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FILED
Superior Court of California
County of Los Angeles
12/12/2024

David W. Slayton, Executive Officer / Clerk of Court
By: M. Arellanes Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ROBERT KEMPER, individually, and on
behalf of other members of the general
public similarly situated, and as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"),

Plaintiff,

vs.

SWISSPORT USA, INC., a Delaware
corporation; SWISSPORT FUELING INC.,
a Delaware corporation; SWISSPORT SA,
LLC, a Delaware limited liability company;
SWISSPORT SA FUEL SERVICES, LLC,
a Delaware limited liability company; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: 24STCV26024

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, et seq.;

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- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Robert Kemper, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all aggrieved employees,
3 alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice.

23 3. Venue is proper in this Court, because Defendants employ persons within the
24 County of Los Angeles, and have violated the requirements of the California Labor Code and
25 applicable IWC Wage Order in this county which give rise to the penalties sought in this
26 action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of
27 the California Labor Code and applicable Industrial Welfare Commission (“IWC”) Wage
28 Order in at least three (3) jobsites location within the County of Los Angeles, including

Defendants' facilities in Los Angeles (5757 W. Century Boulevard, Suite 860, Los Angeles, California 90045; 5781 W. Imperial Highway, Los Angeles, California 90045; and 7025 W. Imperial Highway, Los Angeles, California 90045). Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty or forfeiture imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in Los Angeles County and Plaintiff could bring this action to recover penalties in Los Angeles County, venue is proper.

THE PARTIES

4. Plaintiff Robert Kemper is a resident of Pittsburg, in Contra Costa County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately June 2023 to October 2023. Plaintiff worked for Defendants as a Fleet Mechanic Level II and Ground Service Equipment Mechanic at their San Francisco International Airport ("SFO") location. During his employment, Plaintiff typically worked eight (8) hours or more per day and five (5) days per week. Plaintiff's primary job duties included, without limitation, maintaining, repairing, and servicing Defendants' fleet of ground support equipment, such as aircraft tugs, baggage carts, and fuel trucks used at airports.

5. SWISSPORT USA, INC. was and is, upon information and belief, a Delaware corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

6. SWISSPORT FUELING INC. was and is, upon information and belief, a Delaware corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

7. SWISSPORT SA, LLC was and is, upon information and belief, a Delaware limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

8. SWISSPORT SA FUEL SERVICES, LLC was and is, upon information and belief, a Delaware limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

1 9. Plaintiff is unaware of the true names or capacities of the Defendants sued
2 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
3 amend the complaint and serve such fictitiously named Defendants once their names and
4 capacities become known.

5 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
6 were the partners, agents, owners, or managers of SWISSPORT USA, INC.; SWISSPORT
7 FUELING INC.; SWISSPORT SA, LLC; and SWISSPORT SA FUEL SERVICES, LLC at all
8 relevant times.

9 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
10 acts and omissions alleged herein was performed by, or is attributable to SWISSPORT USA,
11 INC.; SWISSPORT FUELING INC.; SWISSPORT SA, LLC; and SWISSPORT SA FUEL
12 SERVICES, LLC; and/or DOES 1 through 10 (collectively, “Defendants” or “SWISSPORT”),
13 each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert
14 with, each of the other co-Defendants and was acting within the course and scope of such
15 agency, employment, joint venture, or concerted activity with legal authority to act on the
16 others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the
17 official policy of Defendants.

18 12. At all relevant times, Defendants, and each of them, ratified each and every act
19 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
20 and abetted the acts and omissions of each and all the other Defendants in proximately causing
21 the damages herein alleged.

22 13. Plaintiff is informed and believes, and thereon alleges, that each of said
23 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
24 omissions, occurrences, and transactions alleged herein.

25 14. Under California law, Defendants are jointly and severally liable as employers
26 for the violations alleged herein because they have each exercised sufficient control over the
27 wages, hours, working conditions, and employment status of Plaintiff and class members.
28 Each Defendant had the power to hire and fire Plaintiff and class members, supervised and

1 controlled their work schedule and/or conditions of employment, determined their rate of pay,
2 and maintained their employment records. Defendants suffered or permitted Plaintiff and
3 class members to work and/or “engaged” Plaintiff and class members so as to create a
4 common-law employment relationship. As joint employers of Plaintiff and class members,
5 Defendants are jointly and severally liable for the civil penalties and all other relief available
6 to Plaintiff and class members under the law.

7 15. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
8 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
9 members because Defendants have:

- 10 (a) jointly exercised meaningful control over the work performed by
11 Plaintiff and class members;
- 12 (b) jointly exercised meaningful control over Plaintiff’s and class members’
13 wages, hours, and working conditions, including the quantity, quality
14 standards, speed, scheduling, and operative details of the tasks
15 performed by Plaintiff and class members;
- 16 (c) jointly required that Plaintiff and class members perform work which is
17 an integral part of Defendants’ businesses; and
- 18 (d) jointly exercised control over Plaintiff and class members as a matter of
19 economic reality in that Plaintiff and class members were dependent on
20 Defendants, who shared the power to set the wages of Plaintiff and class
21 members and determined their working conditions, and who jointly
22 reaped the benefits from the underpayment of their wages and
23 noncompliance with other statutory provisions governing their
24 employment.

25 16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
26 there has existed a unity of interest and ownership between Defendants such that any
27 individuality and separateness between the entities has ceased.

28 17. SWISSPORT USA, INC.; SWISSPORT FUELING INC.; SWISSPORT SA,

1 LLC; SWISSPORT SA FUEL SERVICES, LLC; and DOES 1 through 10 are therefore alter
2 egos of each other.

3 18. Adherence to the fiction of the separate existence of Defendants would permit
4 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
5 from liability for the wrongful acts committed by them under the name SWISSPORT.

6 19. Plaintiff further alleges, upon information and belief, that Defendants
7 SWISSPORT USA, INC.; SWISSPORT FUELING INC.; SWISSPORT SA, LLC; and
8 SWISSPORT SA FUEL SERVICES, LLC are alter egos of each other for the following
9 reasons:

- 10 (a) On the California Secretary of State's website
11 (<https://bizfileonline.sos.ca.gov/>), SWISSPORT USA, INC.;
12 SWISSPORT FUELING INC.; SWISSPORT SA, LLC; and
13 SWISSPORT SA FUEL SERVICES, LLC have the same principal and
14 mailing address, "227 FAYETTEVILLE ST[REET] [SUITE] 9[00][TH
15 [FL][OOR]] RALEIGH, NC 27601".
- 16 (b) According to their most recent "Statement of Information" forms filed
17 with the California Secretary of State, SWISSPORT USA, INC.;
18 SWISSPORT FUELING INC.; SWISSPORT SA, LLC; and
19 SWISSPORT SA FUEL SERVICES, LLC share the officers, directors,
20 and/or Managers or Members, including, but not limited to:
- 21 (i) Nelson Camacho as Chief Operating Officer and/or Manager
22 or Member for SWISSPORT USA, INC. and SWISSPORT
23 FUELING INC.;
- 24 (ii) Wael Saeed as Chief Financial Officer and/or Manager or
25 Member for SWISSPORT USA, INC. and SWISSPORT
26 FUELING INC.; and
- 27 (iii) SWISSPORT USA, INC., which serves as a Manager or
28 Member of SWISSPORT SA, LLC;

(iv) SWISSPORT FUELING INC., which serves as a Manager or Member of SWISSPORT SA FUEL SERVICES, LLC; and

(c) According to the California Secretary of State's website (<https://bizfileonline.sos.ca.gov/>), SWISSPORT USA, INC.; SWISSPORT FUELING INC.; SWISSPORT SA, LLC; and SWISSPORT SA FUEL SERVICES, LLC share the same agent for service of process, CSC - LAWYERS INCORPORATING SERVICE; and

(d) On information and belief, SWISSPORT USA, INC.; SWISSPORT FUELING INC.; SWISSPORT SA, LLC; and SWISSPORT SA FUEL SERVICES, LLC utilize the same standardized employment forms and issue the same employment policies.

GENERAL ALLEGATIONS

20. Defendants are the world's leading independent provider of airport ground services and air cargo handling. Upon information and belief, Defendants maintain a single, centralized Human Resources ("HR") department at their company headquarters in Raleigh, North Carolina, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants' company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

21. In particular, Plaintiff and class members, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees' assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and procedures in several documents provided at an employee's time of hire.

22. Upon information and belief, Defendants maintain a centralized Payroll department at their company headquarters in Raleigh, North Carolina, which processes payroll

1 for all non-exempt, hourly paid employees working for Defendants at their various locations
2 in California, including Plaintiff and class members. Based upon information and belief,
3 Defendants issue the same formatted wage statements to all non-exempt, hourly paid
4 employees in California, irrespective of their work locations. Upon information and belief,
5 Defendants process payroll for departing employees in the same manner throughout the State
6 of California, regardless of the manner in which each employee's employment ends.

7 23. Defendants continue to employ non-exempt or hourly paid employees in
8 California.

9 24. Plaintiff is informed and believes, and thereon alleges, that at all times herein
10 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
11 and advisors knowledgeable about California labor and wage law, employment and personnel
12 practices, and about the requirements of California law.

13 25. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
14 members were not paid for all hours worked because all hours worked were not recorded.

15 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and class members were entitled to receive certain wages for
17 overtime compensation and that they were not receiving certain wages for overtime
18 compensation.

19 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to receive at least minimum
21 wages for compensation and that they were not receiving at least minimum wages for work
22 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
23 and class members were not paid at least minimum wages for work done off-the-clock.

24 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and class members were entitled to meal periods in
26 accordance with the California Labor Code and applicable IWC Wage Order or payment of
27 one (1) additional hour of pay at their regular rates of pay when they were not provided with
28 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members

1 were not provided with all meal periods or payment of one (1) additional hour of pay at their
2 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
3 period.

4 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and class members were entitled to rest periods in
6 accordance with the California Labor Code and applicable IWC Wage Order or payment of
7 one (1) additional hour of pay at their regular rates of pay when they were not authorized and
8 permitted to take a compliant rest period and that Plaintiff and class members were not
9 authorized and permitted to take compliant rest periods or provided with payment of one (1)
10 additional hour of pay at their regular rates of pay when they were not authorized and
11 permitted to take a compliant rest period.

12 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and class members were entitled to receive complete and
14 accurate wage statements in accordance with California law. In violation of the California
15 Labor Code, Plaintiff and class members were not provided complete and accurate wage
16 statements.

17 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that they had a duty to maintain accurate and complete payroll records in
19 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
20 knowingly, and intentionally failed to do so.

21 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and class members were entitled to timely payment of all
23 wages earned upon termination of employment. In violation of the California Labor Code,
24 Plaintiff and class members did not receive payment of all wages due, including, but not
25 limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within
26 permissible time periods.

27 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and class members were entitled to timely payment of wages

1 during their employment. In violation of the California Labor Code, Plaintiff and class
2 members did not receive payment of all wages, including, but not limited to, overtime wages,
3 minimum wages, and/or meal and rest period premiums, within permissible time periods.

4 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and class members were entitled to receive full
6 reimbursement for all business-related expenses and costs they incurred during the course and
7 scope of their employment and that they did not receive full reimbursement of applicable
8 business-related expenses and costs incurred.

9 35. Plaintiff is informed and believes, and thereon alleges, that at all times herein
10 mentioned, Defendants knew or should have known that they had a duty to compensate
11 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
12 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
13 falsely represented to Plaintiff and class members that they were properly denied wages, all in
14 order to increase Defendants' profits.

15 **PAGA REPRESENTATIVE ALLEGATIONS**

16 36. At all times herein set forth, PAGA provides that any provision of law under
17 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
18 assessed and collected by the Labor and Workforce Development Agency ("LWDA") for
19 violations of the California Labor Code and applicable IWC Wage Order may, as an
20 alternative, be recovered by aggrieved employees in a civil action brought on behalf of
21 themselves and other current or former employees pursuant to procedures outlined in
22 California Labor Code section 2699.3.

23 37. PAGA defines an "aggrieved employee" in Labor Code section 2699(c)(1) as
24 "any person who was employed by the alleged violator and personally suffered each of the
25 violations alleged."

26 38. Plaintiff and other current and former employees of Defendants are "aggrieved
27 employees" as defined by Labor Code section 2699(c)(1) in that they are all Defendants'
28 current or former employees and each of the alleged violations were committed against them.

1 39. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
2 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
3 following requirements have been met:

- 4 (a) The aggrieved employee or representative shall give written notice by
5 online filing with the LWDA and by certified mail to the employer of
6 the specific provisions of the California Labor Code alleged to have
7 been violated, including the facts and theories to support the alleged
8 violation.
- 9 (b) An aggrieved employee's notice filed with the LWDA pursuant to
10 2699.3(a) and any employer response to that notice shall be
11 accompanied by a filing fee of seventy-five dollars (\$75).
- 12 (c) The LWDA shall notify the employer and the aggrieved employee or
13 representative by certified mail that it does not intend to investigate the
14 alleged violation ("LWDA Notice") within sixty (60) calendar days of
15 the postmark date of the aggrieved employee's notice. Upon receipt of
16 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
17 (65) calendar days of the postmark date of the aggrieved employee's
18 notice, the aggrieved employee may commence a civil action pursuant
19 to California Labor Code section 2699 to recover civil penalties.

20 40. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
21 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
22 provision other than those listed in Section 2699.5 after the following requirements have been
23 met:

- 24 (a) The aggrieved employee or representative shall give written notice by
25 online filing with the LWDA and by certified mail to the employer of
26 the specific provisions of the California Labor Code alleged to have
27 been violated (other than those listed in Section 2699.5), including the
28 facts and theories to support the alleged violation.

- 1 (b) An aggrieved employee's notice filed with the LWDA pursuant to
2 2699.3(c) and any employer response to that notice shall be
3 accompanied by a filing fee of seventy-five dollars (\$75).
- 4 (c) The employer may cure the alleged violation within thirty-three (33)
5 calendar days of the postmark date of the notice sent by the aggrieved
6 employee or representative. The employer shall give written notice
7 within that period of time by certified mail to the aggrieved employee or
8 representative and by online filing with the LWDA if the alleged
9 violation is cured, including a description of actions taken, and no civil
10 action pursuant to Section 2699 may commence. If the alleged violation
11 is not cured within the 33-day period, the aggrieved employee may
12 commence a civil action pursuant to Section 2699.

13 41. On October 7, 2024, Plaintiff provided written notice by online filing to the
14 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
15 Code alleged to have been violated, including facts and theories to support the alleged
16 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
17 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
18 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
19 Plaintiff PAGA Case Number LWDA-CM-1055077-24. A true and correct copy of Plaintiff's
20 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

21 42. As of the filing date of this complaint, over 65 days have passed since Plaintiff
22 sent the notice described above to the LWDA, and the LWDA has not responded that it
23 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

24 43. Thus, Plaintiff has satisfied the administrative prerequisites under California
25 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
26 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
27 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

28 44. Labor Code section 558(a) provides "[a]ny employer or other person acting on

1 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
2 provision regulating hours and days of work in any order of the Industrial Welfare
3 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
4 dollars (\$50) for each underpaid employee for each pay period for which the employee was
5 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
6 underpaid employee for each pay period for which the employee was underpaid” Labor
7 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
8 to any other civil or criminal penalty provided by law.”

9 45. Defendants, at all times relevant to this complaint, were employers or persons
10 acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’
11 rights by violating various sections of the California Labor Code as set forth above.

12 46. As set forth below, Defendants have violated numerous provisions of both the
13 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
14 Order.

15 47. Pursuant to PAGA, and in particular, California Labor Code sections 1194.5.
16 2699(a), 2699(k), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the
17 public interest as a private attorney general, seeks assessment and collection of civil penalties
18 and injunctive relief for himself, all other aggrieved employees, and the State of California
19 against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a),
20 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

21 **CLASS ACTION ALLEGATIONS**

22 48. Plaintiff brings this action on his own behalf, as well as on behalf of each and
23 all other persons similarly situated, and thus seeks class certification under California Code of
24 Civil Procedure section 382.

25 49. All claims alleged herein arise under California law for which Plaintiff seeks
26 relief authorized by California law.

27 50. Plaintiff’s proposed class consists of and is defined as follows:

28 All persons who worked for Defendants as non-exempt, hourly

1 paid employees in California, within four years prior to the filing
2 of the initial complaint until the date of trial (“Class”).

3 51. Plaintiff’s proposed subclass consists of and is defined as follows:

4 All persons who worked for Defendants as non-exempt, hourly
5 paid employees in California and who received at least one wage
6 statement within one (1) year prior to the filing of the initial
7 complaint until the date of trial (“Subclass”).

8 52. Members of the Class and Subclass are referred to herein as “class members.”

9 53. Plaintiff reserves the right to redefine the Class and Subclass and to add
10 additional subclasses as appropriate based on further investigation, discovery, and specific
11 theories of liability.

12 54. There are common questions of law and fact as to class members that
13 predominate over questions affecting only individual members, including, but not limited to:

- 14 (a) Whether Defendants required Plaintiff and class members to work over
15 eight (8) hours per day, over twelve (12) hours per day, or over forty
16 (40) hours per week and failed to pay all legally required overtime
17 compensation to Plaintiff and class members;
- 18 (b) Whether Defendants failed to pay Plaintiff and class members at least
19 minimum wages for all hours worked;
- 20 (c) Whether Defendants failed to provide Plaintiff and class members with
21 meal periods;
- 22 (d) Whether Defendants failed to authorize and permit Plaintiff and class
23 members to take rest periods;
- 24 (e) Whether Defendants provided Plaintiff and class members with
25 complete and accurate wage statements as required by California Labor
26 Code section 226(a);
- 27 (f) Whether Defendants maintained accurate payroll records as required by
28 California Labor Code section 1174(d);
- (g) Whether Defendants failed to pay earned overtime wages, minimum
wages, and/or meal and rest period premiums, due to Plaintiff and class

members upon their discharge;

- (h) Whether Defendants failed timely to pay overtime wages, minimum wages, and/or meal and rest period premiums, due to Plaintiff and class members during their employment;
- (i) Whether Defendants failed to reimburse Plaintiff and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;
- (j) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (k) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

55. There is a well-defined community of interest in the litigation and the class members are readily ascertainable:

- (a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.
- (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known

1 to the Court any relationship, conflicts or differences with any class
2 member. Plaintiff's attorneys, the proposed class counsel, are versed in
3 the rules governing class action discovery, certification, and settlement.
4 Plaintiff has incurred, and throughout the duration of this action, will
5 continue to incur costs and attorneys' fees that have been, are, and will
6 be necessarily expended for the prosecution of this action for the
7 substantial benefit of each class member.

8 (d) Superiority: The nature of this action makes the use of class action
9 adjudication superior to other methods. A class action will achieve
10 economies of time, effort, and expense as compared with separate
11 lawsuits, and will avoid inconsistent outcomes because the same issues
12 can be adjudicated in the same manner and at the same time for the
13 entire class.

14 (e) Public Policy Considerations: Employers in the State of California
15 violate employment and labor laws every day. Current employees are
16 often afraid to assert their rights out of fear of direct or indirect
17 retaliation. Former employees are fearful of bringing actions because
18 they believe their former employers might damage their future
19 endeavors through negative references and/or other means. Class
20 actions provide the class members who are not named in the complaint
21 with a type of anonymity that allows for the vindication of their rights
22 while simultaneously protecting their privacy.

23 **FIRST CAUSE OF ACTION**

24 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

25 **(Against all Defendants)**

26 56. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
27 and every allegation set forth above.

28 57. Labor Code section 1198 makes it illegal to employ an employee under

1 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
2 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
3 shall be the . . . standard conditions of labor for employees. The employment of any employee
4 . . . under conditions of labor prohibited by the order is unlawful.”

5 58. California Labor Code section 1198 and the applicable IWC Wage Order
6 provide that it is unlawful to employ persons without compensating them at a rate of pay
7 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
8 number of hours worked by the person on a daily or weekly basis.

9 59. Specifically, the applicable IWC Wage Order provides that Defendants are and
10 were required to pay Plaintiff and class members working more than eight (8) hours in a day
11 or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all
12 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
13 workweek.

14 60. The applicable IWC Wage Order further provides that Defendants are and were
15 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
16 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s
17 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
18 employee, including nondiscretionary bonuses and incentive pay.

19 61. California Labor Code section 510 codifies the right to overtime compensation
20 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
21 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
22 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate
23 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
24 in a day on the seventh (7th) day of work.

25 62. During the relevant time period, Defendants willfully failed to pay all overtime
26 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
27 class members were not paid overtime premiums for all of the hours they worked in excess of
28 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)

1 hours in a week, because all hours worked were not recorded.

2 63. First, during the relevant time period, Defendants had, and continue to have, a
3 company-wide policy and/or practice of discouraging and impeding Plaintiff and class
4 members from recording hours worked that were outside of their scheduled shifts in order to
5 limit the amount of overtime employees could accrue. On information and belief, this policy
6 of limiting overtime, coupled with Defendants' practices of understaffing and assigning heavy
7 workloads (*see infra*), led Plaintiff and class members to work off-the-clock outside of their
8 scheduled shift times in order to complete their assigned tasks. For example, Plaintiff was
9 sometimes required to clean and organize the work area, including tasks such as sweeping,
10 mopping, and disposing of garbage left over from the previous night's shift, but was not
11 permitted to clock in and record this time spent working. As another example, Plaintiff
12 sometimes clocked out at the end of his shift, but was required to continue working to clean
13 and re-organize the work area, including stacking tires, before he could leave for the day.
14 Thus, Defendants failed to track all of the time that employees spent performing work-related
15 tasks outside of their shifts, and Plaintiff and class members received no compensation for this
16 time.

17 64. Second, during the relevant time period, Defendants failed to implement a
18 reliable timekeeping system to track and record Plaintiff's and class members' hours worked.
19 Defendants' timekeeping software often malfunctioned or had connectivity issues, which
20 impeded Plaintiff and class members from accurately recording their hours worked. When
21 Defendants' timekeeping system malfunctioned or had connectivity issues, Defendants' policy
22 and/or practice was to have Defendants' management record Plaintiff's and class members'
23 hours worked. Upon information and belief, Defendants' management altered, falsified,
24 and/or otherwise failed to accurately record Plaintiff's and class members' clock-in and clock-
25 out times. Essentially, due to the limitations of the timekeeping system, Defendants'
26 management maintained control and/or discretion over employees' clock-in and/or clock-out
27 times. Thus, Defendants failed to track time spent working before and after shifts, and
28 Plaintiff and class members received no compensation for this time. To the extent

Defendants' timekeeping policies have taken away time worked that was eligible for overtime, Plaintiff and class members have been denied overtime pay for all hours worked.

65. Third, Defendants had, and continue to have, company-wide policies and/or practices of understaffing their locations while assigning heavy workloads, including pressuring employees to meet time-sensitive repair deadlines. Defendants' policies and/or practices resulted in a failure to provide Plaintiff and class members with adequate meal period coverage, and thus, Plaintiff and class members were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Defendants also had a practice of failing to schedule meal periods which, in conjunction with the assignment of heavy workloads, further caused Plaintiff and class members to not be relieved of their duties for compliant meal periods. For example, Plaintiff sometimes worked through all or part his meal periods due to lack of coverage and heavy workload. Defendants did not compensate Plaintiff and class members for the time they spent working off the clock during unpaid meal periods.

66. Additionally, on information and belief, because Defendants frowned upon employees accruing meal period premiums, Defendants' management pressured employees to clock out for meal periods and/or adjusted their time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal period premiums that would need to be paid by Defendants. Thus, Defendants did not record all hours worked during meal periods, and Plaintiff and class members performed work during meal periods for which they were not paid.

67. Defendants knew or should have known that as a result of these company-wide practices and/or policies, Plaintiff and class members were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Plaintiff and class members worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and class members were not paid overtime wages for all of the overtime hours they actually worked.

68. Defendants' failure to pay Plaintiff and class members the balance of overtime compensation as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class members are entitled to recover from Defendants their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid Minimum Wages (Against all Defendants)

69. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

70. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 9-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11090(2)(H) (defining "Hours Worked").

71. First, as set forth above, as a result of Defendants' policy of limiting the amount of overtime employees could accrue, Defendants required Plaintiff and class members to perform work off-the-clock before and after their scheduled start and end times to complete work-related tasks, such as cleaning and organizing the work area. Defendants failed to track this time that Plaintiff and class members spent working off-the-clock, and Plaintiff and class members received no compensation for this time. As also set forth above, Defendants' timekeeping system restricted Plaintiff and class members from accurately recording their hours worked due to frequent malfunctions. Instead, on information and belief, Plaintiff and class members were subject to Defendants' management altering their time records and/or failing to accurately record their hours worked.

72. Second, as also stated, due to Defendants' policies and/or practices of understaffing their facilities while assigning heavy workloads, including pressure to meet time-sensitive repair deadlines, and failing to schedule meal periods, Plaintiff and class members were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods.

73. Also, as stated above, on information and belief, because Defendants frowned upon employees accruing meal period premiums, Defendants' managers pressured employees to clock out for meal periods and/or adjusted their time records to reflect compliant meal periods, even when they did not receive a compliant meal period. Thus, Defendants systematically failed to pay Plaintiff and class members for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

74. Defendants did not pay minimum wages for all hours worked by Plaintiff and class members. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

75. Defendants' failure to pay Plaintiff and class members minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code section 1194.2, Plaintiff and class members are entitled to recover from Defendants liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

THIRD CAUSE OF ACTION

**Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198—Meal Period
Violations
(Against all Defendants)**

76. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

1 77. At all relevant times herein set forth, California Labor Code section 512(a)
2 provides that an employer may not require, cause, or permit an employee to work for a period
3 of more than five (5) hours per day without providing the employee with a meal period of not
4 less than thirty (30) minutes, except that if the total work period per day of the employee is
5 not more than six (6) hours, the meal period may be waived by mutual consent of both the
6 employer and the employee. Under California law, first meal periods must start after no more
7 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

8 78. At all relevant times herein set forth, California Labor Code sections 226.7,
9 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
10 meal period mandated by an applicable order of the IWC.

11 79. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a),
12 and the applicable IWC Wage Order also require employers to provide a second meal period
13 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
14 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
15 total hours worked is no more than twelve (12) hours, the second meal period may be waived
16 by mutual consent of the employer and the employee only if the first meal period was not
17 waived.

18 80. First, as stated, Defendants had, and continue to have, company-wide policies
19 and/or practices of understaffing while assigning heavy workloads, including pressuring
20 employees to meet time-sensitive repair deadlines, which has resulted in a lack of meal period
21 coverage and prevented Plaintiff and class members from taking all timely, uninterrupted meal
22 periods to which they were entitled. Further, as stated, Defendants had a company-wide
23 practice and/or policy of failing to schedule meal periods, which further caused Plaintiff and
24 class members to not be relieved of their duties for compliant meal periods.

25 81. As a result, Plaintiff and class members had to work through all or part of their
26 meal periods, had their meal periods interrupted, and/or had to wait extended periods of time
27 before taking meal periods. For example, as stated, Plaintiff was sometimes required to work
28 straight through his meal periods. As another example, Plaintiff was sometimes required to

1 return early from his meal periods to keep up with Defendants' pressure to meet time-sensitive
2 repairs. Additionally, on occasion, Plaintiff took his meal periods late, after the fifth hour of
3 work, due to the lack of coverage.

4 82. Second, as stated above, on information and belief, because Defendants
5 frowned upon employees accruing meal period premiums, Defendants' management pressured
6 Plaintiff and class members to clock out for meal periods and/or adjusted their time records to
7 reflect compliant meal periods, even when they did not receive a compliant meal period. For
8 example, Plaintiff was required to clock out for his meal periods to record that he had received
9 compliant meal periods on shifts when he had not, in fact, received these timely, uninterrupted
10 meal periods.

11 83. Third, Defendants did not provide Plaintiff and class members with second 30-
12 minute meal periods on days that they worked in excess of ten (10) hours in one day. During
13 his employment, Plaintiff worked shifts in excess of ten (10) or more hours per day but was
14 never provided a second 30-minute meal period. Plaintiff and class members did not sign
15 valid meal period waivers on days that they were entitled to meal periods and were not
16 relieved of all duties.

17 84. At all times herein mentioned, Defendants knew or should have known that, as
18 a result of these policies, Plaintiff and class members were prevented from being relieved of
19 all duties and required to perform some of their assigned duties during meal periods.
20 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
21 members meal period premiums when meal periods were missed, shortened, interrupted,
22 and/or late.

23 85. Moreover, Defendants engaged in a company-wide practice and/or policy of
24 not paying meal period premiums owed when compliant meal periods are not provided.
25 Because of this practice and/or policy, Plaintiff and class members have not received premium
26 pay for missed, late, and interrupted meal periods. As a result, Defendants failed to provide
27 Plaintiff and class members compliant meal periods in violation of California Labor Code
28 sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

86. Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that the meal period was not provided.

FOURTH CAUSE OF ACTION

Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations (Against all Defendants)

87. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

88. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class members' employment by Defendants.

89. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

90. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016). California Labor Code section 226.7 and the applicable IWC Wage Order also provide that rest periods shall be counted as hours worked for which there shall be no deduction from wages.

1 91. Pursuant to the applicable IWC Wage Order and California Labor Code section
2 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1)
3 additional hour of pay at their regular rates of pay for each work day that a required rest
4 period was not authorized and permitted.

5 92. During the relevant time period, Defendants regularly failed to authorize and
6 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
7 period worked or major fraction thereof. As with meal periods, Defendants' company-wide
8 practices, including understaffing and assigning heavy workloads, prevented Plaintiff and
9 class members from being relieved of all duty to take rest periods. Additionally, Defendants
10 failed to schedule rest periods, which, coupled with Defendants' failure to provide adequate
11 rest period coverage, further led to Plaintiff and class members not being authorized and
12 permitted to take rest periods.

13 93. Furthermore, upon information and belief, during the relevant time period,
14 Defendants maintained a company-wide on-premises rest period policy, which effectively
15 required that Plaintiff and class members remain on the work premises during their rest
16 periods. Because Plaintiff and class members were restricted from leaving the premises
17 during rest periods, they were denied the ability to use their rest periods freely for their own
18 purposes, such as running personal errands. Thus, Defendants effectively maintained control
19 over Plaintiff and class members during rest periods.

20 94. As a result of Defendants' practices and policies, Plaintiff and class members
21 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
22 receiving all uninterrupted rest periods to which they were entitled. For example, Plaintiff
23 missed some of his rest periods, due to the lack of coverage and Defendants' failure to
24 schedule rest periods for employees.

25 95. Defendants have also engaged in a company-wide practice and/or policy of not
26 paying rest period premiums owed when compliant rest periods are not authorized and
27 permitted. Because of this practice and/or policy, Plaintiff and class members have not
28 received premium pay for all missed rest periods.

96. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a compliant rest period was not authorized and permitted.

FIFTH CAUSE OF ACTION

Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records
(Against all Defendants)

97. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

98. At all relevant times herein set forth, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

99. At all relevant times, Defendants have knowingly and intentionally provided Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiff and Subclass members that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, and the corresponding number of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

100. Because Defendants did not record the time Plaintiff and Subclass members spent working off the clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff and Subclass members in compliance with sections 226(a)(1) and 226(a)(5). For the same

1 reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and
2 Subclass members, in violation of section 226(a)(2), and failed to list the applicable hourly
3 rates of pay in effect during the pay period and the corresponding accurate number of hours
4 worked at each hourly rate, in violation of section 226(a)(9).

5 101. The wage statement deficiencies also include, among other things, failing to list
6 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
7 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
8 for which employees were paid; failing to list the name of the employee and only the last four
9 digits of his or her social security number or an employee identification number other than a
10 social security number; failing to list the name and address of the legal entity that is the
11 employer; and/or failing to state all hours worked as a result of not recording or stating hours
12 worked off-the-clock.

13 102. California Labor Code section 1174(d) provides that “[e]very person employing
14 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
15 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
16 plants or establishments at which employees are employed, payroll records showing the hours
17 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
18 applicable piece rate paid to, employees employed at the respective plants or
19 establishments” At all relevant times, and in violation of Labor Code section 1174(d),
20 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
21 members showing the daily hours they worked and the wages paid thereto as a result of failing
22 to record the off-the-clock hours that they worked.

23 103. California Labor Code section 1198 provides that the maximum hours of work
24 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
25 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
26 employment of any employees for longer hours than those fixed by the order or under
27 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
28 Wage Order, employers are required to keep accurate time records showing when the

1 employee begins and ends each work period and meal period. During the relevant time
2 period, Defendants engaged in company-wide practices and/or policies of failing to record
3 actual hours worked (including falsifying time records by recording that compliant meal
4 periods were taken regardless if or when meal periods were actually taken), and thereby failed
5 to keep accurate records of work period and meal period start and end times for Plaintiff and
6 Subclass members, in violation of section 1198. Also, in light of Defendants' failure to
7 provide Plaintiff and Subclass members with second 30-minute meal periods to which they
8 were entitled, Defendants kept no records of meal start and end times for second meal periods.

9 104. Plaintiff and Subclass members are entitled to recover from Defendants the
10 greater of their actual damages caused by Defendants' failure to comply with California Labor
11 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
12 employee.

13 **SIXTH CAUSE OF ACTION**

14 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon** 15 **Termination** 16 **(Against all Defendants)**

17 105. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
18 and every allegation set forth above.

19 106. This cause of action is dependent upon, and wholly derivative of, the overtime
20 wages, minimum wages, and/or meal and rest period premiums that were not timely paid to
21 Plaintiff and those class members no longer employed by Defendants upon their termination.

22 107. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
23 that if an employer discharges an employee, the wages earned and unpaid at the time of
24 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
25 her employment, his or her wages shall become due and payable not later than seventy-two
26 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
27 his or her intention to quit, in which case the employee is entitled to his or her wages at the
28 time of quitting.

108. Defendants willfully failed to pay Plaintiff and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

109. Defendants' failure to pay Plaintiff and class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SEVENTH CAUSE OF ACTION

Violation of California Labor Code § 204—Failure to Timely Pay Wages During Employment (Against all Defendants)

110. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

111. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, and/or meal and rest period premiums that were not timely paid to Plaintiff and class members during their employment.

112. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed.

113. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth (16th) and the last day, inclusive, of any calendar month, other than those wages due upon termination of an

employee, are due and payable between the first (1st) and the tenth (10th) day of the following month.

114. At all times relevant herein, Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

115. During the relevant time period, Defendants willfully failed to pay Plaintiff and class members all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within the time periods specified by California Labor Code section 204.

116. Defendants' failure to pay Plaintiff and class members all wages due violates Labor Code section 204. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

EIGHTH CAUSE OF ACTION

Violation of California Labor Code § 2802—Unpaid Business-Related Expenses (Against all Defendants)

117. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

118. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 9-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an

1 employee whose wages are at least two (2) times the minimum wage provided herein may be
2 required to provide and maintain hand tools and equipment customarily required by the trade
3 or craft.”

4 119. During the relevant time period, Defendants, on a company-wide basis,
5 required Plaintiff and class members to use their personal mobile devices, including, but not
6 limited to, cellular phones, and/or mobile data to carry out their job duties but failed to
7 reimburse them for the costs of their work-related mobile device and/or mobile data expenses.
8 For example, Plaintiff was required to use his personal cellular phone to communicate with
9 equipment manufacturers to obtain service manuals and diagrams for repairing and servicing
10 equipment. Although Defendants required Plaintiff and class members to use their personal
11 mobile devices and/or mobile data to carry out their work-related duties, Defendants failed to
12 reimburse them for their costs incurred.

13 120. Defendants could have provided Plaintiff and class members with company-
14 issued mobile devices, or, Defendants could have reimbursed employees for the cost of their
15 mobile device usage. Instead, Defendants passed these operating costs onto Plaintiff and class
16 members.

17 121. Defendants’ company-wide policy and/or practice of not reimbursing
18 employees for expenses necessarily incurred and passing on their operating costs to Plaintiff
19 and class members violates California Labor Code section 2802. Defendants have
20 intentionally and willfully failed to reimburse Plaintiff and class members for necessary
21 business-related expenses and costs.

22 122. Plaintiff and class members are entitled to recover from Defendants their
23 business-related expenses incurred during the course and scope of their employment, plus
24 interest.

25 **NINTH CAUSE OF ACTION**

26 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

27 **(Against all Defendants)**

28 123. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 124. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
3 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
4 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 1174(d), and
5 1198. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to
6 recover civil penalties for violations of those Labor Code sections not found in section 2699.5,
7 including sections 226(a), 226.7, 510, 512(a), 516, 1182.12, 1194, 1197, 1197.1, and 2802.

8 125. Defendants’ conduct, as alleged herein, violates numerous sections of the
9 California Labor Code, including, but not limited to, the following:

- 10 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
11 Wage Order for Defendants’ failure to compensate Plaintiff and other
12 aggrieved employees with all required overtime pay, as alleged herein;
- 13 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and
14 1198, and the applicable IWC Wage Order for Defendants’ failure to
15 compensate Plaintiff and other aggrieved employees with at least
16 minimum wages for all hours worked, as alleged herein;
- 17 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
18 applicable IWC Wage Order for Defendants’ failure to provide Plaintiff
19 and other aggrieved employees with meal periods, as alleged herein;
- 20 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
21 applicable IWC Wage Order for Defendants’ failure to authorize and
22 permit Plaintiff and other aggrieved employees to take rest periods, as
23 alleged herein;
- 24 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
25 IWC Wage Order for failure to provide accurate and complete wage
26 statements to Plaintiff and other aggrieved employees, as alleged herein;
- 27 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
28 IWC Wage Order for failure to maintain payroll records, as alleged

herein;

- (g) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as alleged herein;
- (h) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein; and
- (i) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other aggrieved employees for all business expenses necessarily incurred, as alleged herein.

126. Therefore, Plaintiff and other aggrieved employees are entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (k).

TENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unlawful Business Practices

(Against all Defendants)

127. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

128. Defendants are “persons” as defined by California Business & Professions Code section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

129. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants’ unlawful business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

130. Defendants’ activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code sections 17200, *et seq.*

131. A violation of California Business & Professions Code sections 17200, *et seq.*

1 may be predicated on the violation of any state or federal law. In the instant case, Defendants'
2 policies and practices have violated state law in at least the following respects:

- 3 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
4 class members, to work overtime without paying them proper
5 compensation in violation of California Labor Code sections 510 and
6 1198, and the applicable IWC Wage Order, as alleged herein;
- 7 (b) Failing to pay at least minimum wage to Plaintiff and class members in
8 violation of California Labor Code sections 1182.12, 1194, 1197,
9 1197.1, and 1198, and the applicable IWC Wage Order, as alleged
10 herein;
- 11 (c) Failing to provide all meal periods to Plaintiff and class members in
12 violation of California Labor Code sections 226.7, 512(a), 516, and
13 1198, and the applicable IWC Wage Order, as alleged herein;
- 14 (d) Failing to authorize and permit Plaintiff and class members to take all
15 rest periods in violation of California Labor Code sections 226.7, 516,
16 and 1198, and the applicable IWC Wage Order, as alleged herein;
- 17 (e) Failing to provide Plaintiff and class members with accurate wage
18 statements and failing to maintain accurate payroll records in violation
19 of California Labor Code sections 226(a), 1174(d), and 1198, and the
20 applicable IWC Wage Order, as alleged herein;
- 21 (f) Failing timely to pay all earned wages to Plaintiff and class members in
22 violation of California Labor Code section 204, as alleged herein; and
- 23 (g) Failing to reimburse Plaintiff and class members for all business
24 expenses necessarily incurred in violation of California Labor Code
25 section 2802, as alleged herein.

26 132. As a result of the violations of California law herein described, Defendants
27 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
28 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged

1 herein.

2 133. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
3 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
4 Defendants during a period that commences four years prior to the filing of the initial
5 complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to
6 Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of
7 Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

8 **ELEVENTH CAUSE OF ACTION**

9 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

10 **Unfair Business Practices**

11 **(Against all Defendants)**

12 134. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
13 and every allegation set forth above.

14 135. Defendants are “persons” as defined by California Business & Professions
15 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
16 and/or associations.

17 136. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
18 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
19 injury in fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff
20 seeks to enforce important rights affecting the public interest within the meaning of Code of
21 Civil Procedure section 1021.5.

22 137. Defendants’ activities, namely Defendants’ company-wide practice and/or
23 policy of not paying Plaintiff and class members all meal and rest period premiums due to
24 them under Labor Code section 226.7, deprived Plaintiff and class members of the
25 compensation guarantee and enhanced enforcement implemented by section 226.7. The
26 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
27 compensate employees, and secondarily to shape employer conduct.” *Safeway, Inc. v.*
28 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7

1 were guaranteed to Plaintiff and class members as part of their employment with Defendants,
2 and thus Defendants' practice and/or policy of denying these statutory benefits constitutes an
3 unfair business practice in violation of California Business & Professions Code sections
4 17200, *et seq.* (*Id.*)

5 138. A violation of California Business & Professions Code sections 17200, *et seq.*
6 may be predicated on any unfair business practice. In the instant case, Defendants' policies
7 and practices have violated the spirit of California's meal and rest period laws and constitute
8 acts against the public policy behind these laws.

9 139. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
10 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
11 benefits implemented by section 226.7 withheld and retained by Defendants during a period
12 that commences four years prior to the filing of the initial complaint; a permanent injunction
13 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
14 Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil
15 Procedure section 1021.5 and other applicable laws; and an award of costs.

16 **REQUEST FOR JURY TRIAL**

17 Plaintiff requests a trial by jury.

18 **PRAYER FOR RELIEF**

19 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
20 against Defendants, jointly and severally, as follows:

21 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
22 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
23 reserves the right to amend his prayer for relief to seek a different amount.

24 **Class Certification**

- 25 2. That this case be certified as a class action;
26 3. That Plaintiff be appointed as the representative of the Class and Subclass;
27 4. That counsel for Plaintiff be appointed as class counsel.

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willfully failing to provide all meal periods to Plaintiff and class members;

17. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

18. For all actual, consequential, and incidental losses and damages, according to proof;

19. For premiums pursuant to California Labor Code section 226.7(c);

20. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

22. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

24. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7(c);

27. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

29. For such other and further relief as the Court may deem equitable and

appropriate.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For injunctive relief pursuant to California Labor Code section 226(h);

33. For statutory penalties pursuant to California Labor Code section 226(e);

34. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

35. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages, and/or meal and rest period premiums, owed at the time of termination of the employment of Plaintiff and other terminated class members;

37. For all actual, consequential and incidental losses and damages, according to proof;

38. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

39. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

40. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

41. For such other and further relief as the Court may deem equitable and

appropriate.

As to the Seventh Cause of Action

42. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to timely pay Plaintiff and class members overtime wages, minimum wages, and/or meal and rest period premiums, during their employment;

43. For all actual, consequential and incidental losses and damages, according to proof;

44. For statutory penalties according to proof pursuant to California Labor Code section 210;

45. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

46. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

47. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eighth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related expenses and costs incurred by Plaintiff and class members;

49. For unpaid business-related expenses and such general and special damages as may be appropriate;

50. For pre-judgment interest on any unpaid business-related expenses from the date such amounts were due, or as otherwise provided by law;

51. For all actual, consequential, and incidental losses and damages, according to proof;

52. For attorneys' fees and costs pursuant to California Labor Code section 2802(c), or as otherwise provided by law; and

1 53. For such other and further relief as the Court may deem equitable and
2 appropriate.

3 **As to the Ninth Cause of Action**

4 54. That the Court declare, adjudge and decree that Defendants violated the
5 following California Labor Code provisions as to Plaintiff and other aggrieved employees:
6 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
7 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
8 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
9 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
10 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
11 earned wages upon termination); 204 (by failing to timely pay all earned wages during
12 employment); and 2802 (by failing to reimburse business expenses);

13 55. For civil penalties pursuant to the California Labor Code, including sections
14 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (k), for violations of California Labor Code
15 sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1,
16 1198, and 2802;

17 56. For injunctive relief pursuant to California Labor Code sections 1194.5 and/or
18 2699(k) to bring Defendants into compliance with the requirements of California Labor Code
19 sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1,
20 1198, and 2802;

21 57. For attorneys' fees and costs pursuant to California Labor Code section
22 2699(k)(1), and any and all other relevant statutes, for Defendants' violations of California
23 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
24 1197, 1197.1, 1198, and 2802;

25 58. For pre-judgment and post-judgment interest as provided by law; and

26 59. For such other and further relief as the Court may deem equitable and
27 appropriate.

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1 **As to the Tenth Cause of Action**

2 60. That the Court declare, adjudge and decree that Defendants' conduct of failing
3 to provide Plaintiff and class members all overtime wages due to them, failing to provide
4 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
5 class members all meal periods, failing to authorize and permit Plaintiff and class members to
6 take all rest periods, failing to provide Plaintiff and class members accurate and complete
7 wage statements, failing to maintain accurate payroll records for Plaintiff and class members,
8 failing to timely pay Plaintiff and class members all earned wages during employment, and
9 failing to reimburse Plaintiff and class members for business-related expenses, constitutes an
10 unlawful business practice in violation of California Business and Professions Code sections
11 17200, *et seq.*;

12 61. For restitution of unpaid wages to Plaintiff and all class members and
13 prejudgment interest from the day such amounts were due and payable;

14 62. For the appointment of a receiver to receive, manage, and distribute any and all
15 funds disgorged from Defendants and determined to have been wrongfully acquired by
16 Defendants as a result of violations of California Business & Professions Code sections
17 17200, *et seq.*;

18 63. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
19 California Code of Civil Procedure section 1021.5; and

20 64. For such other and further relief as the Court may deem equitable and
21 appropriate.

22 **As to the Eleventh Cause of Action**

23 65. That the Court declare, adjudge and decree that Defendants' conduct of denying
24 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
25 an unfair business practice in violation of California Business and Professions Code sections
26 17200, *et seq.*;

27 66. For restitution of the statutory benefits under section 226.7 unfairly withheld
28 from Plaintiff and class members and prejudgment interest from the day such amounts were

1 due and payable;

2 67. For the appointment of a receiver to receive, manage, and distribute any and all
3 funds disgorged from Defendants and determined to have been wrongfully acquired by
4 Defendants as a result of violations of California Business & Professions Code sections
5 17200, *et seq.*;

6 68. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
7 California Code of Civil Procedure section 1021.5;

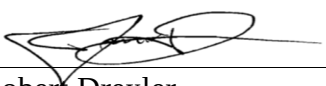
8 69. For pre-judgment and post-judgment interest as provided by law; and

9 70. For such other and further relief as the Court may deem equitable and
10 appropriate.

11 Dated: December 12, 2024

Respectfully submitted,

Capstone Law APC

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14 By: 

Robert Drexler
Jonathan Lee
Robert Myong

Attorneys for Plaintiff Robert Kemper

EXHIBIT “1”

ALEXANDER LIMA
310.712.8154 Direct
Alexander.Lima@capstonelawyers.com

October 7, 2024

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.govfa.net/308>)

Subject: *Robert Kemper v. Swissport USA, Inc., et al.*

Dear PAGA Administrator:

This office represents Robert Kemper in connection with his claims under the California Labor Code. Mr. Kemper was an employee of SWISSPORT USA, INC.; SWISSPORT FUELING INC.; SWISSPORT SA, LLC; and/or SWISSPORT SA FUEL SERVICES, LLC. For the purpose of this letter, Mr. Kemper collectively refers to these entities as “SWISSPORT.”

The employers may be contacted directly at the addresses below:

SWISSPORT USA, INC.
227 FAYETTEVILLE ST 9TH FLOOR
RALEIGH, NC 27601

SWISSPORT FUELING INC.
227 FAYETTEVILLE ST 9TH FLOOR
RALEIGH, NC 27601

SWISSPORT SA, LLC
227 FAYETTEVILLE STREET, SUITE 900
RALEIGH, NC 27601

SWISSPORT SA FUEL SERVICES, LLC
227 FAYETTEVILLE ST SUITE 900
RALEIGH, NC 27601

Mr. Kemper intends to seek civil penalties, attorneys’ fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Mr. Kemper seeks relief on behalf of himself, the State of California, and other persons who are or were employed by SWISSPORT as a non-exempt, hourly paid employee in California and who received at least one wage statement (“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

SWISSPORT employed Mr. Kemper as an hourly paid, non-exempt employee from approximately June 2023 to October 2023. Mr. Kemper worked for SWISSPORT as a Fleet Mechanic Level II and Ground Service Equipment Mechanic at its San Francisco International (“SFO”) location. During his employment, Mr. Kemper typically worked eight (8) or more hours per day and five (5) days per week. By the end of his employment, Mr. Kemper was compensated approximately \$39.00 per hour.

His job duties included, without limitation, maintaining, repairing, and servicing SWISSPORT's fleet of ground support equipment, such as aircraft tugs, baggage carts, and fuel trucks used at airports.

SWISSPORT committed each of the following Labor Code violations against Mr. Kemper, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c)(1):¹

SWISSPORT's Company-Wide and Uniform Payroll and HR Practices

SWISSPORT USA, INC. and SWISSPORT FUELING INC. are Delaware corporations; and SWISSPORT SA, LLC and SWISSPORT SA FUEL SERVICES, LLC are Delaware limited liability companies. Together, they are world's leading independent provider of airport ground services and air cargo handling. Upon information and belief, SWISSPORT maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Raleigh, North Carolina, for all non-exempt, hourly paid employees working for SWISSPORT in California, including Mr. Kemper and other aggrieved employees. At all relevant times, SWISSPORT issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Kemper and other aggrieved employees, regardless of their location or position.

Upon information and belief, SWISSPORT maintains a centralized Payroll department at its corporate headquarters in Raleigh, North Carolina, which processes payroll for all non-exempt, hourly paid employees working for SWISSPORT in California, including Mr. Kemper and other aggrieved employees. Further, SWISSPORT issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Kemper and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, SWISSPORT utilized the same methods and formulas when calculating wages due to Mr. Kemper and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

¹ These facts, theories, and claims are based on Mr. Kemper's experience and counsel's review of those records currently available relating to Mr. Kemper's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. Kemper reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

SWISSPORT willfully failed to pay all overtime wages owed to Mr. Kemper and other aggrieved employees. During the relevant time period, Mr. Kemper and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, SWISSPORT had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Mr. Kemper and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with SWISSPORT's practices of understaffing and assigning heavy workloads (*see infra*), led Mr. Kemper and other aggrieved employees to work off-the-clock outside of their scheduled shift times in order to complete their assigned tasks. For example, about once per week, Mr. Kemper was required to clean and organize the work area, including tasks such as sweeping, mopping, and disposing of garbage left over from the previous night's shift, but was not permitted to clock in and record this time spent working. As another example, approximately twice per week, Mr. Kemper clocked out at the end of his shift, but was required to continue working to clean and re-organize the work area, including stacking tires, before he could leave for the day. Thus, SWISSPORT failed to track all of the time that employees spent performing work-related tasks outside of their shifts, and Mr. Kemper and other aggrieved employees received no compensation for this time.

Second, during the relevant time period, SWISSPORT failed to implement a reliable timekeeping system to track and record Mr. Kemper's and other aggrieved employees' hours worked. SWISSPORT's timekeeping software often malfunctioned or had connectivity issues, which impeded Mr. Kemper and other aggrieved employees from accurately recording their hours worked. When SWISSPORT's timekeeping system malfunctioned or had connectivity issues, SWISSPORT's policy and/or practice was to have SWISSPORT's management record Mr. Kemper's and other aggrieved employees' hours worked. Upon information and belief, SWISSPORT's management altered, falsified, and/or otherwise failed to accurately record Mr. Kemper's and other aggrieved employees' clock-in and clock-out times. Essentially, due to the limitations of the timekeeping system, SWISSPORT's management maintained control and/or discretion over employees' clock-in and/or clock-out times. Thus, SWISSPORT failed to track time spent working before and after shifts, and Mr. Kemper and other aggrieved employees received no compensation for this time. To the extent SWISSPORT's timekeeping policies have taken away time worked that was eligible for overtime, Mr. Kemper and other aggrieved employees have been denied overtime pay for all hours worked.

Third, SWISSPORT had, and continue to have, company-wide policies and/or practices of understaffing its locations while assigning heavy workloads, including pressuring employees to meet time-sensitive repair deadlines. SWISSPORT's policies and/or practices resulted in a failure to provide Mr. Kemper and other aggrieved employees with adequate meal period coverage, and thus, Mr. Kemper and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. SWISSPORT also had a practice of failing to schedule meal periods which, in conjunction with the assignment of heavy workloads, further caused Mr. Kemper and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Mr. Kemper often worked through all or part his meal periods due to lack of coverage and heavy workload. SWISSPORT did not compensate Mr. Kemper and other aggrieved employees for the time they spent working off the clock during unpaid meal periods.

Additionally, on information and belief, because SWISSPORT frowned upon employees accruing meal period premiums, SWISSPORT's management pressured employees to clock out for meal periods and/or adjusted their time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal period premiums that would need to be paid by SWISSPORT. Thus, SWISSPORT did not record all hours worked during meal periods, and Mr. Kemper and other aggrieved employees performed work during meal periods for which they were not paid.

SWISSPORT knew or should have known that as a result of these company-wide practices and/or policies, Mr. Kemper and other aggrieved employees were performing assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Kemper and other aggrieved employees regularly worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Kemper and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

SWISSPORT's failure to pay Mr. Kemper and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Kemper and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring SWISSPORT into compliance with the applicable IWC Wage Order and Labor Code sections 510 and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 9-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. Tit. 8, § 11090(2)(H) (defining "Hours Worked").

First, as set forth above, as a result of SWISSPORT's policy of limiting the amount of overtime employees could accrue, SWISSPORT required Mr. Kemper and other aggrieved employees to perform work off-the-clock before and after scheduled start and times to complete work-related tasks, such as cleaning and organizing the work area. SWISSPORT failed to track this time that Mr. Kemper and other aggrieved employees spent working off-the-clock, and Mr. Kemper and other aggrieved employees received no compensation for this time. As also set forth above, SWISSPORT's timekeeping system restricted Mr. Kemper and other aggrieved employees from accurately recording their hours worked due to frequent malfunctions. Instead, on information and belief, Mr. Kemper and other aggrieved employees were subject to SWISSPORT's management altering their time records and/or failing to accurately record their hours worked.

Second, as also stated, due to SWISSPORT's policies and/or practices of understaffing its facilities while assigning heavy workloads, which included pressuring employees to meet time-sensitive repair deadlines, and failing to schedule meal periods, Mr. Kemper and other aggrieved employees were prevented from taking all uninterrupted meal periods to which they were entitled and were required

to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods.

Also, as stated above, on information and belief, because SWISSPORT frowned upon employees accruing meal period premiums, SWISSPORT's managers pressured employees to clock out for meal periods and/or adjusted their time records to reflect compliant meal periods, even when they did not receive a compliant meal period. Thus, SWISSPORT systematically failed to pay Mr. Kemper and other aggrieved for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

SWISSPORT did not pay at least minimum wages for all hours worked by Mr. Kemper and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, SWISSPORT did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, SWISSPORT regularly failed to pay at least minimum wages to Mr. Kemper and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Kemper and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring SWISSPORT into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (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.

First, as stated, SWISSPORT had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads, including pressuring employees to meet time-sensitive repair deadlines, which has resulted in a lack of meal period coverage and prevented Mr. Kemper and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, SWISSPORT had a company-wide practice and/or policy of failing to schedule meal periods, which further caused Mr. Kemper and other aggrieved employees to not be relieved of their duties for compliant meal periods.

As a result, Mr. Kemper and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, Mr. Kemper was often required to work straight through his meal periods. As another example, as stated, Mr. Kemper was sometimes required to return early from his meal periods to keep up with SWISSPORT's pressure to meet time-sensitive repairs. Indeed, according to Mr. Kemper's time records, on September 4, 2023, he clocked in at the start of his meal period at 1:48 p.m. and clocked out for the end of his meal period at 2:14 p.m., resulting in Mr. Kemper taking a shortened meal period of 26 minutes. Additionally, Mr. Kemper sometimes took his meal periods late, after the fifth hour of work, due to the lack of coverage. For example, according to Mr. Kemper's time records, on September 29, 2023, he clocked in at the start of his shift at 8:32 a.m. and clocked out for his meal period at 3:08 p.m., working a total of six (6) hours and 36 minutes (or 6.60 hours), before he was able to take his meal period.

Second, as stated above, on information and belief, because SWISSPORT frowned upon employees accruing meal period premiums, SWISSPORT's management pressured Mr. Kemper and other aggrieved employees to clock out for meal periods and/or adjusted their time records to reflect compliant meal periods, even when they did not receive a compliant meal period. For example, Mr. Kemper was required to clock out for his meal periods to record that he had received compliant meal periods on shifts when he had not, in fact, received these timely, uninterrupted meal periods.

Third, SWISSPORT did not provide Mr. Kemper and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. During his employment, Mr. Kemper worked shifts in excess of ten (10) or more hours per day but was never provided a second 30-minute meal period. Mr. Kemper and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times mentioned, SWISSPORT knew or should have known that as a result of its company-wide policies and/or practices, Mr. Kemper and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. SWISSPORT further knew or should have known that it did not pay Mr. Kemper and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, SWISSPORT engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Kemper and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods.

Accordingly, SWISSPORT failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Kemper and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring SWISSPORT into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 512(a), 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, SWISSPORT regularly failed to authorize and permit Mr. Kemper and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, SWISSPORT's company-wide practices, including understaffing and assigning heavy workloads, prevented Mr. Kemper and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, SWISSPORT failed to schedule rest periods, which, coupled with SWISSPORT's failure to provide adequate rest period coverage, further led to Mr. Kemper and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, during the relevant time period, SWISSPORT maintained a company-wide on-premises rest period policy, which effectively required that Mr. Kemper and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Kemper and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, SWISSPORT effectively maintained control over Mr. Kemper and other aggrieved employees during rest periods.

As a result of SWISSPORT's practices and policies, Mr. Kemper and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Kemper missed most of his rest periods, because of the lack of rest period coverage and SWISSPORT's failure to schedule rest periods for employees.

SWISSPORT also has engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Kemper and other aggrieved employees have not received premium pay for all missed rest periods.

Accordingly, SWISSPORT failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Kemper and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring SWISSPORT into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. SWISSPORT has not provided Mr. Kemper and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, SWISSPORT has knowingly and intentionally provided Mr. Kemper and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, SWISSPORT issued uniform wage statements to Mr. Kemper and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, and the corresponding number of hours worked at each hourly rate. Specifically, SWISSPORT violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because SWISSPORT did not record the time Mr. Kemper and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), SWISSPORT did not list the correct amount of gross wages and net wages earned by Mr. Kemper and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, SWISSPORT failed to accurately list the total number of hours worked by Mr. Kemper and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages

of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), SWISSPORT willfully failed to maintain accurate payroll records for Mr. Kemper and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, SWISSPORT engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Kemper and other aggrieved employees, in violation of section 1198. Also, in light of SWISSPORT’s failure to provide Mr. Kemper and other aggrieved employees with second 30-minute meal periods to which they were entitled, SWISSPORT kept no records of meal start and end times for second meal periods.

Because SWISSPORT failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Kemper and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Kemper and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Kemper and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring SWISSPORT into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are

deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, SWISSPORT failed to pay Mr. Kemper and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

Mr. Kemper and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring SWISSPORT into compliance with Labor Code section 204, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

During the relevant time period, SWISSPORT willfully failed to pay Mr. Kemper and other aggrieved employees who are no longer employed by SWISSPORT all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving SWISSPORT's employ.

Mr. Kemper and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring SWISSPORT into compliance with Labor Code sections 201 and 202, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 9-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, Mr. Kemper and other aggrieved employees were required to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but SWISSPORT failed to reimburse them for the costs of their work-related mobile device expenses. For example, Mr. Kemper was required to use his personal cellular phone to communicate with equipment manufacturers to obtain service manuals and diagrams for repairing and servicing equipment. Although SWISSPORT required Mr. Kemper and other

aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, SWISSPORT failed to reimburse them for these costs.

SWISSPORT could have provided Mr. Kemper and other aggrieved employees with company-issued mobile devices, or, SWISSPORT could have reimbursed employees for the costs of their mobile device usage. Instead, SWISSPORT passed these operating costs onto Mr. Kemper and other aggrieved employees.

Thus, SWISSPORT had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Kemper and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring SWISSPORT into compliance with the applicable IWC Wage Order and Labor Code section 2802, pursuant to Labor Code section 2699(a), (f), and (k).

California Labor Code § 558(a)

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” SWISSPORT, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Kemper’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Kemper seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Kemper, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against SWISSPORT for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Kemper seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Alexander Lima
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read 'Alexander Lima', with a stylized flourish extending to the right.

Alexander Lima

Copy: SWISSPORT USA, INC. (via U.S. Certified Mail); SWISSPORT FUELING INC. (via U.S. Certified Mail); SWISSPORT SA, LLC (via U.S. Certified Mail); and/or SWISSPORT SA FUEL SERVICES, LLC (via U.S. Certified Mail)

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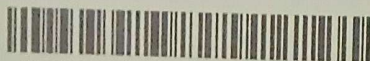
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☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece.

SWISSPORT FUELING INC.
227 FAYETTEVILLE ST
9TH FLOOR
RALEIGH, NC 27601

9590 9402 7706 2122 1530 19
2. Article Number (Transfer from service label)

7022 2410 0000 2265 0670

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Swissport-HQA ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

Raleigh, NC 10/15/24

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece.

SWISSPORT USA, INC.
227 FAYETTEVILLE ST
9TH FLOOR
RALEIGH, NC 27601

9590 9402 7706 2122 1530 26
2. Article Number (Transfer from service label)

7022 2410 0000 2265 0663

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Swissport-HQA ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

Raleigh, NC 10/15/24

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece.

SWISSPORT SA FUEL
SERVICES, LLC
227 FAYETTEVILLE ST
SUITE 900
RALEIGH, NC 27601

9590 9402 7706 2122 1530 33
2. Article Number (Transfer from service label)

7022 2410 0000 2265 0694

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Swissport-HQA ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

Raleigh, NC 10/15/24

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

SWISSPORT SA, LLC
227 FAYETTEVILLE
STREET, SUITE 900
RALEIGH, NC 27601

9590 9402 7706 2122 1530 02
2. Article Number (Transfer from service label)

7022 2410 0000 2265 0687

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Swissport-HQA ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

Raleigh, NC 10/15/24

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **December 12, 2024** I served the document described as **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

KENNETH D. SULZER (SBN 120253)
ksulzer@constangy.com
JOANNA MCMILLAN (SBN 281891)
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Attorneys for Defendant
SWISSPORT USA, INC., SWISSPORT
FUELING INC., SWISSPORT SA, LLC,
SWISSPORT SA FUEL SERVICES, LLC

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☐ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via OneLegal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **December 12, 2024**, at Los Angeles, California.

Sophia Flores

Type/Print Name



Signature