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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

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.: 2:24-cv-09842-JFW-MAA

**FIRST AMENDED 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);
10. **UNFAIR COMPETITION** (Cal. *Bus. & Prof. Code* §§17200 et seq.); and
11. **PRIVATE ATTORNEY GENERAL ACT (PAGA)**

DEMAND FOR A JURY TRIAL

All allegations in this First Amended Complaint (“FAC”) 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

1 minimum wages, provide meal and rest breaks (or pay the statutory compensation
2 due), issue accurate wage statements, reimburse business expenses, pay sick pay,
3 and reporting time pay.

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

8 3. Plaintiff, like his co-workers whom Defendant also employed during
9 the applicable limitations period, spend their workdays as Drivers, Dock Workers
10 and other employees, under illegal and highly regimented circumstances. That
11 regimen results from Defendant's insistence to strictly monitor and curtail labor
12 costs, which Defendant accomplishes by not paying for all labor costs, failing to
13 pay overtime wages due to off the clock work, failing to pay minimum wages,
14 failing to provide meal and rest breaks (or pay the statutory compensation due),
15 failing to issue accurate wage statements, failing to reimburse business expenses,
16 failing to pay sick pay, failing to pay reporting time pay and by using other
17 unlawful stratagems to ensure that labor costs remain artificially low.

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

24 5. Plaintiff seeks compensatory, statutory, declaratory, and injunctive
25 relief for himself and all members of the Class, to compensate these workers for
26 the unpaid wages and to protect current and future workers of Defendant from
27 being subjected to similar wage theft and otherwise unlawful working conditions.
28

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

7. Pursuant to the California Labor Code, on or about October 1, 2024, Plaintiff filed a notice with the Labor and Workforce Development Agency (LWDA) of his intent to pursue claims against Defendant under the Private Attorney General Act (PAGA).

JURISDICTION AND VENUE

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

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

THE PARTIES

PLAINTIFF

10. At all times relevant hereto, Plaintiff was:

- (a) An individual over age 18 and a resident of Los Angeles, California;
- (b) Employed as an hourly employee for Defendant in Compton, California;

- 1 (c) Did not receive overtime wages due to off the clock work and
2 on-call shifts in violation of *Labor Code* §§510, 1198 and the
3 applicable Wage Orders:
4 (d) Did not receive minimum wages as required by *Labor Code*
5 §§1194, 1194.2, 1997, 1197.1, 1198 and the applicable Wage
6 Orders:
7 (e) Did not receive the meal periods as required by *Labor Code*
8 §266.7 and the applicable Wage Orders;
9 (f) Did not receive the rest periods required by *Labor Code*
10 §266.7 and the applicable Wage Orders;
11 (g) Did not receive accurate wage statements as mandated by
12 *Labor Code* §226;
13 (h) Was not reimbursed for business expenses as required by
14 *Labor Code* §2802;
15 (i) Was not paid sick pay as mandated by *Labor Code* §§ 201-
16 204, 218, 218.5, 233, 245, 246 *et. seq*;
17 (j) Was not paid reporting time pay in violation of the applicable
18 IWC Wage Order; and
19 (k) Was not provided his personnel records. Each of these was a
20 violation of the *Labor Code*.
21
22

23 **DEFENDANT**

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

- 26 (a) An Arkansas corporation, with a principal place of business at
27 3801 Old Greenwood Road, Fort Smith, Arkansas 72903.
28

1 Defendant has been authorized to do business and has been
2 doing business in the County of Los Angeles;

3 (b) The former employer of Plaintiff and the current and former
4 employer of the putative Class members;

5 (c) Paid Plaintiff and all Class members on an hourly basis;

6 (d) Failed to pay Plaintiff and all putative Class members
7 overtime wages;

8 (e) Failed to pay Plaintiff and all putative Class members
9 minimum wages;

10 (f) Failed to provide Plaintiff and all putative Class members with
11 meal and rest periods, failed to provide Plaintiff and all
12 putative Class Members with accurate itemized wage
13 statements;

14 (g) Failed to reimburse business expenses to Plaintiff and all
15 putative Class members;

16 (h) Failed to provide sick pay to Plaintiff and all putative Class
17 members;

18 (i) Failed to pay reporting time pay to Plaintiff and all putative
19 Class members; and

20 (j) Failed to provide Plaintiff with his requested personnel
21 records. Each of these was a violation of the *Labor Code*.

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

28

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

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

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

25 16. Plaintiff is informed and believes, and based on that information and
26 belief alleges, that the Defendants named in this Complaint, including DOES 1
27 through 100, inclusive, knowingly and willfully acted in concert, conspired and
28 agreed together among themselves and entered into a combination and systemized

1 campaign of activity to *inter alia* damage Plaintiff, and the Class, and to
2 otherwise consciously and/or recklessly act in derogation of the rights of Plaintiff
3 and the Class, and the trust reposed by Plaintiff, and the Class, in each of the
4 Defendants, the acts being negligently and/or intentionally inflicted. Their
5 conspiracy, and Defendants' concerted actions, were such that, to Plaintiff's
6 information and belief, and to all appearances, Defendants, and each of them,
7 represented a unified body so that the actions of one Defendant were
8 accomplished in concert with, and with the knowledge, ratification, authorization
9 and approval of each of the other Defendants.

10 **CLASS ALLEGATIONS**

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

12 17. The Class ("the Class") is defined as follows:

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

18 (b) "All persons who were hourly paid employees of Defendant and
19 worked for Defendant in California and left the employ of Defendant
20 at any time during the period commencing on the date that is within
21 one (1) year prior to the filing of this Complaint and continuing
22 through the present date (the "Class Period")."

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

1 **B. Maintenance of the Action**

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

5 **C. The Class Requisites**

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

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

- 9 (a) The persons who comprise the Class are so numerous that the
10 joinder of all those persons is impracticable and the disposition
11 of their claims as a Class will benefit the parties and the Court;
12 (b) Nearly all factual, legal, statutory, declaratory and injunctive
13 relief issues that are raised in this Complaint are common to the
14 Class and will apply uniformly to every Class member;
15 (c) The claims of the representative Plaintiff are typical of the
16 claims of each Class member. Plaintiff, like all Class members,
17 has sustained damages arising from Defendant's violations of
18 the laws of the State of California. Plaintiff, and the Class
19 members, were and are similarly or identically harmed by the
20 same unlawful, deceptive, unfair, systematic and pervasive
21 pattern of misconduct engaged in by the Defendant;
22 (d) The representative Plaintiff has, and will continue to, fairly and
23 adequately represent and protect the interests of the Class and
24 has retained counsel who are competent and experienced in
25 class action litigation. There are no material conflicts between
26 the claims of the representative Plaintiff and the Class members
27 that would make class certification inappropriate. Counsel for
28 the Class will vigorously assert the claims of all Class members.

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

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

- 11 (a) The questions of law and fact common to the Class
12 predominate over any question affecting only individual
13 members;
- 14 (b) A class action is superior to any other available method for
15 fairly and efficiently adjudicating the claims of the Class;
- 16 (c) The Class members are so numerous that it is impractical to
17 bring all of them before the Court;
- 18 (d) Plaintiff and other Class members will not be able to obtain
19 effective and economic legal redress unless the action is
20 maintained as a class action;
- 21 (e) There is a community of interest in obtaining appropriate legal
22 and equitable relief for the statutory violations, and in
23 obtaining adequate compensation for the damages and injuries
24 for which Defendant is responsible in an amount sufficient to
25 adequately compensate the Class members;
- 26 (f) Without Class certification, the prosecution of separate actions
27 by individual Class members would create a risk of:
- 28

- i. Inconsistent or varying adjudications for individual Class members that would establish incompatible standards of conduct for Defendant; and/or,
- ii. Adjudication for individual Class members that would, as a practical matter, dispose of other non-party members' interests, or that would substantially impair or impede the non-parties' ability to protect their interests, by, for example, potentially exhausting the funds available from Defendant, and

(g) Defendant has acted or refused to act on grounds generally applicable to the Classes, making final injunctive relief appropriate for the Class, as a whole.

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

GENERAL ALLEGATIONS

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

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

THE CONDUCT

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

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

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

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

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

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

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

23 33. Further, Plaintiff and Class members do not have any fixed schedule.
24 Instead, Plaintiff and Class members are on-call 24 hours per day, 7 days per
25 week. If Plaintiff and Class members receive a call and do not answer, the on-call
26 shifts require Plaintiff and Class members to call back to obtain a shift within 7-
27 minutes. If they do not call Defendant back within 7-minutes, they lose priority in
28 being called for on-call shifts. The on-call shifts require Plaintiff and Class

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

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

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

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

23 **FAILURE TO PAY OVERTIME WAGES**

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

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

6 **FAILURE TO PAY MINIMUM WAGES**

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

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

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

26 42. At all times during the relevant time period, Plaintiff and the Class
27 routinely worked schedules such that they were due pay at minimum wage rates.
28 During this period, it was the practice and policy of Defendant to not pay

1 employees' minimum wages. Monies for unpaid minimum wages remain due
2 and owing.

3 **RESTRICTED MEAL BREAKS**

4 43. Plaintiff and the Class members were routinely not afforded proper
5 meal breaks. Plaintiff and Class members were restricted from leaving their work
6 areas during their meal breaks.

7 **REST BREAKS INTERRUPTED**

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

9 **FAILURE TO ISSUE ACCURATE WAGE STATEMENTS**

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

15 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

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

18 **FAILURE TO PAY SICK PAY**

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

20 **REPORTING TIME PAY**

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

28

FAILURE TO ALLOW INSPECTION OF PERSONNEL RECORDS

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

FIRST CLAIM FOR
FAILURE TO PAY OVERTIME WAGES

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

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

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

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

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

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

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of

1 work in any order of the Industrial Welfare Commission shall
2 be subject to a civil penalty as follows:

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

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

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

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

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

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

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

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

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

SECOND CLAIM FOR
FAILURE TO PAY MINIMUM WAGES

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

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

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

62. *Labor Code* § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage Order 9-2001 also obligates employers to pay each employee minimum wages for all hours worked. These minimum wage standards apply to each hour employees worked for which they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked by an employee 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).

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

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

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

14 66. Defendant’s pattern, practice and uniform administration of
15 corporate policy regarding illegal employee compensation as described herein is
16 unlawful and creates an entitlement, pursuant to *Labor Code* § 218, to recovery
17 by Plaintiff and the members of the Class, in a civil action, of the unpaid balance
18 of the full amount of wages owing, calculated at the appropriate rate.

19 67. *Labor Code* § 1194.2 allows an employee to recover liquidated
20 damages in an amount equal to the wages unlawfully unpaid and interest thereon
21 for any action under *Labor Code* § 1194. Where an employee, such as Plaintiff
22 and the other Class members, are not paid for all hours worked under *Labor Code*
23 § 1194, the employee may recover minimum wages for the time associated with
24 the overtime for which they received no compensation. *See Sillah v. Command*
25 *Int’l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees
26 suing for failure to pay overtime could recover liquidated damages under §
27 1194.2 if they also showed they were paid less than minimum wage); *accord*

1 *Andrade v. Arby's Rest. Grp., Inc.*, 225 F. Supp. 3d 1115, 1132-33 (N.D. Cal.
2 2016).

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

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

12 **THIRD CLAIM FOR**
13 **FAILURE TO PAY FOR MEAL BREAKS**
14 **(Labor Code § 226.7 and IWC Wage Order No. 9 By Plaintiffs Against**
15 **Defendant and Does 1 through 100)**

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

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

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

26 73. IWC Order No. 9-2001(11)(A) provides, in relevant part: "No
27 employer shall employ any person for a work period of more than five (5) hours
28 without a meal period of not less than 30-minutes, except that when a work period

1 of not more than six (6) hours will complete the day's work the meal period may
2 be waived by mutual consent of the employer and the employee."

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

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

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

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

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

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

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

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

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

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

27 83. As a direct and proximate result of Defendant's unlawful conduct
28 as alleged herein, Plaintiff and members of the Class have sustained economic

1 damages, including but not limited to unpaid wages and lost interest, in an
2 amount to be established at trial, and are entitled to recover economic and
3 statutory damages, attorneys' fees and penalties and other appropriate relief due to
4 Defendant's violations of the California Labor Code and IWC Wage Order No. 9.

5 **FOURTH CLAIM FOR**
6 **FOR FAILURE TO PROVIDE REST PERIODS**
7 **(Labor Code § 226.7 and IWC Wage Order No. 9 By Plaintiffs Against**
8 **Defendant and Does 1 through 100)**

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

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

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

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

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

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

26 90. By virtue of Defendant's unlawful failure to provide compliant rest
27 periods to Plaintiff and the Class, Plaintiff and the Class have suffered, and will
28 continue to suffer, damages in amounts which are presently unknown to Plaintiff

1 and the Class, but which exceed the jurisdictional limits of the Court and which
2 will be ascertained according to proof at trial.

3
4 **FIFTH CLAIM FOR**
5 **FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE**
6 **WAGE ITEMIZED STATEMENTS**

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

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

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

12 93. Pursuant to California Labor Code sections 226, and Wage Order 9-
13 2001 section 7, Defendant is required to maintain and provide accurate records
14 relating to employee compensation including all formulas and production records
15 used to calculate wages due.

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

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

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

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

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

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

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

25 101. As result, Plaintiff seeks recovery of the penalties authorized by
26 Labor Code sections 226(e) and 558, and such other penalties and legal and
27 equitable remedies as are provided by law for Defendant's improper conduct.
28

SIXTH CLAIM FOR
REIMBURSEMENT OF BUSINESS EXPENSES

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

102. Plaintiff and the Class reallege and incorporate by reference all of the allegations 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 CLAIM FOR
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 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

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

1 110. Because Defendant did not pay, or timely pay, Plaintiff and members
2 of the Class all owing and underpaid sick pay wages, Defendant violated Sections
3 201-204, 246, and other Labor Code sections. Defendant willfully failed to timely
4 pay Plaintiff and members of the Class all their wages due during employment and
5 failed to timely pay all their wages due upon the termination of their employment
6 within the times prescribed by the Labor Code and is therefore subject to
7 applicable penalties, including a waiting time penalty, for each day, up to a thirty
8 (30) day maximum, pursuant to Section 203.

9 111. Labor Code section 233 provides: “Any employer who provides sick
10 leave for employees shall permit an employee to use in any calendar year the
11 employee's accrued and available sick leave entitlement, in an amount not less
12 than the sick leave that would be accrued during six months at the employee's then
13 current rate of entitlement, for the reasons specified in subdivision (a) of Section
14 246.5.”

15 112. During the relevant time period, Defendant separately provided paid
16 sick days. However, Defendant intentionally and willfully failed to pay Plaintiff
17 and members of the Class their sick pay wages. Accordingly, Plaintiff and
18 members of the Class did not receive sick time that they were entitled to receive
19 by law, and were therefore denied the right to use sick leave within the meaning
20 of Labor Code Sections 233(a) and (c).

21 113. Defendant’s sick pay policy provides equal or more than the
22 California minimum sick pay requirement of 40 hours or 5 days per year.

23 114. Plaintiff had sick time available and was required to miss work due a
24 medical issue. However, Plaintiff’s supervisor repeatedly denied his sick pay
25 requests. Thereafter, on occasion, Plaintiff escalated the issue to the Human
26 Resources Department (“HR”) and was sometimes approved for previously denied
27 sick pay, but on other occasions was denied without cause. As a result, when
28

1 Plaintiff took a sick day, his missed workday was unpaid by Defendant, despite
2 his having accrued sick time.

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

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

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

12 **EIGHTH CLAIM FOR**
13 **REPORTING TIME PAY**

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

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

17 119. Wage Order 9-2001 provides that "[e]ach workday an employee is
18 required to report for work and does report, but is not put to work or is furnished
19 less than half said employee's usual or scheduled day's work, the employee shall
20 be paid for half the usual or scheduled day's work, but in no event for less than
21 two (2) hours nor more than four (4) hours, at the employee's regular rate of pay,
22 which shall not be less than the minimum wage."

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

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

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

NINTH CLAIM FOR

(Failure to Allow Inspection of Employment Records in Violation of *Labor Code* §1198.5 By Plaintiffs against Defendant and Does 1 through 100)

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

124. California Labor Code Section 1198.5 provides:

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

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

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

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

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

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

20 128. As a direct result and consequence of Defendant's failure and refusal
21 to permit Plaintiff full access to his records, Plaintiff seeks injunctive relief in the
22 form of an order or decree mandating Defendant's compliance. Plaintiff has
23 suffered and will suffer harm as a result of Defendant's ongoing refusal to
24 comply. Plaintiff also seeks recovery of the statutory penalty of \$750 based upon
25 Defendants' violation of §1198.
26
27
28

TENTH CLAIM FOR

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

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

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

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

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

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

134. Plaintiff and the Class are entitled to, and do, seek such relief as may be necessary to restore to them the money and property which Defendant has

1 acquired, or of which Plaintiff and the Class have been deprived by means of the
2 above-described unfair and unlawful business practices.

3 135. Plaintiff and the Class are further entitled to, and do, seek a
4 declaration that the above-described business practices are unfair and unlawful
5 and that injunctive relief should be issued restraining Defendant from engaging in
6 any of the above described unfair and unlawful business practices in the future.

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

15 **ELEVENTH CLAIM FOR**
16 **(Damages Pursuant to the Private Attorneys General Act By Plaintiffs**
17 **Against Defendant and Does 1 through 100)**

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

20 138. Plaintiff bring this action on his own behalf and on behalf of all current
21 and former employees of Defendant who were employed in California for the
22 previous four years seeking to recover unpaid wages, including but not limited to
23 unpaid overtime, minimum wages, meal period violations, and rest periods
24 violations (or pay the statutory compensation due), failure to issue accurate wage
25 statements, failure to pay wages due on termination, failure to reimburse business
26 expenses, sick leave wages, reporting time pay, and unfair competition as set forth
27 in this pleading.

28

139. On October 1, 2024, Plaintiff, pursuant to California Labor Code §§2699, *et seq.*, by and through his attorneys, uploaded a Private Attorney General Act (“PAGA”) claim to the State of California Labor and Workforce Development Agency (“LWDA”) and sent a letter via Certified Mail Return Receipt Requested to the defendant.

140. More than 30 days have passed since the above letter, and Plaintiff's counsel has not received any notice from the LWDA stating an intention to prosecute Plaintiff's PAGA claims.

141. Plaintiff has, therefore complied with the administrative exhaustion requirements of PAGA.

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

PRAYER FOR RELIEF

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

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

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

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

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

5. For sick pay;

- 1 6. For reporting time pay;
- 2 7. For an award of consequential damages in Plaintiff and Class
- 3 members' favor and against Defendant, in an amount to be proven at trial;
- 4 8. For statutory damages pursuant to *Cal. Lab. Code* §226, according to
- 5 proof;
- 6 9. For prejudgment interest accrued on all due and unpaid overtime and
- 7 minimum wages from the date that wages were due and payable, pursuant to *Cal.*
- 8 *Lab. Code* §§218.6 and 1194(a), according to proof;
- 9 10. For injunctive relief requiring Defendant to comply with Labor Code
- 10 1198.5(b)(1);
- 11 11. For civil penalties pursuant to *Cal. Labor Code* §1198 and Wage
- 12 Order 9-2001(14);
- 13 12. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7,
- 14 1198.5, according to proof;
- 15 13. For penalties provided by the Labor Code Private Attorney General
- 16 Act;
- 17 14. For reasonable costs, including attorneys' fees, in an amount
- 18 according to proof pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 218.5,
- 19 1198.5, 2802 and/or *Cal. Code of Civ. Proc.* §1021.5;
- 20 15. For an award of restitution of wages to Plaintiff and Class members
- 21 in an amount equal to the amount of wages owed and unpaid, according to proof;
- 22 16. For injunctive relief ordering the continuing unfair business acts and
- 23 practices to cease, as the Court deems just and proper;
- 24 17. For other injunctive relief ordering Defendant to notify Plaintiff and
- 25 Class Members that they have not been paid the proper amounts in accordance
- 26 with California law;
- 27 18. For punitive and exemplary damages in a sum to be determined at
- 28 trial; and

1 19. For such other and further relief as the Court deems just and proper.

2 **DEMAND FOR JURY TRIAL**

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

6 LIPELES LAW GROUP, APC

7 Date: January 3, 2024

8 By: /s/ Thomas H. Schelly
9 Kevin A. Lipeles
10 Thomas H. Schelly
11 Attorneys for Plaintiff
12 Alejandro Gomez

CERTIFICATE OF SERVICE

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; am employed with the law offices of Lipeles Law Group APC and my business address is 880 Apollo St. Suite 336 El Segundo, CA 90245.

On January 3, 2025, I served the foregoing document entitled

PLAINTIFF'S FIRST AMENDED COMPLAINT

on all the appearing and/or interested parties in this action as follows:

Karen Evans

Attorneys for Defendant

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Emily Burkhardt Vicente

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☐ **[by MAIL]** - I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.

☒ **[by ELECTRONIC SUBMISSION]** - I served the above listed document(s) described via electronic transmission to the emails listed above.

1 ☐ [by FAX] - I caused the aforementioned document(s) to be telefaxed to the
2 aforementioned facsimile number(s). *The facsimile machine I used com-*
3 *plied with California Rules of Court, Rule 2003(3) and no error was re-*
4 *ported by the machine. Pursuant to California Rules of Court, Rule*
5 *2005(i), I caused the machine to print a transmission record of the trans-*
6 *mission, a copy of which is attached to this declaration and/or no error*
7 *was reported by the machine.*

8 ☐ [by FEDERAL EXPRESS] - I am readily familiar with the firm's practice
9 for collection and processing of correspondence for overnight delivery by
10 Federal Express. Under that practice such correspondence will be depos-
11 ited at a facility or pick-up box regularly maintained by Federal Express for
12 receipt on the same day in the ordinary course of business with delivery
13 fees paid or provided for in accordance with ordinary business practices.

14 ☐ [by PERSONAL SERVICE] - I caused to be delivered by messenger such
15 envelope(s) by hand to the office of the addressee(s). Such messenger is
16 over the age of eighteen years and not a party to the within action and em-
17 ployed with Attorney Service Name and Address .

18 I declare that I am employed in the office of a member of the bar of this
19 Court at whose direction the service was made.

20 Executed January 3, 2025 at Los Angeles, California.

21
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25
26
27
28

Diana Casarrubias

Print Name

By: /s/ Diana Casarrubias

Signature