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

MARK VAZQUEZ, as an individual, and on
 behalf of all others similarly situated,

Plaintiff,

v.

SWIPEJOBS, LLC, an Arizona limited
 liability company; NELSON NAME PLATE
 COMPANY DBA NELSON MILLER
 GROUP, a California corporation; and DOES
 1 through 100, inclusive,

Defendants.

Case No. 24STCV29308

Amended As a Matter of Right Pursuant to
 Labor Code § 2699.3(a)(2)(C)

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

- (1) **MINIMUM WAGE VIOLATIONS
 (LABOR CODE §§ 1182.12, 1194,
 1194.2, 1197);**
- (2) **FAILURE TO PAY ALL
 OVERTIME WAGES (LABOR
 CODE §§ 204, 510, 558, 1194, AND
 1198);**
- (3) **MEAL PERIOD VIOLATIONS
 (LABOR CODE §§ 226.7 AND 512);**
- (4) **REST PERIOD VIOLATIONS
 (LABOR CODE §§ 226.7, 516);**
- (5) **WAITING TIME PENALTIES
 (LABOR CODE §§ 201-203);**
- (6) **WAGE STATEMENT VIOLATIONS
 (LABOR CODE § 226, *et seq.*);**
- (7) **UNFAIR COMPETITION (BUS &
 PROF CODE § 17200, *et seq.*);**
- (8) **FAILURE TO REIMBURSE FOR
 NECESSARY BUSINESS EXPENSES
 (LABOR CODE § 2802); AND**

**(9) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Mark Vazquez (hereinafter "Plaintiff"), on behalf of himself and all others
2 similarly situated, hereby brings this First Amended Class and Representative Action Complaint
3 against Swipejobs, LLC; Nelson Name Plate Company dba Nelson Miller Group; and DOES 1 to
4 100, inclusive (collectively "Defendants"), and on information and belief allege as follows:

5 **JURISDICTION**

6 1. Plaintiff hereby brings this First Amended Class and Representative Action
7 Complaint for recovery of unpaid wages and penalties under California Business and Professions
8 Code § 17200 *et seq.*, Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12,
9 1194, 1194.2, 1197, 1198, 2698 *et seq.*, 2802, and Industrial Welfare Commission Wage Orders,
10 in addition to seeking declaratory relief and restitution. This Complaint is brought pursuant to
11 California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants' violations
12 of the California Labor Code because the amount in controversy exceeds this Court's
13 jurisdictional minimum.

14 **VENUE**

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

21 **PARTIES**

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

2802, California Business and Professions Code § 17200 *et seq.* (“Unfair Competition Law”), and the Industrial Welfare Commission Wage Orders, which set employment standards for occupations in California.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business in the import/export of goods and materials primarily related to aerospace and electronics in California and the United States, employed Plaintiff within Los Angeles County and the state of California and, therefore, were (and are) doing business in Los Angeles County and the State of California.

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

6. Plaintiff is informed, and believes, and thereon allege, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

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

8. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

1 Plaintiff and the members of the Classes engage in interstate commerce activities in the course of
2 their job duties. As such, Plaintiff and the members of the Classes are “Transportation Workers”
3 exempt from arbitration within the definition of the Federal Arbitration Act. *See Southwest*
4 *Airlines Co. v Saxon*, 596 U.S. 450 (2022); *Carmona v. Domino’s Pizza, LLC*, 73 F.4th 1135 (9th
5 Cir. 2023); *Saige et al. v. U.S. District Court for the Central District of California*, No. 24-4072
6 (9th Cir. July 18, 2024).

7 9. At all times mentioned herein, Defendants, and each of them, were members of
8 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
9 and scope of, and in pursuance of said joint venture, partnership, and common enterprise. Further,
10 Plaintiff alleges that all Defendants were joint employers for all purposes towards Plaintiff and
11 all members of the Classes.

12 10. Defendant Nelson Name Plate Company dba Nelson Miller Group is also jointly
13 liable with Defendant Swipejobs, LLC for all civil legal responsibility and civil liability for the
14 payment of wages, including all sums payable to an employee or the state of California based
15 upon any failure to pay wages, pursuant to Labor Code §2810.3.

16 **GENERAL FACTUAL ALLEGATIONS**

17 11. Plaintiff worked for Defendants as a quality specialist between approximately
18 November 2023 through May 2024 at a rate of approximately \$24 per hour. Defendants are in
19 the business of importing and exporting goods and materials, namely aerospace and automotive
20 materials, in addition to ensuring quality control of said goods and materials. Plaintiff’s job
21 responsibilities included working with Defendants’ customers and suppliers, working with
22 vendors and customer service representatives, and performing quality control inspections on
23 aerospace products, automotive products, and electrical products, all destined for interstate
24 commerce. Plaintiff was generally scheduled to work five days per week, from Monday to Friday
25 from approximately 6:00 a.m. until approximately 2:30 p.m. However, as explained below,
26 Plaintiff routinely performed work beyond his prescheduled hours, including overtime hours, all
27 of which went wholly uncompensated.

28 12. Throughout the duration of Plaintiff’s employment with Defendants, Plaintiff and

1 other aggrieved employees were not paid for all hours worked as Defendants would not accurately
2 keep track of their hours worked. Upon information and belief, the time records maintained by
3 Defendants were not reflective of the actual number of hours that Plaintiff and other aggrieved
4 employees actually worked. Indeed, Defendants maintained no formal timekeeping system
5 whatsoever throughout the duration of Plaintiff's employment with Defendants. Rather, Plaintiff
6 and other aggrieved employees were simply compensated based on their prescheduled hours
7 despite work needs requiring them to work in excess of their prescheduled hours on a near daily
8 basis. For example, Plaintiff estimates that he commenced work prior to 6:00 a.m. nearly every
9 shift that he worked, often around 5:45 a.m. constituting at least 15 minutes worked off-the-clock
10 prior to his hours worked being compensated. Furthermore, Plaintiff estimates that he worked
11 beyond 2:30 p.m., his scheduled stop time, on every single shift that he worked in 2024. Plaintiff
12 estimates that on average, he would work until 2:45 p.m. each of these shifts, and often worked
13 past 3:00 p.m. However, despite Plaintiff and other aggrieved employees working around 30
14 minutes off-the-clock before and after their scheduled shifts as a result of Defendants' practices
15 of only compensating them for their prescheduled hours, Defendants did not ever compensate
16 them for this time necessarily worked, most of which should have been paid at an overtime rate
17 of pay. Finally, as explained below, Plaintiff and other aggrieved employees were instructed by
18 their supervisors and site managers to work through the entirety of their shifts without any time
19 for meal periods, but were not compensated for these hours necessarily worked due to
20 Defendants' "auto-deduct" policy which served to deprive Plaintiff and other aggrieved
21 employees of pay that they were duly entitled to as a consequence of working through their meal
22 periods. Indeed, Defendants would simply falsely manipulate time records to indicate that 30
23 minute meal periods were exercised by Plaintiff and other aggrieved employees, when in reality
24 they were not. As a consequence of Defendants' policies and practices as described above,
25 Plaintiff and other aggrieved employees have been deprived of all minimum wages and overtime
26 wages to which they were duly entitled.
27
28

13. Furthermore, Plaintiff and other aggrieved employees worked overtime hours, but

1 did not receive overtime compensation equal to one and one-half times their regular rates of pay
2 for all overtime hours worked. Upon information and belief, Defendants systematically and
3 intentionally failed to pay overtime compensation due to Plaintiff and other aggrieved employees
4 when they worked off the clock, which as described above amounted to up to an hour per shift
5 worked. Further, when Plaintiff and other aggrieved employees worked overtime, they were not
6 always compensated at the correct regular rate, if at all. As a result, Defendants failed to ensure
7 that Plaintiff and other aggrieved employees were being paid at least the minimum wage for all
8 hours actually worked, and failed to ensure that Plaintiff and other aggrieved employees received
9 proper overtime wages for all overtime hours worked.

10
11 14. Plaintiff and other aggrieved employees were not authorized to take their full
12 legally required 10-minute rest periods, in part due to Defendants' chronic understaffing of its
13 facilities. Indeed, as described above, Plaintiff and other aggrieved employees were made to work
14 through the entirety of their shifts, with the exception of sporadic meal periods, without being
15 afforded all requisite rest periods to which they were duly entitled. Plaintiff estimates that he
16 experienced a rest period violation, whether it be only being authorized to exercise one rest period,
17 or not being authorized to exercise any rest periods at all, on at least 75% of the shifts that he
18 worked. Despite Defendants failures to authorize and permit Plaintiff and other aggrieved
19 employees to exercise all rest periods to which they were entitled, Defendants never provided
20 Plaintiff and other aggrieved employees with an hour of pay at their regular rate for each rest
21 period violation as required by Labor Code § 226.7. Upon information and belief, during at least
22 a portion of the class period, Defendants maintained no payroll code or another mechanism for
23 the payment of rest period premiums in the event Plaintiff and other aggrieved employees were
24 not authorized to take lawful rest periods.

25 15. In addition, Plaintiff and other aggrieved employees were not provided all legally
26 compliant meal periods due to Defendants meal period policies and practices which fail to provide
27 a timely 30-minute duty-free first meal period (i.e. a first meal period commencing before the end
28 of the fifth hour of work). Rather, Plaintiff and other aggrieved employees' meal periods were

frequently i) missed entirely; ii) shortened; iii) not exercised until after the fifth hour worked; and or iv) interrupted by management to discuss work-related matters and attend meetings. Furthermore, to the extent that Plaintiff and other aggrieved employees ever received anything resembling a meal period, they were inherently non-compliant as Defendants did not permit Plaintiff and other aggrieved employees to leave the premises of their job-sites at any point during their shifts. Plaintiff estimates that he did not receive a compliant first meal period, whether it be shortened, missed, or interrupted, on at least 90% of the shifts that he worked. Missed, interrupted or shortened meal periods were an exceedingly frequent occurrence as Plaintiff and other aggrieved employees were made to adhere to strict schedules and deadlines that caused them to be pressured to get back to work as soon as possible after beginning their meal periods, if they were able to take them at all. Furthermore, even on those occasions where Plaintiff and other aggrieved employees did receive meal periods, they were always late, interrupted, and/or on-duty. For the vast majority of his employment, though, Plaintiff was not able to take any time to exercise a meal period whatsoever, instead being made to simply eat whatever snacks and food he had with him while working to meet Defendants unrealistic scheduling demands and deadlines. Indeed, Plaintiff's Operations Manager Mr. John Reynolds specifically and explicitly instructed Plaintiff and other aggrieved employees to work through their meal periods to meet the intense work demands placed upon them. Plaintiff and other aggrieved employees routinely complained about Defendants' meal period practices, both verbally and in writing, however Defendants' practices never changed and they continued with their ongoing unlawful meal period practices. As such, Plaintiff's missed, shortened, late, and on-duty meal periods were a direct result of Defendants' policy/practice. Defendants also failed to provide second meal periods when Plaintiff and other aggrieved employees worked shifts in excess of 10.00 hours. Plaintiff worked in excess of 10 hours during his employment, but he can not recall receiving a second meal period. In addition, on those occasions when Plaintiff and the other aggrieved employees were not provided with all legally compliant meal periods to which they were entitled, Defendants failed to compensate them with the required meal period premiums, as mandated by Labor Code § 226.7.

1 16. Furthermore, Defendants failed to adequately reimburse Plaintiff and other
2 aggrieved employees for all reasonable and necessary work expenditures, including but not
3 limited to, requiring Plaintiff and other aggrieved employees to utilize their personal cell phones
4 on a daily basis to communicate with their managers and supervisors regarding work assignments
5 and complete mandatory trainings. Plaintiff was never provided any reimbursement for the use
6 of his personal cell phone.

7 17. Defendants failed to issue to Plaintiff and other aggrieved employees accurate
8 itemized statements in writing showing (1) gross wages earned, (2) total hours worked by the
9 employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee
10 is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written
11 orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
12 inclusive dates of the period for which the employee is paid, (7) the name of the employee and
13 only the last four digits of his or her social security number or an employee identification number
14 other than a social security number, (8) the name and address of the legal entity that is the
15 employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding
16 number of hours worked at each hourly rate by the employee.

17 18. Defendants have maintained inaccurate payroll records, failed to timely pay all
18 wages owed to employees, and failed to timely pay separating employees at the time of their
19 separation, and issued inaccurate wage statements. This is in part a result of Defendants' failure
20 to accurately compensate Plaintiff and other aggrieved employees for all minimum and overtime
21 wages, and failure to pay premium pay for failing to provide all required meal periods and
22 authorize all required rest periods.

23 19. Defendants violated Labor Code § 204 by failing to pay Plaintiff and other
24 aggrieved employees all wages earned at least twice during each calendar month.

25 20. Defendants failed to meet its obligations to provide paid sick leave to and other
26 aggrieved employees under Labor Code §245.5(b) which requires that employers authorize and
27 permit its employees who worked 30 or more days within a year to accrue paid sick leave, and to
28

1 allow them to exercise paid sick leave on or after their 90th day of employment. Despite meeting
2 all of the statutory requirements for being able to accrue and utilize paid sick leave, Plaintiff and
3 other aggrieved employees were not provided paid sick leave on those occasions where they
4 needed to take a “sick day” in violation of Labor Code §245.5(b).

5 21. Finally, Defendants failed to conform to the requirements of Labor Code § 2810.5
6 by failing to provide Plaintiff and other aggrieved employees written notices, in the language
7 normally used to communicate employment related information to the employees, containing
8 information regarding their: i) rate(s) of pay and the basis thereof; ii) allowances claimed as part
9 of the minimum wage; iii) regular payday designated by the employer; iv) the legal name of the
10 employer; v) the address of the legal entity that is the employer; vi) the telephone number of the
11 employer; vii) identifying information for the employer’s workers’ compensation insurance
12 carrier; and viii) information informing the employee of their right to accrue and use paid sick
13 leave. Despite maintaining an obligation to provide these disclosures to Plaintiff and other
14 aggrieved employees, Defendants failed to do so, in violation of Labor Code § 2810.5.

15 **CLASS ACTION ALLEGATIONS**

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

- 18
- 19 a. The Minimum Wage Class consists of all current and former non-exempt
20 employees of Defendants in California who were subject to Defendants’
21 timekeeping systems and/or practices, during the four years immediately
22 preceding the filing of this lawsuit through the present.
- 23 b. The Overtime Wage Class consists of all current and former non-exempt
24 employees of Defendants in California who worked overtime hours and were
25 subject to Defendants’ timekeeping systems and/or practices, during the four years
26 immediately preceding the filing of this lawsuit through the present
- 27 c. The Rest Period Class consists of all current and former non-exempt employees of
28 Defendants in California who worked at least one shift in excess of 3.5 hours

during the four years immediately preceding the filing of this lawsuit through the present.

d. The Meal Period Class consists of all current and former non-exempt employees of Defendants who performed work in California and: (i) worked at least one shift in excess of 5.0 hours without a meal period of at least 30 minutes in duration commencing prior to the conclusion of the fifth hour of work, and who do not have a corresponding meal period premium payment made for such shifts and/or (ii) worked at least one shift in excess of 10.0 hours while performing work for Defendants in California without a second meal period of at least 30 minutes in duration commencing prior to the conclusion of the tenth hour of work, and who do not have a corresponding meal period premium payment made for such shifts during the four years preceding the filing of this lawsuit through the present.

e. The Wage Statement Class consists of all members of all current and former non-exempt employees of Defendants in California who received a wage statement from Defendants during the one year immediately preceding the filing of this lawsuit through the present.

f. The Waiting Time Class consists of all of Defendants' formerly employed non-exempt employees in California who were subject to Defendants' timekeeping systems and/or practices, during the three years immediately preceding the filing of this lawsuit through the present.

g. The Employee Expense Class consists of all current and former non-exempt employees of Defendants who performed work in California who were not reimbursed for expenses in the performance of their job duties, including but not limited to the utilization of their personal cell phones during the four years immediately preceding the filing of this lawsuit to the present.

23. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is

unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

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

- i. Whether Defendants paid all minimum wages owed for all hours worked to members of the Minimum Wage Class pursuant to Labor Code §§ 118.2, 1194, 1194.2, and 1197;
- ii. Whether Defendants violated the applicable Labor Code provisions, including, but not limited to, §§ 510 and 1194 and The IWC Wage Orders by requiring members of the Overtime Wage Class to perform overtime work and not paying for said work in accordance with the overtime laws of the State of California;
- iii. Whether Defendants' timekeeping policies/practices resulted in the failure to properly compensate members of the Minimum Wage Class;
- iv. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- v. Whether Defendants provided all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- vi. Whether Defendants provided accurate, itemized wage statements to members of the Classes; and
- vii. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of separation from employment were lawful.
- viii. Whether Defendants failed to reimburse members of the Employee Expense Class for business expenditures necessarily incurred in the performance of their duties;

1 25. **Predominance of Common Questions:** Common questions of law and fact
2 predominate over questions that affect only individual members of the Classes. The common
3 questions of law set forth above are numerous and substantial and stem from Defendants' policies
4 and/or practices applicable to each individual class member, such as Defendants' uniform
5 timekeeping policies and practices, meal and rest period policies and practices, wage statement
6 policies and practices, and the policies and practices regarding the timely payment of final wages.
7 As such, the common questions predominate over individual questions concerning each
8 individual class member's showing as to his or her eligibility for recovery or as to the amount of
9 his or her damages.

10 26. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
11 Plaintiff was employed by Defendants as non-exempt employees in California during the
12 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged
13 herein, Plaintiff, like the members of the Classes, was subject to Defendants' meal/rest period and
14 timekeeping policies and practices, was provided inaccurate wage statements, and was not paid
15 all wages earned at the time of his separation of employment.

16 27. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
17 to represent fairly and adequately the interests of the members of the Classes. Moreover,
18 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
19 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
20 and-hour class actions in state and federal courts in the past and are committed to vigorously
21 prosecuting this action on behalf of the members of the Classes.
22

23 28. **Superiority:** The California Labor Code is broadly remedial in nature and serves
24 an important public interest in establishing minimum working conditions and standards in
25 California. These laws and labor standards protect the average working employee from
26 exploitation by employers who have the responsibility to follow the laws and who may seek to
27 take advantage of superior economic and bargaining power in setting onerous terms and
28 conditions of employment. The nature of this action and the format of laws available to Plaintiff

1 and members of the Classes make the class action format a particularly efficient and appropriate
2 procedure to redress the violations alleged herein. If each employee were required to file an
3 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
4 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
5 their vastly superior financial and legal resources. Moreover, requiring each member of the
6 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
7 employees who would be disinclined to file an action against their former and/or current employer
8 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
9 employment. Further, the prosecution of separate actions by the individual class members, even
10 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
11 with respect to the individual class members against Defendants herein; and which would
12 establish potentially incompatible standards of conduct for Defendants; and/or legal
13 determinations with respect to individual class members which would, as a practical matter, be
14 dispositive of the interest of the other class members not parties to adjudications or which would
15 substantially impair or impede the ability of the class members to protect their interests. Further,
16 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
17 individual prosecution considering all of the concomitant costs and expenses attending thereto.
18 As such, the Classes (as defined herein) are maintainable as a Class under § 382 of the Code of
19 Civil Procedure.
20

21 **FIRST CAUSE OF ACTION**

22 **MINIMUM WAGE VIOLATIONS**

23 **(AGAINST ALL DEFENDANTS)**

24 29. Plaintiff re-allege and incorporates by reference all previous paragraphs.

25 30. The IWC Wage Orders, § 4 and California Labor Code §§ 1197 and 1182.12
26 establish the right of employees to be paid minimum wages for all hours worked in amounts set
27 by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been
28 paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance

1 together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal
2 to the unpaid wages and interest accrued thereon. At all relevant times herein, Defendants failed
3 to conform their pay practices to the requirements of the law by failing to pay Plaintiff and the
4 Minimum Wage Class for all hours actually worked including, but not limited to, all hours he was
5 subject to the control of Defendants and/or suffered or permitted to work under the California
6 Labor Code and The IWC Wage Orders.

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

12 32. As a direct and proximate result of Defendants' unlawful conduct as alleged
13 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but
14 not limited to, unpaid wages and lost interest in an amount to be established at trial, and are
15 entitled to recover economic and statutory damages and penalties and other appropriate relief as
16 a result of Defendants' violations of the California Labor Code and The IWC Wage Orders.

17 33. Defendants' practice and uniform administration of corporate policy regarding
18 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
19 the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated
20 damages, including interest thereon, statutory penalties, and attorneys' fees and costs of suit
21 according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and Code of Civil
22 Procedure § 1021.5.

23 **SECOND CAUSE OF ACTION**

24 **FAILURE TO PAY ALL OVERTIME WAGES**

25 **(AGAINST ALL DEFENDANTS)**

26 34. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

27 35. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
28 and 1198, which provide that non-exempt employees are entitled to overtime wages for all

overtime hours worked, and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

36. At all times relevant herein, Defendants were required to properly compensate Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California Labor Code § 1194 and The IWC Wage Orders. The IWC Wage Orders, § 3 requires an employer to pay overtime wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth in the Wage Order.

37. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, and attorneys' fees and costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, The IWC Wage Orders, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

38. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

39. Plaintiff is informed and believes, and based thereon allege, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and members of the Meal Period Class with all legally compliant meal periods in accordance with the mandates of the California Labor Code and The IWC Wage Orders, § 11. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and the Meal Period Class at their respective regular rate of pay, in accordance with California Labor Code §§ 204, 210, 226.7, and 512.

40. As a result, Defendants are responsible for paying premium compensation for meal period violations including interest thereon, as well as statutory penalties, civil penalties, and costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, The IWC Wage Orders, and Civil Code §§ 3287(b) and 3289.

///

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

42. The IWC Wage Orders, § 12 and California Labor Code §§ 226.2, 226.7 and 516 establish the right of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes net rest time for each four (4) hour period worked, or major fraction thereof.

43. As alleged herein, Defendants failed to authorize and permit Plaintiff and members of the Rest Period Class to take all legally compliant rest periods.

44. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid rest period wages and the amount of rest period premiums owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit according to California Labor Code §§ 226.7, 516, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

45. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

46. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of termination of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

47. Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at the time of their separation including, among other things, unpaid and/or underpaid overtime and minimum wages owed, and meal and rest period premium wages. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform

1 policy and practice, Defendants continue to fail to pay members of the Waiting Time Class all
2 earned wages at the end of employment in a timely manner pursuant to the requirements of Labor
3 Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of
4 Labor Code § 203.

5 48. Defendants' willful failure to timely pay Plaintiff and the Waiting Time Class their
6 earned wages upon separation from employment results in a continued payment of wages up to
7 thirty (30) days from the time the wages were due. Therefore, Plaintiff and the Waiting Time
8 Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees
9 and costs of suit.

10 **SIXTH CAUSE OF ACTION**

11 **WAGE STATEMENT VIOLATIONS**

12 **(AGAINST ALL DEFENDANTS)**

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

14 50. Plaintiff is informed and believes, and based thereon allege, that Defendants
15 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
16 and the Wage Statement Class with complete and accurate wage statements reflecting all hours
17 worked along with meal & rest period premiums in violation of Labor Code § 226 et seq.

18 51. Defendants' failures in furnishing Plaintiff and the Wage Statement Class with
19 complete and accurate itemized wage statements resulted in actual injury, as said failures led to,
20 among other things, the non-payment of all minimum and overtime wages, meal and rest period
21 premium wages, and deprived them of the information necessary to identify the discrepancies in
22 Defendants' reported data.

23 52. Defendants' failures create an entitlement to recovery by Plaintiff and the Wage
24 Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226
25 et seq., including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit
26 according to California Labor Code § 226 et seq.

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1 **SEVENTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

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

5 54. Defendants have engaged and continue to engage in unfair and/or unlawful
6 business practices in California in violation of California Business and Professions Code § 17200
7 et seq., by failing to pay Plaintiff and the Classes all minimum and overtime wages, failing to
8 provide all required meal and rest periods, or pay premium payments in lieu thereof, failing to
9 furnish accurate, itemized wage statements, and willfully failing to timely pay Plaintiff and
10 members of the Waiting Time class all final wages due upon separation of employment.

11 55. Defendants' utilization of these unfair and/or unlawful business practices deprived
12 Plaintiff and continues to deprive members of the Classes of compensation to which they are
13 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
14 over Defendants' competitors who have been and/or are currently employing workers and
15 attempting to do so in honest compliance with applicable wage and hour laws.

16 56. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
17 herein, Plaintiff for himself and on behalf of the members of the Classes, seek full restitution of
18 monies, as necessary and according to proof, to restore any and all monies withheld, acquired
19 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

20 57. The acts complained of herein occurred within the last four years immediately
21 preceding the filing of the Complaint in this action.

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

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1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 **(AGAINST ALL DEFENDANTS)**

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

5 60. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
6 states that “an employer shall indemnify his or her employees for all necessary expenditures or
7 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
8 his or her obedience to the directions of the employer...”

9 61. Due to Defendants’ unlawful policy and practice of requiring employees to utilize
10 their personal cellular phones in the performance of their job duties, Defendants have violated
11 Labor Code § 2802.

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

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

18 **NINETH CAUSE OF ACTION**

19 **PRIVATE ATTORNEYS GENERAL ACT**

20 **(AGAINST ALL DEFENDANTS)**

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

22 65. Defendants have committed several Labor Code violations against Plaintiff and
23 other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor
24 Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this
25 representative action against Defendants to recover the civil penalties due to Plaintiff, the
26 members of the Classes, other aggrieved employees, and the State of California according to
27 proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1)
28

1 \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
2 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
3 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
4 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
5 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
6 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
7 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
8 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each
9 subsequent violation per employee per pay period for those violations of the Labor Code for
10 which no civil penalty is specifically provided, based on the following Labor Code Sections:

11 a. Failing to pay minimum wages for all hours worked to Plaintiff, the
12 Minimum Wage Class, and other aggrieved employees in violation of Labor Code §§ 558,
13 1182.12, 1194, 1194.2, 1197, and 1198;

14 b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees
15 all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and
16 1198;

17 c. Failing to provide all legally required meal periods, and failure to pay meal
18 period premium wages, to Plaintiff, the Meal Period Class and other aggrieved employees
19 at the regular rate of compensation in violation of Labor Code §§ 226.7, 512, 558, and
20 1198;

21 d. Failing to authorize and permit all legally required rest periods, and failure
22 to pay rest period premium wages, to Plaintiff, the Rest Period Class, and other aggrieved
23 employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 516,
24 558, and 1198;

25 e. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved
26 employees with complete, accurate, itemized wage statements in violation of Labor Code
27 § 226;
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1 f. Failing to reimburse Plaintiff, the Employee Expense Class, and other
2 aggrieved employees for all necessary work expenses incurred in violation of Labor Code
3 § 2802;

4 g. Failing to timely pay all final wages and compensation earned by Plaintiff,
5 the Waiting Time Class, and other aggrieved employees at the time of separation in
6 violation of Labor Code §§ 201, 202, and 203;

7 h. Failing to pay non-exempt employees all earned wages at least twice
8 during each calendar month in violation of Labor Code § 204;

9 i. Failing to maintain accurate records on behalf of Plaintiff and other
10 aggrieved employees in violation of Labor Code § 1174;

11 j. Failing to provide paid sick leave to Plaintiff and other aggrieved
12 employees in violation of Labor Code § 245.5 (b); and

13 k. Failing to conform to the requirements of Labor Code § 2810.5 by failing
14 to provide Plaintiff and other aggrieved employees with written notices, in the language
15 normally used to communicate employment related information to employees, containing
16 information regarding their: i) rate(s) of pay and the basis thereof; ii) allowances claimed
17 as part of the minimum wage; iii) regular payday designated by the employer; iv) the legal
18 name of the employer; v) the address of the legal entity that is the employer; vi) the
19 telephone number of the employer; vii) identifying information for the employer's
20 workers' compensation insurance carrier; and viii) information informing the employee
21 of their right to accrue and use paid sick leave.
22

23 66. On November 7, 2024, Plaintiff notified Defendants via certified mail, and notified
24 the California Labor and Workforce Development Agency ("LWDA") via its website, of
25 Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for
26 civil penalties under California Labor Code § 2698 et seq. with respect to violations of the
27 California Labor Code identified in Paragraph 65 (a)-(k). Now that sixty-five days have passed
28 from Plaintiff's notifying Defendants and the LWDA of these violations, and the LWDA has not

provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

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

PRAYER

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, 1198 and The IWC Wage Orders § 4(A);
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, 1198 and The IWC Wage Orders § 3(A);
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;
9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code § 226;

1 10. Upon the Seventh Cause of Action, for restitution to Plaintiff of all money and/or
2 property unlawfully acquired by Defendants by means of any acts or practices declared by this
3 Court to be in violation of Business and Professions Code § 17200 *et seq.*;

4 11. Upon the Eighth Cause of Action, for compensatory, consequential, general, and
5 special damages according to proof pursuant to Labor Code § 2802;

6 12. Upon the Ninth Cause of Action, (1) \$100.00 for each initial violation for each
7 failure to pay each employee and \$200 for each subsequent violation or willful or intentional
8 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
9 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
10 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
11 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
12 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
13 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
14 each initial violation and \$200 for each subsequent violation per employee per pay period for the
15 violations of the Labor Code Sections cited in Labor Code § 2699.5;

16 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor
17 Code § 218.6 and Civil Code §§ 3287 and 3289;

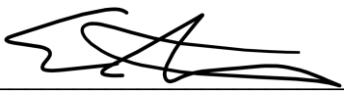
18 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code
19 §226, and Code of Civil Procedure § 1021.5; and

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

21
22 Dated: January 31, 2025

Respectfully submitted,
STANSBURY BROWN LAW, PC

23
24 By:



Daniel J. Brown
Ethan C. Surls
Liana C. Pestana
Attorneys for Plaintiff

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Dated: January 31, 2025

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 2610 ½ Abbot Kinney Blvd. Venice, CA 90291

On January 31, 2025, I served the document listed below on the parties in this action as follows:

I. FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

☐ (BY MAIL) I placed such envelope on the above date, with postage fully prepaid, for deposit in the U.S. Postal Service at my place of business at Venice, California, following the ordinary business practices of my place of business. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mail with the U.S. Postal Service. Under that practice, such correspondence is deposited with the U.S. Postal Service the same day it is collected and processed in the ordinary course of business.

☒ (BY EMAIL or ELECTRONIC TRANSMISSION) By electronically transmitting the document(s) listed above to the email address(es) of the person(s) set forth on the attached service list from the email address assistant@stansburybrownlaw.com. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. Service by e-mail was made pursuant to agreement of the parties, confirmed in writing, or as an additional method of service as a courtesy to the parties or pursuant to Court Order. See Cal. R. Ct. R. 2.260.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 31, 2025, at South Gate, CA.

Laura Romero

Laura Romero

SERVICE LIST

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