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

MIGUEL ACEVES, an individual, on behalf
of himself, the State of California, as private
attorney general, and all others similarly
situated,

Plaintiff,

v.

T&R LUBE CENTERS, INC., a California
company; and DOES 1 TO 50,

Defendants.

CASE NUMBER: CVRI2406891

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

1. Failure to Pay All Minimum Wages,
2. Failure to Pay All Overtime Wages,
3. Failure to Provide Rest Periods and Pay Missed Rest Period Premiums,
4. Failure to Provide Meal Periods and Pay Missed Meal Period Premiums,
5. Failure to Maintain Accurate Employment Records,
6. Failure to Pay Wages Timely during Employment,
7. Failure to Pay All Wages Earned and Unpaid at Separation,
8. Failure to Reimburse Business Expenses,
9. Failure to Furnish Accurate Itemized Wage Statements,
10. Failure to Pay Sick Pay Accurately,
11. Unfair Competition Law, and

12. PAGA Penalties

DEMAND FOR JURY TRIAL

Plaintiff MIGUEL ACEVES (“Plaintiff”), on behalf of himself, the State of California, as private attorney general, and all other similarly situated employees within the State of California, complains and alleges of defendants T&R LUBE CENTERS, INC., (“T&R”) and Does 1 to 50 (collectively, “Defendants”), and each of them, as follows:

I. INTRODUCTION

1. This is a class action complaint brought pursuant to the California Code of Civil Procedure §382.

2. The “Class Period,” as used herein, is defined as the four-year period from the filing of this action and continuing into the present and ongoing. Defendants’ violations of California’s laws, as described more fully below, have been ongoing throughout the Class Period and are still ongoing.

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

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

- A. Failure to pay all minimum wages,
- B. Failure to pay all overtime wages,
- C. Failure to provide meal periods and pay missed meal period premiums
- D. Failure to provide rest periods and pay missed rest period premiums,
- E. Failure to maintain accurate employment records,
- F. Failure to pay wages timely during employment,
- G. Failure to pay all wages earned and unpaid at separation,
- H. Failure to indemnify all necessary business expenditures,
- I. Failure to furnish accurate itemized wage statements,

- 1 J. Failure to pay sick pay accurately (at the regular rate), and
2 K. Violations of California’s Unfair Competition Law (“UCL”) (Bus. & Prof.
3 Code, §§ 17200–17210).

4 5. This action is also a representative action brought pursuant to the California Labor
5 Code Private Attorneys General Act of 2004 (“PAGA”), codified in California Labor Code §§2698
6 through 2699.6.

7 6. The “PAGA Period” as used herein, is defined as the one-year period from the
8 mailing of the PAGA Notice to the Labor and Workforce Development Agency (“LWDA”) and
9 continuing into the present and ongoing.

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

14 8. Plaintiff is informed and believes and thereon alleges that the California Industrial
15 Welfare Commission (“IWC”) Wage Order applicable to the facts of this case is IWC Wage Order
16 4 (the “Applicable Wage Order”) and possibly others that may be applicable. (Cal. Code of Regs.,
17 tit. 8, §§ 11010, 11040) Plaintiff reserves the right to amend or modify the definition of
18 “Applicable Wage Order” with greater specificity or add additional IWC Wage Orders if additional
19 applicable wage orders are discovered in litigation.

20 **II. JURISDICTION & VENUE**

21 9. This Court has subject matter jurisdiction over all causes of action asserted herein
22 pursuant to Article VI, §10, of the California Constitution and Code of Civil Procedure §410.10
23 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds
24 \$25,000, and because each cause of action asserted arises under the laws of the State of California
25 or is subject to adjudication in the courts of the State of California.

26 10. This Court has personal jurisdiction over T&R because T&R has caused injuries in
27 the County of Riverside and the State of California through its acts, and by its violation of the
28 California Labor Code and California state common law. T&R transacts millions of dollars of

1 business within the State of California. T&R owns, maintains facilities and offices, transacts
2 business, has an agent or agents within the County of Riverside, and/or otherwise is found within
3 the County of Riverside.

4 11. Venue as to T&R is proper in this judicial district, pursuant to §395 of the Code of
5 Civil Procedure. T&R operates within California and does business within Riverside County,
6 California. Plaintiff worked for T&R at their Corona facility located in Riverside County. The
7 unlawful acts alleged herein have a direct effect on Plaintiff and all of Defendants' employees
8 identified above within Riverside County and surrounding counties where Defendants may
9 operate.

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

16 **III. THE PARTIES**

17 **A. PLAINTIFF**

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

21 14. Plaintiff brings this action on behalf of himself and the following class pursuant to
22 §382 of the Code of Civil Procedure as follows: *All individuals who are or were employed by*
23 *Defendants as non-exempt employees in California during the Class Period* (the "Class
24 Members").

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

1 16.

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

4 **B. DEFENDANTS**

5 18. Plaintiff is informed and believes and thereon alleges that Defendants were
6 authorized to and doing business in Riverside County and is and/or was the legal employer of
7 Plaintiff, the Aggrieved Employees, and the other Class Members during the applicable statutory
8 periods. Plaintiff, the Aggrieved Employees, and the other Class Members were, and are, subject
9 to Defendants' policies and/or practices complained of herein and have been deprived of the rights
10 guaranteed to them by: California Labor Code §§201, 202, 203, 204, 210, 226, 226.3, 226.7, 246,
11 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, and others that may
12 be applicable; California Business and Professions Code §§17200 through 17210 ("UCL"); and
13 the Applicable Wage Orders (Cal. Code of Regs., tit. 8, §§ 11010, 11040).

14 19. Plaintiff is informed and believes, and based thereon alleges, that during the Class
15 Period and the PAGA Period, Defendants did (and continue to do) business in the State of
16 California, County of Riverside.

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

26 21. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
27 herein, Defendants were and/or are the employers of Plaintiff, the Aggrieved Employees, and the
28 other Class Members. At all times herein mentioned, each of said Defendants participated in the

1 doing of the acts hereinafter alleged to have been done by the named Defendants. Furthermore,
2 the Defendants, and each of them, were the agents, servants, and employees of each and every one
3 of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
4 were acting within the course and scope of said agency and employment. Defendants, and each of
5 them, approved of, condoned, or otherwise ratified every one of the acts or omissions complained
6 of herein.

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

12 **IV. COMMON FACTS & ALLEGATIONS**

13 23. Plaintiff and the other Class Members (collectively, the “Class Members”) are and
14 were employed by the Defendants in the State of California at all relevant times.

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

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

21 26. Specifically, Defendants employed Plaintiff within the statutory Class Period and
22 PAGA Period, working as an hourly, non-exempt environmental health and safety technician,
23 along with other tasks required by Defendants.

24 **A. MINIMUM WAGE VIOLATIONS**

25 27. Labor Code §1197 requires employees to be paid at least the minimum wage fixed
26 by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code
27 §1194 entitles “any employee receiving less than the legal minimum wage . . . to recover in a civil
28 action the unpaid balance of the full amount of this minimum wage.” Likewise, the Applicable

1 Wage Orders also obligate employers to pay each employee minimum wages for all hours worked.
2 (Cal. Code of Regs., tit. 8, §§ 11010, 11040) Labor Code §1198 makes unlawful the employment
3 of an employee under conditions that the IWC Wage Orders prohibit.

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

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

15 30. This policy routinely failed to capture the entirety of the hours the Class Members
16 and the Aggrieved Employees worked. As a result, the Class Members and the Aggrieved
17 Employees were regularly uncompensated for time spent working. This uncompensated time
18 violated California's requirement that employees be compensated for all hours worked. As a result
19 of this practice, the Class Members and the Aggrieved Employees were not compensated their
20 minimum wages for all hours worked.

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

25 32. When employees, such as the Class Members, are not paid for all hours worked
26 under Labor Code §1194, they are entitled to recover minimum wages for the time which they
27 received no compensation. (See *Sillah v. Command International Security Services* (N.D. Cal.
28

1 2015) 154 F.Supp.3d 891 [employees suing for failure to pay overtime could recover liquidated
2 damages under Labor Code §1194.2 if they also showed they were paid less than minimum wage].)

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

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

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

14 34. As set forth above, Defendants failed to fully compensate the Class Members and
15 the Aggrieved Employees for all minimum wages. Accordingly, the Class Members are entitled
16 to recover unpaid wages, liquidated damages and civil penalties for violations of Labor Code
17 §§1194, 1194.2, and 1197.1.

18 35. Based upon these same factual allegations, the Class Members are likewise entitled
19 to penalties under Labor Code §1199.

20 **B. OVERTIME VIOLATIONS**

21 36. Labor Code §510 requires employers to compensate employees who work more
22 than eight hours in one workday, forty hours in a workweek, and for the first eight hours worked
23 on the seventh consecutive day no less than one and one-half times the regular rate of pay for an
24 employee. (Lab. Code, § 510, subd. (a).) Further, Labor Code §510 obligates employers to
25 compensate employees at no less than twice the regular rate of pay when an employee works more
26 than twelve hours in a day or more than eight hours on the seventh consecutive day of work. (Lab.
27 Code, § 510, subd. (a).) These rules are also reflected in the Applicable Wage Orders.
28

1 37. In accordance with Labor Code §1194 and the Applicable Wage Orders, the Class
2 Members and the Aggrieved Employees, could not then agree and cannot now agree to work for a
3 lesser wage than the amount provided by Labor Code §510 or the Applicable Wage Orders.

4 38. Here, Defendants violated their duty to accurately and completely compensate the
5 Class Members and the Aggrieved Employees, for all overtime worked. The Class Members and
6 the Aggrieved Employees, periodically worked hours that entitled them to overtime compensation
7 under the law but were not fully compensated for those hours, including for time spent working
8 while allegedly taking meal breaks as well as work performed off-the-clock.

9 39. Moreover, during the relevant statutory periods, Defendants had a policy and
10 practice of failing to pay overtime wages at the proper rate when it actually paid overtime.
11 Specifically, when Defendants paid overtime wages to the Class Members and the Aggrieved
12 Employees, Defendants failed to include all compensation when calculating the regular rate of pay
13 used in overtime calculations and when paying overtime.

14 40. For instance, the Class Members and the Aggrieved Employees, would often
15 receive, along with their hourly rates of pay for their working hours, additional remuneration
16 and/or non-discretionary bonus pay. Defendants, however, calculated the regular rate of pay for
17 the Class Members and the Aggrieved Employees, without factoring into the regular rate of pay
18 all other non-hourly pay earnings received during the pay period. As a result, the Class Members
19 and the Aggrieved Employees, were underpaid overtime wages when they worked in excess of
20 eight hours in any workday and/or forty hours in a workweek when such additional forms of
21 remuneration were earned. By its practice of periodically requiring the Class Members and the
22 Aggrieved Employees, to work in excess of eight hours in a workday and/or forty hours in a
23 workweek without compensating them at the rate of one and one-half (1½) their regular rate of
24 pay, Defendants willfully violated the provisions of Labor Code §§510, 1194, and 1199.

25 41. These actions were and are in clear violation of California's overtime laws as set
26 forth in Labor Code §§510, 1194, 1199, and the Applicable Wage Orders. (Cal. Code of Regs.,
27 tit. 8, §§ 11010, 11040.) As a result of Defendants' faulty policies and practices, the Class
28

1 Members and the Aggrieved Employees, were not compensated for all hours worked or paid
2 accurate overtime compensation.

3 **C. REST BREAK VIOLATIONS**

4 42. Pursuant to Labor Code §226.7 and the Applicable Wage Orders, Defendants were
5 and are required to provide the Class Members and the Aggrieved Employees, with compensated,
6 duty-free rest periods of not less than ten minutes for every major fraction of four hours worked.
7 Under the Applicable Wage Orders, an employer must authorize and permit all employees to take
8 ten-minute duty-free rest periods for every major fraction of four hours worked. (Cal. Code of
9 Regs., tit. 8, §§ 11010, 11040)

10 43. Likewise, Labor Code §226.7 provides that “[a]n employer shall not require an
11 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
12 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission”
13 (Lab. Code, § 226.7, subd. (b).) Labor Code §226.7 also provides that employers must pay their
14 employees one additional hour of pay at the employee’s regular rate for each workday that a “meal
15 or rest or recovery period is not provided.” (Lab. Code, § 226.7, subd. (c).) Thus, the Wage Orders
16 set when and for how long the rest period must take place and the Labor Code establishes that
17 violations of the IWC Wage Orders are unlawful and sets forth the premium pay employer must
18 pay their employees when employers fail to provide rest periods.

19 44. The California Supreme Court has held that, during required rest periods,
20 “employers must relieve their employees of all duties and relinquish any control over how
21 employees spend their break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th
22 257, 260.) Relinquishing control over employees during rest periods requires that employees be
23 “free to leave the employer’s premises” and be “permitted to attend to personal business.” (*Id.* at
24 p. 275.) The *Brinker* Court explained in the context of rest breaks that employer liability attaches
25 from adopting an unlawful policy:

26 “An employer is required to authorize and permit the amount of rest break
27 time called for under the wage order for its industry. If it does not—if, for
28 example, it adopts a uniform policy authorizing and permitting only one rest

1 break for employees working a seven-hour shift when two are required—it
2 has violated the wage order and is liable.” (*Brinker Rest. Corp. v. Superior*
3 *Court* (2012) 53 Cal.4th 1004, 1033.)

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

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

26 47. In addition to failing to authorize and permit compliant rest periods, the Class
27 Members and the Aggrieved Employees, were not compensated with one hour’s worth of pay at
28 their regular rate of compensation when they were not provided with a compliant rest period in

1 accordance with Labor Code §226.7, subdivision (c). Thus, Defendants have violated Labor Code
2 §226.7 and the Applicable Wage Orders.

3 48. Based on the foregoing, Plaintiff seeks to recover, on behalf of himself and other
4 non-exempt employees, rest period premiums and penalties.

5 **D. MEAL BREAK VIOLATIONS**

6 49. Labor Code §512 and the Applicable Wage Orders require employers to provide
7 employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours
8 of work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for a work
9 period of more than five hours per day without providing the employee with a meal period of not
10 less than 30 minutes”]; Cal. Code of Regs., tit. 8, §§ 11010, 11040 [“No employer shall
11 employ any person for a work period of more than five (5) hours without a meal period of not less
12 than 30 minutes”].) Additionally, an employee who works more than ten hours per day is
13 entitled to receive a second thirty-minute uninterrupted and duty-free meal period. (Lab. Code, §
14 512, subd. (a) [“An employer shall not employ an employee for a work period of more than 10
15 hours per day without providing the employee with a second meal period of not less than 30
16 minutes”].)

17 50. “An on-duty meal period is permitted only when the nature of the work prevents an
18 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal
19 break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement
20 must include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the
21 California Department of Industrial Relations, Division of Labor Standards Enforcement
22 (“DLSE”) and courts have “found that the nature of the work exception applies: (1) where the
23 work has some particular external force that requires the employee to be on duty at all times, and
24 (2) where the employee is the sole employee of a particular employer.” (*Id.* at p. 945, internal
25 quotation marks omitted; *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952,
26 958–959.) “[I]t is the employer’s obligation to determine whether the nature of the work prevents
27 an employee from being relieved before requiring an employee to take an on-duty meal period.”
28 (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 946.)

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

7 52. As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v.*
8 *Superior Court* (2012) 53 Cal.4th 1004, 1035 [“The IWC’s wage orders have long made a meal
9 period’s duty-free nature its defining characteristic.”].) Relinquishing control over employees
10 during meal periods requires that employees be “free to leave the employer’s premises” and be
11 “permitted to attend to personal business.” (*Augustus v. ABM Security Services, Inc.*, *supra*, 2
12 Cal.5th at p. 275.) Under Labor Code §512, if an employer maintains a uniform policy that does
13 not authorize and permit the amount of meal time called for under the law (as specified in the
14 Labor Code and/or applicable IWC Wage Order), “it has violated the wage order and is liable.”
15 (*Brinker Restaurant Corp. v. Superior Court*, *supra*, 53 Cal.4th at p. 1033.)

16 53. During the applicable statutory periods here, the Class Members and the Aggrieved
17 Employees, were periodically denied legally compliant and timely off-duty meal periods of at least
18 thirty minutes due to Defendants’ unlawful meal period policy and practices. As a result of
19 Defendants’ uniform meal period policies and practices, the Class Members and the Aggrieved
20 Employees, were often not permitted to take complaint first meal periods before the end of the
21 fifth hour of work. The Class Members and the Aggrieved Employees, were also periodically not
22 permitted to take second meal periods for shifts in excess of ten hours. Defendants thus violated
23 Labor Code §512 and the Applicable Wage Orders by failing to advise, authorize, or permit the
24 Class Members and the Aggrieved Employees, to receive thirty-minute, off-duty meal periods
25 within the first five hours of their shifts.

26 54. Labor Code §226.7 provides that “[a]n employer shall not require an employee to
27 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
28 applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab. Code, §

1 226.7, subd. (b).) Labor Code §226.7, subdivision (c), and the Applicable Wage Orders further
2 obligate employers to pay employees one additional hour of pay at the employee's regular rate of
3 compensation for each workday that the meal period is not provided. (Lab. Code, § 226.7, subd.
4 (c); Cal. Code of Regs., tit. 8, §§ 11010, 11040 ["If an employer fails to provide an employee a
5 meal period in accordance with the applicable provisions of this order, the employer shall pay the
6 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
7 that the meal period is not provided."].)

8 55. Accordingly, for each day that the Class Members and the Aggrieved Employees,
9 did not receive compliant meal periods, they were and are entitled to receive meal period premiums
10 pursuant to Labor Code §226.7 and the Applicable Wage Orders. Defendants, however, failed to
11 pay the Class Members and the Aggrieved Employees, applicable meal period premiums for many
12 workdays that the employees did not receive a compliant meal period. Thus, Defendants have
13 violated Labor Code §226.7 and the Applicable Wage Orders.

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

16 **E. FAILURE TO REIMBURSE BUSINESS EXPENSES**

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

23 58. At all relevant times herein, Defendants were subject to Labor Code §2804, which
24 states that "any contract or agreement, express or implied, made by any employee to waive the
25 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
26 employee or her personal representative of any right or remedy to which he is entitled under the
27 laws of this State."
28

1 59. Thus, the Class Members and the Aggrieved Employees, were and are entitled to
2 reimbursement for the expenses they incurred during the course of their duties. The duty to
3 reimburse even extends to the use of equipment the employee may already own and would be
4 required to pay for anyway. (*Cochran v. Schwan's Home Serv., Inc.* (2014) 228 Cal.App.4th 1137,
5 1144 [“The threshold question in this case is this: Does an employer always have to reimburse an
6 employee for the reasonable expense of the mandatory use of a personal cell phone, or is the
7 reimbursement obligation limited to the situation in which the employee incurred an extra expense
8 that he or she would not have otherwise incurred absent the job? The answer is that reimbursement
9 is always required. Otherwise, the employer would receive a windfall because it would be passing
10 its operating expenses on to the employee.”].)

11 60. Here, Defendants failed to fully reimburse the Class Members and the Aggrieved
12 Employees, for necessary expenditures incurred as a direct consequence and requirement of
13 performing their job duties, including the costs associated with their personal cell phone, computer,
14 internet, and tools Defendants knew, or should have known, that Class Members would be required
15 to use to perform their work. Consequently, Defendants failed to comply with Labor Code §2802.

16 **F. UNTIMELY WAGES DURING EMPLOYMENT**

17 61. Labor Code §204 expressly requires employers who pay employees on a weekly,
18 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following
19 the close of the payroll period.” Labor Code §210, subdivision (a), makes employers who violate
20 Labor Code §204 subject to a penalty of:

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

23 “(2) For each subsequent violation, or any willful or intentional
24 violation, two hundred dollars (\$200) for each failure to pay each
25 employee, plus 25 percent of the amount unlawfully withheld.”
26 (Lab. Code, § 210, subd. (a).)
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1 62. Notably, the penalty provided by Labor Code §210 is “[i]n addition to, and entirely
2 independent and apart from, any other penalty provided in this article” (Lab. Code, § 210,
3 subd. (a).)

4 63. Due to Defendants’ failure to pay the Class Members and the Aggrieved
5 Employees, the wages described above, along with rest and meal break premiums, Defendants
6 failed to timely pay the Class Members and the Aggrieved Employees, within seven calendar days
7 following the close of payroll in accordance with Labor Code §204 on a regular and consistent
8 basis.

9 **G. UNTIMELY WAGES AT SEPARATION**

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

16 65. Due to Defendants’ faulty pay policies, those former Class Members and Aggrieved
17 Employees, whose employment with Defendants concluded were not compensated for each and
18 every hour worked at the appropriate rate. Defendants have failed to pay former Class Members
19 and the Aggrieved Employees, whose sums were certain at the time of termination within seventy-
20 two hours of their resignation and have failed to pay those sums for thirty days thereafter.

21 **H. WAGE STATEMENT VIOLATIONS**

22 66. Defendants also failed to provide accurate itemized wage statements in accordance
23 with Labor Code §§226, subdivisions (a)(1), (2), (5), (8), and (9). Labor Code §226, subdivision
24 (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
25 statement in writing showing:

- 26 (1) The gross wages earned;
27 (2) The total hours worked by the employee;
28 (3) The number of piece-rate units earned and any applicable

1 piece rate if the employee is paid on a piece rate basis;

2 (4) All deductions, provided that all deductions made on written
3 orders of the employee may be aggregated and shown as one item;

4 (5) The net wages earned;

5 (6) The inclusive dates of the period for which the employee is
6 paid;

7 (7) The name of the employee and only the last four digits of his
8 or her social security number or an employee identification number
9 other than a social security number;

10 (8) The name and address of the legal entity that is the employer;
11 and

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

15 67. Due to Defendants' failure to pay the Class Members and the Aggrieved
16 Employees, properly as described above, the wage statements issued do not indicate the correct
17 amount of gross wages earned, total hours worked, or the net wages earned, or the applicable
18 hourly rates in effect during the pay period and the corresponding number of hours worked at each
19 hourly rate. Thus, Defendants have violated Labor Code §226, subdivisions (a)(1), (2), (5), and
20 (9).

21 68. Further, wage statements of Class Members and the Aggrieved Employees, fail to
22 list a valid legal entity as the employer, in violation of Labor Code §226, subdivision (a)(8).

23 69. In addition to Labor Code §226, subdivision (a), Defendants also knowingly and
24 intentionally failed to provide the Class Members and the Aggrieved Employees, with accurate
25 itemized wage statements in violation of Labor Code §226, subdivision (e). Defendants knew that
26 they were not providing the Class Members and the Aggrieved Employees, with wage statements
27 required by California law but nevertheless failed to correct their unlawful practices and policies.
28 (See *Garnett v. ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d 1121, 1134 [finding the defendant

1 knowingly and intentionally violated Labor Code §226 because the “[d]efendant knew that it was
2 not providing total hours worked to plaintiff or other employees paid on commission” even though
3 it believed that employees paid solely on commission or commission and salary “are exempt and
4 therefore we do not record hours on a wage statement.”].)

5 **I. RECORDKEEPING VIOLATIONS**

6 70. Labor Code §226, subdivision (a), requires employers to keep an accurate record
7 of, among other things, all hours worked by employees. Labor Code §226.3 provides, in pertinent
8 part, as follows:

9 “Any employer who violates subdivision (a) of Section 226 shall be subject
10 to a civil penalty in the amount of two hundred fifty dollars (\$250) per
11 employee per violation in an initial citation and one thousand dollars
12 (\$1,000) per employee for each violation in a subsequent citation, for which
13 the employer fails to provide the employee a wage deduction statement or
14 fails to keep the records required in subdivision (a) of Section 226. The
15 civil penalties provided for in this section are in addition to any other
16 penalty provided by law.” (Lab. Code, § 226.3, emphasis added.)

17 71. Likewise, Labor Code §1174, subdivision (d), requires every employer, including
18 Defendants, to:

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

3 72. As explained in detail above, Defendants failed to provide the Class Members and
4 the Aggrieved Employees, with accurate itemized wage statements. Defendants did so, in part,
5 because they failed to accurately track hours worked by the Class Members and the Aggrieved
6 Employees. Defendants have thus failed to keep accurate records of the “total hours worked by
7 the employee[s]” in violation of Labor Code §226, subdivision (a), and are therefore subject to the
8 penalties provided by Labor Code §226.3. These penalties are “in addition to any other penalty
9 provided by law.” (Lab. Code, § 226.3.)

10 73. The failure to accurately track hours worked also resulted in a failure of Defendants
11 to keep a record of all “payroll records showing the hours worked daily by” Defendants’
12 employees, including Plaintiff and the other Class Members and the Aggrieved Employees, in
13 violation of Labor Code §1174, subdivision (d).

14 **J. SICK PAY VIOLATIONS**

15 74. Defendants also failed in their obligation to provide Class Members and the
16 Aggrieved Employees, the legally required paid sick days at the legal rate pursuant to Labor Code
17 §§ 246(a),(b), which requires that “[a]n employee who, on or after July 1, 2015, works in California
18 for the same employer for 30 or more days within a year from the commencement of employment
19 is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours worked,
20 beginning at the commencement of employment.”

21 75. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees
22 must be “calculated in the same manner as the regular rate of pay for the workweek in which the
23 employee uses paid sick time, whether or not the employee actually works overtime in that
24 workweek.”

25 76. Additionally, Labor Code § 246(l)(2) states that the paid sick time must be
26 “calculated by dividing the employee’s total wages, not including overtime premium pay, by the
27 employee’s total hours worked in the full pay periods of the prior 90 days of employment.” Finally,
28 Labor Code §246(i) requires employers to “provide an employee with written notice that sets forth

1 the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick
2 leave, for use on either the employee's itemized wage statement described in Section 226 or in a
3 separate writing provided on the designated pay date with the employee's payment of wages."

4 77. Here, at all relevant times, Defendants failed in their obligation to provide Class
5 Members and the Aggrieved Employees, the legally required paid sick days at the "regular rate of
6 pay," including all forms of compensation, pursuant to Labor Code §§ 246(a), (b). As such,
7 Defendants paid sick time below the base rate of pay rather than the "regular rate of pay" as
8 required by Labor Code §§ 246(l) (1-2).

9 **V. CLASS ACTION ALLEGATIONS**

10 78. As mentioned above, Plaintiff brings this action on behalf of himself and the Class
11 Members pursuant to §382 of the Code of Civil Procedure.

12 79. **Numerosity/Ascertainability:** The Class Members are so numerous that joinder of
13 all members would be unfeasible and not practicable. The membership of the class is unknown to
14 Plaintiff at this time; however, it is estimated that the number of Class Members is greater than
15 100 individuals. The identity of such membership is readily ascertainable via inspection of
16 Defendants' employment records.

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

- 21 A. Whether Defendants' pay policies/practices resulted in a failure to pay the
22 Class Members for all hours worked, including all minimum wages;
- 23 B. Whether Defendants' pay policies/practices resulted in a failure to pay the
24 Class Members for all required overtime wages at the Class Members'
25 regular rate of pay;
- 26 C. Whether Defendants' rest period policies and practices afforded legally
27 compliant rest periods or compensation in lieu thereof;
- 28 D. Whether Defendants' meal period policies and practices afforded legally

- 1 compliant meal periods or compensation in lieu thereof;
- 2 E. Whether Defendants properly reimbursed Class Members for all necessary
- 3 expenditures incurred in the direct consequence of the discharge of their
- 4 duties;
- 5 F. Whether Defendants maintained accurate employment records;
- 6 G. Whether Defendants timely paid all wages during employment;
- 7 H. Whether Defendants timely paid all wages earned and unpaid at separation;
- 8 I. Whether Defendants furnished legally compliant wage statements to the
- 9 Class Members pursuant to Labor Code §226;
- 10 J. Whether Defendants failed to use the regular rate for payment of sick pay
- 11 to Class Members; and
- 12 K. Whether Defendants' violations of the Labor Code and the Applicable
- 13 Wage Orders amounted to a violation of California's UCL.

14 81. **Predominance of Common Questions:** Common questions of law and fact

15 predominate over questions that affect only individual Class Members. The common questions of

16 law set forth above are numerous and substantial and stem from Defendants' uniform policies and

17 practices applicable to each individual class member, such as Defendants' uniform policy and

18 practice of failing to pay for all hours worked, Defendants' uniform policies and practices which

19 failed to provide complaint rest periods, Defendants' uniform policies and practices which failed

20 to provide complaint meal periods, Defendants' uniform policies which failed to reimburse

21 necessary expenditures, Defendants' failure to provide accurate itemized wage statements,

22 Defendants' failure to use the regular rate for sick pay, and others. As such, the common questions

23 predominate over individual questions concerning each individual class member's showing as to

24 his or her eligibility for recovery or as to the amount of his or her damages.

25 82. **Typicality:** The claims of Plaintiff are typical of the claims of the Class Members

26 because Plaintiff was employed by Defendants as a non-exempt employee in California during the

27 statute(s) of limitation applicable to each cause of action pleaded in this complaint. As alleged

28 herein, Plaintiff, like the other Class Members, was deprived of minimum, regular, and overtime

1 wages because of Defendants' unlawful timekeeping policies and practices, was deprived of rest
2 periods and premium wages in lieu thereof, was deprived of meal periods and premium wages in
3 lieu thereof, was subject to Defendants' uniform rest period policies and practices, was subject to
4 Defendants' uniform meal period policies and practices, was not reimbursed for necessary
5 expenditures, was not provided accurate itemized wage statements, was not paid all wages in full
6 and on time, and was subject to other similar policies and practices to which the Class Members
7 were subject.

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

14 **84. Superiority:** The California Labor Code is broadly remedial in nature and serves
15 an important public interest in establishing minimum working conditions and standards in
16 California. These laws and labor standards protect the average working employee from
17 exploitation by employers who have the responsibility to follow the laws and who may seek to
18 take advantage of superior economic and bargaining power in setting onerous terms and conditions
19 of employment. The nature of this action and the format of laws available to Plaintiff and the
20 Class Members make the class action format a particularly efficient and appropriate procedure to
21 redress the violations alleged herein. If each employee were required to file an individual lawsuit,
22 Defendants would necessarily gain an unconscionable advantage since they would be able to
23 exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior
24 financial and legal resources.

25 **85.** Moreover, requiring each Class Member to pursue an individual remedy would also
26 discourage the assertion of lawful claims by employees who would be disinclined to file an action
27 against their former or current employer for real and justifiable fear of retaliation and permanent
28 damages to their careers at subsequent employment. Further, the prosecution of separate actions

1 by the individual Class Members, even if possible, would create a substantial risk of inconsistent
2 or varying verdicts or adjudications with respect to the individual Class Members against
3 Defendants herein, and which would establish potentially incompatible standards of conduct for
4 Defendants or legal determinations with respect to individual Class Members which would, as a
5 practical matter, be dispositive of the interest of the other Class Members not parties to
6 adjudications or which would substantially impair or impede the ability of the Class Members to
7 protect their interests.

8 86. Further, the claims of the individual Class Members are not sufficiently large to
9 warrant vigorous individual prosecution considering the concomitant costs and expenses attending
10 thereto. As such, the Class Members identified above are maintainable as a class under §382 of
11 the Code of Civil Procedure.

12 **VI. EXHAUSTION OF REMEDIES**

13 87. Plaintiff has fully and completely exhausted administrative remedies under PAGA
14 prior to proceeding with the PAGA claims stated in this complaint. Plaintiff filed a PAGA notice
15 online with the LWDA and sent a letter by certified mail to Defendants setting forth the facts and
16 theories of the violations alleged against Defendants, as prescribed by PAGA. (Lab. Code, §§
17 2698–2699.6.)

18 88. As required by PAGA, Plaintiff submitted the \$75.00 filing fee with the LWDA.
19 Pursuant to Labor Code §2699.3, subdivision (a)(2)(A), no notice was received by Plaintiff from
20 the LWDA evidencing its intention to investigate within sixty-five calendar days of the postmark
21 date of the PAGA notice. Plaintiff is therefore entitled to commence and proceed with a civil
22 action pursuant to Labor Code §2699.

23 **VII. CAUSES OF ACTION**

24 **First Cause of Action**

25 *Failure to Pay All Minimum Wages*

26 *(Against All Defendants)*

27 89. Plaintiff realleges and incorporates by reference all previous paragraphs.
28

1 90. Section 4 of the Applicable Wage Orders and Labor Code §1197 establish the right
2 of employees to be paid minimum wages for all hours worked, in amounts set by state law. (Lab.
3 Code, § 1197; Cal. Code of Regs., tit. 8, §§ 11010, 11040) Labor Code §§1194, subdivision (a),
4 and 1194.2, subdivision (a), provide that an employee who has not been paid the legal minimum
5 wage as required by Labor Code §1197 may recover the unpaid balance, together with attorneys’
6 fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and
7 interest accrued thereon.

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

13 92. Labor Code §1198 makes unlawful the employment of an employee under
14 conditions that the IWC Wage Orders prohibit. Labor Code §§1194, subdivision (a), and 1194.2,
15 subdivision (a), provide that an employer who has failed to pay its employees the legal minimum
16 wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated
17 damages in an amount equal to the wages due and interest thereon.

18 93. As a direct and proximate result of Defendants’ unlawful conduct as alleged herein,
19 Plaintiff and the other Class Members have sustained economic damages, including but not limited
20 to unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to
21 recover economic and statutory damages and penalties and other appropriate relief because of
22 Defendants’ violations of the Labor Code and Applicable Wage Orders.

23 94. Defendants’ practices and policies regarding illegal employee compensation are
24 unlawful and create an entitlement to recovery by Plaintiff and the other Class Members in a civil
25 action for the unpaid amount of minimum wages, liquidated damages, including interest thereon,
26 statutory penalties, attorney’ s fees, and costs of suit according to Labor Code §§204, 218.5, 1194,
27 1194.2, 1197, and 1198, and Code of Civil Procedure §1021.5.

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99. Section 12 of the Applicable Wage Orders, and Labor Code §226.7 establish the right of employees to be provided with a rest period of at least ten minutes for each four hour period worked, or major fraction thereof. (See Cal. Code of Regs., tit. 8, §§ 11010, 11040)

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

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

Fourth Cause of Action

Failure to Provide Meal Periods and Pay Missed Meal Period Premiums

(Against All Defendants)

102. Plaintiff realleges and incorporates by reference all previous paragraphs.

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

104. As a result, Defendants are responsible for paying premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the Applicable Wage Orders and Labor Code §§226.7 and 512, and Civil Code §3287, subdivision (b), and 3289. (See Cal. Code of Regs., tit. 8, §§ 11010, 11040).

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1 to a penalty of \$100 for any initial failure to timely pay each employee's full wages and \$200 for
2 each subsequent violation, plus 25% of the amount unlawfully withheld.

3 111. Labor Code §216 establishes that it is a misdemeanor for any person, with regards
4 to wages due, to "falsely deny the amount or validity thereof, or that the same is due, with intent
5 to secure himself, her employer or other person, any discount upon such indebtedness, or with
6 intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness
7 is due."

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

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

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

22 **Seventh Cause of Action**

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

24 *(Against All Defendants)*

25 115. Plaintiff realleges and incorporates by reference all previous paragraphs.

26 116. The actionable period for this cause of action is three years prior to the filing of this
27 complaint through the present, and ongoing until the violations are corrected or the class is
28 certified. (*Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, 1395; *Murphy v. Kenneth*

1 *Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1109; Code Civ. Proc., § 338, subd. (a).) Labor
2 Code §§201 and 202 of the California Labor Code require Defendants to pay all compensation due
3 and owing to its former employees (including the formerly-employed Class Members) during the
4 actionable period for this cause of action at or around the time that their employment is or was
5 terminated, or ended.

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

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

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

19 **Eighth Cause of Action**

20 *Failure to Indemnify All Necessary Business Expenditures*

21 *(Against All Defendants)*

22 120. Plaintiff realleges and incorporates by reference all previous paragraphs.

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

3 122. Here, Plaintiff and the other Class Members paid out of pocket for necessary
4 business expenditures incurred as a direct consequence and requirement of performing their job
5 duties, including the costs associated with their personal cell phone, computer, internet, and tools.
6 Despite knowing that Plaintiff and the other Class Members incurred these necessary business
7 expenses, and requiring Plaintiff and the other Class Members to use such items, Defendants did
8 not reimburse them.

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

12 **Ninth Cause of Action**

13 *Failure to Furnish Accurate Itemized Wage Statements*

14 *(Against All Defendants)*

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

16 125. Labor Code §226, subdivision (a), obligates employers, semi-monthly or at the time
17 of each payment to furnish an itemized wage statement in writing showing:

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

1 other than a social security number;

2 (8) The name and address of the legal entity that is the employer;
3 and

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

7 126. As set forth above, Defendants issued and continues to issue wage statements to its
8 non-exempt employees including Plaintiff and the other Class Members that are inadequate under
9 Labor Code §226, subdivision (a). By failing to pay Plaintiff and the other Class Members
10 properly as described above, Defendants failed to include required information on their wage
11 statements, including, but not limited to, the gross wages earned, the net wages earned in violation
12 of Labor Code §226, subdivision (a). Additionally, Defendants failed to list a valid legal entity as
13 the employer, in violation of Labor Code §226, subdivision (a)(8).

14 127. Defendants' failure to comply with Labor Code §226, subdivision (a), of the Labor
15 Code was knowing and intentional. (Lab. Code, § 226, subd. (e)).

16 128. As a result of Defendants' issuance of inaccurate itemized wage statements to
17 Plaintiff and the other Class Members in violation of Labor Code §226, subdivision (a), Plaintiff
18 and the other Class Members are each entitled to recover an initial penalty of \$50, and subsequent
19 penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and
20 per each Class Member from Defendants pursuant to Labor Code §226, subdivision (e), along with
21 costs and reasonable attorneys' fees.

22 **Tenth Cause of Action**

23 *Failure to Pay Sick Pay Accurately*

24 *(Against All Defendants)*

25 129. Plaintiff realleges and incorporates by reference all previous paragraphs.

26 130. Defendants failed in their obligation to provide Class Members the legally required
27 paid sick days at the legal rate pursuant to Labor Code §§ 246(a),(b), which requires that "[a]n
28 employee who, on or after July 1, 2015, works in California for the same employer for 30 or more

1 days within a year from the commencement of employment is entitled to paid sick days. . . at the
2 rate of not less than one hour per every 30 hours worked, beginning at the commencement of
3 employment.”

4 131. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees
5 must be “calculated in the same manner as the regular rate of pay for the workweek in which the
6 employee uses paid sick time, whether or not the employee actually works overtime in that
7 workweek.”

8 132. Additionally, Labor Code § 246(l)(2) states that the paid sick time must be
9 “calculated by dividing the employee’s total wages, not including overtime premium pay, by the
10 employee’s total hours worked in the full pay periods of the prior 90 days of employment.” Finally,
11 Labor Code §246(i) requires employers to “provide an employee with written notice that sets forth
12 the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick
13 leave, for use on either the employee’s itemized wage statement described in Section 226 or in a
14 separate writing provided on the designated pay date with the employee’s payment of wages.”

15 133. Here, at all relevant times, Defendants failed in their obligation to provide Class
16 Members the legally required paid sick days at the “regular rate of pay,” including all forms of
17 compensation, pursuant to Labor Code §§ 246(a), (b). As such, Defendants paid sick time below
18 the base rate of pay rather than the “regular rate of pay” as required by Labor Code §§ 246(l) (1-
19 2).

20 134. Such violations allow Plaintiff and the other Class Members to recover in a civil
21 action the unpaid amount of sick pay owing, including interest thereon, statutory penalties,
22 attorney’s fees, and costs of suit.

23 **Eleventh Cause of Action**

24 *Violations of California’s Unfair Competition Law*

25 *(Against All Defendants)*

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

27 136. Defendants have engaged and continue to engage in unfair and/or unlawful business
28 practices in California in violation of California Business and Professions Code §17200 through

1 17210, by committing the unlawful acts described above. Defendants' utilization of these unfair
2 and unlawful business practices deprived and continue to deprive Plaintiff and the other Class
3 Members of compensation to which they are legally entitled. These practices constitute unfair and
4 unlawful competition and provide an unfair advantage over Defendants' competitors who have
5 been and/or are currently employing workers and attempting to do so in honest compliance with
6 applicable wage and hour laws.

7 137. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct alleged
8 herein, Plaintiff for himself and on behalf of the Class Members, seeks full restitution of monies,
9 as necessary and according to proof, to restore any and all monies withheld, acquired and/or
10 converted by Defendants pursuant to Business and Professions Code §§17203 and 17208.

11 138. The acts complained about herein occurred within the four years prior to the
12 initiation of this action and are continuing into the present and ongoing.

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

18 **Twelfth Cause of Action**

19 *Penalties Pursuant to PAGA for Violations of California Labor Code §§201, 202,*
20 *203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2, 1197,*
21 *1197.1, 1198, 1198.5, 1199, and Other Provisions of the Labor Code*
22 *(Against All Defendants)*

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

24 141. Based on the above allegations incorporated by reference, Defendants violated
25 Labor Code §§201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2,
26 1197, 1197.1, 1198, 1198.5, 1199, 2802 and others that may be applicable; and the Applicable
27 Wage Order (Cal. Code of Regs., tit. 8, §§ 11010, 11040), and others that may be applicable.
28

1 142. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
2 §§2698 through 2699.6 because of Defendants' violation of Labor Code §§201, 202, 203, 204,
3 210, 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199,
4 2802 and others that may be applicable; and the Applicable Wage Order (Cal. Code of Regs., tit.
5 8, §§ 11010, 11040), and others that may be applicable.

6 143. Under Labor Code §2699, subdivision (f)(2), and 2699.5, for each such violation,
7 Plaintiff and the Aggrieved Employees are entitled to penalties in an amount to be shown at the
8 time of trial.

9 144. These penalties must be allocated seventy-five percent to the Labor and Workforce
10 Development Agency ("LWDA") and twenty-five percent to the affected employees.

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

16 146. As a result of the faulty compensation policies and practices, Plaintiff and the
17 Aggrieved Employees are also entitled to recover penalties under Labor Code §210 through
18 PAGA.

19 147. Through PAGA and to the extent permitted by law, Plaintiff and the Aggrieved
20 Employees are entitled to recover pursuant to Labor Code §1197.1.

21 148. Plaintiff was compelled to retain the services of counsel to file this action to protect
22 her interests and those of the Aggrieved Employees, and to assess and collect the wages and
23 penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which
24 Plaintiff is also entitled to recover under Labor Code §2699, subdivision (g)(1).

25 **VIII. DEMAND FOR JURY TRIAL**

26 149. Plaintiff hereby demands trial by jury of Plaintiff's and the Class Members' claims
27 against Defendants.

1 **IX. PRAYER FOR RELIEF**

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

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

1 fees, pursuant to Labor Code §2802, subdivision (c);

2 12. For the failure to pay sick pay at the regular rate, compensatory, consequential,
3 general, and special damages according to proof;

4 13. For the violations of California's Unfair Competition Law, restitution to Plaintiff
5 and the other Class Members of all money and/or property unlawfully acquired by Defendants by
6 means of any acts or practices declared by this Court to be in violation of Business and Professions
7 Code §§17200 through 17210;

8 14. For the claim of penalties pursuant to PAGA and other provisions of the California
9 Labor Code, all applicable civil penalties;

10 15. Prejudgment interest on all due and unpaid wages pursuant to Labor Code §218.6
11 and Civil Code §§3287 and 3289;

12 16. On all causes of action for which attorneys' fees may be available, for attorneys'
13 fees and costs as provided by Labor Code §§218.5, 226, Code of Civil Procedure §1021.5, and
14 others as may be applicable;

15 17. For an order enjoining Defendants, and each of them, and their agents, servants,
16 and employees, and all persons acting under, in concert with, or for them, from acting in derogation
17 of any rights or duties adumbrated in this complaint; and

18 18. For such other and further relief, this Court may deem just and proper.

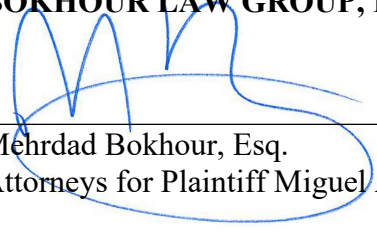
19 Dated: February 18, 2026

GOLDEN STATE EMPLOYMENT LAWYERS

20
21 By: /s/ Sanjay Bansal
22 Sanjay Bansal, Esq.
23 Amir D. Benakote, Esq.
Attorneys for Plaintiff Miguel Aceves

24 Dated: February 18, 2026

BOKHOUR LAW GROUP, P.C.

25
26 By: 
27 Mehrdad Bokhour, Esq.
28 Attorneys for Plaintiff Miguel Aceves

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

On February 18, 2026, I served the following document(s) described as **FIRST AMENDED CLASS AND PAGA ACTION COMPLAINT** on the interested parties in this action:

**Counsel for defendant
T&R LUBE CENTERS, INC.**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

/s/ Carlos Garcia
Carlos Garcia