

ON 4/8/2020

By /s/ Mia Marlowe
Deputy Clerk

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Attorneys for Plaintiff, COLIN NELSON, individually
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**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO**

COLIN NELSON individually and on behalf of
other individuals similarly situated,

Plaintiff,

v.

SWISSPORT USA, INC., a Delaware corporation
and DOES 1-100 inclusive,

Defendant.

CASE NO. 20-CIV-01692

CLASS ACTION COMPLAINT FOR:

- 1. Failure to Pay all Wages in Violation of California *Labor Code* §§ 204, 1194, 1194.2, 1197, 1197.1;**
- 2. Meal Break Violations, California *Labor Code* §§ 200, 226.7, 512;**
- 3. Rest Breaks Violations, California *Labor Code* §§ 200, 226.7, 512;**
- 4. Failure to Furnish an Accurate, Itemized Wage Statement upon Payment of Wages in Violation of California *Labor Code* § 226;**
- 5. Failure to Pay All Wages Owed at Termination in Violation of California *Labor Code* § 203;**
- 6. Violations of California *Business & Professions Code* §§ 17200, et seq.**

DEMAND FOR JURY TRIAL

1 Plaintiff COLIN NELSON, (hereinafter referred to as “Plaintiff”), hereby submits his Class
2 Action Complaint (“Complaint”) against Defendant SWISSPORT USA, INC., a Delaware
3 corporation; and DOES 1-100 (hereinafter referred to as “Defendant”) on behalf of himself and the
4 class of all other similarly situated current and former employees of Defendant. Plaintiff brings this
5 action upon information and belief, except as to his own actions, the investigation of his counsel,
6 and the facts that are a matter of public record, as follows:

7 **INTRODUCTORY FACTUAL ALLEGATIONS**

8 1. This is a class action challenging systemic illegal employment practices resulting in
9 violations of the California *Labor Code* and California *Business and Professions Code* against
10 employees of Defendant.

11 2. Plaintiff seeks relief on behalf of himself and the members of the Plaintiff Class as a
12 result of employment policies, practices and procedures more specifically described below, which
13 violate the California *Labor Code*, and the orders and standards promulgated by the California
14 Department of Industrial Relations, Industrial Welfare Commission, and Division of Labor
15 Standards. Said employment policies, practices and procedures are generally described as follows:

- 16 a. Failure to pay Plaintiff and the members of the Plaintiff Class wages for all hours
17 worked pursuant to California *Labor Code* §1194;
18 b. Failure to provide meal breaks pursuant to California *Labor Code*;
19 c. Failure to provide rest breaks pursuant to California *Labor Code*;
20 d. Failure to pay Plaintiff and members of Plaintiff Class with appropriate wage
21 statements; and
22 e. Failure to pay Plaintiff and members of the Plaintiff Class with all wages owed at
23 time of termination.

24 3. Plaintiff is informed and believes, and based thereon alleges, that among other things
25 Defendant has engaged in a system of willful violations of the California *Labor Code* and California
26 *Business and Professions Code*, and applicable IWC wage orders by creating and maintaining
27 policies, practices and customs that knowingly deny employees the above stated rights and benefits.
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4. The policies, practices and customs of Defendant described above and below have resulted in unjust enrichment of Defendant and an unfair business advantage over businesses that routinely adhere to the structures of the California *Labor Code*, and California *Business and Professions Code*.

5. This matter is brought as a class action pursuant to California *Code of Civil Procedure* §382, on behalf of Plaintiff and the Plaintiff Class, which is defined more specifically below, but which is comprised, generally, of all former and current employees of SWISSPORT USA, INC., a Delaware corporation, who hold or held the job positions which Defendant classified as “non-exempt” at any of Defendant’s facilities in California and throughout the United States.

6. This Complaint alleges systematic violations of the California *Labor Code* (hereinafter, “*Labor Code*,”) and the California *Business & Professions Code* and is brought by Plaintiff on his own behalf and on behalf of the members of the Plaintiff Class.

7. The California Plaintiff “Class Period” is defined as the period from four years prior to the filing of this action through and including the date judgment is rendered in this matter. Plaintiff herein reserves the right to amend this Complaint to reflect a different Class Period as discovery in this matter proceeds.

8. The actions of Defendant are in violation of the California *Labor Code* as well as the wage orders of the Industrial Wage Commission of the State of California and, as a result, are unlawful and unfair acts, thus constituting a violation of California *Business & Professions Code* § 17200, *et seq.* (Unfair Practices Act).

9. The policies, practices and customs of Defendant described above and herein have resulted in unjust enrichment of Defendant and an unfair business advantage over businesses that routinely adhere to the requirements of the California *Labor Code* and of the *Business & Professions Code*.

JURISDICTION AND VENUE

10. On information and belief, Defendant are either a citizen of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts

1 consistent with traditional notions of fair play and substantial justice. There is no basis for federal
2 diversity jurisdiction in this action given that the State of California, as the real party in interest in
3 this action, is not a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs.*
4 *of Cal.*, 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
5 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction in this
6 action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the civil
7 penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

8 11. Venue is proper in San Mateo County because the acts which gave rise to this
9 litigation occurred in this county and Defendant does business in San Mateo County.

10 **THE PARTIES**

11 12. Plaintiff COLIN NELSON (“Plaintiff”) is a resident of San Mateo County, in the
12 State of California. Plaintiff was employed by Defendant from approximately February 2019
13 through October 2019. Plaintiff was employed as a “Ramp Agent.”

14 13. Defendant SWISSPORT USA, INC., is a Delaware corporation that conducts
15 business in California.

16 14. Plaintiff does not know the true names or capacities, whether individual, partner or
17 corporate, of the Defendants sued herein as DOES 1 through 100, inclusive, and for that reason, said
18 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
19 Complaint when the true names and capacities are known. Plaintiff is informed and believes, and
20 based thereon alleges, that each of said fictitious Defendants were responsible in some way for the
21 matters alleged herein and proximately caused Plaintiff and members of the general public and class
22 to be subject to the illegal employment practices, wrongs and injuries complained of herein.

23 15. At all times herein mentioned, Defendants participated in the wrongdoing of the acts
24 hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,
25 and each of them, were the agents, servants and employees of each of the other Defendants, as well
26 as the agents of all Defendants, and at all times herein mentioned, were acting within the course and
27 scope of said agency and employment.

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16. Plaintiff is informed and believes, and based thereon alleges, that at all times material hereto, each of the Defendants named herein were the agent, employee, alter ego and/or joint venture of, or working in concert with each of the other co-Defendants and were acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

17. At all times herein mentioned, Defendants, and each of them, were members of, and engaged in, a joint venture, partnership and common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

18. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged. At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

19. The members of the Plaintiff Class, including the representative Plaintiff named herein, have been employed during the Class Period in California. The practices and policies which are complained of by way of this Complaint are enforced throughout the State of California and the United States.

FACTUAL ALLEGATIONS

20. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

21. Plaintiff and all other members of the Plaintiff Class were and are classified by Defendant as non-exempt employees, pursuant to the provisions of the California *Labor Code*, and the orders and standards promulgated by the California Department of Industrial Relations, Industrial Welfare Commission, and Division of Labor Standards. As non-exempt employees, Plaintiff and all other members of the Plaintiff Class are entitled to certain benefits. In addition, said statutory provisions, wage orders, regulations and standards obligate the employer to maintain

1 accurate records of the hours worked by employees.

2 22. Plaintiff and the members of the Plaintiff Class seek compensation from Defendant
3 for the relevant time period because Defendant:

- 4 a. Failed to pay wages for all hours worked by Plaintiff and the members of the
5 Plaintiff Class;
- 6 b. Failed to provide mandated meal breaks pursuant to California law;
- 7 c. Failed to provide mandated rest breaks pursuant to California law;
- 8 d. Failed to provide accurate, itemized wage statements; and
- 9 e. Failure to pay Plaintiff and members of the Plaintiff Class with all wages owed at
10 time of termination.

11 23. Defendant has engaged in, and continues to engage in, unfair business practices in
12 California by practicing, employing and utilizing the employment practices and policies outlined
13 above.

14 24. Defendant's utilization of such unfair business practices deprives Plaintiff and
15 Plaintiff Class members of the general minimum working standards and entitlements due to them
16 under California law and the Industrial Welfare Commission wage orders as described herein.

17 25. As a direct result of the wage and hour violations herein alleged, Plaintiff and
18 members of the Plaintiff Class have suffered, and continue to suffer substantial losses related to the
19 use and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in
20 seeking to compel Defendant to fully perform its obligations under state law, all to Plaintiff's
21 respective damage in amounts according to proof at the time of trial.

22 ***Defendant's Failure to Pay All Wages***

23 26. Defendant did not compensate their hourly non-exempt employees for all the minutes
24 that they worked as described above, including but not limited to the time that the employees were
25 subject to the control and direction of Defendant; and/or the time that the employees were suffered
26 or permitted to work.

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1 ***Defendant's Failure to Pay For Time Spent "Off the Clock"***

2 27. Defendant did not compensate their hourly non-exempt employees for all the minutes
3 that they worked as described above, including but not limited to the time that the employees were
4 subject to the control and direction of Defendant; and/or the time that the employees were suffered
5 or permitted to work.

6 28. Plaintiff alleges that he would arrive one (1) to one and a half (1 ½) hours prior to the
7 start of his shift. Upon arriving in the parking lot, it took him approximately fifteen (15) minutes to
8 reach the bus stop. Afterwards, Plaintiff had to walk ten (10) to fifteen (15) minutes from the
9 terminal to the office. Plaintiff was not compensated for this waiting time.

10 29. Plaintiff alleges other non-exempt employees experienced the same waiting times.

11 30. Plaintiff also alleges that he would arrive at the office thirty (30) minutes prior to a
12 shift. Specifically, Plaintiff would need to arrive early to ensure that the gate was set up.
13 Additionally, Plaintiff would print the schedule and look at the equipment before clocking in.
14 Plaintiff alleges that this additional time was needed to ensure everything was set up on time, and
15 contends that if the gate was not set up on time he would get written up. Thus, this additional time
16 was needed to ensure everything was prepared on time.

17 31. Defendant failed to compensate Plaintiff and other non-exempt employees for this
18 work performed "off-the clock."

19 ***Defendant's Failure to Provide Mandated Meal Breaks***

20 32. Plaintiff contends that when he and members of the Plaintiff Class worked shifts over
21 five (5) hours or more in duration, Defendant routinely failed to provide timely meal breaks in
22 compliance with State law. Such violations included a failure to provide meal periods before the
23 completion of the employee's fifth hour of work.

24 33. Additionally, Plaintiff alleges that his meal breaks were frequently interrupted and
25 short.

26 34. Plaintiff alleges that throughout the Class Period, Defendant regularly:

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- a. Failed to provide Plaintiff and the members of the plaintiff class with a first meal period of not less than thirty (30) minutes during which they are relieved of all duty before working more than five (5) hours;
- b. Failed to provide Plaintiff and the members of the plaintiff class with a second meal period of not less than thirty (30) minutes during which they are relieved of all duties before working more than ten (10) hours per day; and
- c. Failed to pay Plaintiff and the members of the plaintiff class one hour of pay at their regular rate of compensation for each workday that a meal period was not provided.

Defendant's Failure to Provide Mandated Rest Breaks

35. At all times, relevant hereto, California *Labor Code* § 226.7 and the applicable IWC Wage Order, section 12, required employers to authorize, permit, and provide a ten (10) minute paid rest for each four (4) hours of work or major fraction thereof, during which employees are relieved of all duty.

36. At all times, relevant hereto, California *Labor Code* § 226.7(b) and IWC Wage Order section 12 required employers to pay one hour of additional pay at the regular rate of compensation for each employee and each workday that a proper rest period was not provided.

37. Plaintiff is informed and believes, and based thereon alleges, that Defendant failed and continues to fail to provide required rest breaks. Plaintiff alleges that he never received rest breaks.

38. Through his observations and discussions with his fellow employees, Plaintiff came to understand that other employees similarly received short and late rest breaks without proper compensation.

39. Thus, Plaintiff and other employees receive less than the required ten (10) minutes of rest. Throughout the Class Period, Plaintiff and the members of the Plaintiff Class were routinely denied the rest breaks they were entitled to under California law.

40. Defendant failed to pay Plaintiff and the members of the Plaintiff Class one (1) hour of pay at their regular rate of compensation for each workday that a rest period was not permitted.

1 ***Defendant's Failure to Provide Accurate Wage Statements***

2 41. Defendant failed to comply with California *Labor Code* §226(a) because the earnings
3 statements provided by Defendant to Plaintiff and members of the Plaintiff Class do not depict the
4 total number of hours worked, nor do the statements specify the correct gross wages earned by
5 Plaintiff and other members of the Plaintiff Class. Thus, Defendant violated California *Labor Code*
6 §226(a).

7 42. Defendant failed to accurately record the wages due to Plaintiff and members of the
8 Plaintiff Class, specifically including, but not limited to, by failing to record all hours worked and by
9 failing to record premiums earned for missed meal and rest breaks.

10 ***Defendant's Failure to Pay All Wages Due at Termination of Employment***

11 43. At all times, relevant hereto, California *Labor Code* § 201 required an employer that
12 discharges an employee to pay compensation due and owing to said employee immediately upon
13 discharge. California *Labor Code* § 202 requires an employer to pay an employee who quits any
14 compensation due and owing to said employee within seventy-two (72) hours of an employee's
15 resignation. California *Labor Code* § 203 provides that if an employer willfully fails to pay
16 compensation promptly upon discharge or resignation, as required under §§ 201 and 202, then the
17 employer is liable for waiting time penalties in the form of continued compensation for up to thirty
18 (30) work days.

19 44. Defendant willfully and knowingly failed to pay Plaintiff and other members of the
20 Plaintiff Class upon termination of employment all accrued compensation, including compensation
21 required for missed rest and meal breaks, and for the hours that were spent "off the clock."

22 ***Facts Regarding Willfulness***

23 45. Plaintiff is informed and believes, and based thereon alleges, that Defendant is and
24 was advised by skilled lawyers, other professionals, employees with human resources background
25 and advisors with knowledge of the requirements of California wage and hour laws.

26 46. Plaintiff is informed and believes, and based thereon alleges, that at all relevant
27 times, Defendant had a consistent policy or practice of failing to compensate the Plaintiff Class
28 members, including Plaintiff.

1 47. Plaintiff is informed and believes and based thereon alleges that at all relevant times,
2 Defendant knew or should have known, that the Plaintiff Class members, including Plaintiff, were
3 and are entitled to accurate wages, and to be compensated for missed meal and rest breaks and for
4 time spent under the control of the Defendant.

5 48. Plaintiff is also informed and believes and based thereon alleges that at all relevant
6 times, Defendant knew or should have known, that the Plaintiff Class members are entitled to meal
7 and rest breaks pursuant to California law.

8 ***Unfair Business Practices***

9 49. Defendant has engaged in, and continues to engage in, unfair business practices in
10 California by practicing, employing and utilizing the employment practices and policies outlined
11 above.

12 50. Defendant's utilization of such unfair business practices constitutes unfair
13 competition and provides an unfair advantage over Defendant's competitors.

14 51. Defendant's utilization of such unfair business practices deprives Plaintiff and
15 Plaintiff Class Members of the general minimum working standards and entitlements due them
16 under California law and the Industrial Welfare Commission wage orders as described herein.

17 52. As a direct result of the wage and hour violations herein alleged, Plaintiff and
18 members of the Plaintiff Class have suffered, and continue to suffer substantial losses related to the
19 use and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in
20 seeking to compel Defendant to fully perform its obligations under state law, all to Plaintiff's
21 respective damage in amounts according to proof at the time of trial.

22 ***Plaintiff's Exhaustion of Administrative Remedies***

23 53. Plaintiff is currently complying with the procedures for bringing suit specified in
24 California *Labor Code* § 2699.3.

25 54. By letter dated April 8, 2020, required notice was sent to Labor and Workforce
26 Development Agency ("LWDA") and Defendant of the specific provisions of the California *Labor*
27 *Code* alleged to have been violated, including the facts and theories to support the alleged violations.

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1 This Complaint will be amended when more than sixty-five (65) days have passed since the date the
2 notice was mailed to Defendant and the LWDA, if the LWDA chooses not to investigate the
3 allegations herein.

4 **CLASS ACTION ALLEGATIONS**

5 55. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

6 56. Plaintiff brings this action on behalf of himself and all others similarly situated as a class
7 action, pursuant to California *Code of Civil Procedure* §382. The classes which Plaintiff seeks to represent
8 are composed of, and defined as follows:

9 **Plaintiff Class**

10 All persons who have been, or currently are, employed by Defendant and
11 who held, or hold, job positions which Defendant has classified as “non-
12 exempt” employees in the State of California. (The Class Period is defined
13 as the period from four years prior to the filing of this action through and
14 including the date judgment is rendered in this matter). The term “non-
15 exempt employee” refers to those who Defendant has classified as non-
16 exempt from the overtime wage provisions of the California *Labor Code*.

17 **Terminated Sub Class**

18 All members of the Plaintiff Class whose employment ended during the
19 Class Period. (The Class Period is defined as the period from four years
20 prior to the filing of this action through and including the date judgment is
21 rendered in this matter).

22 (collectively “Plaintiff Class” or “Class Members”)

23 57. The Plaintiff Class and Terminated Sub Class are so numerous that the individual
24 joinder of all members is impracticable. While the exact number and identification of the Plaintiff
25 Class and Terminated Sub Class are unknown to Plaintiff at this time and can only be ascertained
26 through appropriate discovery directed to Defendant, Plaintiff is informed and believes that the class
27 includes potentially hundreds of members.

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1 58. Common questions of law and fact exist as to all Class Members, and predominate
2 over any questions affecting solely individual members of the class. Among the questions of law
3 and fact, that are relevant to the adjudication of class members claims are as follows:

- 4 a. Whether Plaintiff and members of the Plaintiff Class are subject to and entitled
5 to the benefits of California wage and hour statutes;
- 6 b. Whether Defendant's policies resulted in a failure to pay all wages;
- 7 c. Whether Defendant maintained accurate records of the hours worked by
8 members of the Class in violation of California *Labor Code* §1174;
- 9 d. Whether Defendant unlawfully and/or willfully failed to provide Plaintiff and
10 members of the Plaintiff Class with true and proper wage statements upon
11 payment of wages, in violation of California *Labor Code* §226;
- 12 e. Whether Defendant unlawfully and/or unwillingly failed to provide Plaintiff
13 and members of the Plaintiff Class with meal breaks pursuant to California law;
- 14 f. Whether Defendant unlawfully and/or unwillingly failed to provide Plaintiff
15 and members of the Plaintiff Class with rest breaks pursuant to California law;
- 16 g. Whether Plaintiff and members of the Plaintiff Class sustained damages, and if
17 so, the proper measure of such damages, as well as interest, penalties, costs,
18 attorneys' fees, and equitable relief;
- 19 h. Whether the members of the Terminated Sub-Class, that are no longer
20 employed by the Defendant are entitled to penalties pursuant to California
21 *Labor Code* §203; and
- 22 i. Whether Defendant's conduct as alleged herein violates the Unfair Business
23 Practices Act of California, *Bus. & Prof. Code* § 17200, *et seq.*

24 59. The claims of the named Plaintiff are typical of the claims of the members of the
25 Plaintiff Class and Terminated Sub Class. Plaintiff and Class Members sustained losses, injuries
26 and damages arising from Defendant's common policies, practices, procedures, protocols, routines,
27 and rules which were applied to other class members as well as Plaintiff. Plaintiff seeks recovery
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1 for the same type of losses, injuries, and damages as were suffered by other members of the
2 proposed class.

3 60. Plaintiff is an adequate representative of the proposed classes because she is a
4 member of the class, and his interests do not conflict with the interests of the members she seeks to
5 represent. Plaintiff has retained competent counsel, experienced in the prosecution of complex class
6 actions, and together Plaintiff and his counsel intend to prosecute this action vigorously for the
7 benefit of the classes. The interests of the Class Members will fairly and adequately be protected by
8 Plaintiff and his attorneys.

9 61. A class action is superior to other available methods for the fair and efficient
10 adjudication of this litigation since individual litigation of the claims of all Class Members is
11 impracticable. It would be unduly burdensome to the courts if these matters were to proceed on an
12 individual basis, because this would potentially result in hundreds of individuals, repetitive lawsuits.
13 Further, individual litigation presents the potential for inconsistent or contradictory judgments, and
14 the prospect of a “race to the courthouse,” and an inequitable allocation of recovery among those
15 with equally meritorious claims. By contrast, the class action device presents far fewer management
16 difficulties, and provides the benefit of a single adjudication, economics of scale, and
17 comprehensive supervision by a single court.

18 62. The various claims asserted in this action are additionally or alternatively certifiable
19 under the provisions of the California *Code of Civil Procedure* § 382 because:

- 20 a. The prosecution of separate actions by hundreds of individual class members
21 would create a risk of varying adjudications with respect to individual class
22 members, thus establishing incompatible standards of conduct for Defendant; and
23 b. The prosecution of separate actions by individual class members would also
24 create the risk of adjudications with respect to them that, as a practical matter,
25 would be dispositive of the interest of the other class members who are not a
26 party to such adjudications and would substantially impair or impede the ability
27 of such non-party class members to protect their interests.

63. Plaintiff hereby incorporates each and every allegation contained above and realleges said allegations as if fully set forth herein.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES

(By Plaintiff and the Members of the Plaintiff Class Against Defendant)

64. Plaintiff incorporates herein by reference the allegations set forth above.

65. At all times relevant herein, which comprise the time period not less than four (4) years preceding the filing of this action, Defendant was required to compensate their hourly employees for all hours worked upon reporting for work at the appointed time stated by the employer, pursuant to the Industrial Welfare Commission Orders and California *Labor Code* §§ 200, 226, 1197, and 1198.

66. For at least the four (4) years preceding the filing of this action, Defendant failed to compensate employees for all hours worked. Defendant implemented policies that actively prevented employees from being compensated for all time worked by failing to pay non-exempt employees for all waiting time and time spent “off the clock.”

67. Plaintiff alleges that he would arrive one (1) to one and a half (1 ½) hours prior to the start of his shift. Upon arriving in the parking lot, it took him approximately fifteen (15) minutes to reach the bus stop. Afterwards, Plaintiff had to walk ten (10) to fifteen (15) minutes from the terminal to the office. Plaintiff was not compensated for this waiting time. Plaintiff alleges other non-exempt employees experienced the same waiting times.

68. Defendant failed to compensate Plaintiff and other member of the Plaintiff Class for this waiting time.

69. Plaintiff also alleges that he would arrive at the office thirty (30) minutes prior to a shift. Specifically, Plaintiff would need to arrive early to ensure that the gate was set up. Additionally, Plaintiff would print the schedule and look at the equipment before clocking in. Plaintiff alleges that this additional time was needed to ensure everything was set up on time, and contends that if the gate was not set up on time he would get written up. Thus, this additional time was needed to ensure everything was prepared on time.

1 70. Defendant failed to compensate Plaintiff and other members of the Plaintiff Class for
2 this work performed “off-the clock.”

3 71. Defendant’s routine policy of failing to compensate Plaintiff and other Class
4 Members for all earned wages deprived Plaintiff and other Plaintiff Class Members of the
5 compensation they should have received.

6 72. Defendant owes each of their hourly employees for the unpaid time each day.

7 73. Under the above-mentioned wage order and state regulations, Plaintiff and the
8 Plaintiff Class are entitled to recover compensation for all hours worked, but not paid, for the four
9 (4) years preceding the filing of this action, in addition to reasonable attorneys’ fees and costs of suit
10 in accordance with California *Labor Code* § 218.5, and penalties pursuant to California *Labor Code*
11 §203 and 206.

12 74. Defendant’s rate policies are unlawful and in violation of the California *Labor Code*.
13 Further, as a result of Defendant’s unlawful rate policies, Plaintiff and members of the Plaintiff
14 Class have not received proper overtime compensation.

15 75. Defendant has knowingly and willfully refused to perform their obligations to
16 compensate Plaintiff and the Plaintiff Class for all wages earned and all hours worked, in violation
17 of state law. As a direct result, Plaintiff and the Plaintiff Class have suffered, and continue to suffer,
18 substantial losses related to the use and enjoyment of such wages, lost interest on such wages, and
19 expenses and attorneys’ fees in seeking to compel Defendant to fully perform its obligation under
20 state law, in accordance with Plaintiff’s and the Plaintiff Class’ respective damage amounts
21 according to proof at time of trial.

22 76. Defendant committed such actions knowingly and willfully, with the wrongful and
23 deliberate intention of injuring Plaintiff and the Plaintiff Class, from improper motives amounting to
24 malice, and in conscious disregard of Plaintiff’s and the Plaintiff Class’ rights.

25 77. Plaintiff and the Plaintiff Class are thus entitled to recover nominal, actual,
26 compensatory, punitive, and exemplary damages in amounts according to proof at the time of trial.

27 78. As a proximate result of the above-mentioned violations Plaintiff and the Plaintiff
28 Class have been damaged in an amount according to proof at time of trial.

SECOND CAUSE OF ACTION
MEAL BREAKS VIOLATIONS OF
CAL. LABOR CODE SECTIONS 200, 226.7, 512

(By Plaintiff and the Members of the Plaintiff Class Against Defendant)

79. Plaintiff hereby re-alleges, and incorporates by reference as though set fully forth herein, the allegations contained above.

80. For at least the four (4) years preceding the filing of this action, Defendant failed to provide meal breaks as required by law.

81. California *Labor Code* § 226.7(a) provides that: “No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

82. California *Labor Code* § 512 provides that: “An employee may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.”

83. Additionally, when an employee works for a work period of more than five hours, a meal period must be provided no later than the end of the employee's fifth hour of work (in other words, no later than the start of the employee's sixth hour of work).

84. Due to Defendant’s policies, Defendant routinely failed to provide meal periods in compliance with California law and failed to pay Plaintiff and the Class members the full statutory penalty for all missed meal periods.

85. The applicable Wage Order Section 11(D) states “If an employer fails to provide an employee a meal period in the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation each day that the meal period is not provided.”

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1 86. Plaintiff alleges that meal breaks were often late and interrupted. Specifically,
2 Plaintiff alleges that he would have to write in a binder that he took his meal break, when in fact, he
3 took his meal break much later. Thus, the documented meal breaks are incorrect.

4 87. Defendant's conduct described herein violates the Industrial Welfare Commission
5 Order and California *Labor Code* §§ 226, 226.7, 512, and 1198.

6 88. As a proximate result of the aforementioned violations, Plaintiff and the Class
7 Members have been damaged in an amount according to proof at time of trial and have suffered, and
8 continue to suffer, substantial losses related to the use and enjoyment of such monies, lost interest on
9 such monies, and expenses and attorneys' fees in seeking to compel Defendant to fully perform its
10 obligations under state law. Plaintiff and the Class Members are thus entitled to recover nominal,
11 actual, compensatory and exemplary damages in amount according to proof at time of trial.

12 **THIRD CAUSE OF ACTION**

13 **MISSED REST BREAKS IN VIOLATION OF**

14 **CAL. LABOR CODE SECTIONS 200, 226.7, 512**

15 **(By Plaintiff and the Members of the Plaintiff Class Against Defendant)**

16 89. Plaintiff hereby re-alleges, and incorporates by reference as though set fully forth
17 herein, the allegations contained above.

18 90. For at least the four (4) years preceding the filing of this action, Defendant failed to
19 provide rest breaks as required by law.

20 91. The applicable Wage Order Section 12(A) states "Every employer shall authorize and
21 permit all employees to take rest periods, which insofar as practicable shall be in the middle of each
22 work period. The authorized rest period time shall be based on the total hours worked daily at the
23 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof."

24 92. Plaintiff and the Class Members are entitled to recover additional compensation for
25 all rest periods that were missed, but not paid for, during the four (4) years preceding the filing of
26 this Complaint, plus reasonable attorneys' fees and costs of suit pursuant to California *Labor Code* §
27 218.5 and penalties pursuant to California *Labor Code* § 226.7.

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93. Due to, *inter alia*, systemic understaffing, Defendant failed to provide Plaintiff and Class Members the full ten (10) minutes of rest time prescribed by law. Specifically, Plaintiff alleges that he never received rest breaks.

94. As a proximate result of the aforementioned violations, Plaintiff and the Class Members have been damaged in an amount according to proof at time of trial and have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such monies, lost interest on such monies, and expenses and attorneys' fees in seeking to compel Defendant to fully perform its obligations under state law. Plaintiff and the Class Members are thus entitled to recover nominal, actual, compensatory and exemplary damages in amount according to proof at time of trial.

FOURTH CAUSE OF ACTION

FAILURE TO FURNISH AN ACCURATE ITEMIZED WAGE STATEMENT IN

VIOLATION OF CAL. LABOR CODE § 226

(By Plaintiff and the Members of the Plaintiff Class Against Defendant)

95. Plaintiff hereby re-alleges, and incorporates by reference as though set fully forth herein, the allegations contained above.

96. California *Labor Code* §226(a) sets forth reporting requirements for employers when they pay wages, as follows: “[e]very employer shall ... at the time of each payment of wages, furnish his or her employees ... an accurate itemized statement in writing showing (1) gross wages earned; (2) total hours worked by the employee.... (5) net wages earned ... (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” (Emphasis added.) Section (e) provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4000), and shall be entitled to an award of costs and reasonable attorney’s fees.”

97. Defendant failed to comply with California *Labor Code* §226(a) because Defendant failed to accurately represent the gross wages earned and failed to depict the total hours worked.

1 This is because Defendant had a routine policy of failing to accurately calculate the hours worked by
2 Plaintiff and Class Members, and failed to pay premiums for noncompliant meal and rest breaks.

3 98. Plaintiff and Class members were damaged by these failures because, among other
4 things, the failures hindered Plaintiff and Class Members from determining the amounts of wages
5 actually owed to them.

6 99. Plaintiff and Class Members request recovery of California *Labor Code* §226(e)
7 penalties according to proof, as well as interest, attorneys' fees and costs pursuant to California
8 *Labor Code* § 226(e), in a sum as provided by the *Labor Code* and/or other statutes

9
10 **FIFTH CAUSE OF ACTION**
11 **FAILURE TO PAY WAGES AT TIME OF TERMINATION**
12 **IN VIOLATION OF CAL. *LABOR CODE* §§201-203**

13 **(By Plaintiff and Members of the Terminated Sub Class Against Defendant)**

14 100. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth
15 herein.

16 101. At all times, relevant herein, Defendant was required to pay its employees all wages
17 owed in a timely fashion during and at the end of their employment, pursuant to California *Labor*
18 *Code* §§ 201-203.

19 102. As a pattern and practice, Defendant regularly failed to pay Plaintiff and the members
20 of the Terminated Sub Class their final wages pursuant to California *Labor Code* §§ 201-203, and
21 accordingly owe waiting time penalties pursuant to California *Labor Code* § 203.

22 103. These payments should include worked hours that were not accounted for due to the
23 Defendant's policies of failing to pay Plaintiff and members of the Plaintiff Class for all time
24 worked. It should also include premiums for missed meal and rest breaks. The conduct of Defendant
25 and its agents and managerial employees as described herein was willful, and in violation of the
26 rights of Plaintiff and the individual members of the Terminated Sub Class.

27 104. Plaintiff is informed and believes, and based thereon alleges, that Defendant's willful
28 failure to pay wages due and owing upon separation from employment results in a continued

1 payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and
2 Class Members who have separated from employment are entitled to compensation pursuant to
3 California *Labor Code* § 203.

4 **SIXTH CAUSE OF ACTION**

5 **VIOLATIONS OF CALIFORNIA**

6 **BUSINESS AND PROFESSIONS CODE § 17200, etc.**

7 **(By Plaintiff and the Members of the Plaintiff Class, Against Defendant)**

8 105. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth
9 herein.

10 106. Section 17200 of the California *Business and Professions Code* prohibits any
11 unlawful, unfair or fraudulent business act or practice.

12 107. Plaintiff brings this cause of action in a representative capacity on behalf of the
13 general public and the persons affected by the unlawful and unfair conduct described herein.
14 Plaintiff and members of the Plaintiff Class have suffered, and continue to suffer, injury in fact and
15 monetary damages because of Defendant's actions.

16 108. The actions by Defendant as herein alleged amount to conduct which is unlawful and
17 a violation of law. As such, said conduct amounts to unfair business practices in violation of
18 California *Business and Professions Code* § 17200, *et seq.*

19 109. Defendant's conduct as herein alleged has damaged Plaintiff and the members of the
20 Plaintiff Class by denying them wages due and payable, by failing to pay all wages, proper rest and
21 meal breaks, and by failing to pay all wages due in a timely manner at the time of termination (for
22 the Terminated Sub Class). Defendant's actions are thus substantially injurious to Plaintiff and the
23 members of the Plaintiff Class, causing them injury in fact and loss of money.

24 110. Because of such conduct, Defendant has unlawfully and unfairly obtained monies due
25 to the Plaintiff and the members of the Plaintiff Class.

26 111. All members of the Plaintiff Class can be identified by reference to payroll and
27 related records in the possession of the Defendant. The amount of wages due to Plaintiff and
28

1 members of the Plaintiff Class can be readily determined from Defendant's records. The Class
2 Members are entitled to restitution of monies due and obtained by Defendant during the Class Period
3 as a result of Defendant's unlawful and unfair conduct.

4 112. During the Class Period, Defendant committed, and continue to commit, acts of
5 unfair competition as defined by § 17200, *et seq.*, of the *Business and Professions Code*, by and
6 among other things, engaging in the acts and practices described above.

7 113. Defendant's course of conduct, acts, and practices in violation of the California law
8 as mentioned in each paragraph above constitutes a separate and independent violation of § 17200,
9 etc., of the *Business and Professions Code* in that it is fraudulent, improper and unfair.

10 114. The harm to Plaintiff and the members of the Plaintiff Class of being wrongfully
11 denied lawfully earned and unpaid wages outweighs the utility, if any, of Defendant's policies and
12 practices and therefore, Defendant's actions described herein constitute an unfair business practice
13 or act within the meaning of *Business and Professions Code* § 17200.

14 115. Defendant's conduct described herein threatens an incipient violation of California's
15 wage and hour laws, and/or violates the policy or spirit of such laws, or otherwise significantly
16 threatens or harms competition.

17 116. Defendant's course of conduct described herein further violates California *Business*
18 *and Professions Code* § 17200 in that it is fraudulent, improper, and unfair.

19 117. The unlawful, unfair, and fraudulent business practices and acts of Defendant as
20 described herein-above have injured Plaintiff and members of the Plaintiff Class in that they were
21 wrongfully denied the timely and full payment of wages due to them.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff and Class Members pray for judgment as follows:

- 24 1. For an order certifying the proposed Plaintiff, Plaintiff Class and Terminated Sub
25 Class;
26 2. An order that counsel for Plaintiff be appointed class counsel;
27 3. Certification of this class action on behalf of the proposed Plaintiff, Plaintiff Class
28 and Terminated Sub-Class;

4. Designation of Plaintiff as the class representative of the Plaintiff, Plaintiff Class and Terminated Sub Class;
5. For restitution of all monies due to Plaintiff and the members of the Plaintiff Class and disgorgement of all profits from the unlawful business practices of Defendant;
6. A declaration that Defendant's practices violate the California *Labor Code* and California *Business & Professions Code*;
7. Prejudgment and post judgment interest on all sums awarded;
8. For compensatory damages;
9. For penalties pursuant to California *Labor Code* §§ 200, 226;
10. For interest accrued to date;
11. For costs of suit and expenses incurred herein pursuant to California *Labor Code* §§ 226 and 1194;
12. For reasonable attorneys' fees pursuant to California *Labor Code* §§ 226, and 1194; and,
13. A declaratory judgment that Defendant has knowingly and intentionally violated the following provisions of law:
 - a. California *Labor Code* § 1194 for failing pay all wages;
 - b. California *Labor Code* § 226.7 by failing to provide rest and meal breaks mandated by law;
 - c. California *Labor Code* § 226, by failing to provide the information required with each payment of wages;
 - d. California *Labor Code* §§ 201-203 and 227.3 by failing to pay all wages when due and by willfully failing to make timely payment of the full wages due to workers who quit or have been discharged;
 - e. California *Business & Professions Code* §§ 17200-08 by violating the provisions set forth herein above;
14. For all such other and further relief that the Court may deem just and proper.

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2 DATED: April 8, 2020

BRADLEY/GROMBACHER, LLP

3
4 By: Marcus J. Bradley
5 Marcus J. Bradley, Esq.
6 Kiley Lynn Grombacher, Esq.
7 Lirit A. King, Esq.

8 Attorneys for Plaintiff

9
10 **JURY DEMAND**

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12 Plaintiff demands a trial by jury on all issues so triable as a matter of right.

13
14 DATED: April 8, 2020

BRADLEY/GROMBACHER, LLP

15
16 By: Marcus J. Bradley
17 Marcus J. Bradley, Esq.
18 Kiley Lynn Grombacher, Esq.
19 Lirit A. King, Esq.

20 Attorneys for Plaintiff