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Attorney for Plaintiff, GARY FRANKLIN

**SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE**

GARY FRANKLIN, an individual, on his
own behalf and on behalf of all others
similarly situated,

Plaintiffs,

v.

SO CAL HEALTH CARE SOLUTIONS,
INC, a California corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 30-2024-01444488-CU-OE-CXC

[Assigned for all purposes to Hon. Lon F.
Hurwitz, in Dept. CX-103]

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1. FAILURE TO PAY PREMIUM OVERTIME 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);**

3. Plaintiff, like his co-workers whom Defendant also employed during the applicable limitations period, spent their workdays in Lake Forest, California, under illegal and highly regimented circumstances. That regimen results from Defendant's insistence to strictly monitor and curtail labor costs, which Defendant accomplishes by not paying for all labor costs, failing to pay overtime, and minimum wages, refusing to provide proper meal periods, refusing to provide proper rest periods, not paying the required extra hour for missed meal/rest breaks, failing to pay all wages due on termination, failing to reimburse business expenses, failing to allow inspection of employment records, and by using other unlawful stratagems to ensure that labor costs remain artificially low.

4. Plaintiff brings this class action to recover, among other things, wages and penalties from unpaid wages earned and due, including but not limited to premium overtime wages, minimum wages, missed meal/rest break wages, penalties for failure to provide accurate itemized wage statements, wages owed on termination, failure to reimburse business expenses, failure to allow inspection of employment records and interest, attorneys' fees, costs, and expenses.

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

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

JURISDICTION AND VENUE

7. This Court has jurisdiction over this First Amended Complaint under Code of Civil Procedure §410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business & Professions Code* §§ 17200 *et seq.* Plaintiff brings this First Amended Complaint on his own behalf and on behalf of all persons in the Class as defined in paragraph 16 below.

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 Orange and because Defendant owned and operated its non-profit in the County of Orange.

THE PARTIES

PLAINTIFF

9. At all times relevant hereto, Plaintiff was:

- (a) An individual over age 18 and a resident of Orange County, California;
- (b) Employed as an hourly employee for Defendant in Lake Forest, California;
- (c) Did not receive overtime compensation required by *Labor Code* §§510 and 1194 and IWC Wage Order No. 5;
- (d) Did not receive minimum wages as required by *Labor Code* §§1194, 1194.2, 1997, 1197.1, 1198 and IWC Wage Order No. 5;
- (e) Did not receive the meal periods required by *Labor Code* §266.7 and IWC Wage Order No. 5;
- (f) Did not receive the rest periods required by *Labor Code* §266.7 and IWC 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;
- (i) Was not reimbursed necessary business expenses as required by *Labor Code* §2802; and
- (j) Was not provided his personnel records. Each of these was a violation of the *Labor Code*.

DEFENDANT

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1 10. Plaintiff is informed and believes, and based on that information and belief, alleges
2 Defendant SCHCS is, and at all times mentioned herein was:

- 3 (a) A California corporation, with a principal place of business at 34145
4 Pacific Coast Hwy., Suite 818, Dana Point, California 92629. Defendant
5 has been authorized to do business and has been doing business in the
6 County of Orange;
- 7 (b) The former 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 overtime
11 wages;
- 12 (e) Failed to pay Plaintiff and all putative Class members 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 pay Plaintiff and all putative Class members all wages due on
17 termination;
- 18 (h) Failed to reimburse Plaintiff and all putative Class members for their
19 necessary business expenses; and
- 20 (i) Failed to provide their personnel records. Each of these was a violation of
21 the *Labor Code*.

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

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

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

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

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

Defendant were 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

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

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

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

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

A. Maintenance of the Action

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

B. The Class Requisites

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

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

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

- 1 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
2 that are raised in this First Amended Complaint are common to the Class and
3 will apply uniformly to every Class member;
- 4 (c) The claims of the representative Plaintiff are typical of the claims of each
5 Class member. Plaintiff, like all Class members, has sustained damages
6 arising from Defendant's violations of the laws of the State of California.
7 Plaintiff, and the Class members, were and are similarly or identically
8 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
9 pattern of misconduct engaged in by the Defendant;
- 10 (d) The representative Plaintiff has, and will continue to, fairly and adequately
11 represent and protect the interests of the Class and has retained counsel who
12 are competent and experienced in class action litigation. There are no
13 material conflicts between the claims of the representative Plaintiff and the
14 Class members that would make class certification inappropriate. Counsel
15 for the Class will vigorously assert the claims of all Class members.
16

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

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

- 25 (a) The questions of law and fact common to the Class predominate over any
26 question affecting only individual members:
- 27 (b) A class action is superior to any other available method for fairly and
28 efficiently adjudicating the claims of the Class;

- 1 (c) The Class members are so numerous that it is impractical to bring all of
2 them before the Court;
- 3 (d) Plaintiff and other Class members will not be able to obtain effective and
4 economic legal redress unless the action is maintained as a class action;
- 5 (e) There is a community of interest in obtaining appropriate legal and
6 equitable relief for the statutory violations, and in obtaining adequate
7 compensation for the damages and injuries for which Defendant is
8 responsible in an amount sufficient to adequately compensate the Class
9 members;
- 10 (f) Without Class certification, the prosecution of separate actions by
11 individual Class members would create a risk of:
- 12 i. Inconsistent or varying adjudications for individual Class
13 members that would establish incompatible standards of conduct
14 for Defendant; and/or,
- 15 ii. Adjudication for individual Class members that would, as a
16 practical matter, dispose of other non-party members' interests, or
17 that would substantially impair or impede the non-parties' ability to
18 protect their interests, by, for example, potentially exhausting the
19 funds available from Defendant, and
- 20 (g) Defendant has acted or refused to act on grounds generally applicable to
21 the Classes, making final injunctive relief appropriate for the Class, as a
22 whole.
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24 22. Plaintiff contemplates eventually issuing notice to the proposed Class Members
25 that would set forth the subject and nature of the action. The Defendant's own business records
26 may be utilized for assisting in preparing and issuing the contemplated notice. To the extent that
27 any further notices may be required, Plaintiff would contemplate using additional media and/or
28 mailing.

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1 31. As a result, and because they improperly treated such off-the-clock work as non-
2 compensable, Defendant failed to compensate Plaintiff and the Class for such time.

3 **FAILURE TO PAY OVERTIME TIME WAGES**

4 32. Under California law, non-exempt employees, as defined by Wage Order 5, are
5 entitled to premium wages for overtime worked. Under California law, non-exempt employees,
6 as defined by IWC Wage Order No. 5, are entitled to premium wages for overtime worked. Under
7 California law, an hourly paid employee is entitled to overtime pay when they exceed eight hours
8 of work in a single day, exceed 40 hours of work in a week or work seven days in a row.

9 33. Here, at all times during the relevant time period, because Plaintiff and the Class
10 engaged in off-the-clock work, Plaintiff and the Class routinely worked schedules such that they
11 were due pay at overtime rates. During this period, it was the practice and policy of Defendant to
12 not pay employees overtime. Monies for unpaid overtime remain due and owing.

13 **FAILURE TO PAY MINIMUM WAGES**

14 34. Under California law, non-exempt employees, as defined by IWC Wage Order
15 No. 5, are entitled to minimum wages. Labor Code Section 1197 states the California requirement
16 that employees must be paid at least the minimum wage fixed by the Commission or by any
17 applicable state or local law, and any payment of less than the minimum wage is unlawful.
18 Similarly, Labor Code Section 1194 entitles “any employee receiving less than the legal
19 minimum wage...is entitled to recover in a civil action the unpaid balance of the full amount of
20 this minimum wage.” IWC Wage Order No. 5 obligates employers to pay each employee
21 minimum wages for all hours worked.

22 35. These minimum wage standards apply to each hour employees worked or were
23 subject to control by the employer for which they were not paid. Therefore, an employer’s failure
24 to pay for any particular hour of time worked by an employee or subject to the employer’s control
25 is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results
26 in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th
27 314, 324 (2005).

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36. Plaintiff and the Class were not paid minimum wages due to Defendant's failure to afford proper meal/rest breaks.

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

MEAL BREAKS NOT AFFORDED

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

39. Plaintiff and Class members were routinely not afforded compliant meal breaks. Plaintiff and Class members' meal breaks were not afforded, afforded late and/or interrupted.

40. Defendant's policies and procedures were applied to all non-exempt employees in California and resulted in non-exempt employees working time which was not compensated by any wages in violation of Labor Code sections 510, 1194 and the IWC Wage Order No. 5. As a result, Defendant owes wages at the legal overtime rate and minimum wage rate for unpaid overtime and minimum wages to each of their California non-exempt employees whose daily hours were reduced and their meals periods were afforded late, interrupted and/or not at all.

REST PERIODS NOT AFFORDED

41. Plaintiff and Class members were never afforded rest breaks.

FAILURE TO ISSUE ACCURATE WAGE STATEMENTS

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

FAILURE TO PAY WAGES DUE ON TERMINATION

1 43. As a further result of Defendant's failure to pay employees at required overtime,
2 minimum wage rates and afford proper meal/rest breaks, when the employees left their employ,
3 they were not timely paid all wages due them, as required by Labor Code §§ 201, 202 and IWC
4 Wage Order No. 5. Further, it was the practice of Defendant to not pay employees the final
5 paychecks within the time periods mandated by Labor Code §§201, 202 and the IWC Wage Order
6 No. 5.

7 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

8 44. Defendant failed to reimburse Plaintiff and Class members for their necessary
9 business expenses, such as cell phone use. Defendant required Plaintiff and Class members to use
10 their personal cell phones for work-related activities such as clocking in/out and communication
11 regarding work.

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

13 45. Defendant failed to allow Plaintiff to timely inspect his records and payroll files.

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO PAY OVERTIME**

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

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

20 47. During Plaintiff's entire employment with Defendant, pursuant to Cal. Lab. Code
21 §§510, 1194, and 1198, and IWC Wage Order No. 5, Defendant was required to compensate
22 Plaintiff and Class members with premium pay for all overtime work performed, for hours
23 worked in excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight
24 (8) hours on the seventh (7th) consecutive day of any work week.

25 48. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
26 who had not been paid overtime compensation could recover the unpaid balance of the full
27 amount of overtime wages due, including interest thereon, together with reasonable attorneys'
28 fees and costs of suit.

1 49. Pursuant to IWC Wage Order No. 5, § 3, "Employment beyond eight (8) hours in
2 any workday is permissible provided the employee is compensated for such overtime at not less
3 than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours worked
4 in excess of eight (8) hours up to and including twelve (12) hours in any workday..."

5 50. California Labor Code section 558 provides in pertinent part:

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

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

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

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

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

17 51. Throughout Plaintiff's and Class members' employment, Plaintiff and Class
18 members engaged in off-the-clock work and, therefore, worked overtime hours and were not paid
19 overtime pay due.

20 52. Throughout Plaintiff's and Class members' employment, Defendant failed and
21 refused to pay and properly calculate overtime compensation to Plaintiff and Class members as
22 required by law.

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

26 54. 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 pay, is entitled to recover Plaintiff's
28 attorneys' fees, costs and interest.

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES DUE TO TIME ROUNDING**

3 **(IWC Wage Order No. 5; Labor Code §§ 1194, 1194.2, 1997, 1197.1, 1198 By Plaintiffs**
4 **Against Defendant and Does 1 through 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. 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 57. *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 58. Pursuant to IWC Wage Order No. 5, Defendant is required to pay the members of
23 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 59. 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 60. 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 61. Defendant failed to satisfy minimum wage requirements because they improperly
4 failed to afford Plaintiff and Class members meal/rest breaks in violation of *Labor Code* §§ 226.7,
5 1197, 1198 and IWC Wage Order No. 5.

6 62. Defendant’s 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 63. *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 64. 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 Defendant’s 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 65. 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 Defendant owes them,
26 plus interest, penalties, attorneys’ fees, expenses and costs of suit, in amounts according to proof.

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1 **THIRD CAUSE OF ACTION**

2 **FOR FAILURE TO PROVIDE TIMELY OFF-DUTY MEAL PERIODS**

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

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

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

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

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

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

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

23 An employer may not employ an employee for a work period of more than five
24 hours per day without providing the employee with a meal period of not less
25 than 30-minutes, except that if the total work period per day of the employee is
26 no more than six hours, the meal period may be waived by mutual consent of
27 both the employer and employee. An employer may not employ an employee
28 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.

1 72. 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 73. As alleged herein, Defendant 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 not afforded and/or interrupted.

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

20 75. Defendant has a policy or practice of failing to ensure that Plaintiff and members
21 of the class take proper meal periods and clock in/out for meal periods as required by California
22 Labor Code §226.7 and IWC Wage Order No. 5, §11.

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

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

6 93. Notwithstanding these provisions. Defendant has engaged in a uniform practice
7 of refusing to maintain and provide the accurate records and wage statements required by
8 California law.

9 94. Further, instead of paying Plaintiff and Class members premium pay for meal
10 breaks that were not compliant, Defendant paid Plaintiff and Class members 0.5 hours of
11 overtime. This “premium” amount was not separately stated on Plaintiff and Class members’
12 paystubs. Rather, the “premium” was added to Plaintiff and Class members’ overtime hours. This
13 constitutes a violation of Plaintiff and the Class’s wage statements.

14 95. Throughout the Class Period, Defendant 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 compensation,
18 minimum wages, missed, late and/or interrupted meal/rest periods, were not included in gross
19 wages earned by Plaintiff and members of the Class.

20 96. 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 97. 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
24 compensation, minimum wages, or pay for meal/rest periods not timely provided, even though
25 they were so entitled and these failures hindered them from determining the amounts of wages
26 owed to them.

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

99. As a 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 Defendant's improper conduct.

SIXTH CAUSE OF ACTION

FOR FAILURE TO PAY WAGES UPON TERMINATION

(Labor Code §§ 201-203 By Plaintiffs Against Defendant and Does 1 through 100)

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

101. 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.

102. 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.

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

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

SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code §2802 By Plaintiffs Against Defendant and Does 1 through 100)

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

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

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1 107. At all times relevant herein, Defendant was aware that Plaintiff and Class
2 members were using their personal cell phones for business but failed to indemnify Plaintiff and
3 Class members for all their business-related expenses, including wear and tear expenses, in
4 accordance with Labor Code §2802. Defendant required Plaintiff and Class members to use their
5 cell phones every day for work-related activities such as clocking in/out and communicating for
6 work purposes.

7 108. Plaintiff is informed and believes and thereon alleges that at all relevant times,
8 Defendant maintained a practice of not reimbursing Plaintiff and Class Members for their work-
9 related expenses that they incurred in using their cell phones for work-related purposes.

10 109. As a result of Defendant's conduct, Plaintiff and Class Members suffered damages
11 in an amount, subject to proof, to the extent they were not reimbursed for all of their business-
12 related expenses incurred in the discharge of their duties.

13 110. Pursuant to Labor Code §2802, Plaintiff and Class Members are entitled to recover
14 the full amount of their unreimbursed business expenses, reasonable attorneys' fees and costs of
15 suit.

16 **EIGHTH CAUSE OF ACTION**

17 **UNFAIR COMPETITION**

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

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

22 112. Pursuant to IWC Wage Order No. 5, Defendant was the employer of Plaintiff and
23 the Class. Defendant is also a "person," as that term is defined in Business & Professions Code
24 §17021.

25 113. The Business & Professions Code defines unfair competition as any unlawful,
26 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
27 described herein, Defendant has engaged in unfair and unlawful practices by failing to (1) pay
28 Plaintiff and the Class overtime compensation; (2) pay minimum wages; (3) pay Plaintiff and the

1 Class for meal periods not afforded, (4) pay Plaintiff and the Class for rest periods not afforded,
2 (5) furnish Plaintiff and the Class with accurate itemized wage statements, as mandated by the
3 applicable Labor Code and Industrial Welfare Commission requirements, (6) pay all wages due
4 on termination, (7) reimburse business expenses, and (8) provide personnel records, all in
5 violation of Business & Professions Code §§ 17200 *et seq.*

6 114. By and through the unfair and unlawful business practices described herein,
7 Defendant has obtained valuable property, money and services from the Plaintiff and the Class
8 and has deprived them of valuable rights and benefits guaranteed by law, all to the detriment of
9 Plaintiff and the Class.

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

14 116. Plaintiff and the Class are entitled to, and do, seek such relief as may be necessary
15 to restore to them the money and property which Defendant has acquired, or of which Plaintiff
16 and the Class have been deprived by means of the above-described unfair and unlawful business
17 practices.

18 117. Plaintiff and the Class are further entitled to, and do, seek a declaration that the
19 above-described business practices are unfair and unlawful, and that injunctive relief should be
20 issued restraining Defendant from engaging in any of the above-described unfair and unlawful
21 business practices in the future.

22 118. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to
23 redress the injuries which they have suffered as a consequence of the unfair and unlawful business
24 practices of Defendant. As a result of the unfair and unlawful business practices described above,
25 Plaintiff and the Class have suffered and will continue to suffer irreparable harm unless Defendant
26 is restrained from continuing to engage in these unfair and unlawful business practices. In
27 addition, Defendant should be required to disgorge the unpaid moneys to Plaintiff and the Class.

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1 **NINTH CAUSE OF ACTION**

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

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

6 120. Plaintiff brings this action on his own behalf and on behalf of all current and
7 former employees of Defendants who were employed in California for the previous four years,
8 seeking to recover wages from Defendant due to Defendant's systematic failure to pay overtime,
9 minimum wages, provide meal/rest breaks (or pay the statutory compensation due), to issue
10 accurate wage statements, to pay wages on termination, to reimburse business expenses, and
11 unfair competition as set forth in this pleading.

12 121. On December 3, 2024, Plaintiff, pursuant to California Labor Code §§2699, et
13 seq., by and through Plaintiff's attorneys, uploaded a Private Attorney General Act ("PAGA")
14 claim to the State of California Labor and Workforce Development Agency ("LWDA") and sent
15 a letter via Certified Mail Return Receipt Requested to the defendant.

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

19 123. Plaintiff has, therefore complied with the administrative exhaustion requirements
20 of PAGA.

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

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in his favor
25 and against Defendant as follows:

26 1. For compensatory damages in the amount of unpaid overtime due to Plaintiff and
27 Class Members, according to proof;

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2. For compensatory damages in the amount minimum wages due to Plaintiff and Class Members, according to proof;
3. For payment of unpaid wages in accordance with California labor and employment law;
4. For one (1) hour of pay at the regular rate of compensation for Plaintiff and Class Members for each workday that a meal period was provided late and/or missed;
5. For one (1) hour of pay at the regular rate of compensation for Plaintiff and Class Members for each workday that a rest period was not afforded;
6. For payment to Plaintiff and Class Members of waiting time penalties pursuant to *Cal. Lab. Code* §203, in an amount equal to their respective daily rates of pay at the time of termination or layoff, multiplied by the total amount of days elapsed between the date of the involuntary termination and/or 72 hours after notice of the voluntary termination, up to a maximum of 30 days' pay, according to proof;
7. For specific relief, enforcing waiting time penalties of 30 days of per diem wages pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;
8. For compensatory damages in the amount of Plaintiff and Class members' cell phone expenses for business purposes, costs and attorneys' fees pursuant to *Cal. Code Civ. Proc.* §2802(c);
9. For an award of consequential damages in Plaintiff and Class members' favor and against Defendant, in an amount to be proven at trial;
10. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;
11. For specific relief, enforcing waiting time penalties of 30 days of per diem wages pursuant to *Cal. Bus. & Prof. Code* §17200, according to proof;
12. For prejudgment interest accrued on all due and unpaid overtime and minimum wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and 1194(a), according to proof;
13. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, 1198.5, according to proof;

- 1 14. For civil penalties pursuant to *Cal. Labor Code* §1198 and IWC Wage Order No.
2 5;
3 15. For penalties provided by the Labor Code Private Attorney General Act;
4 16. For reasonable costs, including attorneys' fees, in an amount according to proof
5 pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 1198.5(1), 218.5, 2802 and/or *Cal. Code of Civ.*
6 *Proc.* §1021.5;
7 17. For an award of restitution of wages to Plaintiff and Class members in an amount
8 equal to the amount of wages owed and unpaid, according to proof;
9 18. For injunctive relief requiring Defendant to comply with Labor Code
10 1198.5(b)(1);
11 19. For injunctive relief ordering the continuing unfair business acts and practices to
12 cease, as the Court deems just and proper;
13 20. For other injunctive relief ordering Defendant to notify Plaintiff and Class
14 members that they have not been paid the proper amounts in accordance with California law;
15 21. For punitive and exemplary damages in a sum to be determined at trial; and
16 22. For such other and further relief as the Court deems just and proper.

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff Gary Franklin hereby respectfully requests a trial by jury for all claims and issues
19 raised in his First Amended Complaint that may be entitled to a jury trial.
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21 LIPELES LAW GROUP, APC

22 Date: February 20, 2025



23
24 By: _____
25 Jasmine J. Badawi
26 Attorneys for Plaintiff,
27 GARY FRANKLIN
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