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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS**

NICOLAS A. WILENS, an individual, on behalf
of himself, the State of California, as a private
attorney general, and on behalf of all others
similarly situated,

Plaintiff,

v.

GALLO GLASS COMPANY, a Nevada
Corporation; and DOES 1 TO 50,

Defendants.

Case Number: CV-24-010129

**First Amended Class and Representative
Action Complaint For:**

1. Failure to Pay All Minimum Wages,
2. Failure to Pay Split Shift Premiums,
3. Failure to Pay All Overtime Wages,
4. Failure to Provide Rest Periods and Pay Missed Rest Period Premiums,
5. Failure to Provide Meal Periods and Pay Missed Meal Period Premiums,
6. Failure to Maintain Accurate Employment Records,
7. Failure to Pay Wages Timely during Employment,
8. Failure to Pay All Wages Earned and Unpaid at Separation,
9. Failure to Indemnify All Necessary Business Expenditures,
10. Failure to Furnish Accurate Itemized Wage Statements,

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- 11.** Violations of California’s Unfair
Competition Law (Bus. & Prof. Code, §§
17200–17210), and
- 12.** Penalties Pursuant to the Labor Code
Private Attorneys General Act of 2004
 (“PAGA”) for Violations of California
Labor Code Sections 201, 202, 203, 204,
210, 226, 226.3, 226.7, 510, 512, 1174,
1185, 1194, 1194.2, 1197, 1197.1, 1198,
1198.5, 1199, 2802, 2804, and Other
Provisions of the Labor Code.

Demand for Jury Trial

1 Plaintiff Nicolas A. Wilens (“Plaintiff”), on behalf of himself, the State of California, as a
2 private attorney general, and all other similarly situated employees within the State of California,
3 complains and alleges of defendants Gallo Glass Company and Does 1 to 50 (collectively,
4 “Defendants”), and each of them, as follows:

5 **I. INTRODUCTION**

6 1. This is a class action complaint brought pursuant to California Code of Civil Procedure
7 section 382.

8 2. The “Class Period” as used herein, is defined as the period from December 13, 2020 ,
9 and continuing into the present and ongoing. Defendants’ violations of California’s laws as described
10 more fully below have been ongoing throughout the Class Period and are still ongoing.

11 3. Plaintiff brings this class action on behalf of himself and the following class: *All*
12 *individuals who are or were employed by Defendants as non-exempt employees in California during*
13 *the Class Period* (the “Class Members”). (Code Civ. Proc., § 382.)

14 4. Plaintiff brings this action on behalf of himself and the Class Members, as a class action,
15 against Defendants for:

- 16 A. Failure to pay all minimum wages,
- 17 B. Failure to pay split shift premiums,
- 18 C. Failure to pay all overtime wages,
- 19 D. Failure to provide rest periods and pay missed rest period premiums,
- 20 E. Failure to provide meal periods and pay missed meal period premiums,
- 21 F. Failure to maintain accurate employment records,
- 22 G. Failure to pay wages timely during employment,
- 23 H. Failure to pay all wages earned and unpaid at separation,
- 24 I. Failure to indemnify all necessary business expenditures,
- 25 J. Failure to furnish accurate itemized wage statements, and
- 26 K. Violations of California’s Unfair Competition Law (“UCL”) (Bus. & Prof.
27 Code, §§ 17200–17210).

28 5. This action is also a representative action brought pursuant to the California Labor Code

1 Private Attorneys General Act of 2004 (“PAGA”), codified at California Labor Code sections 2698
2 through 2699.6.

3 6. The “PAGA Period” as used herein, is defined as the period from December 13, 2023,
4 and continuing into the present and ongoing.

5 7. This PAGA action is brought on behalf of Plaintiff, the State of California as private
6 attorney general, and on behalf of the following aggrieved employees: *All individuals who are or were*
7 *employed by Defendants as non-exempt employees in California during the PAGA Period* (the
8 “Aggrieved Employees”).

9 8. Plaintiff is informed and believes and thereon alleges that the California Industrial
10 Welfare Commission (“IWC”) Wage Orders applicable to the facts of this case are IWC Wage Orders
11 1-2001, 16-2001, and/or 17-2001 (the “Applicable Wage Orders”) and possibly others that may be
12 applicable. (Cal. Code of Regs., tit. 8, §§ 11010, 11160, 11170.) Plaintiff reserves the right to amend
13 or modify the definition of “Applicable Wage Orders” with greater specificity or add additional IWC
14 Wage Orders if additional applicable wage orders are discovered in litigation.

15 **II. JURISDICTION & VENUE**

16 9. This Court has subject matter jurisdiction over all causes of action asserted herein
17 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure section
18 410.10 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds
19 \$25,000, and because each cause of action asserted arises under the laws of the State of California or
20 is subject to adjudication in the courts of the State of California.

21 10. This Court has personal jurisdiction over Defendants because Defendants have caused
22 injuries in the County of Stanislaus and the State of California through their acts, and by their violation
23 of the California Labor Code and California state common law. Defendants transact millions of dollars
24 of business within the State of California. Defendants own, maintain offices, transact business, have an
25 agent or agents within the County of Stanislaus, and/or otherwise are found within the County of
26 Stanislaus, and Defendants are within the jurisdiction of this Court for purposes of service of process.

27 11. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of the
28 Code of Civil Procedure. Defendants operate within California and do business within Stanislaus

1 County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all of
2 Defendants' employees identified above within Stanislaus County and surrounding counties where
3 Defendants may remotely operate.

4 12. This matter is not appropriate for removal under the Class Action Fairness Act (28
5 U.S.C. § 1332) as the amount in controversy for Plaintiff's and the Class Members' claims, in
6 aggregate, is less than \$5 million. Additionally, all the allegations herein occurred in the State of
7 California. As such, even if the amount in controversy did exceed \$5 million this matter would still not
8 be appropriate for removal under the "local controversy" exception to the Class Action Fairness Act.
9 (28 U.S.C. § 1332, subd. (d)(4)(A).)

10 **III. THE PARTIES**

11 **A. PLAINTIFF**

12 13. At all relevant times, Plaintiff, who is over the age of 18, was and currently is a citizen
13 of California residing in the State of California. Defendants employed Plaintiff as a non-exempt hourly
14 employee in the County of Stanislaus.

15 14. Plaintiff brings this action on behalf of himself and the following class pursuant to
16 section 382 of the Code of Civil Procedure as follows: *All individuals who are or were employed by*
17 *Defendants as non-exempt employees in California during the Class Period* (the "Class Members").

18 15. Plaintiff also brings this action on behalf of himself and the State of California, as a
19 private attorney general, and on behalf of the following group of aggrieved employees: *All individuals*
20 *who are or were employed by Defendants as non-exempt employees in California during the PAGA*
21 *Period* (the "Aggrieved Employees").

22 16. The Class Members and the Aggrieved Employees, at all times pertinent hereto, are or
23 were employees of Defendants during the relevant statutory period.

24 **B. DEFENDANTS**

25 17. Plaintiff is informed and believes and thereon alleges that Defendants were authorized
26 to and doing business in Stanislaus County and is and/or was the legal employer of Plaintiff, the other
27 Aggrieved Employees, and the other Class Members during the applicable statutory periods. Plaintiff,
28 the other Aggrieved Employees, and the other Class Members were, and are, subject to Defendants'

1 policies and/or practices complained of herein and have been deprived of the rights guaranteed to them
2 by: California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1185,
3 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and others that may be applicable;
4 California Business and Professions Code sections 17200 through 17210 (“UCL”); and the Applicable
5 Wage Orders (Cal. Code of Regs., tit. 8, §§ 11010, 11160, 11170).

6 18. Plaintiff is informed and believes, and based thereon alleges, that during the Class
7 Period and PAGA Period, Defendants did (and continue to do) business in the State of California,
8 County of Stanislaus. Defendants’ operations are headquartered in Stanislaus County.

9 19. Plaintiff does not know the true names or capacities, whether individual, partner, or
10 corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said defendants
11 are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this
12 complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and
13 thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were
14 responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff,
15 the other Aggrieved Employees, and the other Class Members to be subject to the unlawful employment
16 practices, wrongs, injuries, and damages complained of herein.

17 20. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
18 herein, Defendants were and/or are the employers of Plaintiff, the other Aggrieved Employees, and the
19 other Class Members. At all times herein mentioned, each of said Defendants participated in the doing
20 of the acts hereinafter alleged to have been done by the named Defendants. Furthermore, the
21 Defendants, and each of them, were the agents, representatives, and employees of each and every one
22 of the other Defendants, and at all times herein mentioned were acting within the course and scope of
23 said agency, representation, and employment. Defendants, and each of them, approved of, condoned,
24 or otherwise ratified every one of the acts or omissions complained of herein.

25 21. Plaintiff is further informed, and believes, and thereon alleges, that at all times
26 mentioned herein, that Defendants, and each of them, are the alter egos of one another and that there
27 existed and now exists a unity of interest and ownership between them such that the individuality and
28 separateness of each of them has ceased. Plaintiff is further informed, and believes, and thereon alleges,

1 that at all times mentioned herein, that Defendants, and each of them, have been and now are mere
2 shells and naked frameworks that their principal uses for the conduct of that Defendant's own business,
3 property, and affairs, for which Defendants, and each of them, have concealed and misrepresented their
4 identities as the entities responsible for their ownership, management, and financial interests.

5 22. Plaintiff is further informed, and believes, and thereon alleges, that at all times
6 mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture,
7 partnership, and common enterprise, and acting within the course and scope of and in pursuance of said
8 joint venture, partnership, and common enterprise. Further, Plaintiff is informed, and believes, and
9 thereon alleges, that all Defendants were joint employers for all purposes of Plaintiff, the other
10 Aggrieved Employees, and the other Class Members.

11 **IV. COMMON FACTS & ALLEGATIONS**

12 23. Plaintiff and the other Class Members (collectively, the "Class Members") are, and were
13 at all relevant times, employed by the Defendants within the State of California.

14 24. Likewise, Plaintiff and the other Aggrieved Employees (collectively, the "Aggrieved
15 Employees") are, and were at all relevant times, employed by the Defendants within the State of
16 California.

17 25. The Class Members and the Aggrieved Employees are, and were, at all relevant times,
18 non-exempt employees for the purposes of minimum wages, split shifts, overtime, rest breaks, meal
19 periods, and the other claims alleged in this complaint.

20 26. Specifically, Plaintiff was employed by Defendants within the statutory Class Period
21 and PAGA Period, working as an hourly, non-exempt furnace tender apprentice for Defendants.
22 Plaintiff's duties included preventative maintenance of furnaces, control and operation of emissions.

23 **A. MINIMUM WAGE VIOLATIONS**

24 27. Labor Code section 1197 requires employees to be paid at least the minimum wage fixed
25 by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code
26 section 1194 entitles "any employee receiving less than the legal minimum wage . . . to recover in a
27 civil action the unpaid balance of the full amount of this minimum wage." Likewise, the Applicable
28 Wage Orders also obligate employers to pay each employee minimum wages for all hours worked.

1 (Cal. Code of Regs., tit. 8, §§ 11010, 11160, 11170.) Labor Code section 1198 makes unlawful the
2 employment of an employee under conditions that the IWC Wage Orders prohibit.

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

7 29. Defendants failed to fully conform their pay practices to the requirements of the law
8 during the relevant statutory periods. The Class Members and the Aggrieved Employees were not
9 compensated for all hours worked including, but not limited to, all hours they were subject to the control
10 of Defendants and/or suffered or permitted to work under the California Labor Code and the Applicable
11 Wage Orders. Among other violations, the Class Members and the Aggrieved Employees were subject
12 to the control of Defendants while off-the-clock and did not receive minimum wage for each hour
13 worked.

14 30. Further, throughout Plaintiff's employment, Defendant failed to pay Plaintiff and the
15 Aggrieved Employee minimum wages for all hours worked. Plaintiff and the Aggrieved Employees
16 were frequently asked to work schedules interrupted by non-paid, non-working periods. For instance,
17 Plaintiff began his morning shift at 6:00 a.m. and generally ended at 3:00 p.m. However, before his
18 ended, Defendant required Plaintiff to clock out early around noon and expected Plaintiff to return later
19 that same evening to complete an evening shift without prior notice. Defendant failed to pay Plaintiff
20 and the Aggrieved Employees for a split shift premium at one hour at the state minimum wage.

21 31. Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that an
22 employer who has failed to pay its employees the legal minimum wage is liable to pay those employees
23 the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages
24 due and interest thereon.

25 32. When employees, such as the Class Members, are not paid for all hours worked under
26 Labor Code section 1194, they are entitled to recover minimum wages for the time which they received
27 no compensation. (See *Sillah v. Command International Security Services* (N.D. Cal. 2015) 154
28 F.Supp.3d 891 [employees suing for failure to pay overtime could recover liquidated damages under

1 Labor Code section 1194.2 if they also showed they were paid less than minimum wage].)

2 33. Labor Code section 1197.1 authorizes employees who are paid less than the minimum
3 wage fixed by an applicable state or local law, or by an order of the IWC, a civil penalty, among other
4 damages, as follows:

5 (1) “For any initial violation that is intentionally committed, one hundred
6 dollars (\$100) for each underpaid employee for each pay period for
7 which the employee is underpaid.”

8 (2) “For each subsequent violation for the same specific offense, two
9 hundred fifty dollars (\$250) for each underpaid employee for each pay
10 period for which the employee is underpaid regardless of whether the
11 initial violation is intentionally committed.” (Lab. Code, § 1197.1, subd.
12 (a).)

13 34. As set forth above, Defendants failed to fully compensate the Class Members and the
14 Aggrieved Employees for all minimum wages. Accordingly, the Class Members are entitled to recover
15 liquidated damages for violations of Labor Code section 1197.1.

16 35. Based upon these same factual allegations, the Class Members are likewise entitled to
17 penalties under Labor Code sections 1199.

18 **B. UNPAID SPLIT SHIFT PREMIUMS**

19 36. Under the Applicable Wage Order, a “split shift” is defined as “a work schedule, which
20 is interrupted by non-paid non-working periods established by the employer, other than bona fide rest
21 or meal periods.” When an employer requires an employee to work a split shift, the employee is entitled
22 to a split shift premium, which is equal to the difference between what the employee earned for the
23 shift and what they would have earned had they been paid the minimum wage for their entire shift plus
24 an extra hour. (Cal. Code of Regs., tit. 8, § 11050, subd. 4(C); *Aleman v. AirTouch Cellular* (2012)
25 209 Cal.App.4th 556, 575–576.) The Applicable Wage Order treats split shift violations as a minimum
26 wage violation. Labor Code sections 1197 and 1198 make the minimum wages set by the IWC
27 enforceable and recoverable in a civil action.
28

1 37. Here, as previously described the Class Members were at times scheduled to work more
2 than one shift in the same day, with an unpaid, non-working break of longer than an hour—and longer
3 than a bona fide meal period—between the shifts. This includes many occasions when the total amount
4 paid to the Class Members was less than the minimum wage for all hours worked plus one hour.
5 Defendants, however, failed to pay the Class Members one hour's pay at the state minimum wage in
6 addition to the minimum wage for the workday.

7 **C. OVERTIME VIOLATIONS**

8 38. Labor Code section 510 requires employers to compensate employees who work more
9 than eight hours in one workday, forty hours in a workweek, and for the first eight hours worked on
10 the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee.
11 (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates employers to compensate
12 employees at no less than twice the regular rate of pay when an employee works more than twelve
13 hours in a day or more than eight hours on the seventh consecutive day of work. (Lab. Code, § 510,
14 subd. (a).) These rules are also reflected in the Applicable Wage Orders.

15 39. In accordance with Labor Code section 1194 and the Applicable Wage Orders, the Class
16 Members and the Aggrieved Employees could not then agree and cannot now agree to work for a lesser
17 wage than the amount provided by Labor Code sections 510 or the Applicable Wage Orders.

18 40. Here, Defendants violated their duty to accurately and completely compensate the Class
19 Members and the Aggrieved Employees for all overtime worked. The Class Members and the
20 Aggrieved Employees periodically worked hours that entitled them to overtime compensation under
21 the law but were not fully compensated for those hours.

22 41. Defendants also had a policy and practice of denying the Aggrieved Employees legally
23 compliant meal breaks, but nevertheless deducting meal break time from the Aggrieved Employees'
24 pay. For instance, Plaintiff and the Aggrieved Employees were instructed by managers to clock out for
25 their meal periods but were expected to continue working to finish their project before being relieved
26 to take a meal period. As a result, the Aggrieved Employees' on-the-clock hours were unlawfully
27 reduced below what was actually worked and, by extension, overtime hours were also reduced below
28 what was actually worked. The Aggrieved Employees were thus periodically shorted the full amount

1 of overtime pay lawfully owed.

2 42. These actions were and are in clear violation of California’s overtime laws as set forth
3 in Labor Code sections 510, 1194, 1199, and the Applicable Wage Orders. (Cal. Code of Regs., tit. 8,
4 §§ 11010, 11160, 11170.) As a result of Defendants’ faulty policies and practices, the Class Members
5 and the Aggrieved Employees were not compensated for all hours worked or paid accurate overtime
6 compensation.

7 **D. REST BREAK VIOLATIONS**

8 43. Pursuant to Labor Code section 226.7 and the Applicable Wage Orders, Defendants
9 were and are required to provide the Class Members and the Aggrieved Employees with compensated,
10 duty-free rest periods of not less than ten minutes for every major fraction of four hours worked. Under
11 the Applicable Wage Orders, an employer must authorize and permit all employees to take ten minute
12 duty free rest periods for every major fraction of four hours worked. (Cal. Code of Regs., tit. 8, §§
13 11010, 11160, 11170.)

14 44. Likewise, Labor Code section 226.7 provides that “[a]n employer shall not require an
15 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,
16 or applicable regulation, standard, or order of the Industrial Welfare Commission” (Lab. Code, §
17 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay their employees one
18 additional hour of pay at the employee’s regular rate for each workday that a “meal or rest or recovery
19 period is not provided.” (Lab. Code, § 226.7, subd. (c).) The “regular rate” for these purposes must
20 factor in all nondiscretionary payments for work performed by the employee, including non-
21 discretionary bonuses, commissions, and other forms of wage payments exceeding the employees’ base
22 hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878.) Thus, the Wage
23 Orders set when and for how long the rest period must take place and the Labor Code establishes that
24 violations of the IWC Wage Orders are unlawful and sets forth the premium pay employer must pay
25 their employees when employers fail to provide rest periods.

26 45. The California Supreme Court has held that, during required rest periods, “employers
27 must relieve their employees of all duties and relinquish any control over how employees spend their
28 break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.) Relinquishing

1 control over employees during rest periods requires that employees be “free to leave the employer’s
2 premises” and be “permitted to attend to personal business.” (*Id.* at p. 275.) The *Brinker* Court
3 explained in the context of rest breaks that employer liability attaches from adopting an unlawful
4 policy:

5 “An employer is required to authorize and permit the amount of rest break time
6 called for under the wage order for its industry. If it does not—if, for example,
7 it adopts a uniform policy authorizing and permitting only one rest break for
8 employees working a seven-hour shift when two are required—it has violated
9 the wage order and is liable.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53
10 Cal.4th 1004, 1033.)

11 46. Here, due to the demands of the job, Plaintiff was frequently required to forego his rest
12 periods in order to complete his daily projects and those that he was able to take were often interrupted
13 by management inquiring about project details and therefore *on-duty*. Moreover, because Plaintiff
14 typically worked hours significantly longer than 8 hours (as described above), Plaintiff was not
15 authorized or permitted first or second, or third rest periods, where appropriate.

16 47. Further, Defendants periodically did not permit the Class Members and the Aggrieved
17 Employees to take compliant duty-free rest breaks, free from Defendants’ control as required by Labor
18 Code section 226.7, the Applicable Wage Orders, and applicable precedent. (See *Augustus v. ABM*
19 *Security Services, Inc.* (2016) 2 Cal.5th 257, 269 [concluding that “during rest periods employers must
20 relieve employees of all duties and relinquish control over how employees spend their time.”].) At all
21 relevant times, the Class Members and the Aggrieved Employees were periodically not provided with
22 legally-compliant and timely rest periods of at least ten minutes for each four hour work period, or
23 major fraction thereof due to Defendants’ unlawful rest period policies/practices. The Class Members
24 and the Aggrieved Employees were often expected and required to continue working through rest
25 periods to meet the expectations Defendants and finish the workday. In some cases when the Class
26 Members and the Aggrieved Employees worked more than ten hours in a shift, Defendants failed to
27 authorize and/or permit a third mandated rest period. As a result, the Class Members and the Aggrieved
28 Employees were periodically unable to take compliant rest periods.

1 48. In such cases where Defendants did not offer the Class Members and the Aggrieved
2 Employees the opportunity to receive a compliant off-duty rest period, “the court may not conclude
3 employees voluntarily chose to skip those breaks.” (*Alberts v. Aurora Behavioral Health Care* (2015)
4 241 Cal.App.4th 388, 410 (2015) [“If an employer fails to provide legally compliant meal or rest
5 breaks, the court may not conclude employees voluntarily chose to skip those breaks.”]; *Brinker Rest.*
6 *Corp. v. Superior Court, supra*, 53 Cal.4th at p. 1033 [“No issue of waiver ever arises for a rest break
7 that was required by law but never authorized; if a break is not authorized, an employee has no
8 opportunity to decline to take it.”].)

9 49. In addition to failing to authorize and permit compliant rest periods, the Class Members
10 and the Aggrieved Employees were not compensated with one hour’s worth of pay at their regular rate
11 of compensation when they were not provided with a compliant rest period in accordance with Labor
12 Code section 226.7, subdivision (c). Thus, Defendants have violated Labor Code section 226.7 and the
13 Applicable Wage Orders.

14 50. Based on the foregoing, Plaintiff seeks to recover, on behalf of himself and other non-
15 exempt employees, rest period premiums and penalties.

16 **E. MEAL BREAK VIOLATIONS**

17 51. Labor Code section 512 and the Applicable Wage Orders require employers to provide
18 employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of
19 work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for a work period of
20 more than five hours per day without providing the employee with a meal period of not less than 30
21 minutes”]; Cal. Code of Regs., tit. 8, §§ 11010, 11160, 11170 [“No employer shall employ any
22 person for a work period of more than five (5) hours without a meal period of not less than 30
23 minutes”].) Additionally, an employee who works more than ten hours per day is entitled to
24 receive a second thirty-minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a)
25 [“An employer shall not employ an employee for a work period of more than 10 hours per day without
26 providing the employee with a second meal period of not less than 30 minutes”].)

27 52. “An on-duty meal period is permitted only when the nature of the work prevents an
28 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal

1 break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement must
2 include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the California
3 Department of Industrial Relations, Division of Labor Standards Enforcement (“DLSE”) and courts
4 have “found that the nature of the work exception applies: (1) where the work has some particular
5 external force that requires the employee to be on duty at all times, and (2) where the employee is the
6 sole employee of a particular employer.” (*Id.* at p. 945, internal quotation marks omitted; *Abdullah v.*
7 *U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is the employer’s obligation
8 to determine whether the nature of the work prevents an employee from being relieved before requiring
9 an employee to take an on-duty meal period.” (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at
10 p. 946.)

11 53. Here, due to the demands of the job, Plaintiff was regularly required to forego his meal
12 periods, and those that he was able to take were often interrupted and therefore *on-duty*. Despite missing
13 his meal periods, Plaintiff’s manager expected him to clock out and deducted a meal period instead of
14 providing a meal period premium. Moreover, although Plaintiff typically worked shifts in excess of 10
15 hours (as described above), Defendant failed to provide Plaintiff with required second meal periods.
16 Further, meal periods that were provided were typically late.

17 54. The Class Members and the Aggrieved Employees were never asked to sign any
18 enforceable document agreeing to an on-duty meal period. Moreover, nothing in the nature of their
19 work involved the kind of “external force” that might justify on-duty meal breaks. (*Lubin v. The*
20 *Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 945.) Nevertheless, Defendants periodically did not
21 provide compliant off-duty meal periods within the first five hours of work for the Class Members and
22 the Aggrieved Employees.

23 55. As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v.*
24 *Superior Court* (2012) 53 Cal.4th 1004, 1035 [“The IWC’s wage orders have long made a meal period’s
25 duty-free nature its defining characteristic.”].) Relinquishing control over employees during meal
26 periods requires that employees be “free to leave the employer’s premises” and be “permitted to attend
27 to personal business.” (*Augustus v. ABM Security Services, Inc.*, *supra*, 2 Cal.5th at p. 275.) Under
28 Labor Code section 512, if an employer maintains a uniform policy that does not authorize and permit

1 the amount of meal time called for under the law (as specified in the Labor Code and/or applicable
2 IWC Wage Order), “it has violated the wage order and is liable.” (*Brinker Restaurant Corp. v. Superior*
3 *Court, supra*, 53 Cal.4th at p. 1033.)

4 56. During the applicable statutory periods here, the Class Members and the Aggrieved
5 Employees were periodically denied legally-compliant and timely off-duty meal periods of at least
6 thirty minutes due to Defendants’ unlawful meal period policy and practices. As a result of Defendants’
7 uniform meal period policies and practices, the Class Members and the Aggrieved Employees were
8 often not permitted to take compliant first meal periods before the end of the fifth hour of work. The
9 Class Members and the Aggrieved Employees were also periodically not permitted to take second meal
10 periods for shifts in excess of ten hours. Defendants thus violated Labor Code section 512 and the
11 Applicable Wage Orders by failing to advise, authorize, or permit the Class Members and the
12 Aggrieved Employees to receive thirty-minute, off-duty meal periods within the first five hours of their
13 shifts.

14 57. Labor Code section 226.7 provides that “[a]n employer shall not require an employee
15 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
16 applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab. Code, § 226.7,
17 subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage Orders further obligate
18 employers to pay employees one additional hour of pay at the employee’s regular rate of compensation
19 for each workday that the meal period is not provided. (Lab. Code, § 226.7, subd. (c); Cal. Code of
20 Regs., tit. 8, §§ 11010, 11160, 11170 [“If an employer fails to provide an employee a meal period in
21 accordance with the applicable provisions of this order, the employer shall pay the employee one (1)
22 hour of pay at the employee’s regular rate of compensation for each workday that the meal period is
23 not provided.”].) The “regular rate” for these purposes must factor in all nondiscretionary payments for
24 work performed by the employee, including non-discretionary bonuses, commissions, and other forms
25 of wage payments exceeding the employees’ base hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC*
26 (2021) 11 Cal.5th 858, 878.)

27 58. Accordingly, for each day that the Class Members and the Aggrieved Employees did
28 not receive compliant meal periods, they were and are entitled to receive meal period premiums

1 pursuant to Labor Code section 226.7 and the Applicable Wage Orders. Defendants, however, failed
2 to pay the Class Members and the Aggrieved Employees applicable meal period premiums for many
3 workdays that the employees did not receive a compliant meal period. Thus, Defendants have violated
4 Labor Code section 226.7 and the Applicable Wage Orders.

5 59. Based on the foregoing, Plaintiff seeks to recover, on behalf of himself and other non-
6 exempt employees, meal period premiums and penalties.

7 **F. UNTIMELY WAGES DURING EMPLOYMENT**

8 60. Labor Code section 204 expressly requires employers who pay employees on a weekly,
9 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the
10 close of the payroll period.” Labor Code section 210, subdivision (a), makes employers who violate
11 Labor Code section 204 subject to a penalty of:

12 “(1) For any initial violation, one hundred dollars (\$100) for each failure to
13 pay each employee.

14 “(2) For each subsequent violation, or any willful or intentional violation, two
15 hundred dollars (\$200) for each failure to pay each employee, plus 25
16 percent of the amount unlawfully withheld.” (Lab. Code, § 210, subd.
17 (a).)

18 61. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and
19 entirely independent and apart from, any other penalty provided in this article” (Lab. Code, § 210,
20 subd. (a).)

21 62. Due to Defendants’ failure to pay the Class Members and the Aggrieved Employees the
22 wages described above, along with rest and meal break premiums, Defendants failed to timely pay the
23 Class Members and the Aggrieved Employees within seven calendar days following the close of payroll
24 in accordance with Labor Code section 204 on a regular and consistent basis. (See *Parson v. Golden*
25 *State FC, LLC* (N.D. Cal., May 2, 2016, No. 16-CV-00405-JST) 2016 WL 1734010, at p. *3–5, 2016
26 U.S. Dist. LEXIS 58299 [finding that a failure to pay rest period premiums can support claims under
27 Labor Code sections 203 and 204].)
28

1 **G. UNTIMELY WAGES AT SEPARATION**

2 63. Labor Code section 203 provides “if an employer willfully fails to pay . . . any wages
3 of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty”
4 for up to thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) As a result
5 of Defendants’ failure to pay the Class Members and the Aggrieved Employees for the wages described
6 above, along with rest and meal break premiums, Defendants violated and continue to violate Labor
7 Code section 203.

8 64. Due to Defendants’ faulty pay policies, those Class Members and Aggrieved Employees
9 whose employment with Defendants concluded were not compensated for each and every hour worked
10 at the appropriate rate. Defendants have failed to pay formerly-employed Class Members and
11 Aggrieved Employees whose sums were certain at the time of termination within at least seventy-two
12 hours of their resignation and have failed to pay those sums for thirty days thereafter.

13 **H. FAILURE TO REIMBURSE BUSINESS EXPENSES**

14 65. At all relevant times herein, Defendants were subject to Labor Code section 2802, which
15 states that “an employer shall indemnify his or her employees for all necessary expenditures or losses
16 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her
17 obedience to the directions of the employer.” The purpose of this section is to “prevent employers from
18 passing along their operating expenses onto their employees.” (*Gattuso v. Harte-Hanks Shoppers, Inc.*
19 (2007) 42 Cal.4th 554, 562.)

20 66. At all relevant times herein, Defendants were subject to Labor Code section 2804, which
21 states that “any contract or agreement, express or implied, made by any employee to waive the benefits
22 of this article or any part thereof, is null and void, and this article shall not deprive any employee or his
23 personal representative of any right or remedy to which he is entitled under the laws of this State.”

24 67. Thus, the Class Members and the Aggrieved Employees were and are entitled to
25 reimbursement for the expenses they incurred during the course of their duties. The duty to reimburse
26 even extends to the use of equipment the employee may already own and would be required to pay for
27 anyway. (*Cochran v. Schwan’s Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 [“The threshold
28 question in this case is this: Does an employer always have to reimburse an employee for the reasonable

1 expense of the mandatory use of a personal cell phone, or is the reimbursement obligation limited to
2 the situation in which the employee incurred an extra expense that he or she would not have otherwise
3 incurred absent the job? The answer is that reimbursement is always required. Otherwise, the employer
4 would receive a windfall because it would be passing its operating expenses on to the employee.”].)

5 68. Here, Defendants expected Plaintiff and the Class Members to document damages,
6 readings and provide proof of issues with photographs taken with their personal cell phones. However,
7 Defendants failed to fully reimburse the Class Members and the Aggrieved Employees for necessary
8 expenditures incurred as a direct consequence and requirement of performing their job duties, including
9 the costs associated with their personal cell phone they required to perform their work. Consequently,
10 Defendants failed to comply with Labor Code section 2802.

11 **I. WAGE STATEMENT VIOLATIONS**

12 69. Defendants also failed to provide accurate itemized wage statements in accordance with
13 Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226, subdivision
14 (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
15 statement in writing showing:

- 16 (1) The gross wages earned;
- 17 (2) The total hours worked by the employee;
- 18 (3) The number of piece-rate units earned and any applicable piece rate if
19 the employee is paid on a piece rate basis;
- 20 (4) All deductions, provided that all deductions made on written orders of
21 the employee may be aggregated and shown as one item;
- 22 (5) The net wages earned;
- 23 (6) The inclusive dates of the period for which the employee is paid;
- 24 (7) The name of the employee and only the last four digits of his or her social
25 security number or an employee identification number other than a social
26 security number;
- 27 (8) The name and address of the legal entity that is the employer; and
28

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

4 70. Due to Defendants' failure to pay the Class Members and the Aggrieved Employees
5 properly as described above, the wage statements issued do not indicate the correct amount of gross
6 wages earned, total hours worked, or the net wages earned, or the applicable hourly rates in effect
7 during the pay period and the corresponding number of hours worked at each hourly rate. Thus,
8 Defendants have violated Labor Code section 226, subdivisions (a)(1), (2), (5), and (9).

9 71. In addition to Labor Code section 226, subdivision (a), Defendants also knowingly and
10 intentionally failed to provide the Class Members and the Aggrieved Employees with accurate itemized
11 wage statements in violation of Labor Code section 226, subdivision (e). Defendants knew that they
12 were not providing the Class Members and the Aggrieved Employees with wage statements required
13 by California law but nevertheless failed to correct their unlawful practices and policies. (See *Garnett*
14 *v. ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d 1121, 1134 [finding the defendant knowingly and
15 intentionally violated Labor Code section 226 because the "[d]efendant knew that it was not providing
16 total hours worked to plaintiff or other employees paid on commission" even though it believed that
17 employees paid solely on commission or commission and salary "are exempt and therefore we do not
18 record hours on a wage statement."].)

19 **J. RECORDKEEPING VIOLATIONS**

20 72. Labor Code section 226, subdivision (a), requires employers to keep an accurate record
21 of, among other things, all hours worked by employees. Labor Code section 226.3 provides, in pertinent
22 part, as follows:

23 "Any employer who violates subdivision (a) of Section 226 shall be subject to a
24 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per
25 violation in an initial citation and one thousand dollars (\$1,000) per employee
26 for each violation in a subsequent citation, for which the employer fails to
27 provide the employee a wage deduction statement or fails to keep the records
28 required in subdivision (a) of Section 226. The civil penalties provided for in

1 this section are in addition to any other penalty provided by law.” (Lab. Code, §
2 226.3, emphasis added.)

3 73. Likewise, Labor Code section 1174, subdivision (d), requires every employer, including
4 Defendants, to:

5 “Keep, at a central location in the state or at the plants or establishments at which
6 employees are employed, payroll records showing the hours worked daily by
7 and the wages paid to, and the number of piece-rate units earned by and any
8 applicable piece rate paid to, employees employed at the respective plants or
9 establishments. These records shall be kept in accordance with rules established
10 for this purpose by the commission, but in any case shall be kept on file for not
11 less than three years. An employer shall not prohibit an employee from
12 maintaining a personal record of hours worked, or, if paid on a piece-rate basis,
13 piece-rate units earned.” (Lab. Code, § 1174, subd. (d), emphasis added.)

14 74. As explained in detail above, Defendants failed to provide the Class Members and the
15 Aggrieved Employees with accurate itemized wage statements. Defendants did so, in part, because they
16 failed to accurately track hours worked by the Class Members and the Aggrieved Employees.
17 Defendants have thus failed to keep accurate records of the “total hours worked by the employee[s]”
18 in violation of Labor Code section 226, subdivision (a), and are therefore subject to the penalties
19 provided by Labor Code section 226.3. These penalties are “in addition to any other penalty provided
20 by law.” (Lab. Code, § 226.3.)

21 75. The failure to accurately track hours worked also resulted in a failure of Defendants to
22 keep a record of all “payroll records showing the hours worked daily by” Defendants’ employees,
23 including Plaintiff and the other Class Members, in violation of Labor Code section 1174, subdivision
24 (d).

25 **V. CLASS ACTION ALLEGATIONS**

26 76. As mentioned above, Plaintiff brings this action on behalf of himself and the Class
27 Members pursuant to section 382 of the Code of Civil Procedure.

28 77. **Numerosity/Ascertainability:** The Class Members are so numerous that joinder of all

1 members would be unfeasible and not practicable. The membership of the class is unknown to Plaintiff
2 at this time; however, it is estimated that the number of Class Members is greater than 100 individuals.
3 The identity of such membership is readily ascertainable via inspection of Defendants' employment
4 records.

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

9 A. Whether Defendants' pay policies/practices resulted in a failure to pay the Class
10 Members for all hours worked, including all minimum wages;

11 B. Whether Defendants' pay policies/practices resulted in a failure to pay the Class
12 Members all split shift premiums lawfully owed;

13 C. Whether Defendants' pay policies/practices resulted in a failure to pay the Class
14 Members for all required overtime wages at the Class Members' regular rate of pay;

15 D. Whether Defendants' rest period policies and practices afforded legally
16 compliant rest periods or compensation in lieu thereof;

17 E. Whether Defendants' meal period policies and practices afforded legally
18 compliant meal periods or compensation in lieu thereof;

19 F. Whether Defendants maintained accurate employment records;

20 G. Whether Defendants timely paid all wages during employment;

21 H. Whether Defendants timely paid all wages earned and unpaid at separation;

22 I. Whether Defendants indemnified their employees for all necessary business
23 expenditures;

24 J. Whether Defendants furnished legally-compliant wage statements to the Class
25 Members pursuant to Labor Code section 226; and

26 K. Whether Defendants' violations of the Labor Code and the Applicable Wage
27 Orders amounted to a violation of California's UCL.
28

1 79. **Predominance of Common Questions:** Common questions of law and fact
2 predominate over questions that affect only individual Class Members. The common questions of law
3 set forth above are numerous and substantial and stem from Defendants' uniform policies and practices
4 applicable to each individual class member, such as Defendants' uniform policy and practice of failing
5 to pay for all hours worked, Defendants' uniform policies and practices which failed to provide
6 compliant rest periods, Defendants' uniform policies and practices which failed to provide compliant
7 meal periods, Defendants' failure to provide accurate itemized wage statements, and others. As such,
8 the common questions predominate over individual questions concerning each individual class
9 member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

10 80. **Typicality:** The claims of Plaintiff are typical of the claims of the Class Members
11 because Plaintiff was employed by Defendants as a non-exempt employee in California during the
12 statute(s) of limitation applicable to each cause of action pleaded in this complaint. As alleged herein,
13 Plaintiff, like the other Class Members, was deprived of minimum, regular, and overtime wages
14 because of Defendants' unlawful timekeeping policies and practices, was deprived of rest periods and
15 premium wages in lieu thereof, was deprived of meal periods and premium wages in lieu thereof, was
16 subject to Defendants' uniform rest period policies and practices, was subject to Defendants' uniform
17 meal period policies and practices, was not provided accurate itemized wage statements, was not paid
18 all wages in full and on time, , and was subject to other similar policies and practices to which the Class
19 Members were subject.

20 81. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
21 represent fairly and adequately the interests of the Class Members. Moreover, Plaintiff's attorneys are
22 ready, willing, and able to fully and adequately represent the Class Members and Plaintiff. Plaintiff's
23 attorneys have prosecuted numerous wage-and-hour class actions in state and federal court in the past
24 and are committed to vigorously prosecuting this action on behalf of the Class Members.

25 82. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
26 important public interest in establishing minimum working conditions and standards in California.
27 These laws and labor standards protect the average working employee from exploitation by employers
28 who have the responsibility to follow the laws and who may seek to take advantage of superior

1 economic and bargaining power in setting onerous terms and conditions of employment. The nature of
2 this action and the format of laws available to Plaintiff and the Class Members make the class action
3 format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each
4 employee were required to file an individual lawsuit, Defendants would necessarily gain an
5 unconscionable advantage since they would be able to exploit and overwhelm the limited resources of
6 each individual plaintiff with their vastly superior financial and legal resources.

7 83. Moreover, requiring each Class Member to pursue an individual remedy would also
8 discourage the assertion of lawful claims by employees who would be disinclined to file an action
9 against their former or current employer for real and justifiable fear of retaliation and permanent
10 damages to their careers at subsequent employment. Further, the prosecution of separate actions by the
11 individual Class Members, even if possible, would create a substantial risk of inconsistent or varying
12 verdicts or adjudications with respect to the individual Class Members against Defendants herein, and
13 which would establish potentially incompatible standards of conduct for Defendants or legal
14 determinations with respect to individual Class Members which would, as a practical matter, be
15 dispositive of the interest of the other Class Members not parties to adjudications or which would
16 substantially impair or impede the ability of the Class Members to protect their interests.

17 84. Further, the claims of the individual Class Members are not sufficiently large to warrant
18 vigorous individual prosecution considering the concomitant costs and expenses attending thereto. As
19 such, the Class Members identified above are maintainable as a class under section 382 of the Code of
20 Civil Procedure.

21 **VI. EXHAUSTION OF REMEDIES**

22 85. Plaintiff has fully and completely exhausted administrative remedies under PAGA prior
23 to proceeding with the PAGA claims stated in this complaint. Plaintiff filed a PAGA notice online with
24 the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified mail to Defendants
25 setting forth the facts and theories of the violations alleged against Defendants, as prescribed by PAGA.
26 (Lab. Code, §§ 2698–2699.6.)

27 86. As required by PAGA, Plaintiff submitted the \$75.00 filing fee with the LWDA by
28 regular mail. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), no notice was received by

1 Plaintiff from the LWDA evidencing its intention to investigate within sixty-five calendar days of the
2 postmark date of the PAGA notice. Plaintiff is therefore entitled to commence and proceed with a civil
3 action pursuant to Labor Code section 2699.

4 **VII. CAUSES OF ACTION**

5 **First Cause of Action**

6 *Failure to Pay All Minimum Wages*

7 *(Against All Defendants)*

8 87. Plaintiff realleges and incorporates by reference all previous paragraphs.

9 88. Section 4 of the Applicable Wage Orders and Labor Code section 1197 establish the
10 right of employees to be paid minimum wages for all hours worked, in amounts set by state law. (Lab.
11 Code, § 1197; Cal. Code of Regs., tit. 8, §§ 11010, 11160, 11170.) Labor Code sections 1194,
12 subdivision (a), and 1194.2, subdivision (a), provide that an employee who has not been paid the legal
13 minimum wage as required by Labor Code section 1197 may recover the unpaid balance, together with
14 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages
15 and interest accrued thereon.

16 89. Here, Defendants failed to fully conform their pay practices to the requirements of the
17 law during the relevant statutory periods. Plaintiff and the other Class Members were not compensated
18 for all hours worked including, but not limited to, all hours they were subject to the control of
19 Defendants and/or suffered or permitted to work under the Labor Code and the Applicable Wage
20 Orders.

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

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

1 economic and statutory damages and penalties and other appropriate relief because of Defendants’
2 violations of the Labor Code and Applicable Wage Orders.

3 92. Defendants’ practices and policies regarding illegal employee compensation are
4 unlawful and create an entitlement to recovery by Plaintiff and the other Class Members in a civil
5 action for the unpaid amount of minimum wages, liquidated damages, including interest thereon,
6 statutory penalties, attorneys’ fees, and costs of suit according to Labor Code sections 204, 218.5, 1194,
7 1194.2, 1197, and 1198, and Code of Civil Procedure section 1021.5.

8 **Second Cause of Action**

9 *Failure to Pay Split Shift Premiums*

10 *(Against All Defendants)*

11 93. Plaintiff realleges and incorporates by reference all previous paragraphs.

12 94. The Applicable Wage Order defines “split shifts” as including any work schedule that
13 is interrupted by unpaid nonworking periods established by the employer, other than bona fide rest or
14 meal periods. Subdivision 4(C) requires that “[w]hen an employee works a split shift, one (1) hour’s
15 pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except
16 when the employee resides at the place of employment.” (Cal. Code of Regs., tit. 8, § 11050, subd.
17 4(C).) The split shift premium required by the Applicable Wage Order effectively increases the
18 applicable minimum wage on split shifts. (*Aleman v. AirTouch Cellular* (2012) 209 Cal.App.4th 556,
19 575.) Labor Code sections 1197 and 1198 make the minimum wages set by the IWC enforceable and
20 recoverable in a civil action.

21 95. As explained above, Defendants routinely required employees, including Plaintiff and
22 the other Class Members, to work multiple shifts in the same day with a gap in the period of work
23 longer than one hour. Defendants, however, failed to pay these employees wages that were at least the
24 minimum wage plus one hour. As a result of the wrongful and unlawful acts of Defendants alleged
25 herein, Plaintiff and the other Class Members have been deprived of split shift premium pay in amounts
26 to be determined, and are entitled to recovery of said amounts according to proof, interest thereon,
27 injunctive relief, attorneys’ fees, and costs.

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1 right of employees to be provided with a rest period of at least ten minutes for each four hour period
2 worked, or major fraction thereof. (See Cal. Code of Regs., tit. 8, §§ 11010, 11160, 11170.)

3 101. Due to Defendants' unlawful rest period policies and practices described in detail above,
4 Defendants did not authorize and permit Plaintiff and the other Class Members to take all rest periods
5 to which they were legally entitled. Despite Defendants' violations, Defendants have not paid an
6 additional hour of pay to Plaintiff and the other Class Members at their respective regular rates of pay
7 for each violation, in accordance with California Labor Code section 226.7.

8 102. The foregoing violations create an entitlement to recovery by Plaintiff and the other
9 Class Members in a civil action for the unpaid amount of rest period premiums owing, including interest
10 thereon, statutory penalties, and costs of suit pursuant to the Applicable Wage Orders, and California
11 Labor Code section 226.7.

12 **Fifth Cause of Action**

13 *Failure to Provide Meal Periods and Pay Missed Meal Period Premiums*

14 *(Against All Defendants)*

15 103. Plaintiff realleges and incorporates by reference all previous paragraphs.

16 104. Plaintiff is informed and believes and thereon alleges, that Defendants failed in their
17 affirmative obligation to provide their hourly non-exempt employees, including Plaintiff and the other
18 Class Members, with all required meal periods in accordance with the mandates of the Labor Code and
19 the Applicable Wage Orders, for the reasons set forth herein above. Despite Defendants' violations,
20 Defendants have not paid an additional hour of pay to Plaintiff and the other Class Members at their
21 respective regular rates of pay for each violation, in accordance with California Labor Code section
22 226.7.

23 105. As a result, Defendants are responsible for paying premium compensation for meal
24 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the
25 Applicable Wage Orders and Labor Code sections 226.7 and 512, and Civil Code sections 3287,
26 subdivision (b), and 3289. (See Cal. Code of Regs., tit. 8, §§ 11010, 11160, 11170.)

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1 **Sixth Cause of Action**

2 *Failure to Maintain Accurate Employment Records*

3 *(Against All Defendants)*

4 106. Plaintiff realleges and incorporates by reference all previous paragraphs.

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

10 108. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to
11 maintain accurate and complete records.

12 109. Defendant has intentionally and willfully failed to keep accurate and complete records
13 showing the hours worked daily and wages paid to Plaintiff and the other Class Members. Thus,
14 Plaintiff and the other Class Members have been denied their legal right and protected interest in having
15 available at a central location at the plant or establishment where they are employed, accurate and
16 complete payroll records showing the hours worked daily by, and the wages paid to, employees at those
17 respective locations pursuant to Labor Code 1174.

18 **Seventh Cause of Action**

19 *Failure to Pay Wages Timely during Employment*

20 *(Against All Defendants)*

21 110. Plaintiff realleges and incorporates by reference all previous paragraphs.

22 111. Labor Code section 200 provides that "wages" include all amounts for labor performed
23 by employees of every description, whether the amount is fixed or ascertained by the standard of time,
24 task, pieces, commission basis, or other method of calculation. Labor Code section 204 states that all
25 wages earned by any person in any employment are payable twice during the calendar month and must
26 be paid not more than seven days following the close of the period when the wages were earned. Labor
27 Code section 210, subdivision (a), makes employers who violate Labor Code section 204 subject to a
28 penalty of \$100 for any initial failure to timely pay each employee's full wages and \$200 for each

1 subsequent violation, plus 25% of the amount unlawfully withheld.

2 112. Labor Code section 216 establishes that it is a misdemeanor for any person, with regards
3 to wages due, to “falsely deny the amount or validity thereof, or that the same is due, with intent to
4 secure himself, his employer or other person, any discount upon such indebtedness, or with intent to
5 annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due.”

6 113. Defendants as a matter of established company policy and procedure in the State of
7 California, scheduled, required, suffered, and/or permitted Plaintiff and the other Class Members, to
8 work without full compensation, to work without legally-compliant off-duty meal periods, to work
9 without legally-compliant off-duty rest periods, and thereby failed to fully pay Plaintiff and the other
10 Class Members within seven days of the close of payroll, as required by law.

11 114. Defendants, as a matter of established company policy and procedure in the State of
12 California, falsely deny they owe Plaintiff and the other Class Members these wages, with the intent of
13 securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress, hinder, delay,
14 and/or defraud Plaintiff and the other Class Members.

15 115. Defendants’ pattern, practice, and uniform administration of its corporate policy of
16 illegally denying employees compensation, as described herein, is unlawful and entitles Plaintiff and
17 the other Class Members to recover, pursuant to Labor Code section 218, the unpaid balance of the
18 compensation owed to them in a civil action and any applicable penalties, attorney fees, and interest
19 owed to them pursuant to Labor Code sections 210 and 218.5.

20 **Eighth Cause of Action**

21 *Failure to Pay All Wages Earned and Unpaid at Separation*

22 *(Against All Defendants)*

23 116. Plaintiff realleges and incorporates by reference all previous paragraphs.

24 117. The actionable period for this cause of action is three years prior to the filing of this
25 complaint through the present, and ongoing until the violations are corrected or the class is certified.
26 (*Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, 1395; *Murphy v. Kenneth Cole Productions,*
27 *Inc.* (2007) 40 Cal.4th 1094, 1109; Code Civ. Proc., § 338, subd. (a).) Labor Code sections 201 and
28 202 of the California Labor Code require Defendants to pay all compensation due and owing to its

1 former employees (including the formerly-employed Class Members) during the actionable period for
2 this cause of action at or around the time that their employment is or was terminated, or ended.

3 118. Section 203 of the Labor Code provides that if an employer willfully fails to pay
4 compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the
5 employer is liable for penalties in the form of continued compensation up to thirty workdays.

6 119. Due to Defendants' faulty pay policies, those Class Members whose employment with
7 Defendants has concluded were not compensated for each and every hour worked at the appropriate
8 rate. Defendants have willfully failed to pay those formerly-employed Class Members whose sums
9 were certain at the time of termination within seventy-two hours of their resignation and have failed to
10 pay those sums for thirty days thereafter as required by Labor Code sections 201 through 203.

11 120. As a result, Defendants are liable to the formerly-employed Class Members for waiting
12 time penalties amounting to thirty days wages for the formerly-employed Class Members pursuant to
13 Labor Code section 203. (See, e.g., DLSE Manual, § 4.3.4 [failure to pay any sort of wages due upon
14 termination entitles an employee to recover waiting time penalties].)

15 **Ninth Cause of Action**

16 *Failure to Indemnify All Necessary Business Expenditures*

17 *(Against All Defendants)*

18 121. Plaintiff realleges and incorporates by reference all previous paragraphs.

19 122. California Labor Code Section 2802 states that employers must "indemnify" an
20 employee for "all necessary expenditures or losses incurred by the employee in direct consequence of
21 the discharge of his or her duties, or of his or her obedience to the directions of the employer." Likewise,
22 Labor Code section 2804 states that "any contract or agreement, express or implied, made by any
23 employee to waive the benefits of this article or any part thereof, is null and void, and this article shall
24 not deprive any employee or his personal representative of any right or remedy to which he is entitled
25 under the laws of this State."

26 123. Here, Plaintiff and the other Class Members paid out of pocket for necessary business
27 expenditures incurred as a direct consequence and requirement of performing their job duties, including
28 the costs associated with their personal cell phone they required to perform their work. Despite knowing

1 that Plaintiff and the other Class Members incurred these necessary business expenses, and requiring
2 Plaintiff and the other Class Members to use such items, Defendants did not reimburse them.

3 124. Thus, Plaintiff and the other Class Members are entitled to recover the cost of such
4 necessary business expenses, plus interest from the date each incurred such business expenses, plus
5 fees and costs. (Lab. Code, § 2802, subds. (b), (c).)

6 **Tenth Cause of Action**

7 *Failure to Furnish Accurate Itemized Wage Statements*

8 *(Against All Defendants)*

9 125. Plaintiff realleges and incorporates by reference all previous paragraphs.

10 126. Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the
11 time of each payment to furnish an itemized wage statement in writing showing:

- 12 (1) The gross wages earned;
- 13 (2) The total hours worked by the employee;
- 14 (3) The number of piece-rate units earned and any applicable piece rate if
15 the employee is paid on a piece rate basis;
- 16 (4) All deductions, provided that all deductions made on written orders of
17 the employee may be aggregated and shown as one item;
- 18 (5) The net wages earned;
- 19 (6) The inclusive dates of the period for which the employee is paid;
- 20 (7) The name of the employee and only the last four digits of his or her social
21 security number or an employee identification number other than a social
22 security number;
- 23 (8) The name and address of the legal entity that is the employer; and
- 24 (9) All applicable hourly rates in effect during the pay period and the
25 corresponding number of hours worked at each hourly rate by the
26 employee.

27 127. As set forth above, Defendants issued and continues to issue wage statements to its non-
28 exempt employees including Plaintiff and the other Class Members that are inadequate under Labor

1 Code section 226, subdivision (a). By failing to pay Plaintiff and the other Class Members properly as
2 described above, Defendants failed to include required information on their wage statements, including,
3 but not limited to, the gross wages earned, the net wages earned in violation of Labor Code section
4 226, subdivision (a).

5 128. Defendants' failure to comply with Labor Code section 226, subdivision (a), of the
6 Labor Code was knowing and intentional. (Lab. Code, § 226, subd. (e)).

7 129. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff
8 and the other Class Members in violation of Labor Code section 226, subdivision (a), Plaintiff and the
9 other Class Members are each entitled to recover an initial penalty of \$50, and subsequent penalties of
10 \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per each Class
11 Member from Defendants pursuant to Labor Code section 226, subdivision (e), along with costs and
12 reasonable attorneys' fees.

13 **Eleventh Cause of Action**

14 *Violations of California's Unfair Competition Law*

15 *(Against All Defendants)*

16 130. Plaintiff realleges and incorporates by reference all previous paragraphs.

17 131. Defendants have engaged and continue to engage in unfair and/or unlawful business
18 practices in California in violation of California Business and Professions Code section 17200 through
19 17210, by committing the unlawful acts described above. Defendants' utilization of these unfair and
20 unlawful business practices deprived and continue to deprive Plaintiff and the other Class Members of
21 compensation to which they are legally entitled. These practices constitute unfair and unlawful
22 competition and provide an unfair advantage over Defendants' competitors who have been and/or are
23 currently employing workers and attempting to do so in honest compliance with applicable wage and
24 hour laws.

25 132. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct alleged herein,
26 Plaintiff for himself and on behalf of the Class Members, seeks full restitution of monies, as necessary
27 and according to proof, to restore any and all monies withheld, acquired and/or converted by
28 Defendants pursuant to Business and Professions Code sections 17203 and 17208.

1 133. The acts complained of herein occurred within the four years prior to the initiation of
2 this action and are continuing into the present and ongoing.

3 134. Plaintiff was compelled to retain the services of counsel to file this Court action to
4 protect his interests and those of the Class Members, to obtain restitution and injunctive relief on behalf
5 of Defendants' current non-exempt employees and to enforce important rights affecting the public
6 interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which Plaintiff
7 is entitled to recover under Code of Civil Procedure section 1021.5.

8 **Twelfth Cause of Action**

9 *Penalties Pursuant to PAGA for Violations of California Labor Code Sections 201,*
10 *202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2, 1197,*
11 *1197.1, 1198, 1198.5, 1199, 2802, 2804, and Other Provisions of the Labor Code*
12 *(Against All Defendants)*

13 135. Plaintiff realleges and incorporates by reference all previous paragraphs.

14 136. Based on the above allegations incorporated by reference, Defendants violated Labor
15 Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2, 1197,
16 1197.1, 1198, 1198.5, 1199, 2802, 2804, and others that may be applicable; and the Applicable Wage
17 Orders (Cal. Code of Regs., tit. 8, §§ 11010, 11160, 11170), and others that may be applicable.

18 137. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code sections
19 2698 through 2699.6 because of Defendants' violation of Labor Code sections 201, 202, 203, 204, 210,
20 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804,
21 and others that may be applicable; and the Applicable Wage Orders (Cal. Code of Regs., tit. 8, §§
22 11010, 11160, 11170), and others that may be applicable.

23 138. Under Labor Code section 2699, subdivision (f)(2), and 2699.5, for each such violation,
24 Plaintiff and the Aggrieved Employees are entitled to penalties in an amount to be shown at the time
25 of trial subject to the following formula:

- 26 A. \$100 for the initial violation per employee per pay period; and
27 B. \$200 for each subsequent violation per employee per pay period.
28

1 139. These penalties must be allocated seventy-five percent to the Labor and Workforce
2 Development Agency (“LWDA”) and twenty-five percent to the affected employees. These penalties
3 may be stacked separately for each of Defendants violations of the California Labor Code. (*Lopez v.*
4 *Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 780–781 [citing with approval *Stoddart v.*
5 *Express Services, Inc.* (E.D. Cal., Sept. 16, 2015, No. 2:12-CV-01054-KJM) 2015 WL 5522142, at *9,
6 for the proposition that plaintiff could pursue separate claims for penalties under Labor Code section
7 226, subdivision (e), and penalties for Labor Code section 226, subdivision (a), violations]; see also
8 *Hernandez v. Towne Park, Ltd.* (C.D. Cal., June 22, 2012, No. CV 12-02972 MMM JCGX) 2012 WL
9 2373372, at *17 fn. 70 [noting that federal courts applying California law have found that “PAGA
10 penalties can be stacked, i.e., multiple PAGA penalties can be assessed for the same pay period for
11 different Labor Code violations.”], internal quotation marks omitted).

12 140. In addition, to the extent permitted by law, Defendants failed to provide Plaintiff and all
13 Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code section
14 226, subdivision (a). Plaintiff seeks separate PAGA penalties for Defendants’ violations of Labor Code
15 section 226, subdivisions (a) and (e). (*Lopez v. Friant & Associates, LLC, supra*, 15 Cal.App.5th at pp.
16 780, 788.)

17 141. For violations of Labor Code section 226, subdivision (a), Plaintiff seeks the default
18 penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that “[a]ny
19 employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount
20 of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand
21 dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails
22 to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of
23 Section 226.” Accordingly, through PAGA and to the extent permitted by law Plaintiff and the
24 Aggrieved Employees are entitled to recover penalties for violations of Labor Code section 226.3 and
25 seeks default PAGA penalties for each of Defendants’ numerous violations of Labor Code section 226,
26 subdivision (e).

27 142. Labor Code section 210 provides that “in addition to, an entirely independent and apart
28 from, any other penalty provided in this article, every person who fails to pay the wages of each

1 employee as provided in Sections . . . 204 . . . shall be subject to a civil penalty as follows: (1) For any
2 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
3 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure
4 to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty
5 compensation policies and practices, Plaintiff and the Aggrieved Employees are also entitled to recover
6 penalties under Labor Code section 210 through PAGA.

7 143. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
8 liquidated damages, in the amount of: (1) one hundred dollars (\$100) for any initial violation that is
9 intentionally committed for each underpaid employee for each pay period for which the employee is
10 underpaid, and (2) two hundred fifty dollars (\$250) for each subsequent violation for the same specific
11 offense for each underpaid employee for each pay period for which the employee is underpaid
12 regardless of whether the initial violation is intentionally committed. Accordingly, through PAGA and
13 to the extent permitted by law, Plaintiff and the Aggrieved Employees are entitled to recover pursuant
14 to Labor Code section 1197.1.

15 144. Plaintiff was compelled to retain the services of counsel to file this action to protect his
16 interests and those of the Aggrieved Employees, and to assess and collect the wages and penalties owed
17 by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which Plaintiff is also entitled
18 to recover under Labor Code section 2699, subdivision (g)(1).

19 **VIII. DEMAND FOR JURY TRIAL**

20 145. Plaintiff hereby demands trial by jury of Plaintiff’s and the Class Members’ claims
21 against Defendants.

22 **IX. PRAYER FOR RELIEF**

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

- 25 1. For an order certifying the proposed class;
- 26 2. For an order appointing Plaintiff as representative of the class;
- 27 3. For an order appointing Plaintiff’s counsel as counsel for the class;
- 28

- 1 **4.** For the failure to pay all minimum wages, compensatory, consequential, general, and
2 special damages according to proof pursuant to Labor Code sections 1194, 1194.2,
3 1197, and others as may be applicable;
- 4 **5.** For the failure to pay split shift premiums, compensatory damages in the amount of the
5 split shift premiums owed, as may be proven;
- 6 **6.** For the failure to pay all overtime wages, compensatory, consequential, general, and
7 special damages according to proof pursuant to Labor Code sections 204, 510, 1194,
8 1198, and others as may be applicable;
- 9 **7.** For the failure to provide rest periods and pay missed rest period premiums,
10 compensatory, consequential, general, and special damages according to proof pursuant
11 to Labor Code section 226.7;
- 12 **8.** For the failure to provide meal periods and pay missed meal period premiums,
13 compensatory, consequential, general, and special damages according to proof pursuant
14 to Labor Code sections 226.7 and 512;
- 15 **9.** For the failure to maintain accurate employment records, penalties pursuant to Labor
16 Code sections 226.3, 1174.5, and others that may be applicable;
- 17 **10.** For the failure to pay wages timely during employment, the unpaid balance of the
18 compensation owed to Plaintiff and the other Class Members and any applicable
19 penalties owed to them pursuant to Labor Code section 210;
- 20 **11.** For the failure to pay all wages earned and unpaid at separation, statutory waiting time
21 penalties pursuant to Labor Code sections 201 through 203, for the Class Members who
22 quit or were fired in an amount equal to their daily wage multiplied by thirty days, as
23 may be proven;
- 24 **12.** For the failure to indemnify all necessary business expenditures, all unreimbursed
25 business expenses, and interest thereon, that are owed, pursuant to Labor Code section
26 2802, and attorney fees, pursuant to Labor Code section 2802, subdivision (c);
- 27 **13.** For the violations of California's Unfair Competition Law, restitution to Plaintiff and
28 the other Class Members of all money and/or property unlawfully acquired by

Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code sections 17200 through 17210;

14. For the claim of penalties pursuant to PAGA and other provisions of the California Labor Code, a civil penalty in the amount of \$100 for the initial violation and \$200 for each subsequent violation as specified in Labor Code section 2699, subdivision (f)(2), in the representative action brought on behalf of Plaintiff and the Aggrieved Employees pursuant the Labor Code Private Attorneys General Act of 2004, and for civil penalties available under Labor Code section 210;
15. Prejudgment interest on all due and unpaid wages pursuant to Labor Code section 218.6 and Civil Code sections 3287 and 3289;
16. On all causes of action for which attorneys' fees may be available, for attorneys' fees and costs as provided by Labor Code sections 218.5, 226, Code of Civil Procedure section 1021.5, and others as may be applicable;
17. For an order enjoining Defendants, and each of them, and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this complaint; and
18. For such other and further relief, this Court may deem just and proper.

Dated: February 5, 2025

MELMED LAW GROUP P.C.



JONATHAN MELMED

Attorneys for Plaintiff, the Putative Class, and the
Aggrieved Employees