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Case #24CV453585
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Attorney for Plaintiff, MARLON CHEVEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF SANTA CLARA**

MARLON CHEVEZ, an individual, on his
own behalf and on behalf of all others
similarly situated,

Plaintiff,

v.

GSK PIZZA INC, DBA MOUNTAIN
MIKE'S PIZZA, a California corporation;
NAGLEE PIZZA CORP, a California
corporation; M AND H PIZZA INC, a
California corporation; ABORN PIZZA
INC, a California corporation; DELANO
MM PIZZA INC, a California corporation,
SP PIZZA, INC, a California corporation,
and DOES 1 through 100, inclusive,

Defendants.

Case No.: 24CV453585

[Assigned for all Purposes to Hone Theodore C.
Zayner, in Dept. 19]

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1. FAILURE TO PAY PREMIUM OVERTIME/DOUBLE TIME WAGES DUE (Cal. Labor Code §§ 510, 511, 558, 1194, 1198; IWC Wage Order No. 5);**
- 2. FAILURE TO PAY MINIMUM WAGES (Cal. Labor Code §§1194, 1194.2, 1997, 1197.1, 1198; IWC Wage Order No. 5);**
- 3. FAILURE TO PROVIDE TIMELY OFF DUTY MEAL PERIODS (Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 5);**
- 4. FAILURE TO PROVIDE TIMELY OFF DUTY REST PERIODS (Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 5);**
- 5. FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. Labor Code §226; IWC Wage Order No. 5);**
- 6. FAILURE TO PAY WAGES DUE ON TERMINATION (Cal. Labor Code §§ 201-203; IWC Wage Order No. 5);**
- 7. FAILURE TO REIMBURSE BUSINESS EXPENSES (Cal. Labor Code § 2802);**

- 1 8. FAILURE TO PROVIDE UNIFORM
2 MAINTENANCE ALLOWANCE (Cal.
3 Labor Code §2802);
4 9. FAILURE TO ALLOW INSPECTION OF
5 EMPLOYMENT RECORDS (Cal. Labor
6 Code §1198.5);
7 10. UNFAIR COMPETITION (Cal. Bus. &
8 Prof. Code §§17200 et seq.); and
9 11. DAMAGES PURSUANT TO PRIVATE
10 ATTORNEY GENERAL ACT (“PAGA”)

11 **DEMAND FOR A JURY TRIAL**

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

16 MARLON CHEVEZ (“Plaintiff”) alleges the following:

17 1. This is a class action brought under California law by an individual who was
18 employed by GSK Pizza Inc dba Mountain Mike’s Pizza, Naglee Pizza Corp, M and H Pizza Inc,
19 Aborn Pizza Inc, Delano MM Pizza Inc and SP Pizza Inc (along with DOES 1 through 100,
20 collectively “Defendants”). Plaintiff brings this action on behalf of himself and others similarly
21 situated to recover wages from Defendants due to Defendants’ systematic failure to pay
22 overtime/double time wages, failure to pay minimum wages, failure to provide meal breaks (or
23 pay the statutory compensation due), failure to provide rest breaks (or pay the statutory
24 compensation due), failure to issue accurate wage statements, failure to pay wages on termination,
25 failure to reimburse business expenses, failure to pay a uniform maintenance allowance and
26 failure to allow inspection of employment records.

27 2. Plaintiffs have worked as employees for Defendants at their restaurants in Central
28 and Northern California. While working, Plaintiffs have been forced to endure stressful and
illegal workplace conditions created by Defendants’ efforts to maximize profits and tightly
control labor costs.

1 3. Plaintiff, like his co-workers whom Defendants also employed during the
2 applicable limitations period, spend their workdays in Central and Northern California, under
3 illegal and highly regimented circumstances. That regimen results from Defendants' insistence
4 to strictly monitor and curtail labor costs, which Defendants accomplish by not paying for all
5 labor costs, failing to pay overtime/double time, minimum wages, refusing to provide proper meal
6 periods, refusing to provide proper rest periods, not paying the required extra hour for missed
7 meal/rest breaks, failing to issue accurate wage statements, failing to pay wages on termination,
8 failing to reimburse business expenses, failing to pay a uniform maintenance allowance, failing
9 to allow inspection of employment records, and by using other unlawful stratagems to ensure that
10 labor costs remain artificially low.

11 4. Plaintiff brings this class action to recover, among other things, wages and
12 penalties from unpaid wages earned and due, including but not limited to, premium
13 overtime/double time wages, minimum wages, missed meal/rest break wages, failure to provide
14 accurate itemized wage statements, failure to pay wages on termination, failure to reimburse
15 business expenses, failure to pay a uniform maintenance allowance, failure to allow inspection
16 of employment records and interest, attorneys' fees, costs, and expenses.

17 5. Plaintiff seeks compensatory, statutory, declaratory, and injunctive relief for
18 himself and all members of the class, to compensate these workers for the unpaid wages and to
19 protect current and future workers of Defendants from being subjected to similar wage theft and
20 otherwise unlawful working conditions.

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

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8. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and 395.5, because the claims made, and the *Labor Code* violations as against the persons identified herein, occurred in the County of Santa Clara and because Defendants owned and operated their businesses in the County of Santa Clara.

PLAINTIFF

- (a) An individual over age 18 and a resident of Contra Costa County, California;
- (b) Employed as an hourly employee for Defendant in Mountain View, California;
- (c) Did not receive overtime/double time compensation required by *Labor Code* §§510 and 1194 and Industrial Wage Order No. 5;
- (d) Did not receive minimum wages as required by *Labor Code* §§1194, 1194.2, 1997, 1197.1, 1198 and Industrial Wage Order No. 5;
- (e) Did not receive the meal periods required by *Labor Code* §266.7 and Industrial Wage Order No. 5;
- (f) Did not receive the rest periods required by *Labor Code* §266.7 and Industrial Wage Order No. 5;
- (g) Did not receive accurate wage statements as mandated by *Labor Code* §226;
- (h) Was not paid all wages due on termination as required by *Labor Code* §§201-203;

- 1 (i) Was not reimbursed necessary business expenses as required by *Labor*
2 *Code* §2802;
3 (j) Was not provided a uniform maintenance allowance as required by *Labor*
4 *Code* §2802; and
5 (k) Was not provided his personnel records. Each of these was a violation of the
6 *Labor Code*.

7 **DEFENDANTS**

8 10. Plaintiff is informed and believes, and based on that information and belief,
9 alleges, Defendant GSK Pizza Inc dba Mountain Mike's Pizza is, and at all times mentioned
10 herein was:

- 11 (a) A California corporation, with a principal place of business at 1725
12 Miramonte Ave., Mountain View, California 94040. Defendant GSK
13 Pizza Inc dba Mountain Mike's Pizza has been authorized to do business
14 and has been doing business in the County of Santa Clara;
15 (b) The current employer of Plaintiff and the current and former employer of
16 the putative Class members;
17 (c) Paid Plaintiff and all Class members on an hourly basis;
18 (d) Failed to pay Plaintiff and all putative Class members premium
19 overtime/double time wages;
20 (e) Failed to pay Plaintiff and all putative Class member minimum wages;
21 (f) Failed to provide Plaintiff and all putative Class members with meal/rest
22 periods and failed to provide Plaintiff and all putative Class members
23 with accurate itemized wage statements;
24 (g) Failed to reimburse Plaintiff and all putative Class members for their
25 necessary business expenses;
26 (h) Failed to provide Plaintiff and all putative Class members a uniform
27 maintenance allowance;
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- 1 (i) Failed to pay Plaintiff and all putative Class members their wages on
2 termination of employment; and
3 (j) Failed to provide their personnel records. Each of these was a violation of
4 the *Labor Code*.

5 11. Plaintiff is informed and believes, and based on that information and belief,
6 alleges, Defendant Naglee Pizza Corp is, and at all times mentioned herein was:

- 7 (a) A California corporation, with a principal place of business at 2011 Naglee
8 Avenue, San Jose, California 95128. Defendant Naglee Pizza Corp has
9 been authorized to do business and has been doing business in the County
10 of Santa Clara;
11 (b) The current employer of Plaintiff and the current and former employer of
12 the putative Class members;
13 (c) Paid Plaintiff and all Class members on an hourly basis;
14 (d) Failed to pay Plaintiff and all putative Class members premium
15 overtime/double time wages;
16 (e) Failed to pay Plaintiff and all putative Class member minimum wages;
17 (f) Failed to provide Plaintiff and all putative Class members with meal/rest
18 periods and failed to provide Plaintiff and all putative Class members with
19 accurate itemized wage statements;
20 (g) Failed to reimburse Plaintiff and all putative Class members for their
21 necessary business expenses;
22 (h) Failed to provide Plaintiff and all putative Class members a uniform
23 maintenance allowance;
24 (i) Failed to pay Plaintiff and all putative Class members their wages on
25 termination of employment; and
26 (j) Failed to provide their personnel records. Each of these was a violation of
27 the *Labor Code*.
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1 12. Plaintiff is informed and believes, and based on that information and belief,
2 alleges, Defendant M and H Pizza Inc is, and at all times mentioned herein was:

- 3 (a) A California corporation, with a principal place of business at 3406
4 Ashbourne Circle, San Ramon, California 94583. Defendant M and H
5 Pizza Inc has been authorized to do business and has been doing business
6 in the County of Santa Clara;
7 (b) The current employer of Plaintiff and the current and former employer of
8 the putative Class members;
9 (c) Paid Plaintiff and all Class members on an hourly basis;
10 (d) Failed to pay Plaintiff and all putative Class members premium
11 overtime/double time wages;
12 (e) Failed to pay Plaintiff and all putative Class member minimum wages;
13 (f) Failed to provide Plaintiff and all putative Class members with meal/rest
14 periods and failed to provide Plaintiff and all putative Class members with
15 accurate itemized wage statements;
16 (g) Failed to reimburse Plaintiff and all putative Class members for their
17 necessary business expenses;
18 (h) Failed to provide Plaintiff and all putative Class members a uniform
19 maintenance allowance;
20 (i) Failed to pay Plaintiff and all putative Class members their wages on
21 termination of employment; and
22 (j) Failed to provide their personnel records. Each of these was a violation of
23 the *Labor Code*.

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25 13. Plaintiff is informed and believes, and based on that information and belief,
26 alleges, Defendant Aborn Pizza Inc is, and at all times mentioned herein was:

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- 1 (a) A California corporation, with a principal place of business at 3406
2 Ashbourne Circle, San Ramon, California 94583. Defendant Aborn Pizza
3 Inc has been authorized to do business and has been doing business in the
4 County of Santa Clara;
- 5 (b) The current employer of Plaintiff and the current and former employer of
6 the putative Class members;
- 7 (c) Paid Plaintiff and all Class members on an hourly basis;
- 8 (d) Failed to pay Plaintiff and all putative Class members premium
9 overtime/double time wages;
- 10 (e) Failed to pay Plaintiff and all putative Class member minimum wages;
- 11 (f) Failed to provide Plaintiff and all putative Class members with meal/rest
12 periods and failed to provide Plaintiff and all putative Class members with
13 accurate itemized wage statements;
- 14 (g) Failed to reimburse Plaintiff and all putative Class members for their
15 necessary business expenses;
- 16 (h) Failed to provide Plaintiff and all putative Class members a uniform
17 maintenance allowance;
- 18 (i) Failed to pay Plaintiff and all putative Class members their wages on
19 termination of employment; and
- 20 (j) Failed to provide their personnel records. Each of these was a violation of
21 the *Labor Code*.

22
23 14. Plaintiff is informed and believes, and based on that information and belief,
24 alleges, Defendant Delano MM Pizza Inc is, and at all times mentioned herein was:

- 25 (a) A California corporation, with a principal place of business at 620 Wollomes
26 Avenue, Ste. 101, Delano, California 93215. Defendant Delano MM Pizza
27 Inc has been authorized to do business and has been doing business in the
28 County of Santa Clara;

- (b) The current employer of Plaintiff and the current and former employer of the putative Class members;
- (c) Paid Plaintiff and all Class members on an hourly basis;
- (d) Failed to pay Plaintiff and all putative Class members premium overtime/double time wages;
- (e) Failed to pay Plaintiff and all putative Class member minimum wages;
- (f) Failed to provide Plaintiff and all putative Class members with meal/rest periods and failed to provide Plaintiff and all putative Class members with accurate itemized wage statements;
- (g) Failed to reimburse Plaintiff and all putative Class members for their necessary business expenses;
- (h) Failed to provide Plaintiff and all putative Class members a uniform maintenance allowance;
- (i) Failed to pay Plaintiff and all putative Class members their wages on termination of employment; and
- (j) Failed to provide their personnel records. Each of these was a violation of the *Labor Code*.

15. Plaintiff is informed and believes, and based on that information and belief, alleges, Defendant SP Pizza Inc is, and at all times mentioned herein was:

- (a) A California corporation, with a principal place of business at 3406 Ashbourne Circle, San Ramon, California 94583. Defendant SP Pizza Inc has been authorized to do business and has been doing business in the County of Santa Clara;
- (b) The current employer of Plaintiff and the current and former employer of the putative Class members;
- (c) Paid Plaintiff and all Class members on an hourly basis;

- (d) Failed to pay Plaintiff and all putative Class members premium overtime/double time wages;
- (e) Failed to pay Plaintiff and all putative Class member minimum wages;
- (f) Failed to provide Plaintiff and all putative Class members with meal/rest periods and failed to provide Plaintiff and all putative Class members with accurate itemized wage statements;
- (g) Failed to reimburse Plaintiff and all putative Class members for their necessary business expenses;
- (h) Failed to provide Plaintiff and all putative Class members a uniform maintenance allowance;
- (i) Failed to pay Plaintiff and all putative Class members their wages on termination of employment; and
- (j) Failed to provide their personnel records. Each of these was a violation of the *Labor Code*.

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

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

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

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

20. Plaintiff is informed and believes, and based on that information and belief alleges, that the Defendants named in this First Amended Complaint, including DOES 1 through 100, inclusive, knowingly and willfully acted in concert, conspired and agreed together among themselves and entered into a combination and systemized campaign of activity to *inter alia* damage Plaintiff, and the Class, and to otherwise consciously and/or recklessly act in derogation of the rights of Plaintiff and the Class, and the trust reposed by Plaintiff, and the Class, in each of the Defendants, the acts being negligently and/or intentionally inflicted. Their conspiracy, and Defendants' concerted actions, were such that, to Plaintiff's information and belief, and to all appearances, Defendants, and each of them, represented a unified body so that the actions of one Defendant was accomplished in concert with, and with the knowledge, ratification, authorization and approval of each of the other Defendants.

CLASS ALLEGATIONS

A. The Definition of the Class

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

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

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

11
12 22. Plaintiff reserves his right under Rule 3.765 of the California Rules of Court to
13 amend or modify the Class description with greater specificity or further division into subclasses
14 or limitation to particular issues.

15 **B. Maintenance of the Action**

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

19 **C. The Class Requisites**

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

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

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

26 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
27 that are raised in this First Amended Complaint are common to the Class
28 and will apply uniformly to every Class member;

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

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

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

- 22 (a) The questions of law and fact common to the Class predominate over any
23 question affecting only individual members;
- 24 (b) A class action is superior to any other available method for fairly and
25 efficiently adjudicating the claims of the Class;
- 26 (c) The Class members are so numerous that it is impractical to bring all of
27 them before the Court;
28

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

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

27 **GENERAL ALLEGATIONS**

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29. At all times material hereto, Defendants have been and are, pizza restaurants.

30. Plaintiff and members of the Class were employed as Cashiers, Cooks, Managers and other non-exempt employees by Defendants in California at various times during the Class Period. Plaintiff prepared food, worked the register, greeted customers and cleaned.

31. The employment by Defendants of the Class Members, and each them, is governed by Industrial Welfare Commission Wage Order 5, which covers those persons employed in the public housekeeping industry.

THE CONDUCT

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

33. Starting on or about March 5, 2018 and continuing to April 6, 2024, Defendant employed Plaintiff on an hourly basis as a Cashier, Cook and Manager at GSK Pizza Inc dba Mountain Mike's Pizza in Mountain View, California.

34. While employed by Defendants as a Cashier, Cook and Manager Plaintiff was paid approximately \$20.00 per hour. From 2018 until 2024, Plaintiff worked 5 days per week, 10 or more hours per day. In 2024, Plaintiff began working part time and he worked 3 days per week for 8 or more hours per day.

OFF THE CLOCK WORK

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

36. Defendants required Plaintiff and the Class to regularly perform compensable tasks pre-shift off-the-clock for which they did not receive any compensation. Specifically, at all times relevant, Plaintiff and Class members consistently worked hours for which they were not paid because Plaintiff and the Class members were required to wait in line to clock in on the POS computers, for 2-3 minutes, twice per month. Defendants were aware of Plaintiff and Class members' off-the-clock work.

1 37. Further, Plaintiff and Class members were required to use their personal cell
2 phones for work-related purposes off the clock to answer calls and/or texts for 5-10 minutes, 4
3 times per week.

4 38. As a result, and they improperly treated such pre-shift time and off the clock work
5 as non-compensable, Defendants failed to compensate Plaintiff and the Class for such time.

6 **FAILURE TO PAY OVERTIME/DOUBLE TIME WAGES**

7 39. Under California law, non-exempt employees as defined by Wage Order No 5, are
8 entitled to premium wages for overtime/double time worked. Under California law, non-exempt
9 employees as defined by IWC Wage Order No. 5, are entitled to premium wages for overtime
10 worked. Under California law, an hourly paid employee is entitled to overtime pay when they
11 exceed eight hours of work in a single day, exceed 40 hours of work in a week or work seven
12 days in a row. Defendant was required to compensate Plaintiff with premium pay for all double-
13 time performed, for hours worked in excess of twelve (12) hours per workday and for work in
14 excess of eight hours on any seventh day of a workweek.

15 40. Here, at all times during the relevant time period, Plaintiff and the Class routinely
16 worked schedules such that they were due pay at overtime/double time rates. During this period,
17 it was the practice and policy of Defendants to not pay employees overtime/double time. Plaintiff
18 and the Class were paid at their regular rate of pay for any overtime/double time worked. Monies
19 for unpaid overtime/double time remain due and owing. Further, due to their off the clock work,
20 Plaintiff and the Class were not paid overtime/double time.

21 **FAILURE TO PAY MINIMUM WAGES**

22 41. Under California law, non-exempt employees as defined by IWC Wage Order No.
23 5 are entitled to minimum wages. Labor Code Section 1197 states the California requirement that
24 employees must be paid at least the minimum wage fixed by the Commission or by any state or
25 local law, 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...is entitled to
27 recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage
28 Order No. 5, obligates employers to pay each employee minimum wages for all hours worked.

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

7 43. Plaintiff and the Class were not paid minimum wages due to Defendants' failure
8 to afford compliant meal/rest breaks.

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

13 **RESTRICTED/MISSED/LATE/INTERRUPTED MEAL BREAKS**

14 45. Under California law, non-exempt employees as defined by IWC Wage Order No.
15 5, are entitled to premium wages for overtime worked, a 30-minute lunch period for each 5 hours
16 worked, or major fraction thereof. Non-exempt employees are entitled to one hour pay at their
17 regular pay rate for each day the requisite meal periods are not provided.

18 46. Plaintiff and Class members were routinely afforded meal breaks late. Also, meal
19 breaks were frequently interrupted. Plaintiff and Class members were not allowed to leave the
20 premises during their meal breaks. Prior to 2024, Plaintiff was not provided with any meal breaks.
21 At times, Plaintiff and Class members were asked to clock out for their meal breaks, but to
22 continue working and take their breaks later.

23 47. Defendants' policies and procedures were applied to all non-exempt employees in
24 California and resulted in non-exempt employees working time which was not compensated by
25 any wages in violation of Labor Code sections 510, 1194 and the IWC Wage Order No. 5.

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1 48. As a result, Defendants owe wages at the legal overtime/double rate and minimum
2 wage rate for unpaid overtime/double time and minimum wages to each of their California non-
3 exempt employees whose daily hours were reduced and their meals periods were afforded late,
4 interrupted, shortened, restricted and/or not at all.

5 **REST PERIODS NOT AFFORDED**

6 49. Plaintiff and Class members' were not afforded rest periods. On days when
7 Plaintiff and Class members worked 10-hour shifts, they were never afforded second rest breaks.

8 **FAILURE TO ISSUE ACCURATE WAGE STATEMENTS**

9 50. As a result of Defendants' failure to pay employees at required overtime/double
10 time rates, minimum wage rates and premium pay for restricted, late, interrupted and/or missed
11 meal/rest breaks, the wage statements issued to the employees did not comply with *Labor Code*
12 §226 and the California Industrial Welfare Commission ("IWC") Wage Order No. 5 in that they
13 did not accurately reflect all wages earned and due and owing.

14 **FAILURE TO PAY WAGES DUE ON TERMINATION OF EMPLOYMENT**

15
16 51. As a further result of Defendants' failure to pay employees at required
17 overtime/double time, minimum wage rates and afford compliant meal/rest breaks, when the
18 employees left their employ, they were not timely paid all wages due them, as required by Labor
19 Code §§ 201, 202 and IWC Wage Order No. 5.

20 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

21 52. Defendants failed to reimburse Plaintiff and Class members for their necessary
22 business expenses, such as cell phone use.

23 **FAILURE TO PROVIDE A UNIFORM MAINTENANCE ALLOWANCE**

24 53. Defendants failed to provide Plaintiff and Class members with a uniform
25 maintenance allowance.

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

27 54. Defendant failed to allow Plaintiff to timely inspect his records and payroll files.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME/DOUBLE TIME**

3 **(Labor Code §§510, 511, 558, 1194, 1198 and IWC Wage Order No. 5 by Plaintiffs Against**
4 **Defendants and Does 1-100)**

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

7 56. During Plaintiff's entire employment with Defendants, pursuant to Cal. Lab. Code
8 §§510, 1194, and 1198, and IWC Wage Order No. 5, Defendants were required to compensate
9 Plaintiff and Class members with premium pay for all overtime/double time work performed, for
10 hours worked in excess of eight (8) hours per day and/or forty (40) hours per week and for the
11 first eight (8) hours on the seventh (7th) consecutive day of any work week. Defendant was
12 required to compensate Plaintiff and Class members with premium pay for all double-time
13 performed, for hours worked in excess of twelve (12) hours per workday and for work in excess
14 of eight hours on any seventh day of a workweek.

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

19 58. Pursuant to IWC Wage Order No. 5, § 3, "Employment beyond eight (8) hours in
20 any workday is permissible provided the employee is compensated for such overtime at not less
21 than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours worked
22 in excess of eight (8) hours up to and including twelve (12) hours in any workday... and (b)
23 Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any
24 workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive
25 day of work in a workweek."

26 59. California Labor Code section 558 provides in pertinent part:

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

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

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

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

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

11 60. Throughout Plaintiff's and Class members' employment, Plaintiff and Class
12 members worked overtime/double time hours and were not paid overtime/double time pay
13 Plaintiff and Class members were not paid overtime at 1.5 times the base rate but instead were
14 paid at their regular rate. Plaintiff and Class members were not paid double time but instead paid
15 at their regular rate when they worked over 12 hours per day and in excess of 8 hours on the
16 seventh consecutive day of work in a workweek.

17 61. Further, Plaintiff and Class members engaged in off-the-clock work and were not
18 compensated therefor. As a result, Defendant owes Plaintiff and Class members overtime/double
19 time due to their off the clock work.

20 62. Throughout Plaintiff's and Class members' employment, Defendants failed and
21 refused to pay and properly calculate overtime/double time compensation to Plaintiff and Class
22 members as required by law.

23 63. The foregoing overtime/double time compensation is owed and unpaid. As a direct
24 and proximate result of Defendants' failure and refusal to pay overtime/double time, Plaintiff and
25 Class Members suffered damages in an amount to be proven at trial.

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

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

3 **(IWC Wage Order No. 5; Labor Code §§ 1194, 1194.2, 1997, 1197.1, 1198 By Plaintiffs**
4 **Against Defendants and Does 1 through 100)**

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

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

12 67. *Labor Code* § 1197 states the California requirement that employees must be paid
13 at least the minimum wage fixed by the Commission, and any payment of less than the minimum
14 wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving less than the
15 legal minimum wage...entitled to recover in a civil action the unpaid balance of the full amount
16 of this minimum wage.” IWC Wage Order 5-2001 also obligates employers to pay each employee
17 minimum wages for all hours worked. These minimum wage standards apply to each hour
18 employees worked for which they were not paid. Therefore, an employer’s failure to pay for any
19 particular hour of time worked by an employee is unlawful, even if averaging an employee’s total
20 pay over all hours worked, paid or not, results in an average hourly wage above minimum wage.
21 *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

22 68. Pursuant to IWC Wage Order No. 5, Defendants are required to pay the members
23 of the Class for all hours worked, meaning the time during which an employee is subject to the
24 control of an employer, including all the time the employee is suffered or permitted to work,
25 whether or not required to do so.

26 69. Furthermore, pursuant to *Labor Code* § 1198, “[t]he maximum hours of work and
27 the standard conditions of labor fixed by the commission shall be the maximum hours of work
28 and the standard conditions of labor for employees.

1 70. The employment of any employee for longer hours than those fixed by the order
2 or under conditions of labor prohibited by the order is unlawful.”

3 71. Defendants failed to satisfy minimum wage requirements because they improperly
4 failed to afford Plaintiff and Class members compliant meal/rest breaks in violation of *Labor*
5 *Code* §§ 226.7, 1197, 1198 and IWC Wage Order No. 5.

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

11 73. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
12 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
13 *Code* § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid for
14 all hours worked under *Labor Code* § 1194, the employee may recover minimum wages for the
15 time associated with the overtime for which they received no compensation. *See Sillah v.*
16 *Command Int’l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing
17 for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed
18 they were paid less than minimum wage); *accord Andrade v. Arby’s Rest. Grp., Inc.*, 225 F. Supp.
19 3d 1115, 1132-33 (N.D. Cal. 2016).

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

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

27 **THIRD CAUSE OF ACTION**
28 **FOR FAILURE TO PROVIDE TIMELY OFF-DUTY MEAL PERIODS**

**(IWC Wage Order No. 5; Labor Code §§ 226.7, 512 By Plaintiffs Against Defendants and
Does 1 through 100)**

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

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

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

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

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

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

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

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

7 83. As alleged herein, Defendants failed to relieve employees of duties for timely meal
8 breaks throughout the Class Period. Plaintiff and the members of the Class's meal periods were
9 routinely afforded late. Also, meal breaks were frequently not afforded and/or interrupted.
10 Plaintiff and Class members were not allowed to leave the premises during their meal breaks.
11 Prior to 2024, Plaintiff was not provided any meal breaks. At times, Plaintiff and Class members
12 were asked to clock out for their meal breaks, but to continue working and take their breaks later.

13 84. Under California law, employers must also record their employees' meal periods:
14 "Every employer shall keep accurate information with respect to each employee, including the
15 following: ... Meal periods ... shall also be recorded. Meal periods during which operations cease
16 ... need not be recorded." IWC Wage Order No. 5, § (7)(A)(3). Where the employer has failed to
17 keep records required by statute, the consequences of such failure should fall on the employer,
18 not the employee. In such a situation, imprecise evidence by the employee can provide a sufficient
19 basis for liability." *Hernandez v. Mendoza*, 199 Cal. App. 3d 721, 727 (1988). Inasmuch as
20 Defendants had an obligation under the record-keeping requirements of the Wage Order to track
21 meal periods unless "all work ceases", Defendant knew or should have known its employees were
22 regularly afforded late, interrupted and/or missing meal periods during the Class Period.

23 85. Defendants have a policy or practice of failing to ensure that Plaintiff and
24 members of the class take proper meal periods required by California Labor Code §226.7 and
25 IWC Wage Order No. 5, §11.

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86. By their actions in affording Plaintiff and Class members improper meal periods, Defendants violated Cal. Lab. Code §226.7(b) and section 11 of Wage Order No. 5 in the amount of one additional hour of pay at the employee's regular rate of compensation for each work period during each day in which Defendants failed to provide employees with proper statutory off-duty meal periods.

87. Defendants also have a policy or practice of failing to pay each of their employees who was not provided with a proper meal period an additional one hour of compensation at each employee's regular rate of pay.

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

89. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and members of the Class have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover economic and statutory damages, attorneys' fees and penalties and other appropriate relief due to Defendants' violations of the California Labor Code and IWC Wage Order No. 5.

FOURTH CAUSE OF ACTION

FOR FAILURE TO PROVIDE REST PERIODS

(Labor Code § 226.7 and IWC Wage Order No. 5 By Plaintiffs Against Defendants and Does 1 through 100)

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

91. Labor Code § 226.7 and IWC Wage Order No. 5 provide that employers shall authorize and permit all employees to take rest periods at the rate of ten minutes net rest time per four hours of work, or major fraction thereof.

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92. Labor Code § 226.7 and IWC Wage Order No. 5 provide that if an employer fails to provide an employee with rest periods in accordance with those provisions, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the rest periods were not so provided.

93. Defendants have intentionally and improperly denied rest periods to Plaintiff and the Class in violation of Labor Code § 226.7 and IWC Wage Order No. 5. Plaintiff and Class members were never afforded second rest breaks on days that they worked 10 or more hours.

94. At all times relevant hereto, Plaintiff and members of the Class have worked 8 or more hours daily.

95. At all times relevant hereto, Defendants failed to provide proper rest periods as required by Labor Code § 226.7 and IWC Wage Order No. 5.

96. By virtue of Defendants' unlawful failure to provide proper rest periods to the Plaintiff and the Class, Plaintiff and the Class have suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff and the Class, but which exceed the jurisdictional limits of the Court and which will be ascertained according to proof at trial.

FIFTH CAUSE OF ACTION

FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE WAGE

ITEMIZED STATEMENTS

**(Labor Code §226 and IWC Wage Order No. 5 By Plaintiffs Against Defendants and Does
1 through 100)**

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

98. Pursuant to IWC Wage Order No. 5, Defendants were the employers of Plaintiff and the Class.

99. Pursuant to California Labor Code sections 226 and 1174, and IWC Wage Order No. 5, section 7, Defendants are required to maintain and provide accurate records relating to employee compensation including all formulas and production records used to calculate wages due.

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

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

11 102. Notwithstanding these provisions. Defendants have engaged in a uniform practice
12 of refusing to maintain and provide the accurate records and wage statements required by
13 California law.

14 103. Throughout the Class Period, Defendants intentionally and knowingly provided
15 Plaintiff and other members of the Class with weekly itemized wage statements containing
16 inaccurate information regarding the wages earned by Plaintiff and members of the Class in that
17 the payments owed to Plaintiff and the members of the Class for overtime/double time
18 compensation, minimum wages, missed, interrupted, restricted, or late meal/rest periods, were
19 not included in gross wages earned by Plaintiff and members of the Class.

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

22 105. Plaintiff and members of the Class were damaged by these failures because,
23 among other things, the failures led them to believe that they were not entitled to overtime/double
24 time compensation, minimum wages, pay for meal/rest periods not compliant, even though they
25 were so entitled and these failures hindered them from determining the amounts of wages owed
26 to them.

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106. Further, regarding Defendant GSK Pizza Inc dba Mountain Mike's Pizza, the company address listed on the California Secretary of State website does not match the company address listed on Plaintiff's paystubs. The address listed on the California Secretary of State website is 1724 Miramonte Avenue, Mountain View, CA 94040. However, that address belongs to Mountain Mike's Pizza. The address listed on Plaintiff's paystubs is 2406 Ashbourne Circle, San Ramon, CA 94583, which is a private residence.

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

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

SIXTH CAUSE OF ACTION

FAILURE TO PAY WAGES ON TERMINATION

(Labor Code §§201-203 and IWC Wage Order No. 5 By Plaintiffs Against Defendants and Does 1 through 100)

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

110. Labor Code § 201(a) provides that a discharged employee's unpaid wages are due and payable immediately. Labor Code § 202(a) provides that when an employee resigns from employment, unpaid wages are due and payable within 72 hours of resignation.

111. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until paid, not to exceed thirty days.

112. Plaintiff and the Class were discharged and/or resigned from Defendants' employ and Defendants willfully failed to pay Plaintiff and the Class wages due them.

113. Plaintiff did not receive the correct amount of his last pay. On or about April 6, 2024, Plaintiff received a text notifying him that he was terminated. However, he did not receive his pay on that date.

1 114. Plaintiff was paid his last pay 2 weeks later and it did not include waiting time
2 penalties.

3 115. Under Labor Code § 203(a), Plaintiff and the Class are entitled to one day's wages
4 for each day he or she was not timely paid, not to exceed 30 days' wages.

5 **SEVENTH CAUSE OF ACTION**

6 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

7 ***(Labor Code §2802 By Plaintiffs Against Defendants and Does 1 through 100)***

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

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

12 118. At all times relevant herein, Defendants were aware that Plaintiff and Class
13 members were using their personal cell phones for business, but failed to indemnify Plaintiff and
14 Class members for all their business-related expenses, including wear and tear expenses, in
15 accordance with Labor Code §2802. Plaintiff is informed and believes and thereon alleges that at
16 all relevant times, Defendant maintained a practice of not reimbursing Plaintiff and Class
17 Members for their work-related expenses that they incurred in using their cell phones for work-
18 related purposes.

19 119. Plaintiff and Class members were required to use their cell phones both on and off
20 the clock for work-related purposes such as answering calls and responding to texts.

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

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

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1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE A UNIFORM MAINTENANCE ALLOWANCE**

3 ***(Labor Code §2802 By Plaintiffs Against Defendants and Does 1 through 100)***

4 122. Plaintiff and the Class reallege and incorporate by reference all of the allegations
5 set forth in this First Amended Complaint.

6 123. Under California law, if an employer requires employees to wear a uniform, the
7 employer must pay for and maintain the uniform for the employee. Labor Code §2802.

8 124. An employer may never impose a financial burden on employees, with respect to
9 paying for and maintaining clothing, which would reduce the employees' wage rate below the
10 minimum wage.

11 125. Here, Defendant required Plaintiff and Class members to wear uniforms consisting
12 of shirts with company logos. However, Plaintiff and Class members were required to maintain
13 their uniforms themselves.

14 126. Defendant failed to reimburse Plaintiff and members of the Class for their uniform
15 maintenance expenses.

16 127. As a proximate result of the aforementioned violations of Labor Code § 2802,
17 Plaintiff and members of the Class have been damaged in an amount according to proof at the
18 time of trial.

19 128. As a proximate result of the aforementioned violations of § 2802, Plaintiff and
20 members of the Class are entitled to recovery from Defendant for reimbursement of necessary
21 expenditures including interest and attorneys' fees.

22 **NINTH CAUSE OF ACTION**

23 **FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS**

24 ***(Labor Code §1198.5 By Plaintiffs Against Defendants and Does 1 through 100)***

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

27 130. California Labor Code Section 1198.5 provides:

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

5 (b) The employer shall make the contents of those personnel records available
6 for inspection to the current or former employee, or his or her representative,
7 at reasonable intervals and at reasonable times, but not later than 30 calendar
8 days from the date the employer receives a written request, unless the current
9 or former employee, or his or her representative, and the employer agree in
10 writing to a date beyond 30 calendar days to inspect the records, and the
11 agreed-upon date does not exceed 35 calendar days from the employer's
12 receipt of the written request to inspect the records. Upon a written request
13 from a current or former employee, or his or her representative, the employer
14 shall also provide a copy of the personnel records,..... later than 30 calendar
15 days from the date the employer receives the request...

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

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

23 131. Additionally, pursuant to IWC Wage Order No. 5, at section 7 re: Records,
24 employers are required to keep accurate payroll records on each employee, and such records must
25 be made readily available for inspection by the employee upon reasonable request. The employer
26 must also maintain accurate production records.

27 132. On or about December 6, 2024, Plaintiff's counsel issued a written request to
28 Defendants for copies of his personnel records.

133. Under California Labor Code Sections 226, 432 and 1198.5, such records were to include all records relating to Plaintiff's hours worked, wage statements and compensation. Plaintiff's counsel and Defendants did not enter into an agreement to enlarge the time for Defendants' compliance, and Defendants have failed to permit Plaintiff copies of his records.

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

TENTH CAUSE OF ACTION

UNFAIR COMPETITION

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

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

136. Pursuant to IWC Wage Order No. 5, Defendants were the employers of Plaintiff and the Class. Defendants are also "person(s)" as that term is defined in Business & Professions Code §17021.

137. The Business & Professions Code defines unfair competition as any unlawful, unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct described herein, Defendants have engaged in unfair and unlawful practices by failing to (1) pay Plaintiff and the Class overtime/double time compensation; (2) pay minimum wages; (3) pay Plaintiff and the Class for meal periods afforded late, restricted, missed and/or interrupted, (4) pay Plaintiff and the Class for rest periods not afforded, (5) furnish Plaintiff and the Class with accurate itemized wage statements, as mandated by the applicable Labor Code and Industrial Welfare Commission requirements, (6) pay wages on termination (7) reimburse business expenses, (8) provide a uniform maintenance allowance; (9) provide personnel records, all in violation of Business & Professions Code §§ 17200 *et seq.*

1 138. By and through the unfair and unlawful business practices described herein,
2 Defendants have obtained valuable property, money and services from the Plaintiff and the Class
3 and has deprived them of valuable rights and benefits guaranteed by law all to the detriment of
4 Plaintiff and the Class.

5 139. All the acts described herein are violations of, among other things, the Labor Code
6 and Industrial Commission Wage Order No. 5, are unlawful and in violation of public policy; and
7 in addition are immoral, unethical, oppressive, and unscrupulous, and thereby constitute unfair
8 and unlawful business practices in violation of Business & Professions Code §§ 17200 *et seq.*

9 140. Plaintiff and the Class are entitled to, and do, seek such relief as may be necessary
10 to restore to them the money and property which Defendants have acquired, or of which Plaintiff
11 and the Class have been deprived by means of the above-described unfair and unlawful business
12 practices.

13 141. Plaintiff and the Class are further entitled to, and do, seek a declaration that the
14 above-described business practices are unfair and unlawful and that injunctive relief should be
15 issued restraining Defendants from engaging in any of the above described unfair and unlawful
16 business practices in the future.

17 142. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to
18 redress the injuries which they have suffered as a consequence of the unfair and unlawful business
19 practices of Defendants. As a result of the unfair and unlawful business practices described
20 above, Plaintiff and the Class have suffered and will continue to suffer irreparable harm unless
21 Defendants are restrained from continuing to engage in these unfair and unlawful business
22 practices. In addition, Defendants should be required to disgorge the unpaid moneys to Plaintiff
23 and the Class.

24 **ELEVENTH CAUSE OF ACTION**

25 **(Damages Pursuant to Private Attorney General Act Against All Defendants and**
26 **Does 1 through 100)**

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

144. Plaintiff brings this action on his own behalf and on behalf of all current and former employees of Defendants who were employed in California for the previous four years seeking to recover wages from Defendant due to Defendants' failure to pay overtime/double time, failure to pay minimum wages, provide meal/rest breaks (or pay the statutory compensation due), to issue accurate wage statements, to pay wages due on termination, to reimburse business expenses, to provide a uniform maintenance allowance, to allow inspection of employment records and unfair competition as set forth in this pleading.

145. On December 6, 2024, Plaintiff, pursuant to California Labor Code §§2699, et seq., by and through Plaintiff’s attorneys, uploaded a Private Attorney General Act (“PAGA”) claim to the State of California Labor and Workforce Development Agency (“LWDA”) and sent a letter via Certified Mail Return Receipt Requested to the defendant.

146. More than 65 days have passed since the above letter, and Plaintiff's counsel has not received any notice from the LWDA stating an intention to prosecute Plaintiff's PAGA claims.

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in his favor and against Defendants, and each of them, as follows:

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

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

/ / /

1 3. For payment of unpaid wages in accordance with California labor and
2 employment law;

3 4. For one (1) hour of pay at the regular rate of compensation for Plaintiff and Class
4 Members for each workday that a meal period was provided late and/or missed;

5 5. For one (1) hour of pay at the regular rate of compensation for Plaintiff and Class
6 Members for each workday that a rest period was not afforded;

7 6. For payment to Plaintiff and Class members of waiting time penalties pursuant to
8 *Cal. Lab. Code* §203, in an amount equal to their respective daily rates of pay at the time of
9 termination or layoff, multiplied by the total amount of days elapsed between the date of the
10 involuntary termination, and/or 72 hours after notice of the voluntary termination, up to a
11 maximum of 30 days' pay, according to proof;

12 7. For specific relief enforcing waiting time penalties of 30 days of per diem wages
13 pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;

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

16 9. For compensatory damages in the amount of Plaintiff and Class members' uniform
17 maintenance expenses, costs and attorneys' fees pursuant to *Cal. Code Civ. Proc.* §2802(c);

18 10. For an award of consequential damages in Plaintiff and Class members' favor and
19 against Defendants, in an amount to be proven at trial;

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

21 12. For specific relief enforcing waiting time penalties of 30 days of per diem wages
22 pursuant to *Cal. Bus. & Prof. Code* §17200, according to proof;

23 13. For prejudgment interest accrued on all due and unpaid overtime/double time and
24 minimum wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code*
25 §§218.6 and 1194(a), according to proof;

26 14. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, 1198.5,
27 according to proof;

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