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ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
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By: Crista Martinez, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

ERIC MILLER, individually, on behalf of all
others similarly situated, the State of California,
and other aggrieved employees,

Plaintiff,

v.

WEKA, INC., a California corporation; and
DOES 1 through 10, inclusive,

Defendants.

CIVSB2426856

Case No.:

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT:**

1. Failure to Pay Minimum and Straight Time Wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197);
2. Failure to Pay Overtime Wages (Cal. Lab. Code §§ 1194 and 1198);
3. Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7 and 512);
4. Failure to Authorize and Permit Rest Periods (Cal. Lab. Code § 226.7);
5. Failure to Timely Pay Final Wages at Termination (Cal. Lab. Code §§ 201-203);
6. Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226);
7. Failure to Indemnify Employees for Expenditures (Cal. Lab. Code § 2802);
8. Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*); and
9. Civil Penalties Under PAGA (Cal. Lab. Code §§ 2699, *et seq.*)

DEMAND FOR JURY TRIAL

1 Plaintiff ERIC MILLER ("Plaintiff"), based upon facts that either have evidentiary
2 support or are likely to have evidentiary support after a reasonable opportunity for further
3 investigation and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendants WEKA, INC. and DOES 1 through
6 10 (hereinafter collectively referred to as "Defendants") for California Labor Code violations and
7 unfair business practices stemming from Defendants' failure to pay for all hours worked
8 (minimum, straight time, and overtime wages), failure to provide meal periods, failure to
9 authorize and permit rest periods, failure to timely pay final wages, failure to furnish accurate
10 wage statements, and failure to indemnify employees for expenditures.

11 2. Plaintiff brings the First through Eighth Causes of Action individually and as a
12 class action on behalf of himself and certain current and former employees of Defendants
13 (hereinafter collectively referred to as the "Class" or "Class Members," and defined more fully
14 below). The Class consists of Plaintiff and all other persons who have been employed by any
15 Defendant in California as an hourly-paid or non-exempt employee during the statute of
16 limitations period applicable to the claims pleaded here.

17 3. Plaintiff brings the Ninth Cause of Action as a representative action under the
18 California Private Attorneys General Act ("PAGA") to recover civil penalties that are owed to
19 Plaintiff, the State of California, and past and present non-exempt employees by Defendants in
20 the State of California during the statute of limitations period for his PAGA claim (hereinafter
21 referred to as the "Aggrieved Employees").

22 4. Defendants own/owned and operate/operated an industry, business, and
23 establishment within the State of California, including San Mateo County. As such and based
24 upon all the facts and circumstances incident to Defendants' business in California, Defendants
25 are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare
26 Commission ("IWC"), and the California Business & Professions Code.

27 5. Despite these requirements, throughout the statutory period, Defendants
28 maintained a systematic, company-wide policy and practice of:

- (a) Failing to pay employees for all hours worked, including all minimum, straight time, and overtime wages in compliance with the California Labor Code and IWC Wage Orders;
- (b) Failing to provide employees with timely and duty-free meal periods in compliance with the California Labor Code and IWC Wage Orders, failing to maintain accurate records of all meal periods taken or missed, and failing to pay an additional hour's pay for each workday a meal period violation occurred;
- (c) Failing to authorize and permit employees to take timely and duty-free rest periods in compliance with the California Labor Code and IWC Wage Orders, and failing to pay an additional hour's pay for each workday a rest period violation occurred;
- (d) Willfully failing to pay employees all expenditures, minimum wages, straight time wages, overtime wages, meal period premium wages, and rest period premium wages due within the time period specified by California law when employment terminates;
- (e) Failing to provide employees with accurate, itemized wage statements containing all the information required by the California Labor Code and IWC Wage Orders; and
- (f) Failing to indemnify employees for expenditures incurred in the direct discharge of their job duties of employment.

6. On information and belief, Defendants, and each of them, were on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies. Defendants' violations, as alleged herein, during all relevant times herein were willful and deliberate.

7. At all relevant times, Defendants were and are legally responsible for the unlawful conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs as the employer of Plaintiff, the Class, and the Aggrieved Employees. Further,

Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of “respondeat superior.”

THE PARTIES

A. Plaintiff

8. Plaintiff ERIC MILLER is a California resident who worked for Defendants in California as an hourly-paid, non-exempt employee from approximately December 2021 to approximately March 2024.

9. Plaintiff reserves the right to seek leave to amend this complaint to add new plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

10. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant WEKA, INC., is, and at all times herein mentioned, was:

- (a) A corporation qualified to do business and actually conducting business in numerous counties throughout the State of California, including in San Bernardino County; and,
- (b) The former employer of Plaintiff and the current and/or former employer of the putative Class, and the current and/or former employer of the Aggrieved Employees because Defendant WEKA, INC. suffered and permitted Plaintiff, the Class, and the Aggrieved Employees to work, and/or controlled their wages, hours, or working conditions.

11. Plaintiff does not know the true names or capacities of the persons or entities sued herein as DOES 1-10, inclusive, and therefore sues said Defendants by such fictitious names. Each of the Doe Defendants was in some manner legally responsible for the damages suffered by Plaintiff, the Class, and the Aggrieved Employees as alleged herein. Plaintiff will amend this complaint to set forth the true names and capacities of these Defendants when they have been ascertained, together with appropriate charging allegations, as may be necessary.

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12. At all times mentioned herein, the Defendants named as DOES 1-10, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured Plaintiff, the Class, and the Aggrieved Employees in the State of California.

13. Plaintiff is informed and believes and thereon alleges that at all relevant times each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the other employees described in the class definition below, and the Aggrieved Employees and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff is informed and believes and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, that each Defendant knew or should have known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

14. Plaintiff worked for Defendants in California as an hourly-paid, non-exempt employee from approximately December 2021 to approximately March 2024. During Plaintiff's employment for Defendants, Defendants paid Plaintiff an hourly wage and classified him as non-exempt from overtime. Defendants typically scheduled Plaintiff to work at least five days in a workweek and at least eight hours per day, but Plaintiff regularly worked more than eight hours in a workday and more than forty (40) hours in a workweek.

15. Throughout Plaintiff's employment, Defendants failed to pay for all hours worked (including minimum, straight time, and overtime wages), failed to provide Plaintiff with legally compliant meal periods, failed to authorize and permit Plaintiff to take rest periods, failed to timely pay all final wages to Plaintiff when Defendants terminated his employment, failed to

1 furnish accurate wage statements to Plaintiff, and failed to indemnify Plaintiff for employment-
2 related expenditures. As discussed below, Plaintiff's experience working for Defendants was
3 typical and illustrative.

4 16. Throughout the statutory period, Defendants maintained a policy and practice of
5 not paying Plaintiff, the Class, and the Aggrieved Employees for all hours worked, including
6 minimum, straight time, and overtime wages. Defendants required Plaintiff, the Class, and the
7 Aggrieved Employees to work "off-the-clock," uncompensated, by, for example, requiring
8 Plaintiff, the Class, and the Aggrieved Employees to perform work prior to clocking in for the
9 workday and to continue working during unpaid meal periods. Some of this unpaid work should
10 have been paid at the overtime rate. Defendants also required Plaintiff, the Class, and the
11 Aggrieved Employees to work in excess of eight hours in any workday or forty (40) hours in a
12 workweek without receiving all overtime wages. Defendants also failed to compensate Plaintiff,
13 the Class, and/or the Aggrieved Employees with twice the regular rate of pay for all work
14 performed in excess of eight hours on the seventh consecutive workday in a workweek. In
15 failing to pay for all hours worked, Defendants also failed to maintain accurate records of the
16 hours Plaintiff, the Class, and the Aggrieved Employees worked.

17 17. Throughout the statutory period, Defendants maintained a policy and practice of
18 not paying Plaintiff, the Class, and the Aggrieved Employees for all hours worked, including
19 minimum, straight time, and overtime wages. Defendants regularly used a system of time
20 rounding and/or synthetic timekeeping that resulted, over a period of time, in failing to
21 compensate Plaintiffs, the Class, and the Aggrieved Employees properly for all the time they
22 have actually worked, even though the realities of Defendants' operations are such that it is
23 possible, practical, and feasible to count and pay for work time to the minute. Accordingly,
24 Defendants frequently paid Plaintiffs, the Class, and the Aggrieved Employees less than all their
25 work time. Some of this unpaid work also should have been paid at the overtime rate. In failing
26 to pay for all hours worked, Defendants also failed to maintain accurate records of the hours
27 Plaintiff and the Class worked.

28 ///

1 18. Throughout the statutory period, Defendants wrongfully failed to include non-
2 discretionary bonuses, commissions, incentive pay, production pay, performance pay, and/or
3 shift differentials in the calculation of Plaintiff's, the other Class Members', and the Aggrieved
4 Employees' regular rate of pay used to calculate their overtime rate for the payment of overtime
5 wages. Plaintiff, the other Class Members, and the Aggrieved Employees earned non-
6 discretionary bonuses, commissions, incentive pay, production pay, performance pay, and/or
7 shift differentials and overtime wages in the same pay periods where they worked overtime
8 hours. Accordingly, Defendants failed to compensate Plaintiff, the Class, and the Aggrieved
9 Employees for all overtime compensation they were owed.

10 19. Throughout the statutory period, Defendants wrongfully failed to provide Plaintiff,
11 the Class, the Aggrieved Employees, or some of them, with legally compliant meal periods.
12 Defendants regularly, but not always, required Plaintiff, the Class, and the Aggrieved Employees
13 to work in excess of five consecutive hours a day without providing a 30-minute, uninterrupted,
14 and duty-free meal period for every five hours of work, or without compensating Plaintiff, the
15 Class, and the Aggrieved Employees for meal periods that were not provided by the end of the
16 fifth hour of work. Instead, Defendants continued to assert control over Plaintiff, the Class, and
17 the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks
18 which could not be completed without working in lieu of taking mandatory meal periods, or by
19 denying Plaintiff, the Class, and the Aggrieved Employees permission to take a meal period.
20 Accordingly, Defendants' policy and practice was to not provide meal periods to Plaintiff, the
21 Class, and the Aggrieved Employees in compliance with California law.

22 20. Throughout the statutory period, Defendants wrongfully failed to authorize and
23 permit Plaintiff, the Class, the Aggrieved Employees, or some of them, to take legally compliant
24 rest periods. Defendants regularly, but not always, required Plaintiff, the Class, and the
25 Aggrieved Employees to work in excess of four consecutive hours a day without Defendants
26 authorizing and permitting them to take a 10-minute, uninterrupted, duty-free rest period for
27 every four hours of work (or major fraction of four hours), or without compensating Plaintiff, the
28 Class, and the Aggrieved Employees for rest periods that were not authorized or permitted.

1 Instead, Defendants continued to assert control over Plaintiff, the Class, and the Aggrieved
2 Employees by requiring, pressuring, or encouraging them to perform work tasks which could not
3 be completed without working in lieu of taking mandatory rest periods, or by denying Plaintiff,
4 the Class, and the Aggrieved Employees permission to take a rest period. Accordingly,
5 Defendants' policy and practice was to not authorize and permit Plaintiff, the Class, and the
6 Aggrieved Employees to take rest periods in compliance with California law.

7 21. Throughout the statutory period, Defendants willfully failed and refused to timely
8 pay Plaintiff, the Class, the Aggrieved Employees, or some of them, all final wages due at their
9 termination of employment. In addition, Plaintiff's final paychecks did not include payment for
10 all expenditures, minimum wages, straight time wages, overtime wages, meal period premium
11 wages, and rest period premium wages owed to him by Defendants at the conclusion of his
12 employment. On information and belief, Defendants' failure to timely pay Plaintiff's final wages
13 when his employment terminated was not a single, isolated incident, but was instead consistent
14 with Defendants' policy and practice that applied to Plaintiff, the Class, and the Aggrieved
15 Employees.

16 22. Throughout the statutory period, Defendants failed to furnish Plaintiff, the Class,
17 the Aggrieved Employees, or some of them, with accurate, itemized wage statements showing all
18 applicable hourly rates, all overtime hourly rates, and all gross and net wages earned (including
19 correct hours worked, correct wages for meal periods that were not provided in accordance with
20 California law, and correct wages for rest periods that were not authorized and permitted in
21 accordance with California law). As a result of these violations of California Labor Code §
22 226(a), Plaintiff, the Class, and the Aggrieved Employees suffered injury because, among other
23 things:

- 24 (a) the violations led them to believe they were not entitled to be paid
25 minimum, straight time, overtime, meal period premium, and rest period
26 premium wages, even though they were entitled;
- 27 (b) the violations led them to believe they had been paid the minimum, straight
28 time, overtime, meal period premium, and rest period premium wages,

1 even though they had not been;

2 (c) the violations led them to believe they were not entitled to be paid
3 minimum, straight time, overtime, meal period premium, and rest period
4 premium wages at the correct California rate even though they were
5 entitled;

6 (d) the violations led them to believe they had been paid minimum, straight
7 time, overtime, meal period premium, and rest period premium wages at
8 the correct California rate even though they had not been;

9 (e) the violations hindered them from determining the amounts of minimum,
10 straight time, overtime, meal period premium, and rest period premium
11 wages owed to them;

12 (f) in connection with their employment before and during this action, and in
13 connection with prosecuting this action, the violations caused them to have
14 to perform mathematical computations to determine the amounts of wages
15 owed to them, computations they would not have to make if the wage
16 statements contained the required accurate information;

17 (g) by understating the wages truly due to them, the violations caused them to
18 lose entitlement and/or accrual of the full amount of Social Security,
19 disability, unemployment, and other governmental benefits; and

20 (h) the wage statements inaccurately understated the wages, hours, and wage
21 rates to which they were entitled, and they were paid less than the wages
22 and wage rates to which they were entitled.

23 Thus, Plaintiff, the Class, and the Aggrieved Employees are owed the amounts provided for in
24 California Labor Code § 226(e) and injunctive relief under California Labor Code § 226(h).

25 23. Throughout the statutory period, Defendants have wrongfully required Plaintiff,
26 the Class, and the Aggrieved Employees to pay expenses they incurred in direct discharge of
27 their duties for Defendants. Plaintiff, the Class, and the Aggrieved Employees regularly paid
28 out-of-pocket for necessary employment-related expenses, including, without limitation, costs

related to personal cell phone usage, work attire, and gas mileage.

24. Plaintiff, the Class, and the Aggrieved Employees incurred substantial expenses as a direct result of performing their job duties for Defendants, but Defendants failed to indemnify Plaintiff, the Class, and the Aggrieved Employees for these employment-related expenses.

CLASS ACTION ALLEGATIONS

25. Plaintiff brings certain claims individually, as well as on behalf of each and all other persons similarly situated, and thus, seeks class certification under California Code of Civil Procedure § 382.

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

27. The proposed Class consists of and is defined as:

All persons who worked for any Defendant in California as an hourly-paid or non-exempt employee at any time during the period beginning four years and 178 days before the filing of the initial complaint in this action and ending when notice to the Class is sent.¹

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

29. Plaintiff undertook this concerted activity to improve the wages and working conditions of all Class Members.

30. There is a well-defined community of interest in the litigation and the Class is readily ascertainable:

(a) Numerosity: The members of the Class (and each subclass, if any) 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 forty (40) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' records.

(b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect

¹ In response to the COVID-19 pandemic, the Judicial Council of California adopted Emergency Rule 9(a) (California Rules of Court), whereby "statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 to October 1, 2020."

1 the interests of each Class Member with whom there is a shared, well-
2 defined community of interest, and Plaintiff's claims (or defenses, if any)
3 are typical of all Class Members' claims as demonstrated herein.

4 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect
5 the interests of each Class Member with whom there is a shared, well-
6 defined community of interest and typicality of claims, as demonstrated
7 herein. Plaintiff has no conflicts with or interests antagonistic to any Class
8 Member. Plaintiff's attorneys, the proposed class counsel, are versed in
9 the rules governing class action discovery, certification, and settlement.
10 Plaintiff has incurred, and throughout the duration of this action, will
11 continue to incur costs and attorneys' fees that have been, are, and will be
12 necessarily expended for the prosecution of this action for the substantial
13 benefit of each Class Member.

14 (d) Superiority: A class action is superior to other available methods for the
15 fair and efficient adjudication of the controversy, including consideration
16 of:

- 17 1) The interests of the members of the Class in individually
18 controlling the prosecution or defense of separate actions;
- 19 2) The extent and nature of any litigation concerning the controversy
20 already commenced by or against members of the Class;
- 21 3) The desirability or undesirability of concentrating the litigation of
22 the claims in the particular forum; and,
- 23 4) The difficulties likely to be encountered in the management of a
24 class action.

25
26 (e) Public Policy Considerations: The public policy of the State of California
27 is to resolve the California Labor Code claims of many employees through
28 a class action. Indeed, current employees are often afraid to assert their

1 rights out of fear of direct or indirect retaliation. Former employees are
2 also fearful of bringing actions because they believe their former
3 employers might damage their future endeavors through negative
4 references and/or other means. Class actions provide the class members
5 who are not named in the complaint with a type of anonymity that allows
6 for the vindication of their rights at the same time as their privacy is
7 protected.

8 31. There are common questions of law and fact as to the Class (and each subclass, if
9 any) that predominate over questions affecting only individual members, including without
10 limitation, whether, as alleged herein, Defendants have:

- 11 (a) Failed to pay Class Members for all hours worked, including minimum,
12 straight time, and overtime wages;
- 13 (b) Failed to provide meal periods and pay meal period premium wages to
14 Class Members;
- 15 (c) Failed to authorize and permit rest periods and pay rest period premium
16 wages to Class Members;
- 17 (d) Failed to provide Class Members with timely final wages;
- 18 (e) Failed to provide Class Members with accurate wage statements; and
- 19 (f) Violated California Business & Professions Code §§ 17200 *et seq.* as a
20 result of their unlawful conduct as described above.

21 32. This Court should permit this action to be maintained as a class action pursuant to
22 California Code of Civil Procedure § 382 because:

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

members of the Class before the Court;

- (d) Plaintiff, and the other members of the Class, will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the statutory violations, and in obtaining adequate compensation for the damages and injuries for which Defendants are responsible in an amount sufficient to adequately compensate the members of the Class for the damages and injuries sustained;
- (f) Without class certification, the prosecution of separate actions by individual members of the Class would create a risk of:
 - 1) Inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants; and/or
 - 2) Adjudications with respect to the individual members which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who are, or may be, responsible Defendants; and
- (g) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the Class as a whole.

33. Plaintiff contemplates the eventual issuance of notice to the proposed members of the Class that would set forth the subject and nature of the instant action. Defendants' own business records may be utilized for assistance in the preparation and issuance of the contemplated notice. To the extent any further notice may be required, Plaintiff contemplates the use of additional techniques and forms commonly used in class actions, such as published notice,

1 e-mail notice, website notice, first-class mail, or combinations thereof, or by other methods
2 suitable to the Class and deemed necessary and/or appropriate by the Court.

3 **FIRST CAUSE OF ACTION**

4 **(Against All Defendants for Failure to Pay Minimum and Straight Time Wages for All**
5 **Hours Worked)**

6 34. Plaintiff incorporates by reference and re-alleges as if fully stated herein
7 paragraphs 1 through 24 in this Complaint.

8 35. "Hours worked" is the time during which an employee is subject to the control of
9 an employer, and includes all the time the employee is suffered or permitted to work, whether or
10 not required to do so.

11 36. At all relevant times herein mentioned, Defendants knowingly failed to pay
12 Plaintiff and the Class, or some of them, compensation for all hours they worked. By their
13 failure to pay compensation for each hour worked as alleged above, Defendants willfully violated
14 the provisions of California Labor Code § 1194, and any additional applicable Wage Orders,
15 which require such compensation to non-exempt employees.

16 37. Accordingly, Plaintiff and the Class are entitled to recover minimum and straight
17 time wages for all non-overtime hours worked for Defendants.

18 38. By and through the conduct described above, Plaintiff and the Class have been
19 deprived of their rights to be paid wages earned by virtue of their employment with Defendants.

20 39. By virtue of Defendants' unlawful failure to pay additional compensation to
21 Plaintiff and the Class, or some of them, for their non-overtime hours worked without pay,
22 Plaintiff and the Class suffered, and will continue to suffer, damages in amounts which are
23 presently unknown to Plaintiff and the Class and which will be ascertained according to proof at
24 trial.

25 40. By failing to keep adequate time records required by California Labor Code §
26 1174(d), Defendants have made it difficult to calculate the full extent of minimum wage
27 compensation due Plaintiff and the Class.

28 41. Pursuant to California Labor Code § 1194.2, Plaintiff and the Class are entitled to

1 recover liquidated damages (double damages) for Defendants' failure to pay minimum wages.

2 42. California Labor Code § 204 requires employers to provide employees with all
3 wages due and payable twice a month. Throughout the statute of limitations period applicable to
4 this cause of action, Plaintiff and the Class were entitled to be paid twice a month at rates
5 required by law, including minimum and straight time wages. However, during all such times,
6 Defendants systematically failed and refused to pay Plaintiff and the Class all such wages due
7 and failed to pay those wages twice a month.

8 43. Plaintiff and the Class are also entitled to seek recovery of all unpaid minimum
9 and straight time wages, interest, and reasonable attorneys' fees and costs pursuant to California
10 Labor Code §§ 218.5, 218.6, and 1194(a).

11 **SECOND CAUSE OF ACTION**

12 **(Against All Defendants for Failure to Pay Overtime Wages)**

13 44. Plaintiff incorporates by reference and re-alleges as if fully stated herein
14 paragraphs 1 through 24 in this Complaint.

15 45. California Labor Code § 510 provides that employees in California shall not be
16 employed more than eight hours in any workday or forty (40) hours in a workweek unless they
17 receive additional compensation beyond their regular wages in amounts specified by law.

18 46. California Labor Code §§ 1194 and 1198 provide that employees in California
19 shall not be employed more than eight hours in any workday unless they receive additional
20 compensation beyond their regular wages in amounts specified by law. Additionally, California
21 Labor Code § 1198 states that the employment of an employee for longer hours than those fixed
22 by the IWC is unlawful.

23 47. At all times relevant hereto, Plaintiff and the Class, or some of them, have worked
24 more than eight hours in a workday and/or more than forty (40) hours in a workweek, as
25 employees of Defendants.

26 48. At all times relevant hereto, Defendants failed to pay Plaintiff and the Class, or
27 some of them, overtime compensation for the hours they have worked in excess of the maximum
28 hours permissible by law as required by California Labor Code §§ 510 and 1198.

51. Plaintiff and the Class also request recovery of overtime compensation according to proof, interest, attorneys' fees and costs pursuant to California Labor Code § 1194(a), as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code and/or other statutes.

52. California Labor Code § 204 requires employers to provide employees with all wages due and payable twice a month. The Wage Orders also provide that every employer shall pay to each employee, on the established payday for the period involved, overtime wages for all overtime hours worked in the payroll period. Defendants failed to provide Plaintiff and the Class, or some of them, with all compensation due, in violation of California Labor Code § 204.

(Against All Defendants for Failure to Provide Meal Periods)

53. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 24 in this Complaint.

54. Under California law, Defendants have an affirmative obligation to relieve Plaintiff and the Class of all duty in order to take their first daily meal period no later than the start of their sixth hour of work in a workday, and to take their second meal period no later than the start of their eleventh hour of work in a workday. California Labor Code § 512 and Section 11 of the applicable Wage Orders require that an employer provide unpaid meal periods of at least thirty (30) minutes for each five-hour period worked. It is a violation of California Labor

1 Code § 226.7 for an employer to require any employee to work during any meal period mandated
2 under any Wage Order.

3 55. Despite these legal requirements, Defendants regularly failed to provide Plaintiff
4 and the Class, or some of them, with both meal periods as required by California law. By their
5 failure to permit and authorize Plaintiff and the Class, or some of them, to take all meal periods
6 as alleged above (or due to the fact that Defendants made it impossible or impracticable to take
7 these uninterrupted meal periods), Defendants willfully violated the provisions of California
8 Labor Code § 226.7 and the applicable Wage Orders.

9 56. Under California law, Plaintiff and the Class are entitled to be paid one hour of
10 additional wages for each workday they were not provided with all required meal period(s), plus
11 interest thereon.

12 **FOURTH CAUSE OF ACTION**

13 **(Against All Defendants for Failure to Authorize and Permit Rest Periods)**

14 57. Plaintiff incorporates by reference and re-alleges as if fully stated herein
15 paragraphs 1 through 24 in this Complaint.

16 58. Defendants are required by California law to authorize and permit breaks of ten
17 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than
18 two hours). California Labor Code § 512 and the applicable Wage Orders require that the
19 employer permit and authorize all employees to take paid rest periods of ten minutes for each
20 four-hour period worked. Thus, for example, if an employee's work time is six hours and ten
21 minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so
22 required is itself a violation of California's rest break laws. It is a violation of California Labor
23 Code § 226.7 for an employer to require any employee to work during any rest period mandated
24 under any Wage Order.

25 59. Despite these legal requirements, Defendants failed to authorize Plaintiff and the
26 Class, or some of them, to take rest breaks, regardless of whether employees worked more than
27 four hours in a workday. By their failure to permit and authorize Plaintiff and the Class to take
28 rest periods as alleged above (or due to the fact that Defendants made it impossible or

1 impracticable to take these uninterrupted rest periods), Defendants willfully violated the
2 provisions of California Labor Code § 226.7 and the applicable Wage Orders.

3 60. Under California law, Plaintiff and the Class are entitled to be paid one hour of
4 premium wages for each workday they were not provided with all required rest break(s), plus
5 interest thereon.

6 **FIFTH CAUSE OF ACTION**

7 **(Against All Defendants for Failure to Pay Wages of Discharged Employees – Waiting Time**
8 **Penalties)**

9 61. Plaintiff incorporates by reference and re-alleges as if fully stated herein
10 paragraphs 1 through 24 in this Complaint.

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

17 63. Within the applicable statute of limitations, the employment of many other
18 members of the Class ended, i.e. was terminated by quitting or discharge, and the employment of
19 others will be. However, during the relevant time period, Defendants failed, and continue to fail
20 to pay terminated Class Members, without abatement, all wages required to be paid by California
21 Labor Code §§ 201 and 202 either at the time of discharge, or within seventy-two (72) hours of
22 their leaving Defendants' employ.

23 64. Defendants' failure to pay those Class members, or some of them, who are no
24 longer employed by Defendants their wages earned and unpaid at the time of discharge, or within
25 seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor
26 Code §§ 201 and 202.

27 65. California Labor Code § 203 provides that if an employer willfully fails to pay
28 wages owed, in accordance with §§ 201 and 202, then the wages of the employee shall continue

1 as a penalty wage from the due date, and at the same rate until paid or until an action is
2 commenced; but the wages shall not continue for more than thirty (30) days.

3 66. The Class is entitled to recover from Defendants their additionally accruing wages
4 for each day they were not paid, at their regular hourly rate of pay, up to thirty (30) days
5 maximum pursuant to California Labor Code § 203.

6 67. Pursuant to California Labor Code §§ 218.5, 218.6 and 1194, the Class is also
7 entitled to an award of reasonable attorneys' fees, interest, expenses, and costs incurred in this
8 action.

9 **SIXTH CAUSE OF ACTION**

10 **(Against All Defendants for Failure to Provide and Maintain Accurate and Compliant**
11 **Wage Records)**

12 68. Plaintiff incorporates by reference and re-alleges as if fully stated herein
13 paragraphs 1 through 24 in this Complaint.

14 69. At all material times set forth herein, California Labor Code § 226(a) provides that
15 every employer shall furnish each of his or her employees an accurate itemized wage statement
16 in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours
17 worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate
18 if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made
19 on written orders of the employee may be aggregated and shown as one item, (5) net wages
20 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
21 employee and the last four digits of his or her social security number or an employee
22 identification number other than a social security number, (8) the name and address of the legal
23 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
24 the corresponding number of hours worked at each hourly rate by the employee.

25 70. Defendants have intentionally and willfully failed to provide employees with
26 complete and accurate wage statements. The deficiencies include, among other things, the
27 failure to correctly identify the gross wages earned by Plaintiff and the Class, the failure to list
28 the true "total hours worked by the employee," and the failure to list the true net wages earned.

1 71. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff
2 and the Class have suffered injury and damage to their statutorily protected rights.

3 72. Specifically, Plaintiff and the members of the Class have been injured by
4 Defendants' intentional violation of California Labor Code § 226(a) because they were denied
5 both their legal right to receive, and their protected interest in receiving, accurate, itemized wage
6 statements under California Labor Code § 226(a).

7 73. Calculation of the true wage entitlement for Plaintiff and the Class is difficult and
8 time consuming. As a result of this unlawful burden, Plaintiff and the Class were also injured as
9 a result of having to bring this action to attempt to obtain correct wage information following
10 Defendants' refusal to comply with many of the mandates of California's Labor Code and related
11 laws and regulations.

12 74. Plaintiff and the Class are entitled to recover from Defendants the greater of their
13 actual damages caused by Defendants' failure to comply with California Labor Code § 226(a), or
14 an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

15 75. Plaintiff and the Class are also entitled to injunctive relief, as well as an award of
16 attorney's fees and costs to ensure compliance with this section, pursuant to California Labor
17 Code § 226(h).

18 **SEVENTH CAUSE OF ACTION**

19 **(Against All Defendants for Failure to Indemnify Employees for Expenditures)**

20 76. Plaintiff incorporates by reference and re-alleges as if fully stated herein
21 paragraphs 1 through 24 in this Complaint.

22 77. As set forth above, Plaintiff and the Class were required to incur substantial
23 necessary expenditures and losses in direct consequence of the discharge of their duties or of
24 their obedience to directions of Defendants.

25 78. Defendants violated California Labor Code § 2802, by failing to pay and
26 indemnify Plaintiff and the Class, or some of them, for necessary expenditures and losses
27 incurred in direct consequence of the discharge of their duties or of their obedience to directions
28 of Defendants.

EIGHTH CAUSE OF ACTION

**(Against All Defendants for Violation of California Business & Professions
Code §§ 17200, *et seq.*)**

80. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 24 in this Complaint.

81. Defendants, and each of them, are “persons” as defined under California Business & Professions Code § 17201.

82. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff, other Class members, and to the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

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

84. A violation of California Business & Professions Code §§ 17200, *et seq.* may be predicated on the violation of any state or federal law. All of the acts described herein as violations of, among other things, the California Labor Code, are unlawful and in violation of public policy; and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business practices in violation of California Business & Professions Code §§ 17200, *et seq.*

Failure to Pay Minimum and Straight Time Wages

85. Defendants' failure to pay minimum and straight time wages, and other benefits in violation of the California Labor Code constitutes unlawful and/or unfair activity prohibited by

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

Failure to Pay Overtime Wages

86. Defendants' failure to pay overtime compensation and other benefits in violation of California Labor Code §§ 510, 1194, and 1198 constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Provide Meal Periods

87. Defendants' failure to provide meal periods in accordance with California Labor Code §§ 226.7 and 512, and the IWC Wage Orders, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Authorize and Permit Rest Periods

88. Defendants' failure to authorize and permit rest periods in accordance with California Labor Code § 226.7 and the IWC Wage Orders, as alleged above, constitutes unlawful and/or unfair activity prohibited by Business and Professions Code §§ 17200, *et seq.*

Failure to Indemnify Business Expenses

89. Defendants' failure to reimburse expenses incurred in accordance with California Labor Code § 2802, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

90. By and through their unfair, unlawful and/or fraudulent business practices described herein, Defendants, have obtained valuable property, money and services from Plaintiff, and all persons similarly situated, and has deprived Plaintiff, and all persons similarly situated, of valuable rights and benefits guaranteed by law, all to their detriment.

91. Plaintiff and the Class Members suffered monetary injury as a direct result of Defendants' wrongful conduct.

92. Plaintiff, individually, and on behalf of members of the putative Class, is entitled to, and does, seek such relief as may be necessary to disgorge money and/or property which Defendants have wrongfully acquired, or of which Plaintiff and the Class have been deprived, by means of the above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the Class are not obligated to establish individual knowledge of the wrongful practices of

Defendants in order to recover restitution.

93. Plaintiff, individually, and on behalf of members of the putative class, is further entitled to, and does, seek a declaration that the above-described business practices are unfair, unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in the future.

94. Plaintiff, individually, and on behalf of members of the putative class, has no plain, speedy, and/or adequate remedy at law to redress the injuries which the Class Members suffered as a consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually, and on behalf of members of the putative Class, has suffered and will continue to suffer irreparable harm unless Defendants, and each of them, are restrained from continuing to engage in said unfair, unlawful and/or fraudulent business practices.

95. Plaintiff also alleges that if Defendants are not enjoined from the conduct set forth herein above, they will continue to avoid paying the appropriate taxes, insurance and other withholdings.

96. Pursuant to California Business & Professions Code §§ 17200, *et seq.*, Plaintiff and putative Class Members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years and 178 days prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and Class Members; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

NINTH CAUSE OF ACTION

(Against All Defendants for Civil Penalties Under the Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698, *et seq.*)

97. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 24 in this Complaint.

98. At all times herein mentioned, Defendants were subject to the Labor Code of the

1 State of California and the applicable Industrial Welfare Commission Orders.

2 99. California Labor Code § 2699(a) specifically provides for a private right of action
3 to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of
4 law, any provision of this code that provides for a civil penalty to be assessed and collected by
5 the Labor and Workforce Development Agency or any of its departments, divisions,
6 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
7 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
8 herself and other current or former employees pursuant to the procedures specified in Section
9 2699.3.”

10 100. Plaintiff has exhausted his administrative remedies pursuant to California Labor
11 Code § 2699.3. He gave written notice by online filing to the LWDA and by certified mail to
12 Defendants of the specific provisions of the Labor Code that Defendants violated against Plaintiff
13 and current and former Aggrieved Employees, including the facts and theories to support the
14 violations. Plaintiff also paid the filing fee.

15 101. The LWDA has not indicated that it intends to investigate Defendants’ Labor
16 Code violations discussed in the notice. Accordingly, Plaintiff may commence a civil action to
17 recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor
18 Code described in this Complaint. These penalties include, but are not limited to, penalties under
19 California Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699.

20 102. Based on the conduct described in this Complaint, Plaintiff is entitled to an award
21 of civil penalties on behalf of himself, the State of California, and similarly Aggrieved
22 Employees of Defendants. The exact amount of the applicable penalties, in all, is in an amount
23 to be shown according to proof at trial. These penalties are in addition to all other remedies
24 permitted by law.

25 103. In addition, Plaintiff seeks an award of reasonable attorney’s fees and costs
26 pursuant to California Labor Code § 2699(g)(1), which states, “Any employee who prevails in
27 any action shall be entitled to an award of reasonable attorney’s fees and costs.”

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PRAYER FOR RELIEF

Plaintiff, individually, and on behalf of all others similarly situated only with respect to the class claims, prays for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action with respect to the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action;
2. That Plaintiff be appointed as the representative of the Class; and
3. That counsel for Plaintiff be appointed as Class Counsel.

As to the First Cause of Action

4. That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 204 and 1194 and applicable IWC Wage Orders by willfully failing to pay all minimum and straight time wages due;
5. For unpaid wages as may be appropriate;
6. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;
7. For liquidated damages;
8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 1194(a); and
9. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

10. That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due;
11. For unpaid wages at overtime wage rates as may be appropriate;
12. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;
13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to

1 California Labor Code § 1194(a); and

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

3 As to the Third Cause of Action

4 15. That the Court declare, adjudge, and decree that Defendants violated California
5 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

6 16. For unpaid meal period premium wages as may be appropriate;

7 17. For pre-judgment interest on any unpaid compensation commencing from the date
8 such amounts were due;

9 18. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5,
10 and for costs of suit incurred herein; and

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

12 As to the Fourth Cause of Action

13 20. That the Court declare, adjudge, and decree that Defendants violated California
14 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

15 21. For unpaid rest period premium wages as may be appropriate;

16 22. For pre-judgment interest on any unpaid compensation commencing from the date
17 such amounts were due;

18 23. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5,
19 and for costs of suit incurred herein; and

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

21 As to the Fifth Cause of Action

22 25. That the Court declare, adjudge and decree that Defendants violated California
23 Labor Code §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time of
24 termination of the employment;

25 26. For statutory wage penalties pursuant to California Labor Code § 203 for former
26 employees who have left Defendants' employ;

27 27. For pre-judgment interest on any unpaid wages from the date such amounts were
28 due;

1 28. For reasonable attorneys' fees and for costs of suit incurred herein; and

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

3 As to the Sixth Cause of Action

4 30. That the Court declare, adjudge, and decree that Defendants violated the record
5 keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders, and
6 willfully failed to provide accurate itemized wage statements thereto;

7 31. For all actual damages, according to proof;

8 32. For statutory penalties pursuant to California Labor Code § 226(e);

9 33. For injunctive relief to ensure compliance with this section, pursuant to California
10 Labor Code § 226(h);

11 34. For reasonable attorneys' fees and for costs of suit incurred herein; and

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

13 As to the Seventh Cause of Action

14 36. That the Court declare, adjudge, and decree that Defendants violated California
15 Labor Code § 2802 by willfully failing to indemnify employees for expenditures;

16 37. For unpaid wages or unreimbursed business expenses as may be appropriate;

17 38. For pre-judgment interest on any unpaid compensation commencing from the date
18 such amounts were due;

19 39. For reasonable attorneys' fees and for costs of suit incurred herein; and

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

21 As to the Eighth Cause of Action

22 41. That the Court declare, adjudge, and decree that Defendants violated California
23 Business & Professions Code §§ 17200, *et seq.* by failing to pay for all hours worked (minimum,
24 straight time, and overtime wages), failing to provide meal periods, and failing to authorize and
25 permit rest periods;

26 42. For restitution of unpaid wages to Plaintiff and all Class Members and
27 prejudgment interest from the day such amounts were due and payable;

28 43. For the appointment of a receiver to receive, manage and distribute any and all

1 funds disgorged from Defendants and determined to have been wrongfully acquired by
2 Defendants as a result of violations of California Business & Professions Code §§ 17200, *et seq.*;

3 44. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
4 California Code of Civil Procedure § 1021.5;

5 45. For injunctive relief to ensure compliance with this section, pursuant to California
6 Business & Professions Code §§ 17200, *et seq.*; and

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

8 As to the Ninth Cause of Action

9 47. That the Court declare, adjudge and decree that Defendants violated the California
10 Labor Code by failing to pay wages for all hours worked (including minimum, straight time, and
11 overtime wages), failing to provide meal periods and pay the correct amount of meal period
12 premium wages, failing to authorize and permit rest periods and pay the correct amount of rest
13 period premium wages, failing to pay all wages owed twice per month, failing to maintain
14 accurate records of hours worked and meal breaks, failing to pay all final wages to terminated
15 employees, failing to furnish accurate wage statements, and failing to reimburse employees for
16 all necessary business expenses.

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

19 49. For all civil penalties pursuant to California Labor Code §§ 2699, *et seq.*, and all
20 other applicable Labor Code provisions;

21 50. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
22 California Labor Code § 2699; and

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

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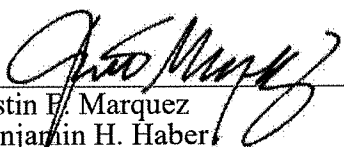
As to all Causes of Action

51. For any additional relief that the Court deems just and proper.

Respectfully submitted,

Dated: August 30, 2024

WILSHIRE LAW FIRM

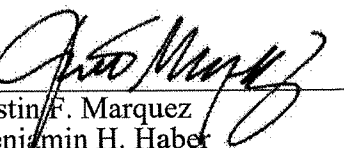
By: 
Justin F. Marquez
Benjamin H. Haber
Chase M. Stern
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as to all causes of action triable by jury.

Dated: August 30, 2024

WILSHIRE LAW FIRM

By: 
Justin F. Marquez
Benjamin H. Haber
Chase M. Stern
Attorneys for Plaintiff