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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SAN DIEGO**

11 BRIAN RICKARD, on behalf of himself and all
12 others similarly situated;

13
14 Plaintiff,

15 vs.

16
17 QUALITY TOWING AND RECOVERY;
18 ANGIES TOWING, INC., a California
19 corporation; and DOES 1 through 100, inclusive;

20 Defendants.
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Case No. 24CU011158C

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 204, 558, 1182.12,
1194, 1194.2, 1197, 1198);
2. FAILURE TO PAY OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);
3. MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 1198);
4. REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 1198);
5. WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*);
6. WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);
7. FAILURE TO REIMBURSE
BUSINESS EXPENSES (LABOR
CODE §§ 2802, 2804);
8. UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200, *et seq.*); and
9. CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Brian Rickard (“Plaintiff”), on behalf of himself and all others similarly situated,
2 and on behalf of the State of California and other aggrieved employees, hereby brings this First
3 Amended Class and Representative Action Complaint against Quality Towing and Recovery;
4 Angie’s Towing, Inc.; and Does 1 through 100, inclusive (collectively, “Defendants”), and on
5 information and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
8 class action for recovery of unpaid wages and penalties under California Business and Professions
9 Code section 17200, *et. seq.*; Labor Code sections 201-204, 226, 226.7, 510, 512, 516, 558,
10 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, and 2698 *et seq.*; and Industrial Welfare
11 Commission Wage Order No. 9 (“Wage Order 9”), in addition to seeking declaratory relief and
12 restitution. This class action is brought pursuant to California Code of Civil Procedure section
13 382. This Court has jurisdiction over Defendants’ violations of the California Labor Code because
14 the amount in controversy exceeds this Court’s jurisdictional minimum.

15 **VENUE**

16 2. Venue is proper in this judicial district pursuant to California Code of Civil
17 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
18 occurred in San Diego County. Defendants own, maintain offices, transact business, have an agent
19 or agents within San Diego County, and/or otherwise are found within San Diego County, and
20 Defendants are within the jurisdiction of this Court for purposes of service of process.

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was, and currently is, a California resident. During the four years immediately preceding
24 the filing of this action and within the statute of limitations periods applicable to each cause of
25 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff
26 was, and is, a victim of Defendants’ policies and/or practices complained of herein, lost money
27 and/or property, and has been deprived of the rights guaranteed by California Labor Code §§ 201-
28 204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2698 *et seq.*;

1 California Business & Professions Code § 17200, *et seq.* (Unfair Competition), and Wage Order
2 9, which sets employment standards for employees in the transportation industry, which includes
3 tow companies.

4 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
5 years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do)
6 business as a tow company, and that they employed Plaintiff and other similarly situated non-
7 exempt employees within San Diego County and the State of California.

8 5. Plaintiff does not know the true names or capacities, whether individual, partner,
9 or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said
10 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
11 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
12 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
13 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
14 and proximately caused Plaintiff and the Classes (as defined in Paragraph 19) to be subject to the
15 unlawful employment practices, wrongs, injuries, and damages complained of herein.

16 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
17 mentioned herein, Defendants were and are the employers of Plaintiff and all Class members.

18 7. At all times herein mentioned, each of said Defendants participated in the acts
19 herein alleged to have been done by the named Defendants; and furthermore, the Defendants, and
20 each of them, were the agents, servants, and employees of each of the other Defendants, as well
21 as the agents of all Defendants, and at all times herein mentioned were acting within the course
22 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
23 and/or otherwise ratified each of the acts or omissions alleged herein.

24 8. At all times mentioned herein, Defendants, and each of them, were members of
25 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
26 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
27 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class
28 Members (as defined in Paragraph 19).

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9. Plaintiff was employed by Defendants as a non-exempt tow truck driver from

10. Defendants operate a tow company with multiple offices (or “yards”) in the San Diego area, including in Lemon Grove, El Cajon, San Diego, Chula Vista, and Escondido. During a portion of the relevant time period, Defendants utilized a timekeeping system which resulted in Plaintiff and other non-exempt employees not being compensated for all hours actually worked, by rounding, time-shaving, or otherwise. Specifically, although Defendants recorded – and had the ability to record – Plaintiff’s and other non-exempt employees’ hours worked to the minute, Defendants regularly, systematically, and impermissibly rounded, shaved, or otherwise manipulated the time worked by Plaintiff and other non-exempt employees in Defendants’ favor, such that the time shaving/rounding practice utilized by Defendants was not even-handed over time. Defendants would round and shave in Defendants’ favor such that Plaintiff and other non-exempt employees were underpaid for their time worked. Due to Defendants’ timekeeping policies and practices that fail to compensate for all hours worked, Plaintiff and other non-exempt employees were deprived of all required minimum wages. Further, on occasions when Plaintiff and other non-exempt employees worked over eight hours in a workday and/or forty hours in a workweek, the process of time-shaving or rounding also deprived them of overtime wages owed. Based on the foregoing, Plaintiff and other non-exempt employees were not compensated for all earned minimum wages and overtime wages.

11. Defendants have also failed to pay all overtime wages, as Defendants have failed to include the value of bonuses or other remuneration that cannot be excluded from the “regular rate of pay (these methods of remuneration shall hereinafter be referred to as “Incentive Pay”). Defendants would pay overtime and/or double-time at 1.5 times or 2 times Plaintiff’s and other exempt employees’ *base* pay rate, rather than 1.5 times or 2 times their *regular* rate of pay.

12. Defendants have also required Plaintiff and other employees to incur business expenses without reimbursement. Plaintiff and other employees were required to use their personal cell phones for work purposes, including but not limited to sending and receiving work-

related phone calls and text messages to and from management and/or other employees on their personal cell phones. For example, Plaintiff and other drivers would receive text messages from management on their personal cell phones reminding them to fill up their fuel at the end of the shift, reminding them of other work-related rules, and otherwise engaging in work-related discussions. Plaintiff would also receive a “backup” text to his personal cell phone from the Towbook app regarding each job he was assigned, and he would be reprimanded for failing to answer his personal cell phone when contacted by management.

13. Despite requiring Plaintiff and other employees to use their personal property for work-related purposes, Defendants have failed to reimburse them for any portion of their personal expenses, including any portion of their monthly cell phone bill. As a result of the foregoing, Plaintiff and other employees are entitled to reimbursement pursuant to Labor Code § 2802 and *Cochran v. Schwan’s Home Service, Inc.* (2014) 228 Cal.App.4th 1137 (holding employer must reimburse employees for “reasonable percentage” of their cell phone bills if they are required to use their cell phones for work, even if employees did not incur specific out-of-pocket expense).

14. Defendants have also failed to provide meal periods to Plaintiff and other non-exempt employees. Defendants did not schedule meal periods for Plaintiff or other drivers. Plaintiff would generally work more than 5 hours in a workday but frequently was not provided an opportunity to take a 30-minute meal period occurring before the end of the fifth hour of work. Instead, he was frequently required to perform back-to-back jobs (or other work tasks) without sufficient breaks in between that would allow for a timely, 30-minute meal period. Indeed, on those days when Plaintiff would attempt to take a lunch, he would text dispatch that he was taking a lunch but then he would receive work-related texts and/or phone calls – which he was required to answer – during his “lunch.” Plaintiff also often worked over 10 hours in a workday and was not provided with second meal periods. Despite failing to provide Plaintiff and other non-exempt employees with legally compliant meal periods, Defendants have failed to pay the meal period premiums required by Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class period, Defendants have maintained no payroll code or other mechanism for paying meal period premiums when Defendants failed to provide a legally compliant meal period.

1 15. Defendants have also failed to authorize and permit compliant rest periods to
2 Plaintiff and other non-exempt employees. As with meal periods, rest breaks were not scheduled
3 and Plaintiff and other employees were required to perform back-to-back jobs without sufficient
4 breaks between them, and therefore Defendants made it impracticable to take a 10-minute off-
5 duty rest period for each four hours of work (or major fraction thereof). Despite failing to
6 authorize and permit legally compliant rest periods to Plaintiff and other non-exempt employees,
7 Defendants have failed to pay the rest period premiums required by Labor Code § 226.7. Upon
8 information and belief, during at least a portion of the putative class period, Defendants have
9 maintained no payroll code or other mechanism for paying rest period premiums when
10 Defendants failed to authorize and permit a legally compliant rest period.

11 16. As a result of Defendants' failure to pay all wages due, their failure to account for
12 and compensate for all hours worked by its employees, and/or their failure to pay meal and rest
13 period premium wages, Defendants have failed to pay all wages to Plaintiff and other formerly
14 employed non-exempt employees at the separation of their employment.

15 17. As a further result of Defendants' unlawful practices described above, Defendants
16 have maintained inaccurate time and payroll records, and have issued inaccurate wage statements
17 to Plaintiff and other non-exempt employees.

18 18. On information and belief, Defendants have engaged in the above unlawful
19 practices throughout the putative class period and continuing to the present.

20 **CLASS ACTION ALLEGATIONS**

21 19. **Class Definitions:** Plaintiff brings this action on behalf of himself and the
22 following Classes pursuant to Section 382 of the Code of Civil Procedure:

23 a. The Minimum Wage Class consists of all of the Defendants' current and former
24 non-exempt employees in California who were subject to Defendants' timekeeping and
25 payroll practices, at any point from four years prior to the filing of this action to the present.

26 b. The Overtime Class consists of all of the Defendants' current and former non-
27 exempt employees in California who worked more than 8.0 hours in a workday and/or over
28 40.0 hours in a workweek, and (i) were subject to Defendants' timekeeping and payroll

1 policies and/or (ii) earned Incentive Pay in the same pay period as they were paid overtime
2 or double-time compensation, at any time from four years immediately preceding the filing
3 of this action through the present.

4 c. The Meal Period Class consists of all of the Defendants' current and former non-
5 exempt employees in California who worked at least one shift in excess of 5.0 hours, and/or
6 at least one shift in excess of 10.0 hours, at any time from four years immediately preceding
7 the filing of this action through the present.

8 d. The Rest Period Class consists of all of the Defendants' current and former non-
9 exempt employees in California who worked at least one shift of 3.5 hours or more, at any
10 time from four years immediately preceding the filing of this action through the present.

11 e. The Wage Statement Class consists of (i) all members of the Minimum Wage
12 Class, Overtime Class, Meal Period Class, and/or Rest Period Class who received a wage
13 statement from Defendants at any time from one year immediately preceding the filing of
14 this action through the present.

15 f. The Waiting Time Class consists of all members of the Minimum Wage Class,
16 Overtime Class, Meal Period Class, and/or Rest Period Class, who are no longer employed
17 by Defendants and whose employment with Defendants ended at any time from three years
18 immediately preceding the filing of this action through the present.

19 g. The Expense Reimbursement Class consists of all of Defendants' employees who
20 were required to use their personal property, including but not limited to personal cellular
21 phones, for work-related purposes, at any time from four years prior to the filing of this
22 action through the present.

23 20. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
24 joinder of all members would be unfeasible and impracticable. The membership of the Classes is
25 unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than
26 fifty (50) individuals in each Class. The identity of such membership is readily ascertainable via
27 Defendants' employment records.

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21. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

- i. Whether Defendants paid members of the Minimum Wage Class at least the applicable minimum wage for all hours worked;
- ii. Whether Defendants' timekeeping and payroll practices violate the applicable Labor Code provisions including, but not limited to, Sections 510 and 1194 by requiring overtime work and not paying the Overtime Class for said work according to California's overtime laws;
- iii. Whether Defendants provided legally compliant meal periods to members of the Meal Period Class;
- iv. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class;
- v. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226;
- vi. Whether Defendants paid all wages due to members of the Waiting Time Class at the time of separation of employment; and
- vii. Whether Defendants properly reimbursed expenses incurred by members of the Expense Reimbursement Class.

22. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' timekeeping, overtime, wage statement, meal period, rest period, expense reimbursement, and final wage policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

1 23. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because
2 Plaintiff was employed by Defendants as non-exempt employee in California during the statute(s)
3 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged
4 herein, Plaintiff, like the members of the Classes, was not paid all earned minimum wages and
5 overtime wages; was subject to Defendants' uniform meal and rest period policies/practices; was
6 furnished with inaccurate wage statements; was deprived of all final wages upon his separation
7 of employment from Defendants; and was not reimbursed for all expenses he incurred in carrying
8 out his job duties for Defendants.

9 24. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
10 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,
11 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of
12 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class
13 actions in state and federal courts in the past and are committed to vigorously prosecuting this
14 action on behalf of the members of the Classes.

15 25. **Superiority:** The California Labor Code is broadly remedial in nature and serves
16 an important public interest in establishing minimum working conditions and standards in
17 California. These laws and labor standards protect the average working employee from
18 exploitation by employers who have the responsibility to follow the laws and who may seek to
19 take advantage of superior economic and bargaining power in setting onerous terms and
20 conditions of employment. The nature of this action and the format of laws available to Plaintiff
21 and members of the Classes make the class action format a particularly efficient and appropriate
22 procedure to redress the violations alleged herein. If each employee were required to file an
23 individual lawsuit, Defendants would necessarily gain an unfair advantage, as they would be able
24 to exploit and overwhelm the limited resources of each individual plaintiff with their vastly
25 superior financial and legal resources. Moreover, requiring each member of the Classes to pursue
26 an individual remedy would discourage the assertion of lawful claims by employees who would
27 be disinclined to file an action against their former and/or current employer for real and justifiable
28 fear of retaliation and permanent damages to their careers at subsequent employment. Further, the

1 prosecution of separate actions by individual class members would create a substantial risk of
2 inconsistent or varying verdicts or adjudications with respect to the individual class members
3 against Defendants herein; and which would establish potentially incompatible standards of
4 conduct for Defendants. Further, the claims of the individual members of the Classes are not
5 sufficiently large to warrant vigorous individual prosecution considering all of the concomitant
6 costs and expenses attending thereto. As such, the Classes identified in Paragraph 19 are
7 maintainable under Section 382 of the Code of Civil Procedure.

8 **FIRST CAUSE OF ACTION**

9 **MINIMUM WAGE VIOLATIONS**

10 **(AGAINST ALL DEFENDANTS)**

11 26. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

12 27. Wage Order 9, § 4 and Labor Code §§ 1197 and 1182.12 establish employees'
13 right to be paid minimum wages for all hours worked in amounts set by state law. Labor Code §§
14 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage
15 as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees,
16 costs of suit, liquidated damages in an amount equal to the unpaid wages, and interest.

17 28. At all relevant times, Defendants failed to conform their pay practices to the
18 requirements of the law by failing to pay Plaintiff and the Minimum Wage Class for all hours
19 actually worked including, but not limited to, all hours they were subject to Defendants' control
20 and/or suffered or permitted to work under the Labor Code and Wage Order 9.

21 29. California Labor Code § 1198 makes unlawful the employment of an employee
22 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
23 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
24 those employees the balance of the unpaid wages as well as liquidated damages in an amount
25 equal to the wages due and interest thereon.

26 30. As a direct and proximate result of Defendants' unlawful conduct as alleged
27 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but
28 not limited to, unpaid wages and lost interest in an amount to be established at trial, and they are

entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and Wage Order 9.

31. Defendants' practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated damages, interest, statutory penalties, and attorneys' fees and costs of suit, per Labor Code §§ 204, 218.6, 558, 1194, 1194.2, 1197, 1198, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(AGAINST ALL DEFENDANTS)

32. Plaintiff re-alleges and incorporates by reference all prior paragraphs.

33. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked, and which provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

34. At all times relevant herein, Defendants were required to properly compensate Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 9. Wage Order 9, § 3 requires an employer to pay an employee "one and one-half (1½) times the employee's regular rate of pay" for work in excess of 8 hours per workday and/or in excess of 40 hours in any workweek, and for the first 8 hours on the seventh consecutive workday in a workweek. Wage Order 9, § 3 also requires an employer to pay an employee double the employee's regular rate of pay for work in excess of 12 hours in a workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek. As alleged herein, Defendants caused Plaintiff and Overtime Class members to work overtime and double-time hours but did not compensate them at one and one-half times (or two times) their regular rate of pay for such hours.

35. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime

1 premiums owing, including interest thereon, statutory penalties, and attorneys' fees and costs of
2 suit according to California Labor Code §§ 204, 218.6, 510, 558, 1194, and 1198, and Code of
3 Civil Procedure § 1021.5.

4 **THIRD CAUSE OF ACTION**

5 **MEAL PERIOD VIOLATIONS**

6 **(AGAINST ALL DEFENDANTS)**

7 36. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

8 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 failed in their affirmative obligation to provide all their non-exempt employees, including
10 Plaintiff and members of the Meal Period Class, with all required meal periods in accordance with
11 the mandates of the California Labor Code and Wage Order 10, for the reasons set forth in this
12 Complaint.

13 38. As a result, Defendants owe premium compensation for meal period violations,
14 including interest thereon, statutory penalties, and costs of suit, pursuant to Wage Order 9, Labor
15 Code §§ 226.7 and 512, Civil Code § 3287, and Art. XV, § 1 of the California Constitution.

16 **FOURTH CAUSE OF ACTION**

17 **REST PERIOD VIOLATIONS**

18 **(AGAINST ALL DEFENDANTS)**

19 39. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

20 40. Labor Code §§ 226.7 and 516, and Wage Order 9, § 12 establish the right of
21 employees to be authorized and permitted a rest period of at least ten (10) minutes for each four
22 (4) hour period worked, or major fraction thereof.

23 41. As alleged herein, Defendants have failed to authorize and permit Plaintiff and
24 Rest Period Class members to take their legally entitled rest periods. Defendants have also failed
25 to compensate Plaintiff and Rest Period Class members with a rest period premium for each
26 workday they were not authorized and permitted all rest periods to which they were entitled.

27 42. The foregoing violations create an entitlement to recovery by Plaintiff and Rest
28 Period Class members in a civil action for the unpaid amount of rest period premiums owing,

1 including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor
2 Code §§ 226.7, 516, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art. XV, §
3 1 of the California Constitution.

4 **FIFTH CAUSE OF ACTION**

5 **WAGE STATEMENT VIOLATIONS**

6 **(AGAINST ALL DEFENDANTS)**

7 43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

8 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
10 and the Wage Statement Class with accurate and complete itemized wage statements that
11 included, among other requirements, all hours worked, all hours worked at each rate of pay, and
12 all wages earned, in violation of Labor Code § 226.

13 45. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
14 with complete and accurate itemized wage statements resulted in injury, as said failures led to,
15 among other things, the non-payment of all their wages and meal and rest period premium wages,
16 and deprived them of the information necessary to identify and reconcile the discrepancies in
17 Defendants' reported data.

18 46. Defendants' failures create an entitlement to recovery by Plaintiff and members of
19 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
20 Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs
21 of suit, pursuant to Labor Code §§ 226 and 226.3.

22 **SIXTH CAUSE OF ACTION**

23 **WAITING TIME PENALTIES**

24 **(AGAINST ALL DEFENDANTS)**

25 47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

26 48. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
27 an employer to pay all wages immediately at the time of separation of employment in the event
28 the employer discharges the employee, or the employee provides at least 72 hours of notice of

1 their intent to quit. In the event the employee provides less than 72 hours of notice of their intent
2 to quit, said employee's wages become due and payable not later than 72 hours upon said
3 employee's last date of employment.

4 49. Plaintiff is informed and believes, and based thereon alleges, that Defendants
5 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
6 at their separation from employment, including (but not limited to) unpaid minimum wages and
7 overtime wages and unpaid meal and rest period premium wages.

8 50. Further, Plaintiff is informed and believes, and based thereon alleges, that as a
9 matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members
10 of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant
11 to the requirements of Labor Code §§ 201-203.

12 51. Defendants' failure to pay all final wages was willful within the meaning of Labor
13 Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
14 Time Class their earned wages upon separation from employment results in a continued payment
15 of daily wages up to thirty days from the time the wages were due. Plaintiff and members of the
16 Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable
17 attorneys' fees and costs of suit.

18 **SEVENTH CAUSE OF ACTION**

19 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

20 **(AGAINST ALL DEFENDANTS)**

21 52. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

22 53. At all relevant times, Defendants were subject to Labor Code § 2802, which states
23 that "an employer shall indemnify his or her employees for all necessary expenditures or losses
24 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or
25 her obedience to the directions of the employer."

26 54. At all relevant times, Defendants were subject to Labor Code § 2804, which states,
27 "any contract or agreement, express or implied, made by any employee to waive the benefits of
28 this article or any part thereof, is null and void, and this article shall not deprive any employee or

his personal representative of any right or remedy to which he is entitled under the laws of this State.”

55. Due to Defendants’ unlawful policy and practice of requiring employees to use their personal property, including but not limited to personal cell phones, for work purposes, requiring employees to purchase items for work, and their failure to reimburse Plaintiff and members of the Expense Reimbursement Class, Defendants have violated Labor Code § 2802.

56. As a proximate result of Defendants’ policies and/or practices in violation of Labor Code §§ 2802 and 2804, Plaintiff and members of the Expense Reimbursement Class have suffered damages in sums, which will be shown according to proof.

57. Plaintiff and members of the Expense Reimbursement Class are entitled to attorneys’ fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

58. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff and members of the Expense Reimbursement Class are entitled to interest, which shall accrue from the date on which they incurred the initial necessary expenditure.

EIGHTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

59. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

60. Defendants have engaged, and continue to engage, in unfair and/or unlawful business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to pay Plaintiff and the Classes all minimum wages and overtime wages due, failing to provide meal periods or pay meal period premium wages, failure to authorize and permit rest periods or pay rest period premium wages, failing to furnish accurate and complete itemized wage statements, failing to reimburse business expenses, and failing to pay all earned wages at separation of employment.

61. Defendants’ utilization of these unfair and/or unlawful business practices has deprived Plaintiff and members of the Classes of compensation to which they are legally entitled,

1 constitutes unfair and/or unlawful competition, and provides an unfair advantage over
2 Defendants' competitors who have been and/or are currently employing workers and attempting
3 to do so in honest compliance with applicable wage and hour laws.

4 62. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
5 herein, Plaintiff, for himself and on behalf of the members of the Classes, seeks full restitution of
6 monies as necessary and according to proof, to restore all monies withheld, acquired, and/or
7 converted by Defendants pursuant to Business & Professions Code §§ 17203 and 17208.

8 63. The acts complained of herein occurred within the four years immediately
9 preceding the filing of this action.

10 64. Plaintiff was compelled to retain the services of counsel to file this court action to
11 protect their interests and those of the Classes, to obtain restitution and injunctive relief on behalf
12 of Defendants' current non-exempt employees, and to enforce important rights affecting the
13 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
14 which he is entitled to recover under Code of Civil Procedure § 1021.5.

15 **NINTH CAUSE OF ACTION**

16 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

17 **(AGAINST ALL DEFENDANT)**

18 65. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 66. Defendants have committed several Labor Code violations against Plaintiff and
20 other aggrieved employees. Plaintiff is an "aggrieved employee" within the meaning of Labor
21 Code § 2698 *et seq.* Plaintiff, acting on behalf of himself and other aggrieved employees, brings
22 this representative action against Defendants to recover the civil penalties due to Plaintiff, other
23 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
24 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
25 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
26 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
27 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each
28 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for

each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3, per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees at least the minimum wage for all hours worked, in violation of Labor Code §§ 204, 558, 1182.12, 1194, 1194.2, 1197, 1198;
- b. Failing to pay Plaintiff and other aggrieved employees all overtime and/or double-time compensation earned, in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to provide meal periods, and failing to pay meal periods premiums, to Plaintiff and other aggrieved employees, in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- d. Failing to authorize and permit rest periods, and failing to pay rest period premiums, to Plaintiff and other aggrieved employees, in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- e. Failing to furnish Plaintiff and other aggrieved employees with accurate and complete itemized wage statements, in violation Labor Code §§ 226 and 1198;
- f. Failing to pay all wages owed to Plaintiff and other aggrieved former employees at their separation of employment, in violation of Labor Code §§ 201-203;
- g. Failing to reimburse Plaintiff and other aggrieved employees for expenses incurred in the course of employment, in violation of Labor Code §§ 20802 and 2804; and
- h. Failing to maintain accurate records (including but not limited to records of actual hours worked and meal periods taken) on behalf of Plaintiff and other aggrieved employees, in violation of Labor Code §§ 1174 and 1198.

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67. On or about September 13, 2024, Plaintiff notified Defendants via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in paragraph 66 (a)-(h) above. Now that sixty-five days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act (“PAGA”) with respect to these violations. As noted in Plaintiff’s notice letter, the “aggrieved employees” Plaintiff seeks to represent in his PAGA action are all current and former non-exempt employees of Defendants who have worked for Defendants in California at any time from one year immediately preceding the date of Plaintiff’s PAGA notice letter through the date that judgment is entered in Plaintiff’s PAGA action or any alternative date agreed upon by the parties and/or approved by the court.

68. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which he is entitled to recover under California Labor Code § 2699(g).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing counsel for Plaintiff as counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1198;
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;

1 6. Upon the Third Cause of Action, for compensatory, consequential, general, and
2 special damages according to proof pursuant to Labor Code §§ 204, 226.7, 512, 558, and 1198;

3 7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and
4 special damages according to proof pursuant to Labor Code §§ 226.7, 516, 558, and 1198;

5 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §
6 226, *et seq.*;

7 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
8 Labor Code §§ 201-203;

9 10. Upon the Seventh Cause of Action, for compensatory, consequential, general, and
10 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;

11 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
12 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
13 practices declared by this Court to be in violation of Bus. & Prof Code § 17200, *et seq.*;

14 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other aggrieved
15 employees, and the State of California according to proof pursuant to Labor Code § 2699,
16 including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
17 employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant
18 to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully
19 withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to
20 Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00
21 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4)
22 \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent
23 violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
24 each initial violation and \$200.00 for each subsequent violation per employee per pay period for
25 those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to
26 Labor Code § 2699(f);

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1 13. Prejudgment interest on all due and unpaid wages and other damages pursuant to
2 Cal. Labor Code §§ 218.6, 1194(a), and 2802(b); Civil Code § 3287; and Art. XV, § 1 of the
3 California Constitution;

4 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
5 226(e), 1194 *et seq.*, 2802(c), 2699(k), Code of Civil Procedure § 1021.5, and all other applicable
6 statutes; and

7 15. For such other and further relief the Court may deem just and proper.

8 Date: November 18, 2024

MARQUEE LAW GROUP, APC

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10 
11 Tuvia Korobkin
12 Attorneys for Plaintiff

13 **DEMAND FOR JURY TRIAL**

14 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

15 Date: November 18, 2024

MARQUEE LAW GROUP, APC

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18 Tuvia Korobkin
19 Attorneys for Plaintiff
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