

1 ANTHONY J. ORSHANSKY (SBN 199364)
anthony@counselonegroup.com
2 P. BARTHOLOMEW QUINTANS (SBN 308085)
bart@counselonegroup.com
3 **COUNSELONE, PC**
9465 Wilshire Boulevard, Suite 300
4 Beverly Hills, California 90212
Telephone: (310) 277-9945
5 Facsimile: (424) 277-3727

6 Attorneys for Plaintiffs Yogeshkumar Mistry and
Rudolph Jackson, on behalf of themselves and
7 others similarly situated

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN JOAQUIN**

11
12 **YOGESHKUMAR MISTRY and RUDOLPH**
13 **JACKSON**, on behalf of themselves and
others similarly situated,

14 Plaintiffs,

15 v.

16 **UST GLOBAL INC;** and DOES 1 through
17 100, inclusive,

18 Defendants.
19
20
21
22
23
24
25
26
27
28

FILED
SUPERIOR COURT

2025 JUN 24 AM 11:09

STEPHANIE BOHRER, CLERK

BY LISA VEGA
DEPUTY

Case No.:

STK-CV-40F-2025-8591

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT FOR:**

- (1) **FAILURE TO PAY MINIMUM WAGES;**
- (2) **FAILURE TO PAY OVERTIME WAGES;**
- (3) **FAILURE TO PROVIDE MEAL PERIODS;**
- (4) **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS;**
- (5) **FAILURE TO PROVIDE SICK PAY AND SUPPLEMENTAL SICK LEAVE;**
- (6) **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;**
- (7) **FAILURE TO PAY ALL WAGES WITHIN A TIMELY MANNER AND UPON SEPARATION OF EMPLOYMENT;**
- (8) **FAILURE TO REIMBURSE BUSINESS EXPENSES;**
- (9) **FAILURE TO MAINTAIN PAYROLL RECORDS;**
- (10) **UNFAIR COMPETITION LAW VIOLATIONS; AND**
- (11) **PENALTIES PURSUANT TO THE PAGA**

DEMAND FOR JURY TRIAL

CLASS AND REPRESENTATIVE ACTION COMPLAINT

FILE BY FAX

1 Plaintiffs Yogeshkumar Mistry and Rudolph Jackson (collectively, “Plaintiffs”), on behalf
2 of themselves, the State of California, and all others similarly situated, allege and complain of
3 Defendants UST Global Inc and DOES 1 through 100, inclusive (collectively, “Defendants”), and
4 each of them, as follows:

5 **I. INTRODUCTION**

6 1. This is a class action pursuant to California Code of Civil Procedure section 382 on
7 behalf of Plaintiffs and the following class: *All current and former non-managerial employees in*
8 *California who worked for Defendant UST Global Inc during the period October 23, 2020 to June*
9 *30, 2025* (the “Class Period”). Such individuals are the “Class” or “Class Members.”

10 2. Throughout the relevant time period, Defendants willfully maintained a policy and/or
11 practice of failing to pay all wages, including minimum and overtime wages, for all hours worked;
12 failing to provide compliant duty-free meal periods or to pay premiums for noncompliance; failing
13 to authorize and permit compliant duty-free rest breaks or to pay premiums for noncompliance;
14 failing to provide sick pay and supplemental sick leave; failing to maintain and provide accurate
15 itemized wage statements; failing to maintain required records; failing to reimburse business
16 expenses; and failing to pay all wages owed timely and upon separation of employment. Defendants’
17 unlawful conduct has also given rise to derivative claims for unfair business practices and violation
18 of California’s Private Attorneys General Act of 2004, Labor Code section 2698 et seq. (“PAGA”).

19 3. Plaintiffs, on behalf of themselves and all other similarly situated employees,
20 pursuant to Business and Professions Code sections 17200 through 17208, also seek all monies
21 owed but withheld and retained by Defendants to which Plaintiffs and Class Members are entitled.
22 Plaintiffs seek an order by the Court awarding restitution, injunctive relief, and all other legal and
23 equitable relief allowed, plus interest, attorneys’ fees and costs.

24 4. Plaintiffs, on behalf of themselves and all other similarly situated aggrieved
25 employees (the “Aggrieved Employees”), also bring this representative action against Defendants
26 to recover wages and penalties owed pursuant to Labor Code section 2699. Plaintiffs were
27 compelled to retain the services of counsel to file this action to protect their interests and those of
28

1 Aggrieved Employees and has thereby incurred attorneys' fees and costs, which they are entitled to
2 recover under Labor Code section 2699.

3 5. For purposes of the allegations set forth herein, Class Members, along with
4 Aggrieved Employees comprising the PAGA representative action, are collectively referred to as
5 "Employees" except as otherwise specified.

6 **II. JURISDICTION AND VENUE**

7 6. This Court has jurisdiction over this action pursuant to article VI, section 10 of the
8 California Constitution, which grants the superior court "original jurisdiction in all other causes"
9 except those given by statute to other courts. The statutes under which this action is brought do not
10 specify any other basis for jurisdiction.

11 7. This Court has jurisdiction over Defendants because, upon information and belief,
12 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail
13 themselves of the California market so as to render the exercise of jurisdiction over them by
14 California courts consistent with traditional notions of fair play and substantial justice.

15 8. Venue as to Defendants is proper in this judicial district pursuant to Code of Civil
16 Procedure section 395.5 because, upon information and belief, the obligations giving rise to liability
17 occurred in part in the County of San Joaquin, State of California.

18 9. This case should be classified as complex according to California Rules of Court,
19 Rule 3.400, and assigned to a complex litigation judge and department because it is a class action,
20 will involve substantial documentary evidence and a large number of witnesses, is likely to involve
21 extensive motion practice raising difficult or novel issues that will be time-consuming to resolve,
22 and will require substantial post-judgment judicial supervision.

23 **III. PARTIES**

24 10. Plaintiffs are residents of California. At all relevant times herein, Defendants
25 employed Plaintiffs and subjected them to the same employment policies and/or practices that
26 affected Employees.

27 11. Plaintiffs are informed and believe, and based thereon allege, that Defendants are
28 registered to do business in the State of California.

1 12. Plaintiffs are informed and believe, and based thereon allege, that Defendants do
2 business in the State of California and, at all times hereinafter mentioned, were and are employers
3 as defined in and subject to the California Labor Code and California Industrial Welfare
4 Commission (“IWC”) Occupational Wage Orders. During the relevant period, Defendants
5 employed Plaintiffs and Employees within the State of California.

6 13. The true names and capacities, whether individual, corporate, associate, or otherwise,
7 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiffs,
8 who therefore sue defendants by such fictitious names under Code of Civil Procedure section 474.
9 Plaintiffs are informed and believe and based thereon allege that each of the defendants designated
10 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
11 Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities
12 of the defendants designated hereinafter as DOES when such identities become known.

13 14. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
14 include DOES 1 through 100 identified herein.

15 15. Plaintiffs are informed and believe, and based thereon allege, that each Defendant
16 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
17 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
18 legally attributable to other Defendants. Plaintiffs are further informed and believe, and based
19 thereon allege, that Defendants are joint employers in that they employed Plaintiffs and Employees
20 at the same time and were operating as a joint enterprise and single entity during the relevant time
21 periods.

22 16. At all times throughout their employment, Plaintiffs and Employees were regularly
23 and consistently subject to the common policies and/or practices utilized by Defendants.

24 17. Accordingly, all Defendants engaged, suffered, and permitted Plaintiffs and
25 Employees to perform services from which they benefitted.

26 ///

27 ///

28 ///

1 **IV. FACTUAL BACKGROUND**

2 **Defendants Systematically Violated State Wage and Hour Laws**

3 18. Plaintiffs are informed and believe that there are at least several hundred Class
4 Members employed by Defendants within the State of California during the class period. Defendant
5 UST Global Inc. is a technology services company.

6 19. Upon information and belief, Plaintiffs and Employees are covered by IWC Wage
7 Order No. 4-2001.¹ However, Defendants misclassified Plaintiffs and Employees as exempt
8 employees for purposes of compensation and applications of the Labor Code. This misclassification
9 was improper. Defendants' misclassification resulted in repeated and widespread failures to: (a) pay
10 minimum and overtime wages; (b) provide meal periods; (c) authorize and permit duty-free rest
11 breaks; (d) provide accurate itemized wage statements; and (e) make correct timely payments to
12 Plaintiffs and Employees throughout the relevant time period, among other things.

13 20. Throughout the applicable period of time, Defendants did not pay Plaintiffs and
14 Employees at least the California minimum wage for all hours worked. Labor Code section 1197
15 states the California requirement that employees must be paid at least the minimum wage fixed by
16 the Commission, and any payment of less than the minimum wage is unlawful. Similarly, Labor
17 Code section 1194 entitles "any employee receiving less than the legal minimum wage . . . to
18 recover in a civil action the unpaid balance of the full amount of this minimum wage." IWC Wage
19 Order No. 4-2001 also obligates employers to pay each employee minimum wages for all hours
20 worked.

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

26
27
28 ¹ Upon information and belief, Plaintiffs allege that IWC Wage Order No. 4-2001 is applicable.
However, Plaintiffs reserve the right to amend and/or allege any other applicable Wage Order(s).

22. Labor Code section 1194.2 authorizes employees to recover liquidated damages for violations of Labor Code section 1194. Where an employee, like Plaintiffs and Employees, is not paid for all hours worked under Labor Code section 1194, the employee may recover minimum wages and liquidated damages for the time for which he or she received no compensation. (*Sillah v. Command Int'l Sec. Servs.* (N.D.Cal. 2015) 154 F.Supp.3d 891 [holding that employees suing for failure to pay overtime could recover liquidated damages under section 1194.2 if they also showed they were paid less than minimum wage]; accord, *Andrade v. Arby's Rest. Grp., Inc.* (N.D.Cal. Dec. 12, 2016, No. 15-cv-03175 NC), 2016 U.S. Dist. LEXIS 172319, at *20-21.)

23. Labor Code section 1197.1 authorizes employees who are paid less than the minimum wage fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution of wages, and liquidated damages as follows: “(1) [f]or any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid . . . [and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.”

24. Labor Code section 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the employee's regular rate of pay. Further, Labor Code section 510 obligates an employer to compensate an employee at no less than twice the regular rate of pay when the employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.

25. Throughout the applicable period of time, Defendants have had a policy and/or practice of failing to pay overtime wages to Plaintiffs and Employees for all overtime hours they worked. The work times of Plaintiffs and Employees have been, and continue to be, greater than eight (8) hours per day and/or forty (40) hours per week. Yet, because Defendants did not pay Plaintiffs and Employees wages for, *inter alia*, hours that were worked, Plaintiffs and Employees were deprived wages at overtime premium amounts attributable to overtime hours.

1 26. By their common policy and/or practice of requiring Plaintiffs and Employees to
2 work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
3 compensating them at the applicable overtime rate of pay, Defendants willfully violated the
4 provisions of Labor Code sections 510 and 1198, as well as the relevant IWC Wage Order(s).

5 27. In addition, Defendants willfully discriminated against and between employees on
6 the basis of race, national origin, and sex in setting pay and other terms and conditions of
7 employment. In so doing, Defendants' common policies and/or practices also resulted in violations
8 of the California Equal Pay Act, codified at Labor Code section 1197.5, which prohibits employers
9 from paying employees lower wages than employees of the opposite sex, race, or ethnicity for
10 substantially similar work; the California Fair Employment and Housing Act ("FEHA"), codified at
11 Government Code section 12940 *et seq.*; the prohibitions against race discrimination codified at 29
12 U.S.C. § 1981; and the federal Equal Pay Act of 1963, codified at 29 U.S.C. § 206(d), which
13 prohibits discrimination by employers between employees on the basis of sex by paying wages to
14 employees in such establishment at a rate less than the rate at which the employer pays wages to
15 employees of the opposite sex in such establishment for equal work on jobs the performance of
16 which requires equal skill, effort, and responsibility, and which are performed under similar working
17 conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system;
18 (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential
19 based on any other factor other than sex.

20 28. Defendants failed to provide Plaintiffs and Employees with timely duty-free meal
21 periods. Labor Code sections 226.7, 512, and IWC Wage Order No. 4-2001 requires employers to
22 provide employees with a thirty (30) minute uninterrupted and duty-free meal period within the first
23 five (5) hours of work. (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1042
24 ["Accordingly, first meal periods must start after no more than five hours."].) Moreover, an
25 employee who works more than ten (10) hours per day is entitled to receive a second thirty (30)
26 minute uninterrupted and duty-free meal period. (See Lab. Code, § 512.)

27 29. Defendants denied Plaintiffs and Employees meal periods that comply with Labor
28 Code sections 226.7, 512, and IWC Wage Order No. 4-2001. Plaintiffs and Employees suffered late,

1 short, interrupted, and/or missed first and second meal periods. (See *Donohue v. AMN Services, LLC*
2 (2021) 11 Cal.5th 58 [the California Supreme Court reversed the Fourth Appellate District and set
3 forth two clear rules: (1) employers are not permitted to round time records when determining if
4 employees are entitled to meal premium pay, and (2) it is the employer’s burden to show that
5 compliant meal periods were provided to employees if the time records show otherwise].) Plaintiffs
6 and Aggrieved Employees did not receive compliant meal periods within the first five (5) hours of
7 their work, and did not receive compliant second meal periods when working shifts of ten (10) hours
8 or more.

9 30. Defendants were also obligated but failed to provide Plaintiffs and Employees with
10 net ten (10) minute rest breaks for work shifts exceeding four (4) hours or a major fraction thereof
11 worked as required by Labor Code section 226.7 and IWC Wage Order No. 4-2001. The California
12 Supreme Court held in *Augustus v. ABM Security Services Inc.*, (2016) 2 Cal.5th 257, that employees
13 must be relieved of all duties during rest breaks pursuant to Labor Code section 226.7 and
14 subdivision 12(A) of Wage Order No. 5-2001. The Court found that the Wage Orders and the Labor
15 Code require employers to “relinquish control over how employees spend their time” and “relieve
16 employees of all duties” during employees’ 10-minute rest periods. Plaintiffs and Employees did
17 not receive compliant rest breaks.

18 31. In addition to failing to authorize and permit compliant meal and rest breaks,
19 Plaintiffs and Employees were not compensated with one (1) hour’s worth of pay at their regular
20 rates of pay when they were not provided with compliant meal and rest breaks in accordance with
21 Labor Code section 226.7, subdivision (b). (See *Ferra v. Loews Hollywood Hotel* (2021) 11 Cal.5th
22 858.)

23 32. Labor Code sections 551 and 552 require that every employee is entitled to one day’s
24 rest in a seven-day workweek, that no employer of labor shall cause his employees to work more
25 than six days in a workweek, and that an employer shall pay a civil penalty in the amounts of fifty
26 dollars (\$50) for each aggrieved employee per pay period for the initial violation and one hundred
27 dollars (\$100) for each aggrieved employee per pay period for each subsequent violation. During
28 the relevant time period, Plaintiffs and Employees were required to occasionally work in excess of

1 six (6) days in a workweek. During the relevant time period, Plaintiffs and Employees were required
2 to work in excess of thirty (30) hours in a week and/or six (6) hours in any one (1) day thereof,
3 during workweeks in which they were required to work in excess of six (6) days. During the relevant
4 time period, Plaintiffs and Employees were required to work in excess of six (6) days in a workweek
5 without accumulating or being provided the opportunity to take at least one (1) day of rest, and when
6 Plaintiffs and Aggrieved Employees accumulated days of rest, they were not allowed to take the
7 equivalent of one (1) day's rest in seven (7) during each calendar month.

8 33. Defendants failed to provide paid sick leave to which Plaintiffs and Employees were
9 entitled under Labor Code section 246. Labor Code section 246 states that any employee who works
10 thirty or more days within a year from the commencement of employment is entitled to paid sick
11 days as provided in that section, and may begin using those accrued sick days beginning on the
12 ninetieth day of employment. An employee shall accrue paid sick days at the rate of not less than
13 one (1) hour per every thirty (30) worked, and shall accrue no less than twenty-four (24) hours of
14 paid sick leave by the 120th calendar day of employment or each calendar year, or in each twelve-
15 month period, and no less than forty (40) hours of paid sick leave by the 200th calendar day of
16 employment or each calendar year, or in each twelve-month period. Accrued paid sick days may be
17 carried over to the following year of employment. Defendants withheld accrued paid sick leave from
18 Plaintiffs and Employees, in violation of Labor Code section 246.

19 34. Defendants violated Labor Code sections 2800 and 2802 by failing to pay and
20 indemnify Plaintiffs and Employees for their necessary business expenditures and losses incurred
21 in direct consequence of the discharge of their duties.

22 35. Labor Code section 203 provides "if an employer willfully fails to pay . . . any wages
23 of an employee who is discharged or who quits, the wages of the employee shall continue as a
24 penalty" for up to 30 days. (Lab. Code, § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.)

25 36. Due to Defendants' noncompliant policies and/or practices described herein,
26 Plaintiffs and Employees whose employment with Defendants concluded were not compensated for,
27 *inter alia*, all straight-time and overtime hours worked, and were not paid all meal and rest break
28 premiums owed at their regular rates of pay. Thus, Defendants have failed to pay Plaintiffs and

1 Employees all wages, whose sums were certain, at the time of termination or within seventy-two
2 (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in
3 violation of Labor Code section 203.

4 37. Labor Code section 204 expressly requires that “[a]ll wages . . . earned by any person
5 in any employment are due and payable twice during each calendar month, on days designated in
6 advance by the employer as the regular paydays.” Pursuant to Labor Code section 204, subdivision
7 (d), these requirements are “deemed satisfied by the payment of wages for weekly, biweekly or
8 semimonthly payroll if the wages are paid not more than seven calendar days following the close of
9 the payroll period.” Due to Defendants’ failure to pay Plaintiffs and Employees for, *inter alia*, all
10 straight-time and overtime hours worked, Defendants failed to timely pay Plaintiffs and Employees
11 within seven (7) days of the close of the payroll period in accordance with Labor Code section 204
12 on a regular and consistent basis.

13 38. Through Labor Code section 210 and the PAGA, and to the extent permitted by law,
14 Plaintiffs and Employees are entitled to recover civil penalties for violations of Labor Code section
15 204.

16 39. Plaintiffs and Employees were not furnished with accurate itemized wage statements
17 that accurately showed their gross wages earned, net wages earned, premium payments at their
18 regular rates of pay for noncompliant meal and rest breaks, all applicable hourly rates and
19 corresponding number of hours worked at each hourly rate in effect during each pay period, and
20 other information required by Labor Code section 226, subdivision (a).

21 40. During the relevant period, Defendants have knowingly and intentionally failed to
22 provide Plaintiffs and Employees with the above-described writing through actions alleged herein
23 in violation of Labor Code section 226. Plaintiffs and Employees have been injured by Defendants’
24 intentional violation of Labor Code section 226, subdivision (a), because they were denied both their
25 legal right to receive, and their protected interest in receiving, accurate itemized wage statements.

26 41. In addition, because Defendants failed to provide accurate and mandated information
27 on the itemized wage statements, Plaintiffs and Employees have been prevented by Defendants from
28 determining, *inter alia*, if all hours worked were paid and the extent of the underpayment. Plaintiffs

1 had to file this lawsuit and perform computations in order to analyze whether, and to what extent,
2 Plaintiffs and Employees suffered underpayment, thereby causing Plaintiffs to incur expenses and
3 time lost. Thus, Plaintiffs and Employees are owed the greater of all actual damages or fifty dollars
4 (\$50.00) for the initial pay period in which a violation occurs and one hundred dollars (\$100.00) per
5 employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four
6 thousand dollars (\$4,000.00), as provided for in Labor Code section 226, subdivision (e).

7 42. Moreover, for the violations described above, Plaintiffs and Employees may also
8 recover civil penalties pursuant to Labor Code section 226.3 and the PAGA for Defendants’
9 violations of Labor Code section 226, subdivision (a).

10 43. Further, Plaintiffs and Employees have been denied their legal right and protected
11 interest in having available at a central location at the plant or establishment where they are
12 employed, accurate and complete payroll records showing the hours worked daily by, and the wages
13 paid to, Plaintiffs and Employees at those respective locations pursuant to Labor Code section 1174.
14 Pursuant to Labor Code section 1174.5 and the PAGA, Plaintiffs and Employees may also recover
15 civil penalties for violation of Labor Code section 1174, subdivision (d).

16 44. Finally, Defendants’ post-employment restrictive covenants in its employment
17 agreements with aggrieved employees flout California law. Under California Business and
18 Professions Code section 16600, California courts have found various post-employment restrictive
19 covenants to be void and unenforceable, including: (1) covenants not to compete (*Edwards v. Arthur*
20 *Andersen LLP* (2008) 44 Cal.4th 937, 945), (2) covenants not to solicit a former employer’s
21 customers (*Id.* at 948), (3) overly broad confidentiality provisions that operate as a “de facto”
22 noncompete provision (*Brown v. TGS Mgmt. Co., LLC* (2020) 57 Cal.App.5th 303, 318–19), and
23 (4) covenants not to solicit a former employer’s employees. (*AMN Healthcare, Inc. v. Aya*
24 *Healthcare Servs., Inc.* (2018) 28 Cal.App.5th 923, 936.) Labor Code section 432.5 prohibits
25 employers from requiring employees to agree to any term or condition of employment that is known
26 by the employer to be prohibited by law. A violation of Labor Code section 432.5 serves as an
27 additional basis for a representative action under the PAGA.

1 45. Based on the foregoing, Defendants have also engaged in unlawful and unfair
2 business practices in violation of Business and Professions Code section 17200 et seq., thereby
3 entitling Plaintiffs and Class Members to restitution, disgorgement of profits, or other equitable
4 remedies.

5 **V. CLASS ACTION ALLEGATIONS**

6 46. Plaintiffs bring this action, on behalf of themselves and all others similarly situated,
7 as a class action pursuant to Code of Civil Procedure section 382. Plaintiffs seek to represent a
8 proposed class comprised of and defined as follows:

9 *All current and former non-managerial employees in California who worked for*
10 *Defendant UST Global Inc during the period October 23, 2020 to June 30, 2025*
11 *(again, “Class” or “Class Members”).*

12 47. Plaintiffs reserve the right under California Rules of Court, Rule 3.765(b) to amend
13 or modify the class description identified herein with greater specificity or further division into
14 subclasses or limitation to particular issues.

15 48. This action has been brought and may properly be maintained as a class action under
16 the provisions of Code of Civil Procedure section 382 because there is a well-defined community
17 of interest in the litigation and the Class is easily ascertainable.

18 **A. Numerosity**

19 52. The potential members of the Class as defined are so numerous that joinder of all the
20 members of the Class is not practicable. Plaintiffs are informed and believe that there are at least
21 several hundred Class Members employed by Defendants within the State of California during the
22 class period.

23 53. Plaintiffs allege that Defendants’ employment records would provide information as
24 to the number and location of all Class Members.

25 **B. Commonality**

26 54. There are questions of law and fact common to the Class that predominate over any
27 questions affecting only individual Class Members. These common questions of law and fact
28 include, without limitation:

- 1 a. Whether Defendants' failure to pay wages, without abatement or reduction,
2 in accordance with the California Labor Code, was willful;
- 3 b. Whether Defendants had a corporate policy and/or practice of failing to pay
4 Class Members for all hours worked in violation of California law;
- 5 c. Whether Defendants failed to pay at least the minimum wage to Class
6 Members for all hours worked;
- 7 d. Whether Defendants required Class Members to work over eight (8) hours
8 per day and/or over forty (40) hours per week and failed to pay the legally required overtime
9 compensation to Class Members;
- 10 e. Whether Defendants paid employees differentially based on sex, race, or
11 ethnicity for substantially similar work;
- 12 f. Whether Defendants deprived Class Members of legally compliant meal
13 periods and rest breaks;
- 14 g. Whether Defendants had a corporate policy and/or practice of failing to pay
15 Class Members required premium payments for noncompliant (*e.g.*, short, late, interrupted, and/or
16 missed altogether) meal periods and rest breaks in violation of California law;
- 17 h. Whether Defendants had a corporate policy and/or practice of failing to
18 provide sick pay and/or supplemental sick leave as required under California law;
- 19 i. Whether Defendants failed to reimburse Class Members for necessary
20 business-related expenses and costs;
- 21 j. Whether Defendants failed to timely pay all wages due to Class Members
22 during their employment;
- 23 k. Whether Defendants failed to pay all wages due to Class Members within the
24 required time upon their discharge or resignation;
- 25 l. Whether Defendants complied with wage reporting as required by the
26 California Labor Code, including, *inter alia*, section 226;
- 27 m. Whether Defendants kept complete and accurate payroll records as required
28 by the California Labor Code, including, *inter alia*, section 1174, subdivision (d);

- 1 n. Whether Defendants' conduct was willful or reckless;
- 2 o. Whether Defendants engaged in unfair business practices in violation of the
- 3 Unfair Competition Law, Business and Professions Code section 17200 et seq.;
- 4 p. Whether Class Members are entitled to compensatory damages pursuant to
- 5 the California Labor Code;
- 6 q. The appropriate amount of damages, restitution, and/or monetary penalties
- 7 resulting from Defendants' violation of California law;
- 8 r. Whether Class Members are entitled to attorneys' fees and costs; and
- 9 s. Whether Class Members are entitled to interest.

10 **C. Typicality**

11 55. The claims of Plaintiffs are typical of the claims of the Class. Plaintiffs and Class

12 Members sustained injuries and damages arising out of and caused by Defendants' common course

13 of conduct in violation of laws and regulations that have the force and effect of law and statutes, as

14 alleged herein.

15 **D. Adequacy of Representation**

16 56. Plaintiffs will fairly and adequately represent and protect the interests of the Class.

17 Counsel who represent Plaintiffs and Class Members are competent and experienced in litigating

18 wage and hour class and representative actions, and have the financial resources to litigate the claims

19 at issue.

20 **E. Superiority of Class Action**

21 57. A class action is superior to other available means for the fair and efficient

22 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and

23 questions of law and fact common to the Class predominate over any questions affecting only

24 individual members of the Class. Each member of the Class has been damaged and is entitled to

25 recovery by reason of Defendants' illegal policy and/or practice of failing to pay minimum and/or

26 overtime wages, failing to provide compliant duty-free meal periods and/or pay premiums owed

27 thereon, failing to authorize and permit compliant duty-free rest breaks and/or pay premiums owed

28 thereon, failing to provide sick pay and supplemental sick leave, failing to maintain and provide

1 accurate itemized wage statements, failing to reimburse for necessary business expenses incurred,
2 failing to pay all wages owed in a timely manner, failing to pay all wages due upon termination
3 and/or resignation, and engaging in unfair business practices.

4 58. Class action treatment will allow those similarly situated persons to litigate their
5 claims in a manner that is most efficient and economical for the parties and the judicial system.
6 Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this
7 action that would preclude its maintenance as a class action.

8 **FIRST CAUSE OF ACTION**

9 **FAILURE TO PAY MINIMUM WAGES**

10 **(Lab. Code, §§ 1194, 1194.2, 1197, 1197.1, 1197.5 and the Relevant IWC Wage Orders)**

11 **[On Behalf of Plaintiffs and the Class against All Defendants]**

12 59. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate by
13 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
14 fully set forth herein.

15 60. Throughout the period of time applicable to this cause of action, Defendants did not
16 pay Plaintiffs and Class Members at least the California minimum wage for all hours worked,
17 thereby violating Labor Code section 1194 and the relevant IWC Wage Order(s). Plaintiffs and
18 Class Members performed work pre- and post-shift that was not compensated by Defendants.

19 61. In addition, as alleged above, Defendants willfully discriminated against and
20 between employees on the basis of sex in setting pay. As a result, the wages due to affected Class
21 Members were short, in violation of Labor Code section 1197.5.

22 62. Defendants' failure to pay Plaintiffs and Class Members the minimum wage as
23 required is unlawful and violates Labor Code sections 1194, 1194.2, 1197, 1197.1, and 1197.5. As
24 a result, Plaintiffs and Class Members are entitled to recover the unpaid balance of their minimum
25 wage compensation, as well as interest, costs, and attorney's fees, and liquidated damages in an
26 amount equal to the wages unlawfully unpaid and interest thereon.

27 ///

28 ///

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME WAGES**

3 **(Lab. Code, §§ 510, 1197.5 and 1198, and the Relevant IWC Wage Orders)**

4 **[On Behalf of Plaintiffs and the Class against All Defendants]**

5 63. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate by
6 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
7 fully set forth herein.

8 64. At all times relevant to this Complaint, Labor Code section 510, subdivision (a), was
9 in effect and provided: “[e]ight hours of labor constitutes a day’s work. Any work in excess of eight
10 hours in one workday and any work in excess of forty hours in any one workweek . . . shall be
11 compensated at the rate of no less than one and one-half times the regular rate of pay for an
12 employee.”

13 65. Pursuant to the relevant IWC Wage Order(s), an employee shall not be employed
14 more than eight (8) hours in any workday and/or more than forty (40) hours in any workweek unless
15 the employee receives one and one-half (1½) times such employee’s regular rate of pay for all hours
16 worked over eight (8) hours in any workday and/or more than forty (40) hours in any workweek.
17 Further, an employer must compensate an employee at no less than twice the employee’s regular
18 rate of pay when the employee works more than twelve (12) hours in a day or more than eight (8)
19 hours on the seventh consecutive day of work.

20 66. At all times mentioned, Plaintiffs and the Class regularly worked shifts that consisted
21 of more than eight (8) hours in a workday and/or more than forty (40) hours in a workweek and
22 were not paid proper overtime wages for all overtime hours worked as a result of, but not limited
23 to, Defendants’ failure to pay for work performed pre- and post-shift.

24 67. Accordingly, by requiring Plaintiffs and the Class to work in excess of eight (8) hours
25 per day and/or forty (40) hours per week without properly compensating them overtime wages, as
26 described above, Defendants willfully violated the provisions of Labor Code section 1194.

68. In addition, as alleged above, Defendants willfully discriminated against and between employees on the basis of sex in setting pay. As a result, the wages due to affected Class Members were short, in violation of Labor Code section 1197.5.

69. As a result of the unlawful acts of Defendants, Plaintiffs and the Class have been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, costs, and attorneys' fees.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code, §§ 226.7 and 512, and the Relevant IWC Wage Orders)

[On Behalf of Plaintiffs and the Class against All Defendants]

70. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

71. Labor Code section 226.7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC")." Similarly, Labor Code section 512 and the IWC Wage Orders require employers to provide employees with thirty (30) minute uninterrupted and duty-free meal periods within the first five (5) hours of work. (See *Brinker, supra*, 53 Cal.4th at p. 1042 ["Accordingly, first meal periods must start after no more than five hours."].) Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. (See Lab. Code, § 512.)

72. Despite these legal requirements, Defendants failed to provide meal periods that comply with Labor Code sections 226.7 and 512 and IWC Wage Order No. 4-2001.

73. To the extent Defendants claim that Plaintiffs and Class Members waived their rights to second meal periods for shifts worked in excess of ten (10) hours, the waivers are not applicable to those occasions when Plaintiffs and Class Members worked shifts in excess of twelve (12) hours

1 a day and/or to the extent the waivers are ineffective on-duty meal period agreements where the
2 nature of the work does not prevent them from being relieved of all duties.

3 74. Under Labor Code section 226.7 and the relevant IWC Wage Order(s), Plaintiffs and
4 Class Members are entitled to be paid one (1) hour of additional wages at their regular rates of pay
5 for each day they were not provided with all required meal periods. (See *Ferra, supra*, 11 Cal.5th
6 at p. 858.) Defendants failed to pay Plaintiffs and Class Members the additional wages to which
7 they were entitled for non-compliant meal periods.

8 75. As a result, Defendants are liable to Plaintiffs and each Class Member for one (1)
9 hour of additional wages at their regular rates of pay for each workday a compliant meal period was
10 not provided, in a sum to be proven at trial.

11 **FOURTH CAUSE OF ACTION**

12 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

13 **(Lab. Code, § 226.7 and the Relevant IWC Wage Orders)**

14 **[On Behalf of Plaintiffs and the Class against All Defendants]**

15 76. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate by
16 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
17 fully set forth herein.

18 77. Under the applicable IWC Wage Order(s), an employer must authorize and permit
19 all employees to take ten (10) minute duty free rest breaks for every major fraction of four hours
20 worked. Labor Code section 226.7 provides that “an employer shall not require an employee to work
21 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
22 regulation, standard, or order of the Industrial Welfare Commission.”

23 78. Defendants are required by California law to authorize and permit breaks of ten (10)
24 uninterrupted minutes for each four hours of work or major fraction thereof (i.e., more than two
25 hours). That is, the required number of rest breaks is equal to the number of work hours divided by
26 four, and if the work time is not evenly divisible by four, any remainder of two hours or less is
27 rounded down and that which exceeds two hours is rounded up. For example, if a Class Member’s
28 work time is six hours and ten minutes, he or she is entitled to two rest breaks. If the work time is

1 nine hours, the employee is still entitled to only two rest breaks. (There is an exception: if the shift
2 is under three and one-half hours, no rest break is required.) Each failure to authorize rest breaks as
3 required is itself a violation of California’s rest break laws.

4 79. Despite these legal requirements, Defendants failed to authorize and permit Plaintiffs
5 and Class Members to take timely, duty-free rest breaks. Here, as a companywide practice and in
6 fact, Defendants did not offer Plaintiffs and Class Members the opportunity to receive compliant
7 off-duty rest breaks and, thus, “the court may not conclude employees voluntarily chose to
8 skip...breaks.” (*Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal.App.4th 388, 410 [“[i]f
9 an employer fails to provide legally compliant meal or rest breaks, the court may not conclude
10 employees voluntarily chose to skip those breaks.”]; accord, *Brinker, supra*, 53 Cal.4th at p. 1033
11 [“No issue of waiver ever arises for a rest break that was required by law but never authorized; if a
12 break is not authorized, an employee has no opportunity to decline to take it.”].)

13 80. In *Augustus, supra*, 2 Cal.5th 257, the court expressly rejected the employer’s
14 assertion that it could provide an on-duty rest break to employees who worked as security guards
15 and further explained “that employers [must] relinquish any control over how employees spend their
16 break time, and relieve their employees of all duties.” (*Id.* at p. 273.) However, Defendants did not
17 relieve Plaintiffs and Class Members of all duties and relinquish control over how Plaintiffs and
18 Class Members spend their time.

19 81. Plaintiffs and Class Members were not compensated with one (1) hour’s worth of
20 pay at their regular rates of pay when they were not provided with compliant rest breaks in
21 accordance with Labor Code section 226.7, subdivision (b). (See *Ferra, supra*, 11 Cal.5th at p. 858.)

22 82. As a result, Defendants are liable to Plaintiffs and Class Members for one (1) hour
23 of additional pay at their regular rates of pay for each workday when a compliant rest break was not
24 provided, in a sum to be proven at trial.

25 ///

26 ///

27 ///

28 ///

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE SICK PAY AND SUPPLEMENTAL SICK LEAVE**

3 **(Lab. Code, §§ 245-248.6)**

4 **[On Behalf of Plaintiffs and the Class Against All Defendants]**

5 83. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate by
6 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
7 fully set forth herein.

8 84. Throughout the relevant time period, Defendants failed to provide proper paid sick
9 pay to Plaintiffs and Class Members by failing to provide paid sick leave, improperly calculating
10 the sick leave accrual or the sick leave rate of pay owed to Plaintiffs and Class Members by failing
11 to base the accrued sick leave hours on the correct number of hours worked as a result of policies
12 and practices for meal periods and/or shift start and end times and/or other required off-the-clock
13 work), and/or failing to incorporate multiple rates of pay and/or all non-discretionary remuneration,
14 including but not limited to nondiscretionary bonuses and/or other non-discretionary compensation,
15 into the sick leave pay rate calculation.

16 85. Defendants further failed to place Plaintiffs and Class Members on notice of their
17 paid sick leave rights, and did not communicate Plaintiffs' and Class Members' entitlement to sick
18 leave in a Labor Code section 2810.5 notice. Based on information and belief, Defendants failed to
19 provide notice of the correct sick leave amount available to Plaintiffs and Class Members on their
20 wage statements or other written statements. Moreover, Defendants failed to maintain accurate
21 records of used sick leave and the balance of paid sick leave.

22 86. Defendants failed to comply with Labor Code section 246 by failing to provide
23 Plaintiffs and Employees with wage statements compliant with Labor Code section 226, or any
24 separate writing, containing the amount of paid sick leave available, or paid time off that Defendants
25 provide in lieu of sick leave, at the time of payment of wages. Therefore, Defendants' policies and
26 practices violate Labor Code sections 245 through 248.5.

27 87. Labor Code section 248.6 provides that employers with 26 or more employees are
28 required to provide up to eighty (80) hours of COVID-19 Supplemental Paid Sick Leave to covered

employees to care for themselves, to care for family members, or for vaccine-related purposes. Defendants violated Labor Code section 248.6 by not providing Plaintiffs and Employees with required COVID-19 Supplemental Paid Sick Leave.

88. As a result of Defendants' violations of Labor Code sections 245 through 248.6, Plaintiffs and Class Members have suffered injury and damage to their statutorily protected rights, and are entitled to damages and penalties therefor.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Lab. Code, §§ 226 and 226.3)

[On Behalf of Plaintiffs and the Class against All Defendants]

89. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

90. Labor Code section 226, subdivision (a) requires employers, semi-monthly or at the time or each payment of wages, to furnish employees with an accurate itemized statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate basis;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer; and

1 (9) all applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate by the employee.

3 91. During the relevant time period, due to Defendants', *inter alia*, failure to provide
4 Plaintiffs and Class Members with lawful meal periods and rest breaks (or pay meal and rest break
5 premiums at the regular rates of pay thereon), along with the failure to pay minimum and overtime
6 wages, the wage statements issued by Defendants, at a minimum, do not indicate the correct amount
7 of gross wages earned, the correct total hours worked, the correct net wages earned, or the applicable
8 and/or correct hourly rates in effect during the pay period and the corresponding number of hours
9 worked at each hourly rate in violation of Labor Code section 226, subdivisions (a)(1), (2), (5), and
10 (9).

11 92. An employee suffering injury as a result of a knowing and intentional failure by an
12 employer to comply with Labor Code section 226, subdivision (a), is entitled to recover the greater
13 of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs
14 and one hundred dollars (\$100.00) per employee for each violation in a subsequent pay period, not
15 exceeding an aggregate penalty of four thousand dollars (\$4,000.00), and is entitled to an award of
16 costs and reasonable attorneys' fees.

17 93. The absence of accurate information on their wage statements has delayed challenge
18 to Defendants' unlawful pay practices, requires discovery and mathematical computations to
19 determine the amount of wages owed, causes difficulty and expense in attempting to reconstruct
20 time and pay records, and leads to submission of inaccurate information about wages and amounts
21 deducted from wages to state and federal governmental agencies. Plaintiffs would not have had to
22 engage in these efforts and incur these costs had Defendants provided accurate wage statements.
23 This also delayed Plaintiffs' ability to demand and recover the underpayment of wages from
24 Defendants.

25 94. Thus, Plaintiffs and Class Members have been injured by Defendants' violation of
26 Labor Code section 226, subdivision (a), because they were denied both their legal right to receive,
27 and their protected interest in receiving, accurate itemized wage statements.

1 95. Plaintiffs and Class Members are thus entitled to recover from Defendants the greater
2 of their actual damages caused by Defendants' failure to comply with Labor Code section 226,
3 subdivision (a), or an aggregate penalty not exceeding four thousand dollars (\$4,000.00) per
4 employee pursuant to Labor Code section 226, subdivision (e), and any other allowable penalties
5 including those pursuant to Labor Code section 226.3.

6 **SEVENTH CAUSE OF ACTION**

7 **FAILURE TO PAY ALL WAGES WITHIN A TIMELY MANNER**

8 **AND UPON SEPARATION OF EMPLOYMENT**

9 **(Lab. Code, §§ 201, 202, 203, 204, and 210)**

10 **[On Behalf of Plaintiffs and the Class against All Defendants]**

11 96. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate by
12 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
13 fully set forth herein.

14 97. Labor Code sections 201 and 202 provide that if an employer discharges an
15 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,
16 and that if an employee voluntarily leaves his or her employment, his or her wages shall become
17 due and payable not later than seventy-two (72) hours thereafter, unless the employee has given
18 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is
19 entitled to his or her wages at the time of quitting.

20 98. Labor Code section 203 provides that if an employer willfully fails to pay
21 compensation promptly upon discharge or resignation, as required by sections 201 and 202, then the
22 employer is liable for penalties in the form of continued compensation up to thirty (30) days.

23 99. As alleged herein and above, Defendants' failure to pay wages was willful in that
24 Defendants knew wages (e.g., for off-the-clock work, unpaid premiums) were owed to Plaintiffs
25 and Class Members, but failed to pay said wages, at the time of termination, or within 72 hours of
26 resignation, thus entitling Plaintiffs and Class Members to penalties under Labor Code section 203,
27 which provides that an employee's wages shall continue as a penalty until paid for a period of up to
28 thirty (30) days from the time they were due.

1 100. Labor Code section 204 requires that all wages earned by any person in any
2 employment between the 1st and 15th day, inclusive, of any calendar month, other than those wages
3 due upon termination of an employee, are due and payable between the 16th and the 26th day of the
4 month during which the labor was performed, and that all wages earned by any person in any
5 employment between the 16th and the last day, inclusive, of any calendar month, other than those
6 wages due upon termination of an employee, are due and payable between the 1st and 10th day of
7 the following month. Section 204 also requires that all wages earned for labor in excess of the normal
8 work period shall be paid no later than the payday for the next regular payroll period.

9 101. The requirements of Labor Code section 204 shall be deemed satisfied by the
10 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
11 seven calendar days following the close of the payroll period when the wages were earned.

12 102. During the relevant time period, Defendants failed to pay Plaintiffs and Class
13 Members all wages due to them within the time period specified by Labor Code section 204
14 including, but not limited to, unpaid minimum and overtime wages, along with unpaid meal and rest
15 break premiums and sick pay.

16 103. Labor Code section 210 imposes upon Defendants a penalty of \$100.00 for each
17 violation of failing to pay the wages of each employee. Furthermore, Labor Code section 210
18 imposes upon Defendants for each subsequent violation, or any willful or intentional violation, of
19 failure to pay the wages of each employee a penalty of \$200.00, plus 25 percent of the amount
20 unlawfully withheld.

21 104. Pursuant to Labor Code sections 218.5 and 218.6, along with Civil Code sections
22 3287, subdivision (b), and 3289, Plaintiffs request that the Court award reasonable attorneys' fees
23 and the costs incurred by them in this action, along with pre-judgment interest on all amounts
24 recovered herein, as well as any statutory penalties Defendants may owe under the California Labor
25 Code and/or any other statute.

26 ///

27 ///

28 ///

1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 **(Lab. Code, §§ 2800 and 2802)**

4 **[On Behalf of Plaintiffs and the Class against All Defendants]**

5 105. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate by
6 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
7 fully set forth herein.

8 106. Labor Code section 2802 provides that an employer shall indemnify employees for
9 all necessary expenditures or losses incurred by employee in direct consequence of the discharge of
10 their duties, or of their obedience to the directions of the employer, even though unlawful, unless an
11 employee, at the time of obeying the directions, believed them to be unlawful.

12 107. Defendants required Plaintiffs and Class Members to use their personal cell phones
13 for business-related purposes. Additionally, Defendants' managers and other Class Members
14 routinely communicated with Plaintiffs and the other Class Members for business-related matters
15 by calling them on their personal cell phones and/or sending text messages to their personal cell
16 phones. These losses were incurred as a direct consequence of Plaintiffs' and Class Members' duties
17 and at the direction of Defendants.

18 108. Although Plaintiffs and Class Members were regularly required to use their own
19 personal cell phones for work purposes, Plaintiffs and Class Members were not provided
20 reimbursement for the cost and use of their personal cell phones. California law prohibits an
21 employer from failing to reimburse employees from losses incurred through the use of their own
22 personal cell phones even if the use would not cause the employee to exceed their data limit.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO MAINTAIN PAYROLL RECORDS**

3 **(Lab. Code, § 1174, subd. (d))**

4 **[On Behalf of Plaintiffs and the Class against All Defendants]**

5 109. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate by
6 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
7 fully set forth herein.

8 110. Pursuant to Labor Code section 1174, subdivision (d), an employer shall keep, at a
9 central location in the state or at the plants or establishments at which employees are employed,
10 payroll records showing the hours worked daily by and the wages paid to employees employed at
11 the respective plants or establishments. These records shall be kept in accordance with rules
12 established for this purpose by the commission, but in any case, shall be kept on file for not less
13 than three years.

14 111. Defendants have intentionally and willfully failed to keep accurate and complete
15 payroll records showing the hours worked daily by and the wages paid to Plaintiffs and Class
16 Members.

17 112. As a result of Defendants' violation of Labor Code section 1174, subdivision (d),
18 Plaintiffs and Class Members have suffered injury and damage to their statutorily protected rights.

19 113. More specifically, Plaintiffs and Class Members have been injured by Defendants'
20 intentional and willful violation of Labor Code section 1174, subdivision (d), because they were
21 denied both their legal right and protected interest in having available, accurate, and complete
22 payroll records pursuant to Labor Code section 1174, subdivision (d).

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **TENTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION LAW VIOLATIONS**

3 **(Bus. & Prof. Code, § 17200 et seq.)**

4 **[On Behalf of Plaintiffs and the Class against All Defendants]**

5 114. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate by
6 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
7 fully set forth herein.

8 115. The Unfair Competition Law (“UCL”), California Business and Professions Code
9 section 17200 et seq., prohibits any unlawful, unfair, or fraudulent business practices. Business and
10 Professions Code section 17204 allows “any person who has suffered injury in fact and has lost
11 money or property” to prosecute a civil action for violation of the UCL. Such a person may bring
12 such an action on behalf of himself or herself and others similarly situated who are affected by the
13 unlawful, unfair, or fraudulent business practice.

14 116. The statute of limitations for a claim under the UCL is four years. Accordingly, the
15 actionable period for this cause of action is four years prior to the filing of this Complaint through
16 the present, and on-going until the violations are corrected and/or the Class is certified.

17 117. Labor Code section 90.5, subdivision (a), states that it is the public policy of
18 California to vigorously enforce minimum labor standards in order to ensure employees are not
19 required to work under substandard and unlawful conditions, and to protect employers who comply
20 with the law from those who attempt to gain competitive advantage at the expense of their workers
21 by failing to comply with minimum labor standards.

22 118. A violation of Business and Professions Code section 17200 et seq. may be
23 predicated upon the violation of any state or federal law. Defendants’ policies and/or practices have
24 violated state law in at least the following respects:

25 (a) Requiring Plaintiffs and Class Members to work without paying them the
26 minimum wage for all hours worked in violation of Labor Code sections 1194, 1194.2, 1197, and
27 the applicable IWC Wage Order(s);

28 ///

1 (b) Requiring Plaintiffs and Class Members to work overtime without paying
2 them the proper compensation in violation of Labor Code sections 510, 1198, and the applicable
3 IWC Wage Order(s);

4 (c) Paying employees differentially based on sex, race, or ethnicity for
5 substantially similar work, in violation of Labor Code section 1197.5 and the federal Equal Pay Act
6 of 1963;

7 (d) Failing to provide compliant duty-free meal periods to Plaintiffs and Class
8 Members and failing to authorize and permit compliant duty-free rest breaks to Plaintiffs and Class
9 Members in violation of Labor Code sections 226.7 and 512, and the applicable IWC Wage
10 Order(s);

11 (e) Failing to provide Plaintiffs and Class Members sick pay and supplemental
12 paid sick leave as required by California law;

13 (f) Failing to reimburse Plaintiffs and Class Members for necessary business
14 expenses incurred in performing their job duties, in violation of Labor Code section 2802;

15 (g) Failing to timely pay all wages to Plaintiffs and Class Members during their
16 employment and upon separation of employment, in violation of Labor Code sections 201, 202, 203,
17 204, and 210; and

18 (h) Failing to maintain and provide Plaintiffs and Class Members with accurate
19 itemized wage statements, in violation of Labor Code sections 226, subdivision (a).

20 Thus, Defendants engaged in unlawful competition in violation of Business and Professions
21 Code section 17200 et seq. by violating, *inter alia*, sections 200-204, 210, 218.5, 218.6, 226, 226.3,
22 226.7, 246, 432.5, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5,
23 1198, 2800, and 2802, the applicable IWC Wage Order(s), the California Equal Pay Act, and the
24 federal Equal Pay Act of 1963.

25 119. As a direct and proximate result of Defendants' unlawful business practices,
26 Plaintiffs and Class Members have suffered economic injuries because Defendants' conduct has
27 damaged Plaintiffs and Class Members by, *inter alia*, wrongfully denying them all wages, including
28 minimum and overtime wages, failing to pay all meal and rest breaks premiums at the regular rate

1 of pay, failing to pay sick pay and supplemental paid sick leave, and neglecting to reimburse for
2 necessary business expenses, along with the corresponding interest, in a timely manner and upon
3 separation, and while supplying them inaccurate and misleading wage statements. Such conduct is
4 substantially injurious to Plaintiffs and Class Members.

5 120. Additionally, Defendants intentionally avoided paying Plaintiffs and Class Members
6 wages and monies, thereby creating for Defendants an artificially lower cost of doing business in
7 order to undercut their competitors and establish a greater foothold in the marketplace. Through
8 their actions alleged herein, Defendants have engaged in unfair competition within the meaning of
9 Business and Professions Code section 17200.

10 121. Defendants have profited from their unlawful, unfair, and/or fraudulent acts and
11 practices. Plaintiffs and Class Members are entitled to monetary relief pursuant to Business and
12 Professions Code sections 17203 and 17208 from at least four years prior to the filing of this
13 Complaint through the date of such restitution, at rates specified by law. Defendants should be
14 required to disgorge all the profits and gains they have reaped and restore such profits and gains to
15 Plaintiffs and Class Members, from whom they were unlawfully taken.

16 122. Defendants' course of conduct, acts, and practices in violation of the California laws
17 mentioned above constitute independent violations of Business and Professions Code section 17200
18 et seq.

19 123. Plaintiffs and Class Members are entitled to enforce all applicable penalty provisions
20 of the California Labor Code pursuant to Business and Professions Code section 17202.

21 124. Plaintiffs has assumed the responsibility of enforcement of the laws and public
22 policies specified herein by suing on behalf of himself and Class Members previously or presently
23 employed by Defendants in California. Plaintiffs' success in this action will enforce important rights
24 affecting the public interest. Plaintiffs will incur a financial burden in pursuing this action in the
25 public interest. Therefore, an award of reasonable attorneys' fees to Plaintiffs is appropriate pursuant
26 to Code of Civil Procedure section 1021.5.

27 ///

28 ///

ELEVENTH CAUSE OF ACTION
PENALTIES PURSUANT TO THE PAGA
(Lab. Code, § 2698 et seq.)

[On Behalf of Plaintiffs and Aggrieved Employees against All Defendants]

125. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

126. Plaintiffs, on behalf of himself and Aggrieved Employees, brings this representative action against Defendants to recover wages and penalties pursuant to the PAGA, Labor Code section 2698 et seq.

127. Based on the above allegations incorporated by reference, Defendants have violated Labor Code sections 200-204, 210, 218.5, 218.6, 226, 226.3, 226.7, 246, 432.5, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 2800, and 2802, the applicable IWC Wage Order(s), the California Equal Pay Act, and the federal Equal Pay Act of 1963.

128. Under Labor Code sections 2699, subdivision (f)(2), and 2699.5, Plaintiffs and Aggrieved Employees are entitled to penalties of up to \$200 per violation in an amount to be shown at the time of trial. These penalties shall be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the affected employees.

129. Defendants failed to provide Plaintiffs and Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code section 226, subdivision (a). Plaintiffs seeks separate PAGA penalties for Defendants' violations of Labor Code section 226, subdivisions (a) and (e). (*Lopez v. Friant & Assocs., LLC* (2017) 15 Cal.App.5th 773, 788; *Bell v. Home Depot U.S.A.* (E.D.Cal. Dec. 11, 2017, No. 2:12-cv-02499 JAM-CKD) 2017 U.S. Dist. LEXIS 204493, at *5 [finding after *Friant* that "[t]o the extent the Court's Order [granting summary judgment to *Home Depot*] was ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs' derivative claim for [PAGA] penalties under section 226(e) . . . the Court's Order should not be read to grant summary judgment on Plaintiffs' claim for PAGA penalties based on violation of section

226(a).”].) For violations of Labor Code section 226, subdivision (a), Plaintiffs seeks the default penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required records in subdivision (a) of Section 226.” Accordingly, through the PAGA and to the extent permitted by law, Plaintiffs and Aggrieved Employees are entitled to recover penalties for violations of Labor Code section 226.3 and seek the default PAGA penalties for each of Defendants’ numerous violations of Labor Code section 226, subdivision (a). Labor Code section 210 provides that “[i]n addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections . . . 204 . . . shall be subject to a civil penalty as follows: (1) [f]or any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) [f]or each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.” As a result of the faulty compensation policies and/or practices, Plaintiffs and Aggrieved Employees are also entitled to recover penalties under Labor Code section 210 through PAGA.

130. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and liquidated damages, in the amount of: “(1) [f]or any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid . . . [and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.” Accordingly, through PAGA and to the extent permitted by law, Plaintiffs and Aggrieved Employees are entitled to recover pursuant to Labor Code section 1197.1.

131. On October 23, 2024, Plaintiff Mistry filed his PAGA Notice online with the LWDA and sent a supplemental letter by certified mail to Defendants setting forth the facts and theories of

1 the violations alleged against Defendants, and paid the filing fee to the LWDA, as prescribed by
2 Labor Code section 2698 et seq.

3 132. On November 8, 2024, Plaintiffs Mistry and Jackson filed a second PAGA Notice
4 online with the LWDA and sent a supplemental letter by certified mail to Defendants setting forth
5 the facts and theories of the violations alleged against Defendants, and paid the filing fee to the
6 LWDA, as prescribed by Labor Code section 2698 et seq.

7 133. Plaintiffs, as personal representatives of the general public and on behalf of
8 Aggrieved Employees and the State of California, will and does seek to recover any and all penalties
9 for each and every violation shown to exist or to have occurred during the PAGA period, in an
10 amount according to proof, as to those penalties that are otherwise only available to public agency
11 enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with 75
12 percent of the penalties recovered being reimbursed to the State of California and the LWDA.

13 134. Plaintiffs were compelled to retain the services of counsel to file this action to protect
14 their interests and those of Aggrieved Employees, and to assess and collect the wages and penalties
15 owed by Defendants. Plaintiffs have thereby incurred attorneys' fees and costs, which they are
16 entitled to recover under Labor Code section 2699, subdivision (g)(1).

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiffs pray for the following relief:

- 19 1. For an order certifying this action as a class action;
- 20 2. For compensatory damages in the amount of the unpaid minimum wage and overtime
21 compensation for work performed by Plaintiffs and Class Members, as may be proven;
- 22 3. For liquidated damages in the amount equal to the unpaid minimum wage and interest
23 thereon, as may be proven;
- 24 4. For compensatory damages in the amount of the regular rate of pay made by
25 Plaintiffs and Class Members for each non-compliant meal period for which premium pay was
26 deficient, as may be proven;

27 ///

28 ///

1 5. For compensatory damages in the amount of the regular rate of pay made by
2 Plaintiffs and Class Members for each day of non-compliant rest breaks for which premium pay was
3 deficient, as may be proven;

4 6. For penalties pursuant to Labor Code section 203 for Plaintiffs and Class Members
5 who quit or were fired in an amount equal to their daily wage multiplied by thirty (30) days, as may
6 be proven;

7 7. For actual damages and/or penalties pursuant to Labor Code section 226, subdivision
8 (e), for Plaintiffs and Class Members, as may be proven;

9 8. For reimbursement of business expenditures, as may be proven;

10 9. For restitution for unfair competition pursuant to Business and Professions Code
11 section 17200 et seq., including disgorgement of profits, as may be proven;

12 10. For a civil penalty of \$200.00 for each violation as specified in Labor Code section
13 2699, subdivision (f)(2), in the representative action brought on behalf of Plaintiffs and Aggrieved
14 Employees pursuant to the Private Attorneys General Act of 2004;

15 11. For all civil penalties available under section 210 of the Labor Code and the Private
16 Attorneys General Act of 2004;

17 12. For all civil penalties available under section 226.3 of the Labor Code and the Private
18 Attorneys General Act of 2004;

19 13. For all recoverable unpaid wages and civil penalties available under Labor Code
20 sections 248.5, 248.6, and the Private Attorneys General Act of 2004;

21 14. For all civil penalties available under section 1174.5 of the Labor Code and the
22 Private Attorneys General Act of 2004;

23 15. For all civil penalties available under section 1197.1 of the Labor Code and the
24 Private Attorneys General Act of 2004;

25 16. For punitive damages based on Defendants' willful and unlawful discrimination as
26 alleged herein;

27 ///

28 ///

17. For an order enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this complaint;

18. For an award of pre-judgment and post-judgment interest;

19. For an award providing for the payment of the costs of this suit;

20. For an award of attorneys' fees, to the extent provided by law; and

21. For such other and further relief as the Court may deem proper and just.

Respectfully submitted,

Dated: June 23, 2025

COUNSELONE, PC

By:

Anthony J. Orshansky

P. Bartholomew Quintans

Attorneys for Plaintiffs, putative Class

Members, and Aggrieved Employees

DEMAND FOR JURY TRIAL

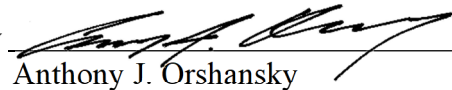
Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

Respectfully submitted,

Dated: June 23, 2025

COUNSELONE, PC

By



Anthony J. Orshansky

P. Bartholomew Quintans

Attorneys for Plaintiffs, putative Class

Members, and Aggrieved Employees