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11 As an individual and on behalf of all others similarly situated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF RIVERSIDE**

14 MICHAEL SIANO, as an individual on
15 behalf of himself and on behalf of all others
16 similarly situated,

17 Plaintiff,

18 v.

19 ACCELERATE360 DISTRIBUTION,
20 LLC, a Delaware limited liability company;
21 4052342 WEST DE LLC,, a Delaware
22 limited liability company; and DOES 1-
23 100, inclusive,

24 Defendants.

Case No.: CVRI2301109

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

1. **Recovery of Unpaid Wages and Liquidated Damages**
2. **Failure to Provide Meal Breaks**
3. **Failure to Provide Rest Breaks**
4. **Failure to Furnish Accurate Itemized Wage Statements**
5. **Failure to Timely Pay All Wages Due Upon Separation of Employment**
6. **Failure to Timely Pay All Wages Earned**
7. **Failure to Reimburse Business Expenses**
8. **Unfair Competition**
9. **Violations of California's Worker Adjustment and Retraining Notification Act**
10. **Violations of Worker Adjustment and Retraining Notification, 29 U.S.C. § 2101, et seq.**
11. **Violation of the Private Attorneys General Act of 2004**

DEMAND FOR JURY TRIAL

1 Plaintiff, MICHAEL SIANO (“PLAINTIFF”), an individual on behalf of himself and all
2 other similarly situated Class Members (as defined below) and Aggrieved Employees (as defined
3 below), hereby files this First Amended Complaint against Defendants ACCELERATE360
4 DISTRIBUTION, LLC, a Delaware limited liability company; 4052342 WEST DE LLC, a
5 Delaware limited liability company; and DOES 1-100, inclusive, (collectively referred to herein as
6 “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

7 **JURISDICTION AND VENUE**

8 1. This court possesses original subject matter jurisdiction over this matter. Venue is
9 proper in the County of Riverside pursuant to California Code of Civil Procedure section 395.5
10 because DEFENDANTS transact business within this judicial district, DEFENDANTS employed
11 PLAINTIFF to work in this judicial district and some of the acts, omissions, and conduct alleged by
12 PLAINTIFF herein occurred in this this judicial district.

13 **THE PARTIES**

14 2. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
15 California and a citizen of the State of California. PLAINTIFF was employed by DEFENDANTS
16 in the State of California as a non-exempt employee during the Class Period (defined below).

17 3. PLAINTIFF worked for DEFENDANTS as a magazine delivery driver, truck driver
18 and/or similar title(s) from in or around July 2014 through on or about August 5, 2020. PLAINTIFF
19 reported to DEFENDANTS’ offices, warehouse, yard and/or locations in Ontario, California, and
20 completed routes in cities throughout California, including but not limited to, Ontario, California.

21 4. DEFENDANTS are a limited liability companies that, at all relevant times, were
22 authorized to do business within the State of California and are doing business in the State of
23 California.

24 5. DEFENDANTS own, operate, or otherwise manage a printing, publishing, print
25 distribution business and/or logistics company. DEFENDANTS own, operate or manage
26 warehouses, yards, locations, and/or facilities in California including but not limited to,
27 DEFENDANTS’ offices, yards, locations and/or facilities located in Ontario, California, at which
28

1 DEFENDANTS regularly assigned PLAINTIFF to work during the Class Period. ¹

2 6. The true names and capacities of the DOE Defendants sued herein as DOES 1
3 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
4 Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally
5 responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this
6 Complaint to reflect the true names and capacities of the Doe Defendants when such identities
7 become known.

8 7. PLAINTIFF is further informed and believes that, at all relevant times, each
9 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
10 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
11 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
12 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
13 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
14 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
15 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
16 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
17 controlled, aided and abetted the conduct of all other Defendants.

18 **JOINT LIABILITY**

19 8. Under California law, the definition of the terms “to employ” are broadly construed
20 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
21 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)
22 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49
23 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
24 was to reach situations in which multiple entities control different aspects of the employment
25 relationship. Supervision of the work, in the specific sense of exercising control over how services
26 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
27 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a

28 ¹ See <https://start.cortera.com/company/research/m0j2sxm7s/american-news-co/>. Last visited on March 3, 2023.

1 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
2 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
3 California, applying a less stringent standard to what constitutes sufficient control by a business
4 over its vendor's employees' wages and working conditions to render that business liable as a joint
5 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); "[i]f the putative
6 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
7 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
8 employment," *Id.* at 875 [emphasis added].

9 9. During PLAINTIFF's employment by DEFENDANTS, PLAINTIFF and the Class
10 Members (defined below) were jointly employed by DEFENDANTS for purposes of the Wage
11 Orders, under the alternative definitions of "to employ" adopted by the California Supreme Court
12 in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control over wages,
13 hours and working conditions of PLAINTIFF and the Class Members and Aggrieved Employees;
14 (2) suffered or permitted PLAINTIFF and Class Members and Aggrieved Employees to work for
15 them; and (3) engaged PLAINTIFF and Class Members and Aggrieved Employees to work for them.

16 10. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
17 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
18 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
19 across all of their locations/facilities and subjected all of the Class Members and Aggrieved
20 Employees to these same policies and practices regardless of the location(s) where they worked.
21 Among other things, PLAINTIFF is informed and believes that: (1) there is common ownership in,
22 and financial control, in DEFENDANTS' companies, (2) DEFENDANTS utilize common
23 management, who have control over the day-to-day operations and employment matters, including
24 the power to hire and fire, set schedules, issue employee policies, and determine rates of
25 compensation across its locations in California; (3) DEFENDANTS utilize the same policies and
26 procedures for all California employees, including issuing the same employee handbooks and other
27 form agreements; (4) DEFENDANTS use at least some of the same Human Resources personnel
28 and attorneys to oversee employment matters; and, (6) DEFENDANTS share employees.

1 11. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
2 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Class Members
3 and Aggrieved Employees upon whose behalf PLAINTIFF brings these allegations and causes of
4 action, in that DEFENDANTS, exercised sufficient control over PLAINTIFF and the Class
5 Members and Aggrieved Employees' wages, hours and working conditions, and/or suffered or
6 permitted PLAINTIFF and the Class Members and Aggrieved Employees to work so as to be
7 considered the joint employers of PLAINTIFF and the Class Members and Aggrieved Employees.

8 12. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
9 uniform set of policies, practices and/or procedures concerning, inter alia, hourly pay, time-keeping
10 practices, reimbursement of business expenses and other working conditions that were distributed
11 to, and/or applied to PLAINTIFF and the Class Members and Aggrieved Employees, and further
12 that DEFENDANTS uniformly compensated and controlled the wages of PLAINTIFF and the Class
13 Members and Aggrieved Employees in a uniform manner. DEFENDANTS collectively represented
14 to PLAINTIFF and the Class Members and Aggrieved Employees that each was an "at-will"
15 employee of DEFENDANTS, and that DEFENDANTS collectively retained the right to terminate
16 PLAINTIFF's and Class Members and Aggrieved Employees' employment with or without cause.
17 Upon information and belief, DEFENDANTS further collectively represented to PLAINTIFF and
18 Class Members and Aggrieved Employees in writing the details of their compensation, and the
19 manner in which they were to take meal and rest periods, the procedures required by
20 DEFENDANTS collectively for recordation of hours worked and the policies applicable to
21 PLAINTIFF and Class Members and Aggrieved Employees by which DEFENDANTS collectively
22 would evaluate the wage rates of PLAINTIFF and Class Members and Aggrieved Employees.

23 13. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
24 and working conditions of PLAINTIFF and Class Members and Aggrieved Employees. As such,
25 DEFENDANTS collectively held the right to control virtually every aspect of PLAINTIFF's and
26 the Class Members and Aggrieved Employees' employment, including the instrumentality that
27 resulted in the illegal conduct for which PLAINTIFF seeks relief in this Complaint.

28 14. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
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1 control over, applied the same policies and practices, and engaged in the same acts and omissions
2 with regard to the other Class Members and Aggrieved Employees.

3 **CLASS ALLEGATIONS**

4 15. PLAINTIFF brings this action on behalf of himself, and all others similarly situated
5 as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF seeks to
6 represent are defined as follows and referred to as the “Class” or “Class Members”:

7 All current and former non-exempt and/or hourly-paid delivery
8 drivers who worked for DEFENDANTS in the State of California at
9 any time during the period from September 6, 2018, through the date
10 of Preliminary Approval. (“Class Period”)

- 11 a. Numerosity. While the exact number of Class Members is unknown to
12 PLAINTIFF at this time, the Class is so numerous that the individual joinder of
13 all members is impractical under the circumstances of this case. PLAINTIFF is
14 informed and believes the Class consists of at least 100 individuals.
- 15 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
16 because common questions of law and fact predominate over individual issues.
17 Common questions include, but are not limited to, the following: (1) whether
18 DEFENDANTS understated hours worked and failed to pay all amounts due to
19 PLAINTIFF and the Class Members for wages earned, including minimum and
20 straight time wages, under California law; (2) whether DEFENDANTS
21 provided PLAINTIFF and Class Members with accurate, itemized wage
22 statements in compliance with California law, displaying, including but not
23 limited to, the total hours worked during the pay period; (3) whether
24 DEFENDANTS timely paid PLAINTIFF and the Class Members all wages due
25 upon separation of employment; (4) whether DEFENDANTS failed to
26 reimburse PLAINTIFF and the Class Members for all business expenses; and
27 (5) whether DEFENDANTS violated California Business and Professions Code
28 sections 17200, *et seq.*

- 1 c. Ascertainable Class. The proposed Class is ascertainable as members can be
2 identified and located using information in DEFENDANTS' business, payroll
3 and personnel records.
- 4 d. Typicality. PLAINTIFF's claims are typical of the claims of the Class Members.
5 PLAINTIFF suffered a similar injury as members of the Class as a result of
6 DEFENDANTS' common practices regarding, *inter-alia*, failure to calculate
7 and pay all owed wages, failure to provide accurate wage statements, failure to
8 reimburse business expenses, and failure to timely pay all wages due upon
9 separation of employment.
- 10 e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the
11 Class Members. PLAINTIFF has no interests adverse to the interests of the other
12 Class Members. Counsel who represent PLAINTIFF are competent and
13 experienced in litigating similar class action cases and are California lawyers in
14 good standing. Counsel for PLAINTIFF have the experience and resources to
15 vigorously prosecute this case.
- 16 f. Superiority. A class action is superior to other available means for the fair and
17 efficient adjudication of this controversy since individual joinder of all members
18 of the class is impractical. Class action treatment will permit a large number of
19 similarly situated persons to prosecute their common claims in a single forum
20 simultaneously, efficiently, and without the unnecessary duplication of effort
21 and expense that numerous individual actions would engender. Furthermore, as
22 the damages suffered by each individual member of the Class may be relatively
23 small, the expenses and burden of individual litigation would make it difficult
24 or impossible for individual members of the Class to redress the wrongs done to
25 them, while an important public interest will be served by addressing the matter
26 as a class action. The cost to the court system of adjudication of such
27 individualized litigation would be substantial. Individualized litigation would
28 also present the potential for inconsistent or contradictory judgments. Finally,

1 the alternative of filing a claim with the California Labor Commissioner is not
2 superior, given the lack of discovery in such proceedings, the fact that there are
3 fewer available remedies, and the losing party has the right to a trial de novo in
4 the Superior Court.

5 **FACTUAL AND LEGAL ALLEGATIONS**

6 16. During the relevant period, PLAINTIFF, and each of the Class Members and
7 Aggrieved Employees worked for DEFENDANTS in the State of California. At all times referenced
8 herein, DEFENDANTS exercised control over PLAINTIFF and Class Members and Aggrieved
9 Employees, and suffered and/or permitted them to work.

10 17. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
11 PLAINTIFF worked for DEFENDANTS as a magazine delivery driver, truck driver and/or similar
12 title(s) from in or around July 2014 through on or about August 5, 2020. PLAINTIFF reported to
13 DEFENDANTS' DEFENDANTS' offices, warehouse, yard and/or locations in Mira Loma,
14 California and completed routes in various cities, including but not limited to, Ontario, California.
15 PLAINTIFF regularly worked over twelve (12) hours per day, at least four (4) days per week.

16 18. At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an
17 hourly basis for time counted by DEFENDANTS as hours.

18 19. **Unpaid Minimum and Straight Time Wages.** DEFENDANTS failed to
19 compensate PLAINTIFF and Class Members and Aggrieved Employees for all hours worked,
20 resulting in the underpayment of minimum and straight time wages. DEFENDANTS failed to
21 compensate PLAINTIFF and Class Members and Aggrieved Employees for all hours worked by
22 virtue of, DEFENDANTS' automatic deduction policies, payment according to scheduled hours
23 rather than actual hours worked, and/or time rounding policies, and failure to relieve employees of
24 all duties/employer control and/or suffering, permitting and/or requiring Class Members and
25 Aggrieved Employees to perform work during unpaid meal periods, as explained below.

26 20. Based on information and belief, DEFENDANTS implemented a policy and/or
27 practice of rounding meal period start and end times and/or automatically deducting at least thirty
28 minutes per shift for meal periods, despite having actual and/or constructive knowledge that

1 PLAINTIFF and other Class Members and Aggrieved Employees were subject to DEFENDANTS'
2 control during purported meal periods and/or were otherwise required to work through unpaid meal
3 periods, depriving PLAINTIFF and Class Members and Aggrieved Employees of all wages owed.

4 21. For example, Class Members and Aggrieved Employees were required to remain
5 inside and/or in immediate physical proximity to their assigned vehicles during unpaid meal periods
6 and/or were required to monitor work communication devices during unpaid meal periods and
7 therefore remained under DEFENDANTS' control during unpaid meal periods, resulting in unpaid
8 minimum wages and straight time wages to Class Members and Aggrieved Employees. For instance,
9 PLAINTIFF was required to monitor a dispatch radio and/or cellphone for work communications
10 during unpaid meal periods. Also, PLAINTIFF was consistently required to cut his meal periods
11 short and/or work through his meal periods completely due to the need to respond to work
12 communications, complete deliveries and/or complete other work tasks. Based on information and
13 belief, other Class Members and Aggrieved Employees were also at times required to work through
14 part and/or all of their unpaid meal periods (including first and/or second meal periods) due to the
15 need to respond to work-related communications, complete deliveries, and/or complete other work
16 tasks. Due to the pressure to complete assigned worked duties, PLAINTIFF and other Class
17 Members and Aggrieved Employees were consistently unable to take uninterrupted meal periods
18 and would often be forced to eat their meals and/or take purported meal periods while driving
19 between delivery locations/job sites and/or completing other work tasks.

20 22. Based on information and belief, DEFENDANTS performed an automatic meal
21 period deduction of at least thirty minutes per shift for each Class Member even though
22 DEFENDANTS were aware those Class Members and Aggrieved Employees were working through
23 their meal periods and/or were not receiving full thirty-minute off duty meal periods. For example,
24 based on information and belief, PLAINTIFF's supervisor would input/report to payroll that
25 PLAINTIFF had taken a thirty-minute off-duty meal period, e.g., from precisely 7:00 a.m. to
26 precisely 7:30 a.m., each shift worked even though PLAINTIFF was consistently required to work
27 through his meal periods due to the need to respond to work communications, complete deliveries
28 and/or complete other work tasks. Based on information and belief, DEFENDANTS also performed

1 an automatic meal period deduction of at least thirty minutes per shift for other Class Members and
2 Aggrieved Employees who were also required to suffer interrupted, shortened and/or on-duty meal
3 periods and/or work through their unpaid meal periods completely, resulting in the underpayment
4 of wages owed to Class Members and Aggrieved Employees.

5 23. Based on information and belief, Class Members and Aggrieved Employees were
6 not paid for all hours worked due to DEFENDANTS' policy and/or practice of rounding time entries
7 or paying according to scheduled hours worked instead of actual time worked, and/or mandated off-
8 the clock work policies and/or practices.

9 24. For example, based on information and belief, Class Members and Aggrieved
10 Employees were required to perform off-the-clock work due to work-related phone calls and/or
11 messages Class Members and Aggrieved Employees received to their phones/work-communication
12 devices and were required to respond to outside of scheduled shift times and/or during unpaid meal
13 periods, including but not limited to, communications from supervisors and/or other Class Members
14 and Aggrieved Employees regarding scheduling, shift assignments and/or other work tasks,
15 resulting in the underpayment of wages owed to Class Members and Aggrieved Employees.

16 25. Moreover, based on information and belief, at times, DEFENDANTS' electronic
17 employee time-keeping system / app malfunctioned such that Class Members and Aggrieved
18 Employees were required to either reinitiate and/or otherwise troubleshoot the system / app prior to
19 being able to clock in and/or were unable to clock in at all for the start of their shifts, resulting in
20 off-the-clock work and the underpayment of wages owed to Class Members and Aggrieved
21 Employees. Based on information and belief, Class Members and Aggrieved Employees
22 experienced the same issues when clocking out for shifts. This time spent under DEFENDANTS'
23 control was not recorded and not compensated and resulted in unpaid minimum wages owed to
24 Class Members and Aggrieved Employees.

25 26. Based on information and belief, PLAINTIFF and other Class Members and
26 Aggrieved Employees were required to complete other off-the-clock work tasks before clocking in
27 for the beginning of their shifts and/or after clocking out for the end of their shifts and/or during
28 uncompensated meal periods, resulting in the underpayment of minimum and straight time wages

1 owed to PLAINTIFF and other Class Members and Aggrieved Employees.

2 27. Based on information and belief, Class Members and Aggrieved Employees were
3 also not compensated for off-the-clock work tasks, such as, but not limited to, all time spent
4 performing pre-trip and/or post-trip vehicle and/or equipment inspections, time spent performing
5 vehicle maintenance tasks, time spent completing paperwork and/or waiting/standby time at pick-
6 up/delivery locations, time spent donning and/or doffing uniforms/safety gear/protective equipment,
7 and/or all time spent completing deliveries, which resulted in the underpayment of minimum wages
8 and straight time wages owed to Class Members and Aggrieved Employees.

9 28. Based on information and belief, DEFENDANTS failed to pay Class Members and
10 Aggrieved Employees for time they were required to spend completing orientation, policy
11 questionnaires, and/or time spent completing the onboarding process including but not limited to
12 reviewing various documents and policies provided by DEFENDANTS. Based on information and
13 belief, this work time was completed off-the-clock and was not compensated. For example, based
14 on information and belief, DEFENDANTS required Class Members and Aggrieved Employees to
15 review and sign various types of policies and documents, including but not limited to, safety
16 guidelines/safety awareness certifications, employee time-keeping policies, among other
17 documents, but they were not paid for all time spent reviewing and/or completing certification as
18 directed by DEFENDANTS.

19 29. Based on further information and belief, DEFENDANTS implemented a time-
20 rounding system that as applied systematically deprived PLAINTIFF and other Class Members and
21 Aggrieved Employees of compensable time because the time-rounding system implemented by
22 DEFENDANTS would almost always, if not always, result in understating actual compensable work
23 time. For example, based on information and belief, DEFENDANTS rounded to at least the nearest
24 quarter, half and/or whole hour, PLAINTIFF's and other Class Members and Aggrieved Employees'
25 total hours worked during most if not all pay periods, resulting in the consistent underpayment of
26 minimum wages and straight time wages owed to PLAINTIFF and other Class Members and
27 Aggrieved Employees.

28 30. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
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1 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
2 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
3 minimum wages and/or straight time wages owed to PLAINTIFF and Class Members and
4 Aggrieved Employees.

5 31. Based on information and belief, DEFENDANTS had actual and/or constructive
6 knowledge that its time rounding policies/practices, auto-deduction policies and practices and/or
7 other off-the-clock work resulted in the underpayment of minimum and straight time wages owed
8 to PLAINTIFF and other Class Members and Aggrieved Employees, in violation of, including but
9 not limited to, California's minimum wage laws.

10 32. **Meal Period Violations.** PLAINTIFF and other Class Members consistently worked
11 shifts of more than five (5) hours, entitling them to at least one meal period. However, PLAINTIFF
12 and other Class Members would not receive legally compliant thirty (30) minute first and second
13 meal periods. Based on information and belief, Class Members were consistently unable to take
14 timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal
15 periods, interrupted meal periods, and/or work through part or all their meal periods due to
16 understaffing, the nature and constraints of their job duties and/or commentary from supervisors
17 pressuring them to take non-compliant meal periods or skip meal periods completely.

18 33. DEFENDANTS did not pay PLAINTIFF a meal period premium for each late,
19 interrupted, short, and/or otherwise legally noncompliant meal period.

20 34. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide
21 PLAINTIFF and other Class Members with legally compliant rest periods at a rate of every four (4)
22 hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the
23 work period, as required by law.

24 35. DEFENDANTS failed to pay a rest period premium for each day in which
25 PLAINTIFF and Class Members experienced a missed/unlawful rest period in violation of
26 California law.

27 36. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
28 provide PLAINTIFF and other Class Members₁₂ and Aggrieved Employees with accurate wage

1 statements that complied with Labor Code section 226.

2 37. DEFENDANTS issued wage statements to PLAINTIFF and Class Members and
3 Aggrieved Employees that failed to indicate the earned gross and net wages earned during the pay
4 period, the correct applicable rates of pay for all hours worked, and the total hours worked by
5 PLAINTIFF and Class Members and Aggrieved Employees (by virtue of rounded time entries,
6 automatic deduction for meal periods/failure to relieve Class Members and Aggrieved Employees
7 of all duties and employer control during unpaid meal periods, payment according to scheduled
8 hours worked rather than actual hours worked, and/or other off-the-clock work policies and
9 practices) which results in a violation of Labor Code section 226(a).

10 38. Based on information and belief, wage statements issued by DEFENDANTS failed
11 to list all applicable hourly rates in effect during the pay period and the corresponding number of
12 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

13 39. Moreover, based on information and belief, DEFENDANTS issued wage statements
14 to PLAINTIFF and Class Members and Aggrieved Employees that further violate Labor Code
15 section 226(a), by among other things, failing to list the correct name and/or address of the legal
16 entity that is the employer.

17 40. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Class
18 Members and Aggrieved Employees that were not accurate and did not include all of the statutorily
19 required information. As such, DEFENDANTS violated Labor Code section 226.

20 41. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
21 information and belief, DEFENDANTS failed to timely pay Class Members and Aggrieved
22 Employees all wages that were due and owing upon termination or resignation. Based on
23 information and belief, DEFENDANTS untimely provide final wages to Class Members and
24 Aggrieved Employees without regard to the timing requirements of Labor Code sections 201-202.

25 42. Upon separation of employment, Class Members and Aggrieved Employees' final
26 paychecks were not timely provided and/or were not timely provided with all owed vacation pay
27 and/or paid time off. Moreover, PLAINTIFF's and Class Members and Aggrieved Employees' final
28 paychecks, once provided, did not include all wages owed as they were devoid of, including but not

1 limited to, all owed minimum wages, straight time wages, vacation pay, and all owed sick leave
2 and/or paid time off wages at the properly accrued rates.

3 43. Moreover, DEFENDANTS failed to timely provide all owed wages immediately
4 upon discharge of employment. For example, based on information and belief, at times, Class
5 Members and Aggrieved Employees experienced breaks in their employment caused by
6 DEFENDANTS whereby Class Members and Aggrieved Employees would not be called in for work
7 for longer than a single pay period due to including but not limited to DEFENDANTS' lack of work
8 or lack of assignments. Such instances qualify as a discharge of employment. Yet, DEFENDANTS
9 failed to timely pay all owed wages at the end of such periods of employment, in violation of
10 including but not limited to Labor Code section 201-202.

11 44. These violations subject DEFENDANTS to civil penalties under Labor Code section
12 203, 210, and/or 256.

13 45. **Unreimbursed Business Expenses.** Based on information and belief,
14 DEFENDANTS required PLAINTIFF and Class Members and Aggrieved Employees to incur
15 business expenses as a direct consequence of the performance of their job duties without providing
16 reimbursement, in violation of Labor Code section 2802. Based on information and belief,
17 PLAINTIFF and Class Members and Aggrieved Employees were improperly required to provide
18 and maintain work tools that are supposed to be the responsibility of the employer.

19 46. Based on information and belief, DEFENDANTS shifted the costs of doing business
20 onto Class Members and Aggrieved Employees by requiring them to pay for business expenses,
21 including but not limited to, uniforms and/or protective/safety equipment, and/or the use of Class
22 Members and Aggrieved Employees' personal mobile phone and data usage for work-related
23 purposes, including but not limited to, to receive and respond to work related messages and/or phone
24 calls. For example, based on information and belief, Class Members and Aggrieved Employees were
25 required to use their personal cell phones for work but did not receive any and/or full reimbursement
26 from DEFENDANTS for these business expenses.

27 47. Based on information and belief, Class Members and Aggrieved Employees were
28 not reimbursed for the cost of using their personal₁₄ phone for work-related purposes and/or the cost

1 of purchasing and/or maintaining work uniforms and/or protective/safety equipment.

2 48. Based on information and belief, Class Members and Aggrieved Employees were
3 improperly required to pay for additional business expenses that are supposed to be the
4 responsibility of DEFENDANTS. For example, based on information and belief, Class Members
5 and Aggrieved Employees were improperly required to pay for business expenses that are the
6 responsibility of DEFENDANTS, including but not limited to, hand tools/equipment and/or cost of
7 gas, costs of repairs, tolls/fines and/or other work-related fees/fines, incurred as a direct consequence
8 of the discharge of their assigned job duties without receiving any and/or full reimbursement from
9 DEFENDANTS for these expenses.

10 49. On information and belief, at times, Class Members and Aggrieved Employees were
11 required to use their personal vehicles for DEFENDANTS' business purposes, including but not
12 limited to, for driving between and/or around DEFENDANTS' job sites/locations and/or for other
13 work purposes without receiving any and/or full reimbursement from DEFENDANTS for the
14 business use of their personal vehicles.

15 50. DEFENDANTS' failure to provide Class Members and Aggrieved Employees with
16 full reimbursement for all reasonable expenses associated with carrying out their duties required
17 that Class Members and Aggrieved Employees subsidize and/or carry the burden of business
18 expenses in violation of Labor Code section 2802.

19 51. **Violations of the WARN Act.** Mass layoffs, relocations and terminations in
20 California are regulated by the California WARN Act (Labor Code sections 1400-1408). Under the
21 California WARN Act ("Cal-WARN Act"), employers must provide 60 days' notice to affected
22 employees before ordering a "mass layoff." Labor Code section 1400, et seq.

23 52. Section 1401(a) provides as follows:

24 53. (a) An employer may not order a mass layoff, relocation, or termination at a covered
25 establishment unless, 60 days before the order takes effect, the employer gives written notice of the
26 order to the following:

27 54. (1) The employees of the covered establishment affected by the order.

28 55. (2) The Employment Development Department, the local workforce investment

1 board, and the chief elected official of each city and county government within which the
2 termination, relocation, or mass layoff occurs.

3 56. Section 1401(b) provides that “[a]n employer required to give notice of any mass
4 layoff...under this chapter shall include in its notice the elements required by the federal [WARN]
5 Act. (29 U.S.C. Sec. 2101 et seq.).

6 57. Section 1400 defines the terms used to impose the above-described notice duty. A
7 “[c]overed establishment” means any industrial or commercial facility or part thereof that employs,
8 or has employed within the preceding 12 month, 75 or more persons.” Lab. Code section 1400(a).
9 “Employer” means any person...who directly or indirectly owns and operates a covered
10 establishment.” Labor Code section 1400(b). “Mass layoff” means a layoff during any 30-day
11 period of 50 or more employees at a covered establishment.” Labor Code section 1400(d).
12 “Layoff” means a separation from a position for lack of funds or lack of work.” Labor Code section
13 1400(c). “Termination” means the cessation or substantial cessation of industrial or commercial
14 operations in a covered establishment.” Labor Code section 1400(f).

15 58. At all relevant times, DEFENDANTS directly or indirectly owned, operated and/or
16 otherwise managed a covered establishment at which DEFENDANTS ordered a mass layoff of
17 Class Members and Aggrieved Employees without providing legally compliant written notice at
18 least sixty days in advance to Class Members and Aggrieved Employees as required under the Cal-
19 WARN Act, thereby denying Class Members and Aggrieved Employees of the notice and mandated
20 waiting-time period under the Cal-WARN Act prior to the mass layoff, in violation of the Cal
21 WARN Act, section 1401(a).

22 59. Based on information and belief, DEFENDANTS has a policy and practice of failing
23 to give compliant written notice to Class Members and Aggrieved Employees within the timing
24 requirements set forth in Labor Code section 1401(a) before ordering a mass layoff, relocation or
25 termination, in violation of, including but not limited to, Labor Code section 1401(a).

26 60. These violations subject DEFENDANTS to civil penalties including but not limited
27 to penalties pursuant to Labor Code 1403 of up to \$500 dollars for each day of DEFENDANTS’s
28 violation of Labor Code section 1401 for each Class Member. Moreover, PLAINTIFF and Class

1 Members and Aggrieved Employees are entitled to recover reasonable attorney's fees and costs
2 under Labor Code section 1404.

3 61. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
4 engaged in these same herein described unlawful practices and that DEFENDANTS applied these
5 same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

6 **FIRST CAUSE OF ACTION**

7 **Recovery of Unpaid Wages and Liquidated Damages**
8 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

9 62. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

10 63. It is fundamental that an employer must pay its employees for all time worked.
11 California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages.
12 Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 223
13 prohibits the pay of less than a statutory or contractual wage scale. Pursuant to California Labor
14 Code sections 1194 and 1197, and the Industrial Wage Commission ("IWC") Wage Orders, an
15 employer must pay its employees for all hours worked, up to 40 hours per week or 8 hours per day,
16 at a regular rate no less than the mandated minimum wage. Payment to an employee of less than
17 the applicable minimum wage for all hours worked in a payroll period is unlawful. Labor Code
18 section 224 only permits deductions from wages when the employer is required or empowered to
19 do so by state or federal law or when the deduction is expressly authorized in writing by the
20 employee for specified purposes that do not have the effect of reducing the agreed upon wage.

21 64. DEFENDANTS violated the above-described laws by failing to compensate
22 PLAINTIFF and the Class Members for all hours worked by virtue of, among other things,
23 DEFENDANTS' time rounding, automatic deduction for meal periods, off-the-clock/unpaid work
24 completed during meal periods, other pre-shift, post-shift and/or otherwise off-the-clock work,
25 and/or payment according to scheduled hours worked rather than actual hours worked (described
26 above), which resulted in the failure to account for all hours worked and thus the denial of all owed
27 straight time wages.

28 65. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
Class Members for all hours worked.

1 66. Based on information and belief, DEFENDANTS had actual or constructive
2 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
3 meal periods, failure to relieve employees of all duties and employer control during unpaid meal
4 periods, policy and practice of payment according to scheduled work time rather than actual work
5 time, and/or other mandated off-the-clock work resulted in the underpayment of minimum wages
6 owed to PLAINTIFF and other Class Members.

7 67. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFF and the Class
8 Members are entitled to recover all unpaid minimum wages and liquidated damages thereon, plus
9 attorney's fees and costs, in an amount to be proved at trial.

10 **SECOND CAUSE OF ACTION**

11 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
12 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

13 68. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

14 69. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
15 DEFENDANTS were required to provide PLAINTIFF and the Class Members with one 30-minute
16 meal break free from all duties and employer control for all shifts longer than 5 hours, and a second
17 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be
18 waived, but only under the following circumstances: (1) if an employee's total work period in a day
19 is over five (5) hours but no more than six (6) hours, the required meal period may be waived by
20 mutual consent of the employer and employee, and (2) if an employee's total work period in a day
21 is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be
22 waived by mutual consent of the employer and employee, but only if the first meal period was not
23 waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their
24 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
25 done so.

26 70. Employers must pay employees an additional hour of wages at the employees'
27 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
28 meal period, first meal period provided after five (5) hours, second meal period provided after 10
hours). Lab. Code § 226.7.

1 71. As explained above, PLAINTIFF and other Class Members were consistently unable
2 to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being
3 forced to take late meal periods, interrupted meal periods, and/or work through part or all of their
4 meal periods due to understaffing, the nature and constraints of their job duties, and/or commentary
5 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
6 completely.

7 72. Based on information and belief, DEFENDANTS had and continue to have a policy
8 of rounding the start and end times of employees' meal periods and/or automatically deducting thirty
9 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and Class
10 Members did not receive compliant meal periods.

11 73. Moreover, based on information and belief, Class Members did not receive a timely,
12 uninterrupted second meal period when working shifts over ten (10) hours in a workday.

13 74. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
14 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
15 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in
16 violation of California's meal period laws.

17 75. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
18 periods in violation of California law and/or failed to pay the proper meal period premium for failure
19 to incorporate all non-discretionary remuneration including but not limited to, bonuses, shift
20 differential pay and/or other non-discretionary compensation into the regular rate or compensation
21 for purposes of calculating the owed meal period premium.

22 76. As a result, under Labor Code section 226.7, PLAINTIFF and the Class Members
23 are entitled to one additional hour's pay at the employee's regular rate of compensation for each day
24 a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and costs,
25 all in an amount to be proved at trial.

26
27 **THIRD CAUSE OF ACTION**
28 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
 (By PLAINTIFF and the Class Members Against all DEFENDANTS)

1 77. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

2 78. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
3 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
4 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
5 “insofar as practicable.” In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the
6 California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts
7 from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10
8 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029).
9 The rest period requirement obligates employers to permit and authorize employees to take off-duty
10 rest periods, meaning employers must relieve employees of all duties and relinquish control over
11 how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257.

12 79. If the employer fails to provide any required rest period, the employer must pay the
13 employee one hour of pay at the employee’s regular rate of compensation for each workday the
14 employer did not provide at least one legally required rest period, pursuant to Labor Code section
15 226.7.

16 80. PLAINTIFF and the Class Members did not receive legally compliant, timely 10-
17 minute rest periods for every four (4) hours worked or major fraction thereof. As explained above,
18 any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject to
19 DEFENDANTS’ control due to the nature and constraints of Class Members’ job duties,
20 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Class Members to
21 skip rest periods completely or otherwise take non-compliant rest periods.

22 81. Based on information and belief, DEFENDANTS implemented policies and/or
23 practices that failed to relieve PLAINTIFF and other Class Members of all duties and employer
24 control during rest periods. Based on further information and belief, Class Members were pressured
25 to complete their work duties according to a designated schedule such that rest periods were only
26 taken once tasks were completed, and/or as time permitted.

27 82. As a result, PLAINTIFF and Class Members did not receive legally compliant first,
28 second, or third rest periods as required by California law.

1 83. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
2 period premium to PLAINTIFF and other Class Members for each workday in which there was a
3 missed or otherwise unlawful rest period. Based on further information and belief, when a rest
4 premium was paid, DEFENDANTS failed to include non-discretionary compensation including but
5 not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
6 regular rate of compensation for purposes of determining the owed rest period premium.

7 84. DEFENDANTS are therefore liable to PLAINTIFF and the Class Members for one
8 hour of additional pay at the regular rate of compensation for each workday that a required rest
9 period was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage
10 Order, plus pre-judgment interest, plus attorneys' fees and costs, all in an amount to be proved at
11 trial.

12 **FOURTH CAUSE OF ACTION**
13 **Failure to Furnish Accurate Itemized Wage Statements**
14 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

15 85. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

16 86. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFF and the Class
17 Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized
18 wage statement accurately stating the following:

19 (1) gross wages earned, (2) total hours worked by the employee,
20 except for any employee whose compensation is solely based on a
21 salary and who is exempt from payment of overtime under
22 subdivision (a) of Section 515 or any applicable order of the Industrial
23 Welfare Commission, (3) the number of piece-rate units earned and
24 any applicable piece rate if the employee is paid on a piece-rate basis,
25 (4) all deductions, provided that all deductions made on written orders
26 of the employee may be aggregated and shown as one item, (5) net
27 wages earned, (6) the inclusive dates of the period for which the
28 employee is paid, (7) the name of the employee and his or her social
security number, except that by January 1, 2008, only the last four
digits of his or her social security number or an employee
identification number other than a social security number may be
shown on the itemized statement, (8) the name and address of the
legal entity that is the employer, and (9) all applicable hourly rates in
effect during the pay period and the corresponding number of hours
worked at each hourly rate by the employee.

29 87. Due to violations detailed above, including but not limited to, DEFENDANTS'
30 failure to pay straight time wages and minimum wages for all hours worked, and failure to pay all

1 sick leave wages at the proper rates, DEFENDANTS have violated California Labor Code § 226 by
2 willfully failing to furnish PLAINTIFF and other Class Members with accurate, itemized wage
3 statements that listed the gross and net wages earned and the correct applicable rates of pay for all
4 hours worked.

5 88. As explained above, wage statements issued by DEFENDANTS failed to list the
6 “total hours worked” by PLAINTIFF and Class Members (by virtue of rounded time entries,
7 automatic deduction for meal periods/failure to relieve Class Members of all duties and employer
8 control during unpaid meal periods, payment according to scheduled hours worked rather than actual
9 hours worked, and/or other off-the-clock work policies and practices all described in greater detail
10 *supra*), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on
11 a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v.*
12 *Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

13 89. Separately, and independent from the above allegations, as explained above,
14 DEFENDANTS issued wage statements to PLAINTIFF and Class Members that violate Labor Code
15 section 226(a)(8), by failing to list the correct name and/or address of the legal entity that is the
16 employer.

17 90. DEFENDANTS’ failure to accurately list all hours worked on all wage statements
18 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Class
19 Members over whether they received all wages owed to them.

20 91. As a result, PLAINTIFF and other Class Members have suffered injury as they could
21 not easily determine whether they received all wages owed to them and whether they were paid for
22 all hours worked.

23 92. Moreover, as a result of DEFENDANTS’ failure to list the correct name and/or
24 address of the legal entity that is the employer, PLAINTIFF and Class Members have suffered injury
25 as they could not contact their employer regarding any question(s) they had about wages paid.

26 93. DEFENDANTS’ knowingly and intentionally failed to provide PLAINTIFF and
27 Class Members with accurate, itemized wage statements.

28 94. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and Class Members

1 have suffered injury. The absence of accurate information on their wage statements has prevented
2 earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
3 mathematical computations to determine the amount of wages owed, and will cause difficulty and
4 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
5 submission of inaccurate information about wages and amounts deducted from wages to state and
6 federal government agencies. As a result, PLAINTIFF and Class Members are required to
7 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
8 and pay records than if DEFENDANT had complied with its legal obligations.

9 95. Pursuant to California Labor Code section 226(e), PLAINTIFF and Class Members
10 are entitled to recover fifty dollars per employee for the initial pay period in which a Section 226
11 violation occurred and one hundred dollars per employee per violation for each subsequent pay
12 period, not to exceed an aggregate penalty of four thousand dollars per employee.

13 96. Pursuant to California Labor Code § 226(h), PLAINTIFF and Class Members are
14 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
15 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
16 provide currently employed Class Members with inaccurate wage statements in violation of
17 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
18 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
19 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
20 with California Labor Code § 226(a).

21 97. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFF and Class
22 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable
23 attorneys' fees, and costs of suit.

24 **FIFTH CAUSE OF ACTION**

25 **Failure to Timely Pay All Wages Due Upon Separation of Employment** 26 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

27 98. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

28 99. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
employer discharges an employee, the wages earned and unpaid at the time of discharge are due and

1 payable immediately.”

2 100. California Labor Code section 202(a) provides, in relevant part, that “[i]f an
3 employee not having a written contract for a definite period quits his or her employment, his or her
4 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
5 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
6 to his or her wages at the time of quitting.”

7 101. Based in information and belief, DEFENDANTS failed and continue to fail to timely
8 pay final wages to Class Members upon separation of employment in violation of Labor Code section
9 201-202. Moreover, final paychecks once provided to Class Members do not include all wages owed
10 as they are devoid of, including but not limited to, all owed minimum wages, straight time wages,
11 vacation pay, and all owed sick leave and/or paid time off wages at the properly accrued rates.

12 102. Moreover, DEFENDANTS failed to timely provide all owed wages immediately
13 upon discharge of employment. For example, based on information and belief, at times, Class
14 Members experienced breaks in their employment caused by DEFENDANTS whereby Class
15 Members would not be called in for work for longer than a single pay period due to including but
16 not limited to DEFENDANTS’ lack of work or lack of assignments. Such instances qualify as a
17 discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at the end of
18 such periods of employment, in violation of including but not limited to Labor Code section 201-
19 202.

20 103. Under Labor Code section 203, PLAINTIFF and the Class Members who are no
21 longer employed by DEFENDANTS are entitled to recover waiting time penalties of up to 30 days’
22 pay, plus attorney’s fees and costs, in an amount to be proved at trial.

23
24 **SIXTH CAUSE OF ACTION**
Failure to Timely Pay All Wages Earned

25 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

26 104. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

27 105. Pursuant to California Labor Code § 204, DEFENDANT is required to pay
28 employees at least twice a month for all wages earned during the preceding pay period. California

1 Labor Code § 204 mandates that labor performed between the 1st and 15th days, inclusive, of any
2 calendar month shall be paid for between the 16th and the 26th day of the month during which the
3 labor was performed, and labor performed between the 16th and the last day, inclusive, of any
4 calendar month, shall be paid for between the 1st and 10th day of the following month.

5 106. Furthermore, pursuant to California Labor Code § 204, if DEFENDANT utilizes an
6 alternate payday schedule, DEFENDANT is required to pay wages within seven calendar days of
7 the end of the payroll period in which the wages were earned.

8 107. During the CLASS PERIOD, DEFENDANT has willfully failed to timely pay
9 accrued wages and other compensation to PLAINTIFF and CLASS MEMBERS in accordance with
10 California Labor Code § 204.

11 108. As a result, PLAINTIFF and CLASS MEMBERS are entitled to all available
12 statutory penalties, together with interest thereon, as well as other available remedies.

13 109. As a proximate result of DEFENDANT's unlawful actions and omissions,
14 PLAINTIFF and CLASS MEMBERS have been deprived of compensation in an amount according
15 to proof at the time of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery
16 of such amounts, plus interest thereon, and attorneys' fees and costs, pursuant to California Labor
17 Code §§ 1194 and 2699.

18
19 **SEVENTH CAUSE OF ACTION**
20 **Failure to Reimburse Business Expenses**
21 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

22 110. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

23 111. California law requires employers to indemnify their employees for all necessary
24 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
25 their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable
26 Wage Orders section 9(b). Furthermore, "for purposes of [section 2802], the term 'necessary
27 expenditure or losses' shall include all reasonable costs, including, but not limited to, attorneys' fees
28 incurred by the employee enforcing the rights granted by this section."

112. Among other things, under California law, when employees must use their personal

1 cellphones for work-related purposes, the employer must reimburse them for a reasonable
2 percentage of their cell phone bills. See *Cochran v. Schwan's Home Services, Inc.* (2014) 228
3 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
4 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
5 Id. 1144-1145. California law also requires employers to reimburse employees for automobile
6 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
7 and tear on the vehicle. See *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

8 113. As described above, PLAINTIFF and the Class Members were improperly required
9 to pay for business expenses that are legally the responsibility of the employer.

10 114. DEFENDANTS' failure to provide PLAINTIFF and the Class Members with full
11 reimbursement for all reasonable expenses associated with carrying out their duties required that
12 PLAINTIFF and the Class Members subsidize and/or carry the burden of business expenses in
13 violation of Labor Code section 2802.

14 115. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Class
15 Members have suffered injury in that they were not completely reimbursed as mandated by
16 California law.

17 116. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members
18 are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable
19 attorneys' fees, and costs of suit.

20 **EIGHTH CAUSE OF ACTION**

21 **Unfair Competition**

22 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

23 117. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

24 118. DEFENDANTS' unlawful conduct alleged herein constitutes unfair competition
25 within the meaning of California Business and Professions Code section 17200 *et seq.* This unfair
26 conduct includes all unlawful conduct alleged herein, including but not limited to: DEFENDANTS'
27 failure to pay minimum and straight time wages by virtue of its illegal policies and practices;
28 DEFENDANTS' failure to furnish complete and accurate itemized wage statements;

1 DEFENDANTS' failure to reimburse business expenses; DEFENDANTS' failure to timely pay all
2 wages owed upon separation of employment; and DEFENDANTS' failure to provide paid sick leave
3 (or paid time off in lieu thereof) at the properly accrued rates (due to, including but not limited to,
4 DEFENDANTS' failure to incorporate all non-discretionary compensation into the sick pay
5 calculation and failure to base the accrued sick leave on the correct number of hours worked as a
6 result of DEFENDANTS' time-rounding/auto deduction policies and practices, payment according
7 to scheduled hours worked and/or other off-the-clock work policies and practices).

8 119. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
9 California Labor Code, DEFENDANTS have gained a competitive advantage over other
10 comparable companies doing business in the State of California that properly accrue and pay sick
11 time benefits, to provide complete and accurate itemized wage statements, to reimburse employees
12 for all business expenses, to pay all owed wages and during employment and due upon separation
13 of employment of their employees.

14 120. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFF
15 and Class Members have suffered injury in fact and lost money or property, as described in more
16 detail above. Pursuant to California Business and Professions Code section 17200, *et seq.*,
17 PLAINTIFF and Class Members are entitled to restitution of all wages and other monies rightfully
18 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of their
19 unlawful and unfair business practices.

20 121. PLAINTIFF also seeks an injunction against DEFENDANTS on behalf of the Class
21 Members, enjoining DEFENDANTS and any and all persons acting in concert with them from
22 engaging in each of the unlawful practices and policies set forth herein.

23 122. PLAINTIFF also seeks an award of attorney's fees pursuant to Code Civ. Proc
24 Section 1021.5 and as permitted by law, and an award for costs reasonably incurred, as permitted
25 by law.

26 **NINTH CAUSE OF ACTION**
27 **Violations of California's Worker Adjustment and Retraining Notification ("WARN") Act**
28 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

123. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

1 124. Mass layoffs, relocations and terminations in California are regulated by the
2 California WARN Act (Labor Code sections 1400-1408). Under the California WARN Act (“Cal-
3 WARN Act”), employers must provide 60 days’ notice to affected employees before ordering a
4 “mass layoff.” Labor Code section 1400, et seq.

5 125. Section 1401(a) provides as follows:

6 (a) An employer may not order a mass layoff, relocation, or termination at a covered
7 establishment unless, 60 days before the order takes effect, the employer gives written notice
8 of the order to the following:

9 (1) The employees of the covered establishment affected by the order.

10 (2) The Employment Development Department, the local workforce investment
11 board, and the chief elected official of each city and county government within which the
12 termination, relocation, or mass layoff occurs.

13 126. Section 1401(b) provides that “[a]n employer required to give notice of any mass
14 layoff...under this chapter shall include in its notice the elements required by the federal [WARN]
15 Act. (29 U.S.C. Sec. 2101 et seq.).

16 127. Section 1400 defines the terms used to impose the above-described notice duty. A
17 “[c]overed establishment” means any industrial or commercial facility or part thereof that employs,
18 or has employed within the preceding 12 month, 75 or more persons.” Lab. Code section 1400(a).
19 “Employer” means any person...who directly or indirectly owns and operates a covered
20 establishment.” Labor Code section 1400(b). “Mass layoff” means a layoff during any 30-day
21 period of 50 or more employees at a covered establishment.” Labor Code section 1400(d).
22 “Layoff” means a separation from a position for lack of funds or lack of work.” Labor Code section
23 1400(c). “Termination” means the cessation or substantial cessation of industrial or commercial
24 operations in a covered establishment.” Labor Code section 1400(f).

25 128. At all relevant times, DEFENDANTS directly or indirectly owned, operated and/or
26 otherwise managed a covered establishment at which DEFENDANTS ordered a mass layoff of
27 Class Members without providing legally compliant written notice at least sixty days in advance to
28 Class Members as required under the Cal-WARN Act, thereby denying Class Members of the notice

1 and mandated waiting-time period under the Cal-WARN Act prior to the mass layoff, in violation
2 of the Cal WARN Act, section 1401(a).

3 129. Based on information and belief, DEFENDANTS has a policy and practice of failing
4 to give compliant written notice to Class Members within the timing requirements set forth in Labor
5 Code section 1401(a) before ordering a mass layoff, relocation or termination, in violation of,
6 including but not limited to, Labor Code section 1401(a).

7 130. These violations subject DEFENDANTS to civil penalties including but not limited
8 to penalties pursuant to Labor Code 1403 of up to \$500 dollars for each day of DEFENDANTS's
9 violation of Labor Code section 1401 for each Class Member. Moreover, PLAINTIFF and Class
10 Members are entitled to recover reasonable attorney's fees and costs under Labor Code section
11 1404.

12 **TENTH CAUSE OF ACTION**

13 **Violations of the Worker Adjustment and Retraining Notification ("WARN") Act (By 14 PLAINTIFF and the Class Members Against all DEFENDANTS)**

15 131. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

16 132. At all relevant times DEFENDANTS were an "employer" as that term is defined in
17 29 U.S.C. § 2101(a)(1) and 20 C.F.R. § 639(a).

18 133. At all relevant times, PLAINTIFF and other Class Members were employees of
19 Defendant as that term is defined by 29 U.S.C. § 2101.

20 134. Based on information and belief, DEFENDANTS ordered a mass layoff and/or
21 closing of a facility, as that term is defined by 29 U.S.C. § 2101(a)(2).

22 135. Based on further information and belief, the mass lay and/or closing of a facility
23 resulted in "employment losses" as that term is defined by 29 U.S.C. § 2101(a)(2) for at least fifty
24 of DEFENDANTS' employees as well as more than 33% of DEFENDANTS' workforce at the
25 facility, not including "part-time employees," as that term is defined by 29 U.S.C. § 2101(a)(8).

26 136. PLAINTIFFS and CLASS MEMBERS were terminated by Defendant without cause
27 on their part, as part of or as the reasonably foreseeable consequence of the mass layoff and/or
28 facility closing ordered by DEFENDANTS.

29 137. DEFENDANTS failed to give PLAINTIFF and CLASS MEMBERS written notice

1 that complied with the requirements of the WARN Act.

2 138. As a result, PLAINTIFF and each of the CLASS MEMBERS are “aggrieved
3 employees” as that term is defined in 29 U.S.C. § 2104(a)(7).

4 139. DEFENDANTS failed to pay PLAINTIFF and each of the CLASS MEMBERS their
5 respective wages and other vested benefits for 60 days from the dates of their respective
6 terminations.

7
8 **ELEVENTH CAUSE OF ACTION**
9 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
10 **2698, *ET SEQ.***
11 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
12 **DEFENDANTS)**

13 140. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

14 141. PLAINTIFF brings this action under the Private Attorneys General Act of 2004,
15 Labor Code sections 2698, et seq., ("PAGA"), as a representative action on behalf of PLAINTIFF,
16 the State of California and Aggrieved Employees, regarding violations of the California Labor Code
17 as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

18 All current and former non-exempt and/or hourly-paid delivery drivers who worked for
19 DEFENDANTS in the State of California at any time during the period from September 6,
20 2018, through the date of Preliminary Approval (“PAGA Period”).

21 142. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
22 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
23 limitations period and suffered all of the Labor Code violations set forth herein. Accordingly,
24 PLAINTIFF seeks to recover on behalf of the State of California and all Aggrieved Employees, the
25 civil penalties provided by PAGA, plus reasonable attorney's fees and costs. PLAINTIFF has
26 standing to bring a PAGA cause of action on behalf of PLAINTIFF, the State of California, and all
27 Aggrieved Employees, as PLAINTIFF was jointly employed by DEFENDANTS and is thereby
28 affected by all of the alleged violations.

29 **COMPLIANCE WITH PAGA'S NOTIFICATION REQUIREMENTS**

30 143. On December 6, 2024, PLAINTIFF, through counsel, gave written notice by online

1 filing with the California Labor and Workforce Development Agency ("LWDA") informing it that
2 DEFENDANTS failed to comply with California's labor laws with regard to the allegations alleged
3 in this Complaint ("PAGA Notice"). The PAGA Notice was also sent to DEFENDANTS via
4 certified mail.

5 144. The LWDA did not provide notice of its intention to investigate DEFENDANTS'
6 violations after expiration of the statutorily-mandated waiting-time period(s), or at any time. To the
7 extent any of the alleged violations were curable, DEFENDANTS failed to cure within the time
8 allotted by PAGA. Accordingly, PLAINTIFF has exhausted the administrative remedies as required
9 by Labor Code section 2699.3. Consequently, PLAINTIFF's right to file the instant lawsuit against
10 DEFENDANTS has duly accrued.

11 145. PLAINTIFF seeks to recover the PAGA civil penalties through a representative
12 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
13 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

14 146. From one year prior to PLAINTIFF's filing of the required PAGA notice with the
15 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated California
16 Labor Code sections, 201-204, 226, 226.3, 226.7, 510, 512, 1194, 1197, 1199, 1400-1408, 2802,
17 IWC Wage Order No. 9 §§ 3, 4, 11, 12, 20, and 29 USC §§2101-2109, and all applicable Wage
18 Orders.

19 147. As set forth above, DEFENDANTS have committed numerous violations of the
20 California Labor Code due to including but not limited to their failure to pay all owed wages, failure
21 to provide accurate wage statements, failure to reimburse business expenses, failure to pay all wages
22 owed upon separation of employment, and Violations of the W.A.R.N. Act, as alleged above. PAGA
23 penalties are in addition to any other relief available under the Labor Code.

24 148. Under the provisions of PAGA and the above mentioned Labor Code sections,
25 including but not limited to Labor Code sections 201-204, 226, 226.3, 226.7, 510, 512, 1194, 1197,
26 1199, 1400-1408, 2802, IWC Wage Order No. 9 §§ 3, 4, 11, 12, 20, and 29 USC §§2101-2109 as
27 well as all interpretations of these laws by California Courts and administrative bodies, as well as
28 any other law that is enforceable through PAGA, DEFENDANTS are liable for the following

1 penalties:

- 2 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
- 3 relevant California Labor Code provisions listed herein only if permitted by the
- 4 PAGA statute, pursuant to Labor Code section 2699(a); and
- 5 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
- 6 violations without a civil penalty recoverable under the PAGA, all in the default
- 7 amounts provided by Labor Code section 2699(f).

8 149. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
9 PLAINTIFF is entitled to recover civil penalties, costs, and attorney's fees.

10
11 **PRAYER FOR RELIEF**

12 WHEREFORE, PLAINTIFF prays for relief and judgment, on behalf of PLAINTIFF and
13 Class Members and Aggrieved Employees as follows:

- 14 1. For an order that the action be certified as a class action;
- 15 2. For an order that PLAINTIFF be appointed as class representative;
- 16 3. For an order that counsel for PLAINTIFF be appointed as class counsel;
- 17 4. For compensatory damages according to proof;
- 18 5. For liquidated damages according to proof;
- 19 6. For penalties according to proof;
- 20 7. For an order requiring DEFENDANTS to pay a sum equivalent to all unpaid wages and
- 21 other vested benefits for 60 days in accordance with the WARN Act, 29 U.S.C. §
- 22 2104(a)(1)(4) and California Labor Code § 1402(a).
- 23 8. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully
- 24 withheld from PLAINTIFF and the Class Members;
- 25 9. For an order finding DEFENDANTS have engaged in unfair competition in violation of
- 26 section 17200, *et seq.*, of the California Business and Professions Code;
- 27 10. For an order enjoining DEFENDANTS from further acts of unfair competition;
- 28 11. For pre-judgment interest as permitted by law;

- 1 12. For attorney's fees and costs reasonably incurred;
2 13. For civil penalties under Labor Code Section 2699; and
3 14. For such other and further relief that the Court deems just and proper.

4 Dated: August 6, 2025

CROSNER LEGAL, PC

5 By: /s/ Brandon Brouillette
6 Brandon Brouillette, Esq.
7 Zachary M. Crosner, Esq.
8 Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

9 PLAINTIFF demands a trial by jury on all claims so triable.

10 Dated: August 6, 2025

CROSNER LEGAL, PC

11 By: /s/ Brandon Brouillette
12 Brandon Brouillette, Esq.
13 Zachary M. Crosner, Esq.
14 Attorneys for Plaintiff
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