

Kevin A. Lipeles (Bar No. 244275)
Thomas H. Schelly (Bar No. 217285)
LIPELES LAW GROUP, APC
880 Apollo Street, Suite 336
El Segundo, California 90245
Telephone: (310) 322-2211
Fax: (310) 322-2252

Electronically FILED by
Superior Court of California,
County of Los Angeles
10/02/2024 1:05 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By J. Covarrubias, Deputy Clerk

Attorneys for Plaintiff
ALEJANDRO GOMEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

ALEJANDRO GOMEZ, an individual,
on his own behalf and on behalf of all
others similarly situated,

Plaintiffs,

vs.

ABF FREIGHT SYSTEM, INC., an
Arkansas corporation; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 24STCV25591

CLASS ACTION COMPLAINT FOR:

- 1. FAILURE TO PAY OVERTIME (Cal. Labor Code §§ 510, 558, 1194, 1194.3, 1198; Wage Order No. 9);**
- 2. FAILURE TO PAY MINIMUM WAGES (Cal. Labor Code §§ 1194, 1197, 1197.1, 1198, 119; IWC Wage Order No. 9);**
- 3. FAILURE TO PROVIDE TIMELY OFF DUTY MEAL PERIODS (Cal. Labor Code § 226.7, 512; IWC Wage Order No. 9);**
- 4. FAILURE TO PROVIDE REST PERIODS (Cal. Labor Code § 226.7; IWC Wage Order No. 9);**
- 5. FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. Labor Code §226; Wage Order No. 9);**
- 6. FAILURE TO REIMBURSE BUSINESS EXPENSES (Cal. Labor Code §2802);**
- 7. FAILURE TO PAY ALL SICK LEAVE WAGES WHEN DUE (Cal. Labor Code §§ 201-204, 218, 218.5, 233, 245, 246 et. seq.);**
- 8. REPORTING TIME PAY (Wage Order No. 9);**
- 9. FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS (Cal. Labor Code §1198.5); and**
- 10. UNFAIR COMPETITION (Cal. Bus. & Prof. Code §§17200 et seq.)**

DEMAND FOR A JURY TRIAL

All allegations in this Complaint are based upon information and belief except for those allegations which pertain to the Plaintiff named herein and his counsel. Each allegation has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

Alejandro Gomez ("Plaintiff") alleges the following:

1. This is a class action brought under California law by an individual who was employed by ABF Freight System, Inc. ("ABF" or "Defendant") (along with DOES 1 through 100, collectively "Defendants"). Plaintiff brings this action on behalf of himself and others similarly situated to recover wages from Defendant due to Defendant's systematic failure to: pay overtime wages, pay minimum wages, provide meal and rest breaks (or pay the statutory compensation due), issue accurate wage statements, reimburse business expenses, pay sick pay, and reporting time pay.

2. Plaintiffs have worked as Drivers, Dock Workers and other employees for Defendant in California. While working, Plaintiffs have been forced to endure stressful and illegal workplace conditions created by Defendant's efforts to maximize profits and tightly control labor costs.

3. Plaintiff, like his co-workers whom Defendant also employed during the applicable limitations period, spend their workdays as Drivers, Dock Workers and other employees, under illegal and highly regimented circumstances. That regimen results from Defendant's insistence to strictly monitor and curtail labor costs, which Defendant accomplishes by not paying for all labor costs, failing to pay overtime wages due to off the clock work, failing to pay minimum wages, failing to provide meal and rest breaks (or pay the statutory compensation due), failing to issue accurate wage statements, failing to reimburse

1 business expenses, failing to pay sick pay, failing to pay reporting time pay and by using other
2 unlawful stratagems to ensure that labor costs remain artificially low.

3 4. Plaintiff brings this class action to recover, among other things, wages and
4 penalties from unpaid wages earned and due, including but not limited to, overtime wages,
5 minimum wages, premium pay for failure to afford proper meal/rest breaks, penalties for
6 failure to provide accurate itemized wage statements, reimbursement of business expenses, sick
7 pay, reporting time pay and interest, attorneys' fees, costs, and expenses.

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

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

16 7. Pursuant to the California Labor Code, on or about October 1, 2024, Plaintiff
17 filed a notice with the Labor and Workforce Development Agency (LWDA) of his intent to
18 pursue claims against Defendant under the Private Attorney General Act (PAGA). As such,
19 Plaintiff reserves the right to amend this Complaint. Plaintiff intends to amend this Complaint
20 to add a cause of action pursuant to PAGA under Labor Code §§2699 *et seq.*

21 JURISDICTION AND VENUE

22 8. This Court has jurisdiction over this Complaint under Code of Civil Procedure
23 §410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business &*
24 *Professions Code* §§ 17200 *et seq.* Plaintiff Alejandro Gomez brings this Complaint on his
25 own behalf and on behalf of all persons in the Class as defined in paragraph 17 below.

26 9. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and
27 395.5, because the claims made, and the *Labor Code* violations as against the persons identified
28

1 herein, occurred in the County of Los Angeles and because Defendant owned and operated
2 their business in the County of Los Angeles.

3
4 **THE PARTIES**

5 **PLAINTIFF**

6 10. At all times relevant hereto, Plaintiff was:

- 7 (a) An individual over age 18 and a resident of Los Angeles, California;
8 (b) Employed as an hourly employee for Defendant in Compton, California;
9 (c) Did not receive overtime wages due to off the clock work and on-call
10 shifts in violation of *Labor Code* §§510, 1198 and the applicable Wage
11 Orders;
12 (d) Did not receive minimum wages as required by *Labor Code* §§1194,
13 1194.2, 1997, 1197.1, 1198 and the applicable Wage Orders;
14 (e) Did not receive the meal periods as required by *Labor Code* §266.7 and
15 the applicable Wage Orders;
16 (f) Did not receive the rest periods required by *Labor Code* §266.7 and the
17 applicable Wage Orders;
18 (g) Did not receive accurate wage statements as mandated by *Labor Code*
19 §226;
20 (h) Was not reimbursed for business expenses as required by *Labor Code*
21 §2802;
22 (i) Was not paid sick pay as mandated by *Labor Code* §§ 201-204, 218,
23 218.5, 233, 245, 246 *et. seq*;
24 (j) Was not paid reporting time pay in violation of the applicable IWC
25 Wage Order; and
26 (k) Was not provided his personnel records. Each of these was a violation of
27 the *Labor Code*.
28

1 **DEFENDANT**

2 11. Plaintiff is informed and believes, and based on that information and belief,
3 alleges, Defendant ABF is, and at all times mentioned herein was:

- 4 (a) An Arkansas corporation, with a principal place of business at 3801 Old
5 Greenwood Road, Fort Smith, Arkansas 72903. Defendant has been
6 authorized to do business and has been doing business in the County of
7 Los Angeles;
- 8 (b) The former employer of Plaintiff and the current and former employer of
9 the putative Class members;
- 10 (c) Paid Plaintiff and all Class members on an hourly basis;
- 11 (d) Failed to pay Plaintiff and all putative Class members overtime wages;
- 12 (e) Failed to pay Plaintiff and all putative Class members minimum wages;
- 13 (f) Failed to provide Plaintiff and all putative Class members with meal and
14 rest periods, failed to provide Plaintiff and all putative Class Members
15 with accurate itemized wage statements;
- 16 (g) Failed to reimburse business expenses to Plaintiff and all putative Class
17 members;
- 18 (h) Failed to provide sick pay to Plaintiff and all putative Class members;
- 19 (i) Failed to pay reporting time pay to Plaintiff and all putative Class
20 members; and
- 21 (j) Failed to provide Plaintiff with his requested personnel records. Each of
22 these was a violation of the *Labor Code*.

23 12. The true names and capacities, whether individual, corporate, subsidiary,
24 partnership, associate or otherwise of Defendants DOES 1 through 100, inclusive, are unknown
25 to Plaintiff, who therefore sues these Defendants by such fictitious names pursuant to *Code of*
26 *Civil Procedure* § 474. Plaintiff will seek leave to amend his Complaint to allege the true
27 names and capacities of DOES 1 through 100, inclusive, when they are ascertained.
28

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

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

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

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

1 the actions of one Defendant were accomplished in concert with, and with the knowledge,
2 ratification, authorization and approval of each of the other Defendants.

3 **CLASS ALLEGATIONS**

4 **A. The Definition of the Class**

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

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

10 (b) “All persons who were hourly paid employees of Defendant and worked for
11 Defendant in California and left the employ of Defendant at any time during the
12 period commencing on the date that is within one (1) year prior to the filing of
13 this Complaint and continuing through the present date (the “Class Period”).”

14 18. Plaintiff reserves his right under Rule 3.765 of the California Rules of Court to
15 amend or modify the Class description with greater specificity or further division into
16 subclasses or limitation to particular issues.

17 **B. Maintenance of the Action**

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

21 **C. The Class Requisites**

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

23 21. The Class action meets the statutory prerequisites for maintaining a class action
24 under Code of Civil Procedure § 382 in that:

25 (a) The persons who comprise the Class are so numerous that the joinder of all
26 those persons is impracticable and the disposition of their claims as a Class
27 will benefit the parties and the Court;
28

- 1 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
2 that are raised in this Complaint are common to the Class and will apply
3 uniformly to every Class member;
- 4 (c) The claims of the representative Plaintiff are typical of the claims of each
5 Class member. Plaintiff, like all Class members, has sustained damages
6 arising from Defendant's violations of the laws of the State of California.
7 Plaintiff, and the Class members, were and are similarly or identically
8 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
9 pattern of misconduct engaged in by the Defendant;
- 10 (d) The representative Plaintiff has, and will continue to, fairly and adequately
11 represent and protect the interests of the Class and has retained counsel
12 who are competent and experienced in class action litigation. There are no
13 material conflicts between the claims of the representative Plaintiff and the
14 Class members that would make class certification inappropriate. Counsel
15 for the Class will vigorously assert the claims of all Class members.

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

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

- 25 (a) The questions of law and fact common to the Class predominate over any
26 question affecting only individual members:
- 27 (b) A class action is superior to any other available method for fairly and
28 efficiently adjudicating the claims of the Class;

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

23 24. Plaintiff contemplates eventually issuing notice to the proposed Class Members
24 that would set forth the subject and nature of the action. The Defendant's own business records
25 may be utilized for assisting to prepare and issue the contemplated notice. To the extent that
26 any further notices may be required, Plaintiff would contemplate using additional media and/or
27 mailing.

28 **GENERAL ALLEGATIONS**

1 25. At all times material hereto, Defendant has been and is, a transportation
2 company.

3 26. Plaintiff and members of the Class were employed as Drivers, Dock Workers
4 and other non-exempt employees in California at various times during the Class Period.

5 **THE CONDUCT**

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

8 28. Starting on or about February 2, 2022 and continuing to the present, Defendant
9 employed Plaintiff on an hourly basis as a Driver and Dock Worker in Compton, California.

10 29. While employed by Defendant as a Driver and Dock Worker, Plaintiff was paid
11 \$31.23 per hour.

12 30. The employment by Defendant of the Class Members, and each them, is
13 governed by Industrial Welfare Commission Wage Order 9, which covers those persons
14 employed in the transportation industry.

15 **OFF-THE-CLOCK WORK AND ON-CALL SHIFTS**

16 31. Employers must compensate non-exempt employees for "off-the-clock" work
17 (before punching in or after punching out on a time clock) if the employers knew or should
18 have known that the employees were working those hours. *Morillion v. Royal Packing Co.*
19 (2000) 22 Cal. 4th 575, 585.

20 32. Defendant required Plaintiff and the Class to regularly perform compensable
21 tasks off-the-clock for which they did not receive any compensation. Specifically, at all times
22 relevant, Plaintiff and Class members consistently worked hours for which they were not paid
23 because Plaintiff and the Class members were required to use their personal cell phones for
24 work-related activities, such as texting/calling their supervisors/bosses, texting/calling their co-
25 workers, for 5-10 minutes per month, while off-shift. Plaintiff and Class members received
26 calls on their personal cell phones, when off-shift, for approximately 1-minute per call.

27 33. Further, Plaintiff and Class members do not have any fixed schedule. Instead,
28 Plaintiff and Class members are on-call 24 hours per day, 7 days per week. If Plaintiff and

1 Class members receive a call and do not answer, the on-call shifts require Plaintiff and Class
2 members to call back to obtain a shift within 7-minutes. If they do not call Defendant back
3 within 7-minutes, they lose priority in being called for on-call shifts. The on-call shifts require
4 Plaintiff and Class members to arrive at work within 2 hours. Although Plaintiff and Class
5 members have the option to decline shifts, doing so will cause them to lose priority and access
6 to future shifts. Plaintiff and Class members do not receive any on-call time pay. Defendant
7 only pays Plaintiff and Class members wages after they arrive to work and clock in for their
8 shifts. Plaintiff was called in to work between 1 and 3 shifts per week. Between 4 to 6 days per
9 week Plaintiff did not receive any on-call pay.

10 34. Unpredictable work schedules take a toll on all employees. Without the security
11 of a definite work schedule, workers who must be “on-call” are forced to make childcare
12 arrangements, elder-care arrangements, encounter obstacles in pursuing their education,
13 experience adverse financial effects, and deal with stress and strain on their family life. The
14 “on-call” shifts also interfere with employees’ ability to obtain supplemental employment in
15 order to ensure financial security for their families.

16 35. Defendant’s employees often depend on the hours of work to earn a living. One
17 effect of Defendant’s policy is thus to prevent employees from being able to commit to other
18 work that will provide them with additional income. As a result, Defendant effectively pays
19 Plaintiff and other members of the Class for part time work, but obligates them to nearly full-
20 time work.

21 36. As a result, and because they improperly treated such off the clock work and on-
22 call-shift standby time as not compensable, Defendant failed to compensate Plaintiff and the
23 Class for such time.

24 **FAILURE TO PAY OVERTIME WAGES**

25 37. Under California law, non-exempt employees as defined by Wage Order 9, are
26 entitled to premium wages for overtime worked. Under California law, an hourly paid
27 employee is entitled to overtime pay when they exceed eight hours of work in a single day,
28 exceed 40 hours of work in a week or work seven days in a row.

38. At all times during the relevant time period, Plaintiff and the Class routinely worked schedules such that they were due pay at the overtime rate due to off the clock work and on-call shifts. During this period, it was the practice and policy of Defendant to not pay employees overtime wages. Monies for unpaid overtime remain due and owing.

FAILURE TO PAY MINIMUM WAGES

39. Under California law, non-exempt employees as defined by IWC Wage Order No. 9 are entitled to minimum wages. Labor Code Section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code Section 1194 entitles “any employee receiving less than the legal minimum wage...is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage Order No. 9, obligates employers to pay each employee minimum wages for all hours worked.

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

41. Plaintiff and the Class were not paid minimum wages due to Defendant's failure to afford compliant meal/rest breaks, off the clock work and on-call shifts.

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

RESTRICTED MEAL BREAKS

1 43. Plaintiff and the Class members were routinely not afforded proper meal breaks.
2 Plaintiff and Class members were restricted from leaving their work areas during their meal
3 breaks.

4 **REST BREAKS INTERRUPTED**

5 44. Plaintiff and Class members' rest breaks were at times interrupted.

6 **FAILURE TO ISSUE ACCURATE WAGE STATEMENTS**

7 45. As a result of Defendant's failure to pay employees required overtime wages,
8 minimum wages and failure to afford compliant meal/rest breaks, the wage statements issued to
9 the employees did not comply with *Labor Code* §226 and California Industrial Welfare
10 Commission ("IWC") Wage Order 9 in that they did not accurately reflect all wages earned and
11 due and owing.

12 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

13 46. Defendant failed to reimburse Plaintiff and Class members with their necessary
14 business expenses, such as cell phone use, gloves and masks.

15 **FAILURE TO PAY SICK PAY**

16 47. Defendant failed to pay Plaintiff and Class members sick pay.

17 **REPORTING TIME PAY**

18 48. Defendant failed to pay Plaintiff and Class members reporting time pay. Plaintiff
19 and Class members were required to always be on-call or standby 24/7. Defendant did not pay
20 Plaintiff and Class members for their on call-time, while they waited for work. Defendant's
21 policy was to pay Plaintiff and Class members only if they came in to work their shifts, but not
22 for phone calls or other on-call duties. When Plaintiff and Class members were required to
23 work, they were required to show up within 2 hours of being called.

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

25 49. Defendant failed to allow Plaintiff to timely inspect his personnel records and
26 payroll file.

27 //

28 //

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME WAGES**

3 **(Labor Code §§ 510, 558, 1194, 1194.3, 1198, IWC Wage Order 9 By Plaintiffs Against**
4 **Defendant and Does 1 through 100)**

5 50. Plaintiff and the Class reallege and incorporate by reference all of the allegations
6 set forth in this Complaint.

7 51. During Plaintiff's entire employment with Defendant, pursuant to Cal. Lab.
8 Code §§510, 1194, and 1198, and IWC Wage Order No. 9, Defendant was required to
9 compensate Plaintiff with premium pay for all overtime work performed, for hours worked in
10 excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8)
11 hours on the seventh (7th) consecutive day of any work week.

12 52. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
13 who had not been paid overtime compensation could recover the unpaid balance of the full
14 amount of overtime wages due, including interest thereon, together with reasonable attorneys'
15 fees and costs of suit.

16 53. Pursuant to IWC Wage Order No. 9-2001, § 3, "Employment beyond eight (8)
17 hours in any workday is permissible provided the employee is compensated for such overtime
18 at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all
19 hours worked in excess of eight (8) hours up to and including twelve (12) hours in any
20 workday...

21 54. California Labor Code section 558 provides in pertinent part:

22 (a) Any employer or other person acting on behalf of an employer who
23 violates, or causes to be violated, a section of this chapter or any
24 provision regulating hours and days of work in any order of the
25 Industrial Welfare Commission shall be subject to a civil penalty as
follows:

26 (1) For any initial violation, fifty dollars (\$50) for each underpaid
27 employee for each pay period for which the employee was underpaid in
28 addition to an amount sufficient to recover underpaid wages.

1 (2) For each subsequent violation, one hundred dollars (\$100) for each
2 underpaid employee for each pay period for which the employee was
3 underpaid in addition to an amount sufficient to recover underpaid
wages.

4 (3) Wages recovered pursuant to this section shall be paid to the affected
5 employee...

6 (c) The civil penalties provided for in this section are in addition to any
7 other civil or criminal penalty provided by law.

8 55. As alleged above, Defendant required Plaintiff and the Class to regularly
9 perform compensable tasks off-the-clock such as texting/calling their supervisors/bosses,
10 texting/calling their co-workers, for 5-10 minutes per month, while off-shift. Plaintiff and Class
11 members received calls on their personal cell phones, when off-shift, for approximately 1-
12 minute per call. Plaintiff and Class members did not receive any compensation for their off the
clock work.

13 56. Further, Plaintiff and Class members are on-call 24 hours per day, 7 days per
14 week. Defendant failed to pay Plaintiff and Class members "On-Call" time pay for their on-call
15 shift standby time.

16 57. Throughout Plaintiff's employment, Defendant failed and refused to pay and
17 properly calculate overtime compensation to Plaintiff and Class members as required by law.

18 58. The foregoing overtime compensation is owed and unpaid. As a direct and
19 proximate result of Defendant's failure and refusal to pay overtime, Plaintiff and Class
20 members suffered damages in an amount to be proven at trial.

21 59. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal
22 counsel in order to enforce Plaintiff's rights to overtime pay, is entitled to recover Plaintiff's
23 attorneys' fees, costs and interest.

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO PAY MINIMUM WAGES**

26 **(IWC Wage Order No. 9; Labor Code §§ 1194, 1194.2, 1997, 1197.1, 1198 By Plaintiffs**
27 **Against Defendant and Does 1 through 100)**
28

1 60. Plaintiff and the Class reallege and incorporate by reference all of the allegations
2 set forth in this Complaint.

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

8 62. *Labor Code* § 1197 states the California requirement that employees must be
9 paid at least the minimum wage fixed by the Commission, and any payment of less than the
10 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving
11 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of
12 the full amount of this minimum wage.” IWC Wage Order 9-2001 also obligates employers to
13 pay each employee minimum wages for all hours worked. These minimum wage standards
14 apply to each hour employees worked for which they were not paid. Therefore, an employer’s
15 failure to pay for any particular hour of time worked by an employee is unlawful, even if
16 averaging an employee’s total pay over all hours worked, paid or not, results in an average
17 hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324
18 (2005).

19 63. Pursuant to IWC Wage Order No. 9, Defendant is required to pay the members
20 of the Class for all hours worked, meaning the time during which an employee is subject to the
21 control of an employer, including all the time the employee is suffered or permitted to work,
22 whether or not required to do so.

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

1 65. Defendant failed to satisfy minimum wage requirements because they
2 improperly failed to pay Plaintiff and Class members for off the clock work, on-call shift time
3 and failed to afford compliant meal/rest breaks in violation of *Labor Code* §§ 226.7, 1197,
4 1198 and IWC Wage Order No. 9.

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

10 67. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
11 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
12 *Code* § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid
13 for all hours worked under *Labor Code* § 1194, the employee may recover minimum wages for
14 the time associated with the overtime for which they received no compensation. *See Sillah v.*
15 *Command Int'l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees
16 suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also
17 showed they were paid less than minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*,
18 225 F. Supp. 3d 1115, 1132-33 (N.D. Cal. 2016).

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

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

27 //

28 //

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PAY FOR MEAL BREAKS**

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

5 70. Plaintiff and the Class reallege and incorporate by reference all of the allegations
6 set forth in this Complaint.

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

13 72. California Labor Code §1198 makes unlawful the employment of an employee
14 under conditions the IWC prohibits.

15 73. IWC Order No. 9-2001(11)(A) provides, in relevant part: "No employer shall
16 employ any person for a work period of more than five (5) hours without a meal period of not
17 less than 30-minutes, except that when a work period of not more than six (6) hours will
18 complete the day's work the meal period may be waived by mutual consent of the employer and
19 the employee."

20 74. IWC Order No. 9-2001 (11)(c) further provides, in relevant part: "Unless the
21 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
22 considered an 'on duty' meal period and counted as time worked."

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

24 An employer may not employ an employee for a work period of more than five
25 hours per day without providing the employee with a meal period of not less
26 than 30-minutes, except that if the total work period per day of the employee is
27 no more than six hours, the meal period may be waived by mutual consent of
28 both the employer and employee. An employer may not employ an employee
for a work period of more than 10 hours per day without providing the
employee with a second meal period of not less than 30-minutes, except that if
the total hours worked is no more than 12 hours, the second meal period may

1 be waived by mutual consent of the employer and the employee only if the first
2 meal period was not waived.

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

9 77. As alleged herein, Plaintiff and the members of the Class were restricted from
10 leaving their work areas during their meal breaks at the direction of Defendant and/or with their
11 endorsement, encouragement, knowledge and acquiescence.

12 78. Under California law, employers must also record their employees' meal
13 periods: "Every employer shall keep accurate information with respect to each employee,
14 including the following: ... Meal periods ... shall also be recorded. Meal periods during which
15 operations cease ... need not be recorded." IWC Order No. 9, § (7)(A)(3). Where the employer
16 has failed to keep records required by statute, the consequences of such failure should fall on
17 the employer, not the employee. In such a situation, imprecise evidence by the employee can
18 provide a sufficient basis for liability." *Hernandez v. Mendoza*, 199 Cal. App. 3d 721, 727
19 (1988). Inasmuch as Defendant had an obligation under the record-keeping requirements of the
20 Wage Order to track meal periods unless "all work ceases", Defendant knew or should have
21 known its employees were regularly not afforded proper meal periods during the Class Period.

22 79. Defendant has a policy or practice of failing to ensure that Plaintiff and
23 members of the Class take the meal periods required by California Labor Code §226.7 and
24 IWC Wage Order No. 9-2001 §11.

25 80. By their actions in not affording Plaintiff and Class Members proper meal
26 periods Defendant violated Cal. Lab. Code §226.7(b) and section 11 of IWC Wage Order No. 9
27 in the amount of one additional hour of pay at the employee's regular rate of compensation for
28 each work period during each day in which Defendant failed to provide employees with
statutory compliant meal periods.

1 81. Defendant also has a policy or practice of failing to pay each of their employees
2 who was not provided with a meal period as required an additional one hour of compensation at
3 each employee's regular rate of pay.

4 82. Cal. Labor Code § 218 authorizes Plaintiff and the members of the Class to
5 bring a private right of action to recover wages due based on the deprivation of timely meal
6 periods under Cal. Labor Code § 226.7(b).

7 83. As a direct and proximate result of Defendant's unlawful conduct as alleged
8 herein, Plaintiff and members of the Class have sustained economic damages, including but not
9 limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled
10 to recover economic and statutory damages, attorneys' fees and penalties and other appropriate
11 relief due to Defendant's violations of the California Labor Code and IWC Wage Order No. 9.

12 **FOURTH CAUSE OF ACTION**

13 **FOR FAILURE TO PROVIDE REST PERIODS**

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

16 84. Plaintiff and the Class reallege and incorporate by reference all of the allegations
17 set forth in this Complaint.

18 85. Labor Code § 226.7 and IWC Wage Order No. 9 provide that employers shall
19 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time
20 per four hours of work, or major fraction thereof.

21 86. Labor Code § 226.7 and IWC Wage Order No. 9 provide that if an employer
22 fails to provide an employee with rest periods in accordance with those provisions, the
23 employer shall pay the employee one hour of pay at the employee's regular rate of
24 compensation for each workday that the rest periods were not so provided.

25 87. Defendant has intentionally and improperly denied uninterrupted rest periods to
26 Plaintiff and the Class in violation of Labor Code § 226.7 and IWC Wage Order No. 9.

27 88. Plaintiff and members of the Class's rest periods were at times interrupted.
28

1 89. At all times relevant hereto, Defendant failed to provide rest periods as required
2 by Labor Code § 226.7 and IWC Wage Order No. 9.

3 90. By virtue of Defendant's unlawful failure to provide compliant rest periods to
4 Plaintiff and the Class, Plaintiff and the Class have suffered, and will continue to suffer,
5 damages in amounts which are presently unknown to Plaintiff and the Class, but which exceed
6 the jurisdictional limits of the Court and which will be ascertained according to proof at trial.

7 **FIFTH CAUSE OF ACTION**
8 **FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE WAGE**
9 **ITEMIZED STATEMENTS**

10 **(Labor Code §226 By Plaintiffs Against Defendant and Does 1 through 100)**

11 91. Plaintiff and the Class reallege and incorporate by reference all of the allegations
12 set forth in this Complaint.

13 92. Pursuant to IWC Wage Order No. 9, Defendant was the employer of Plaintiff
14 and the Class.

15 93. Pursuant to California Labor Code sections 226, and Wage Order 9-2001 section
16 7, Defendant is required to maintain and provide accurate records relating to employee
17 compensation including all formulas and production records used to calculate wages due.

18 94. Defendant is further required to provide, *inter alia*, semimonthly or at the time
19 of each payment of wages, an accurate itemized statement showing: (1) gross wages earned; (2)
20 all deductions from wages; (3) net wages earned; (4) the inclusive dates of the period for which
21 the employee is being paid; (5) the name of the employee; and (6) the name and address of the
22 legal entity that is the employee's actual employer. Cal. Labor Code §226(a).

23 95. Section 226(e) provides that an employee is entitled to recover \$50 for the
24 initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay
25 period, not to exceed \$4,000, plus an award of costs and reasonable attorneys' fees, for all pay
26 periods in which the employer knowingly and intentionally failed to provide accurate itemized
27 statements to the employee causing the employee to suffer injury.

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

4 97. Throughout the Class Period, Defendant intentionally and knowingly provided
5 Plaintiff and other members of the Class with weekly itemized wage statements containing
6 inaccurate information regarding the wages earned by Plaintiff and members of the Class in
7 that the payments owed to Plaintiff and the members of the Class for overtime wages due to off
8 the clock work and on-call shifts, minimum wages, premium pay for meal/rest breaks, reporting
9 time pay and sick pay, were not included in gross wages earned by Plaintiff and members of the
10 Class. Further, Defendant failed to furnish Plaintiff and the Class, upon payment of wages,
11 itemized statements accurately showing the number of hours worked and the rates paid.

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

14 99. Plaintiff and members of the Class were damaged by these failures because,
15 among other things, the failures led them to believe that they were not entitled to overtime
16 wages, minimum wages, premium pay for meal/rest breaks not properly afforded, reporting
17 time pay and sick pay, even though they were so entitled and these failures hindered them from
18 determining the amounts of wages owed to them.

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

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

24 **SIXTH CAUSE OF ACTION**

25 **REIMBURSEMENT OF BUSINESS EXPENSES**

26 **(Cal. Labor Code §2802 By Plaintiffs Against All Defendant and Does 1 through 100)**

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

103. Labor Code §2802 requires employers to indemnify employees for all necessary expenditures incurred by employees in the discharge of their duties.

104. At all times relevant herein, Defendant was aware that Plaintiff and Class members were using their personal cell phones and purchasing gloves and masks during Covid for business, but failed to indemnify Plaintiff and Class members for all their business-related expenses, including wear and tear expenses, in accordance with Labor Code §2802. Plaintiff and the Class were required to use their cell phones to text and call their supervisors every day due to being on standby for on-call shifts 24/7. Defendant maintained a practice of not reimbursing Plaintiff and Class Members for their work-related expenses that they incurred in using their cell phones and purchases of gloves and masks for work-related purposes.

105. As a result of Defendant's conduct, Plaintiff and Class Members suffered damages in an amount, subject to proof, to the extent they were not reimbursed for all of their business-related expenses incurred in the discharge of their duties.

106. Pursuant to Labor Code §2802, Plaintiff and Class Members are entitled to recover the full amount of their unreimbursed business expenses, reasonable attorneys' fees and costs of suit.

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE SICK LEAVE

(Cal. Labor Code §§ 201-204, 218, 218.5, 233, 245, 246 et. seq.; IWC Wage Order No. 9

By Plaintiffs against Defendant and Does 1 through 100)

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

108. Section 246 (1) requires that employers pay sick time pay to non-exempt employees at the employee's "regular rate of pay." Employers must calculate paid sick leave for nonexempt employees (1) "in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek" or (2) "by dividing the employee's total wages, not including overtime

1 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days
2 of employment.”

3 109. Moreover, Section 204 provides that wages are generally due and payable no later
4 than seven days after the end of a pay period or at least twice during each calendar month, on
5 days designated in advance as the regular paydays. Section 201 provides if an employer
6 discharges an employee, the wages earned and unpaid at the time of discharge are due and
7 payable immediately. Section 202 provides that an employee is entitled to receive all unpaid
8 wages no later than 72 hours after an employee quits his or her employment, unless the employee
9 has given seventy-two (72) hours previous notice of his or her intention to quit, in which case
10 the employee is entitled to his or her wages at the time of quitting. Section 203 provides that if
11 an employer willfully fails to pay wages owed in accordance with Sections 201 and 202, then
12 the wages of the employee shall continue as a penalty from the due date, and at the same rate
13 until paid, but the wages shall not continue for more than thirty (30) days.

14 110. Because Defendant did not pay, or timely pay, Plaintiff and members of the Class
15 all owing and underpaid sick pay wages, Defendant violated Sections 201-204, 246, and other
16 Labor Code sections. Defendant willfully failed to timely pay Plaintiff and members of the Class
17 all their wages due during employment and failed to timely pay all their wages due upon the
18 termination of their employment within the times prescribed by the Labor Code and is therefore
19 subject to applicable penalties, including a waiting time penalty, for each day, up to a thirty (30)
20 day maximum, pursuant to Section 203.

21 111. Labor Code section 233 provides: “Any employer who provides sick leave for
22 employees shall permit an employee to use in any calendar year the employee's accrued and
23 available sick leave entitlement, in an amount not less than the sick leave that would be accrued
24 during six months at the employee's then current rate of entitlement, for the reasons specified in
25 subdivision (a) of Section 246.5.”

26 112. During the relevant time period, Defendant separately provided paid sick days.
27 However, Defendant intentionally and willfully failed to pay Plaintiff and members of the Class
28 their sick pay wages. Accordingly, Plaintiff and members of the Class did not receive sick time

1 that they were entitled to receive by law, and were therefore denied the right to use sick leave
2 within the meaning of Labor Code Sections 233(a) and (c).

3 113. Defendant's sick pay policy provides equal or more than the California minimum
4 sick pay requirement of 40 hours or 5 days per year.

5 114. Plaintiff had sick time available and was required to miss work due a medical
6 issue. However, Plaintiff's supervisor repeatedly denied his sick pay requests. Thereafter, on
7 occasion, Plaintiff escalated the issue to the Human Resources Department ("HR") and was
8 sometimes approved for previously denied sick pay, but on other occasions was denied without
9 cause. As a result, when Plaintiff took a sick day, his missed workday was unpaid by Defendant,
10 despite his having accrued sick time.

11 115. Any employer who violates Labor Code section 233 is liable to employees for the
12 greater of one day's pay or actual damages, reasonable equitable relief, and reasonable attorneys'
13 fees and costs. Lab. Code sections 233(d), (e).

14 116. Labor Code section 218 authorizes a private right of action to recover unpaid
15 wages, including under sections 204 and 233.

16 117. Pursuant to Labor Code sections 218 and 218.5, Plaintiff and members of the
17 Class are entitled to recover the full amount of their unpaid wages, applicable penalties,
18 prejudgment interest on the amount of their unpaid wages, reasonable attorneys' fees and costs
19 of suit.

20 **EIGHTH CAUSE OF ACTION**

21 **REPORTING TIME PAY**

22 **(Wage Order No. 9 By Plaintiffs against Defendant and Does 1 through 100)**

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

25 119. Wage Order 9-2001 provides that "[e]ach workday an employee is required to
26 report for work and does report, but is not put to work or is furnished less than half said
27 employee's usual or scheduled day's work, the employee shall be paid for half the usual or
28

1 scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours,
2 at the employee's regular rate of pay, which shall not be less than the minimum wage."

3 120. Defendant has a policy and practice that requires Plaintiff and Class members to
4 be on-call or standby 24/7 at all times. Defendant does not pay Plaintiff and Class members for
5 their on call-time, while they waited for work. Defendant's policy is to pay Plaintiff and Class
6 members only if they actually come in to work their shifts. When Plaintiff and Class members
7 were required to work, they were required to show up within 2 hours of being called.

8 121. Defendant has not included, and continues not to include, on-call shifts as part
9 of the employees' "scheduled day's work" when calculating reporting time pay, unless the
10 employees are actually required to work the on-call shift. This has resulted in Defendant failing
11 to pay required reporting time pay to Plaintiff and the Class.

12 122. As a direct and proximate results of Defendant's actions as set forth herein,
13 Plaintiff and the Class have been damaged in that Plaintiff and the Class have not been paid all
14 required reporting time pay.

15 **NINTH CAUSE OF ACTION**

16 **(Failure to Allow Inspection of Employment Records in Violation of *Labor Code* §1198.5**

17 **By Plaintiffs against Defendant and Does 1 through 100)**

18 123. Plaintiff and the Class reallege and incorporate by reference all of the allegations
19 set forth in this Complaint.

20 124. California Labor Code Section 1198.5 provides:

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

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

1 written request from a current or former employee, or his or her
2 representative, the employer shall also provide a copy of the personnel
3 records,..... later than 30 calendar days from the date the employer receives
4 the request...

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

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

12 125. Additionally, pursuant to Wage Order 9, at section 7 re: Records, employers are
13 required to keep accurate payroll records on each employee, and such records must be made
14 readily available for inspection by the employee upon reasonable request. The employer must
15 also maintain accurate production records.

16 126. On or about October 1, 2024, Plaintiff's counsel issued a written request to
17 Defendant for copies of his personnel records.

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

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

28 **TENTH CAUSE OF ACTION**

**(Unfair Competition in Violation of Business & Professions Code §§ 17200 *et seq.* By
Plaintiffs Against Defendant and Does 1 through 100)**

1 129. Plaintiff and the Class reallege and incorporate by reference all of the allegations
2 set forth in this Complaint.

3 130. Pursuant to IWC Wage Order No. 9, Defendant was the employer of Plaintiff
4 and the Class. Defendant is also a "person" as that term is defined in Business & Professions
5 Code §17021.

6 131. The Business & Professions Code defines unfair competition as any unlawful,
7 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
8 described herein, Defendant has engaged in unfair and unlawful practices by failing to (1) pay
9 overtime wages; (2) pay minimum wages (3) pay premium pay for meal breaks not properly
10 afforded; (4) pay premium pay for rest breaks not properly afforded; (5) furnish Plaintiff and
11 the Class with accurate itemized wage statements, (6) reimburse business expenses, (7) sick
12 pay; (8) pay reporting time pay; and (9) provide and allow inspection of personnel records, all
13 in violation of Business & Professions Code §§ 17200 *et seq.*

14 132. By and through the unfair and unlawful business practices described herein,
15 Defendant has obtained valuable property, money and services from the Plaintiff and the Class
16 and has deprived them of valuable rights and benefits guaranteed by law all to the detriment of
17 Plaintiff and the Class.

18 133. All the acts described herein are violations of, among other things, the Labor
19 Code and the Industrial Commission Wage Order No. 9, are unlawful and in violation of public
20 policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and thereby
21 constitute unfair and unlawful business practices in violation of Business & Professions Code
22 §§ 17200 *et seq.*

23 134. Plaintiff and the Class are entitled to, and do, seek such relief as may be
24 necessary to restore to them the money and property which Defendant has acquired, or of
25 which Plaintiff and the Class have been deprived by means of the above-described unfair and
26 unlawful business practices.

27 135. Plaintiff and the Class are further entitled to, and do, seek a declaration that the
28 above-described business practices are unfair and unlawful and that injunctive relief should be

1 issued restraining Defendant from engaging in any of the above described unfair and unlawful
2 business practices in the future.

3 136. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to
4 redress the injuries which they have suffered as a consequence of the unfair and unlawful
5 business practices of Defendant. As a result of the unfair and unlawful business practices
6 described above, Plaintiff and the Class have suffered and will continue to suffer irreparable
7 harm unless Defendant is restrained from continuing to engage in these unfair and unlawful
8 business practices. In addition, Defendant should be required to disgorge the unpaid moneys to
9 Plaintiff and the Class.

10
11 **PRAYER FOR RELIEF**
12

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

15 1. For compensatory damages in the amount of overtime wages due to Plaintiff and
16 Class members, according to proof;

17 2. For compensatory damages in the amount of minimum wages due to Plaintiff
18 and Class members, according to proof;

19 3. For one (1) hour of pay at the regular rate of compensation for Plaintiff and
20 Class members for each workday that a meal and/or rest period was not provided;

21 4. For compensatory damages in the amount of Plaintiff and Class members' cell
22 phone, gloves and masks expenses for business purposes, costs and attorneys' fees pursuant to
23 Cal. Code Civ. Proc. §2802(c);

24 5. For sick pay;

25 6. For reporting time pay;

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

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

1 9. For prejudgment interest accrued on all due and unpaid overtime and minimum
2 wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and
3 1194(a), according to proof;

4 10. For injunctive relief requiring Defendant to comply with Labor Code
5 1198.5(b)(1);

6 11. For civil penalties pursuant to *Cal. Labor Code* §1198 and Wage Order 9-
7 2001(14);

8 12. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, 1198.5,
9 according to proof;

10 13. For reasonable costs, including attorneys' fees, in an amount according to proof
11 pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 218.5, 1198.5, 2802 and/or *Cal. Code of Civ.*
12 *Proc.* §1021.5;

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

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

17 16. For other injunctive relief ordering Defendant to notify Plaintiff and Class
18 Members that they have not been paid the proper amounts in accordance with California law;

19 17. For punitive and exemplary damages in a sum to be determined at trial; and

20 18. For such other and further relief as the Court deems just and proper.

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff Alejandro Gomez hereby respectfully requests a trial by jury for all claims and
23 issues raised in his Complaint that may be entitled to a jury trial.

24
25 LIPELES LAW GROUP, APC

26 Date: October 1, 2024

27 By: 

28 Thomas H. Schelly
 Attorneys for Plaintiff
 Alejandro Gomez