate by reference all of the allegations
27 set forth in this First Amended Complaint.

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1 61. California Labor Code §226.7(a) prohibits an employer from requiring an
2 employee to work during any meal period mandated by IWC Wage Order 7. Section 226.7(b) of
3 the California Labor Code provides that "[a]n employer shall not require an employee to work
4 during a meal or rest break or recovery period mandated pursuant to an applicable statute, or
5 applicable regulation, standard, or order of the Industrial Welfare Commission..."

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

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

12 64. IWC Wage Order No. 7, section (11)(c) further provides, in relevant part: "Unless
13 the employee is relieved of all duty during a 30-minute meal period, the meal period shall be
14 considered an 'on duty' meal period and counted as time worked."

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

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

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

1 67. As alleged herein, Defendant failed to afford meal breaks throughout the Class
2 Period. Plaintiff and the members of the Class's meal periods were routinely not afforded despite
3 working in excess of 5 hours.

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

14 69. Defendant has a policy or practice of failing to ensure that Plaintiff and members
15 of the Class take proper meal periods required by California Labor Code §226.7 and IWC Wage
16 Order No. 7, §11.

17 70. By their actions in affording Plaintiff and Class members improper meal periods,
18 Defendant violated Cal. Lab. Code §226.7(b) and section 11 of Wage Order No. 7 in the amount
19 of one additional hour of pay at the employee's regular rate of compensation for each work period
20 during each day in which Defendant failed to provide employees with proper statutory off-duty
21 meal periods.

22 71. Defendant also has a policy or practice of failing to pay each of their employees
23 who was not provided with a proper meal period an additional one hour of compensation at each
24 employee's regular rate of pay.

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

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1 73. As a direct and proximate result of Defendant's unlawful conduct as alleged
2 herein, Plaintiff and members of the Class have sustained economic damages, including but not
3 limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled
4 to recover economic and statutory damages, attorneys' fees and penalties and other appropriate
5 relief due to Defendant's violations of the California Labor Code and IWC Wage Order No. 7.

6 **THIRD CAUSE OF ACTION**

7 **FOR FAILURE TO PROVIDE REST PERIODS**

8 **(Labor Code § 226.7 and IWC Wage Order No. 7 By Plaintiffs Against Defendant and**
9 **Does 1 through 100)**

10 74. Plaintiff and the Class reallege and incorporate by reference all of the allegations
11 set forth in this First Amended Complaint.

12 75. Labor Code § 226.7 and IWC Wage Order No. 7 provide that employers shall
13 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time per
14 four hours of work or major fraction thereof.

15 76. Labor Code § 226.7 and IWC Wage Order No. 7 provide that if an employer fails
16 to provide an employee with rest periods in accordance with those provisions, the employer shall
17 pay the employee one hour of pay at the employee's regular rate of compensation for each
18 workday that the rest periods were not so provided.

19 77. Defendant has intentionally and improperly denied rest periods to Plaintiff and the
20 Class in violation of Labor Code § 226.7, and IWC Wage Order No. 7. Plaintiff and Class
21 members were required to carry walkie-talkies during work hours. They were required to keep
22 the walkie-talkies on during rest breaks. Further, Plaintiff and Class members' rest breaks were
23 interrupted at least two times per week.

24 78. At all times relevant hereto, Plaintiff and members of the Class have worked five
25 or more hours daily.

26 79. At all times relevant hereto, Defendant failed to provide proper rest periods as
27 required by Labor Code § 226.7 and IWC Wage Order No. 7.

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1 86. Notwithstanding these provisions. Defendant has engaged in a uniform practice
2 of refusing to maintain and provide the accurate records and wage statements required by
3 California law.

4 87. Throughout the Class Period, Defendant intentionally and knowingly provided
5 Plaintiff and other members of the Class with weekly itemized wage statements containing
6 inaccurate information regarding the wages earned by Plaintiff and members of the Class in that
7 the payments owed to Plaintiff and the members of the Class for minimum wages, missed or late
8 meal/rest periods and all hours worked, were not included in gross wages earned by Plaintiff and
9 members of the Class.

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

12 89. Plaintiff and members of the Class were damaged by these failures because,
13 among other things, the failures led them to believe that they were not entitled to minimum wages,
14 pay for meal/rest periods not timely provided, and all hours worked, even though they were so
15 entitled and these failures hindered them from determining the amounts of wages owed to them.

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

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

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO PAY WAGES DUE ON TERMINATION**

23 ***(Labor Code §2802 By Plaintiffs Against Defendant and Does 1 through 100)***

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

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

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PAY UNIFORM MAINTENANCE ALLOWANCE**

3 **(Labor Code §2802 By Plaintiffs Against Defendant and Does 1 through 100)**

4 102. Plaintiff and the Class reallege and incorporate by reference all of the allegations
5 set forth in this First Amended Complaint.

6 103. Under California law, if an employer requires employees to wear a uniform, the
7 employer must pay for and maintain the uniform for the employee. Labor Code
8 §2802.

9 104. An employer may never impose a financial burden on employees with respect to
10 paying for and maintaining clothing, which would reduce the employees' wage rate below the
11 minimum wage.

12 105. Here, Defendant required Plaintiff and Class members to wear uniforms
13 consisting of shirts with company logos. However, Plaintiff and Class members were required to
14 pay for their uniforms and maintain their uniforms themselves.

15 106. Defendant failed to reimburse Plaintiff and members of the Class for their
16 uniforms and maintenance expenses.

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

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

23 **EIGHTH CAUSE OF ACTION**

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

25 **(Cal. Labor Code § 204; IWC Wage Order No. 7 By Plaintiffs against Defendant and**
26 **Does 1 through 100)**

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

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

111. California Labor Code section 204 requires an employer, such as ACE, to pay employees for all work performed on the job.

112. Section 4 of IWC Wage Order No. 7 requires that employers pay employees for all hours worked, including time spent being trained.

113. At all times relevant herein, Defendant was required to compensate their non-exempt employees for all hours worked pursuant to Wage Order No. 7, and Cal. Labor Code §§200, 223, 226, 500, 510, 1197, 1198.

114. During the class period, ACE had and continues to have, a policy and practice of failing to compensate its employees for all hours worked.

115. Defendant had, and continues to have, a policy and practice of requiring, suffering, or otherwise permitting employees to attend mandatory training/orientation while off the clock without compensating them for all of the time spent training.

116. By requiring Plaintiff and Class members to attend mandatory training/orientation for 2 hours without compensation as alleged above, Defendant willfully has violated and continues to violate the provisions of California Labor Code section 204.

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

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

NINTH CAUSE OF ACTION

FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS

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

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

120. California Labor Code Section 1198.5 provides:

(a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.

(b) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request to inspect the records. Upon a written request from a current or former employee or his or her representative, the employer shall also provide a copy of the personnel records, later than 30 calendar days from the date the employer receives the request...

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

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

121. Additionally, pursuant to IWC Wage Order No. 7, at section 7 re: Records, employers are required to keep accurate payroll records on each employee, and such records must be made readily available for inspection by the employee upon reasonable request. The employer must also maintain accurate production records.

122. On or about August 13, 2024, Plaintiff's counsel issued a written request to Defendant for copies of his personnel records.

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

1 124. As a direct result and consequence of Defendant's failure and refusal to permit
2 Plaintiff full access to his records, Plaintiff seeks injunctive relief in the form of an order or decree
3 mandating Defendant's compliance. Plaintiff has suffered and will suffer harm as a result of
4 Defendant's ongoing refusal to comply. Plaintiff also seeks recovery of the statutory penalty of
5 \$750 based upon Defendant's violation of §1198.

6 **TENTH CAUSE OF ACTION**

7 **UNFAIR COMPETITION**

8 **(Business & Professions Code §§ 17200 *et seq.* By Plaintiffs Against Defendant and Does 1**
9 **through 100)**

10 125. Plaintiff and the Class reallege and incorporate by reference all of the allegations
11 set forth in this First Amended Complaint.

12 126. Pursuant to IWC Wage Order No. 7, Defendant was the employer of Plaintiff and
13 the Class. Defendant is also a "person," as that term is defined in Business & Professions Code
14 §17021.

15 127. The Business & Professions Code defines unfair competition as any unlawful,
16 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
17 described herein, Defendant has engaged in unfair and unlawful practices by failing to (1) pay
18 minimum wages; (2) pay Plaintiff and the Class for meal periods not afforded; (3) pay Plaintiff
19 and the Class for rest periods not afforded and/or interrupted, (4) furnish Plaintiff and the Class
20 with accurate itemized wage statements, as mandated by the applicable Labor Code and Industrial
21 Welfare Commission requirements, (5) pay all wages due on termination, (6) reimburse business
22 expenses, (7) provide a uniform maintenance allowance, (8) pay for all hours worked and (9)
23 provide personnel records, all in violation of Business & Professions Code §§ 17200 *et seq.*

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

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1 129. All the acts described herein are violations of, among other things, the Labor Code
2 and Industrial Commission Wage Order No. 7, are unlawful and in violation of public policy; and
3 in addition, are immoral, unethical, oppressive, and unscrupulous, and thereby constitute unfair
4 and unlawful business practices in violation of Business & Professions Code §§ 17200 *et seq.*

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

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

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

19 **ELEVENTH CAUSE OF ACTION**

20 **DAMAGES PURSUANT TO PRIVATE ATTORNEY GENERAL ACT**

21 **(Against Defendant and Does 1 through 100)**

22 133. Plaintiff brings this action on his own behalf and on behalf of all current and
23 former employees of Defendants who were employed in California for the previous four years,
24 seeking to recover wages from Defendants due to Defendant's systematic failure to pay minimum
25 wages, provide meal/rest breaks (or pay the statutory compensation due), to issue accurate wage
26 statements, to pay wages on termination, to reimburse business expenses, to pay a uniform
27 maintenance allowance, to pay for all hours worked and to allow inspection of employment
28 records and unfair competition.

134. On August 13, 2024, Plaintiff, pursuant to California Labor Code §§ 2699, et seq., by and through his attorneys, uploaded a Private Attorney General Act (“PAGA”) claim to the State of California Labor and Workforce Development Agency (“LWDA”) and sent a letter via Certified Mail Return Receipt Requested to Defendant.

135. More than 65 days have passed since the above letter, and Plaintiff's counsel has not received a notice from the LWDA stating an intention to prosecute Plaintiff's PAGA claims.

136. Plaintiff has complied with the administrative exhaustion requirements of PAGA.

137. Plaintiff seeks Labor Code penalties, attorneys' fees and costs, in an amount according to proof at trial as provided by the Labor Code Private Attorney General Act.

PRAYER FOR RELIEF

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

1. For compensatory damages in the amount minimum wages due to Plaintiff and Class members, according to proof;

2. For payment of unpaid wages in accordance with California labor and employment law;

3. For one (1) hour of pay at the regular rate of compensation for Plaintiff and Class Members for each workday that a meal period was provided late and/or missed;

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

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

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

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1 7. For compensatory damages in the amount of Plaintiff and Class Members' cell
2 phone expenses for business purposes, costs and attorney's fees pursuant to Cal. Code Civ. Proc.
3 §2802(c);

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

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

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

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

11 12. For specific relief, enforcing waiting time penalties of 30 days of per diem wages
12 pursuant to *Cal. Bus. & Prof. Code* §17200, according to proof;

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

16 14. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, 1198.5,
17 according to proof;

18 15. For reasonable costs, including attorneys' fees, in an amount according to proof
19 pursuant to Cal. Labor Code § 2699(g);

20 16. For civil penalties pursuant to *Cal. Labor Code* §1198 and IWC Wage Order No.
21 7;

22 17. For reasonable costs, including attorneys' fees, in an amount according to proof
23 pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 1198.5(1), 218.5, 2802 and/or Cal. Code of Civ.
24 Proc. §1021.5;

25 18. For an award of restitution of wages to Plaintiff and Class members in an amount
26 equal to the amount of wages owed and unpaid, according to proof;

27 19. For injunctive relief requiring Defendant to comply with Labor Code
28 1198.5(b)(1);

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

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

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

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

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff William Rose hereby respectfully requests a trial by jury for all claims and
9 issues raised in his First Amended Complaint that may be entitled to a jury trial.

10
11 LIPELES LAW GROUP, APC

12 Date: October 17, 2024

13
14 By:  _____

15 Jasmine J. Badawi
16 Attorneys for Plaintiff,
17 WILLIAM ROSE
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