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11 on behalf of himself and other managers similarly situated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

11 ANTHONY RODARTE, on behalf of himself
12 and other managers similarly situated,

13 Plaintiff,

14 vs.

15
16 CRASH CHAMPIONS, LLC; and DOES 1 to
17 100, inclusive,

18 Defendants.

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Clerk of Court
Superior Court of CA,
County of Santa Clara
24CV432852
Reviewed By: R. Walker

Case No.: **24CV432852**

CLASS ACTION

**PLAINTIFF ANTHONY RODARTE'S
COMPLAINT FOR DAMAGES AND
RESTITUTION AND FOR:**

1. **FAILURE TO PAY WAGES FOR ALL TIME WORKED AT MINIMUM WAGE IN VIOLATION OF LABOR CODE SECTIONS 1194 AND 1197**
2. **FAILURE TO PAY OVERTIME WAGES FOR DAILY OVERTIME WORKED, AND FAILURE TO INCLUDE ADDITIONAL REMUNERATION WHEN CALCULATING OVERTIME WAGES IN VIOLATION OF LABOR CODE SECTIONS 510, 1194, AND 1198**
3. **FAILURE TO AUTHORIZE OR PERMIT MEAL PERIODS IN VIOLATION OF LABOR CODE SECTIONS 512 AND 226.7**
4. **FAILURE TO AUTHORIZE OR PERMIT REST PERIODS IN VIOLATION OF LABOR CODE SECTION 226.7**

5. **FAILURE TO PROVIDE SICK PAY IN VIOLATION OF LABOR CODE SECTION 246**
6. **FAILURE TO TIMELY PAY EARNED WAGES DURING EMPLOYMENT IN VIOLATION OF LABOR CODE SECTION 204**
7. **FAILURE TO TIMELY PAY ALL EARNED WAGES AND FINAL PAYCHECKS DUE AT TIME OF SEPARATION OF EMPLOYMENT IN VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**
8. **FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS IN VIOLATION OF LABOR CODE SECTION 226**
9. **UNFAIR BUSINESS PRACTICES, IN VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200, *et seq.***

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff ANTHONY RODARTE (“Plaintiff”), on behalf of himself and other manages similarly situated, who alleges and complains against Defendants CRASH CHAMPIONS, LLC (“Defendant CRASH CHAMPIONS”), and DOES 1 to 100, inclusive (collectively “Defendants”) as follows:

INTRODUCTION

1. This is a wage and hour class action lawsuit on behalf of Plaintiff and other current and former non-exempt hourly managers (“employee” or “employees”) of Defendants in California seeking within the applicable statute of limitations periods:

- (a) failure to pay wages for all hours worked at minimum wage;
- (b) failure to pay overtime wages for all overtime hours worked;
- (c) failure to pay overtime at the proper overtime rate by failing to include all remuneration in calculating the regular rate of pay for purposes of paying overtime;
- (d) failure to authorize or permit all legally required and compliant meal periods

1 and/or pay meal period premium wages;

2 (e) failure to authorize or permit all legally required and compliant rest periods
3 and/or pay rest period premium wages;

4 (f) failure to pay sick pay at the proper regular rate;

5 (g) statutory penalties for failure to timely pay earned wages during employment;

6 (h) statutory waiting time penalties in the form of continuation wages for failure
7 to timely pay employees all wages due upon separation of employment; and

8 (i) statutory penalties for failure to provide accurate wage statements.

9 Based on these alleged violations, Plaintiff now brings this class action to recover unpaid wages,
10 restitution, statutory penalties, and injunctive relief and other equitable relief, reasonable attorney's
11 fees pursuant to Labor Code §§218.5, 226(e), 1194, costs, interest, and liquidated damages, on behalf
12 of himself and all others similarly situated.

13 **JURISDICTION AND VENUE**

14 2. This Court has subject matter jurisdiction to hear this case because Plaintiff's and
15 putative class members' claims for unpaid wages, actual damages, liquidated damages, restitution,
16 and penalties sought by Plaintiff on behalf of himself and others similarly situated from Defendants
17 exceeds the minimal jurisdictional limits of the Superior Court of the State of California.

18 3. Venue is proper in Santa Clara County pursuant to Code of Civil Procedure §§393(a),
19 395(a) and 395.5 in that liability arose there, because at least some of the transactions that are the
20 subject matter of this Complaint occurred therein and/or each defendant is found, maintains offices,
21 transacts business, and/or has an agent therein.

22 4. Defendants operate throughout California; Defendants employed Plaintiff and
23 putative class members in locations throughout California, including but not limited to Santa Clara
24 County, at 533 Burke Street, San Jose, California 95112; more than two-thirds of putative class
25 members are California citizens; the principal violations of California law occurred in California; the
26 conduct of Defendants forms a significant basis for Plaintiff's and putative class members' claims;
27 and Plaintiff and putative class members seek significant relief from Defendants.
28

PARTIES

5. Plaintiff brings this action on behalf of himself and other members of the general public similarly-situated. The named Plaintiff and the class of persons on whose behalf this action is filed are current, former and/or future employees of Defendants who work as hourly non-exempt employees. At all times mentioned herein, the currently named Plaintiff is and was a resident of California and were employed by Defendants within the four years prior to the filing of the Complaint.

6. Defendants employed Plaintiff as an hourly non-exempt employee from in or around January 2023 to in or about October 2023.

7. Plaintiff is informed and believes, and on that basis alleges that Defendants employed Plaintiff and other hourly non-exempt employees throughout the State of California and therefore its conduct forms a significant basis of the claims asserted in this matter.

8. Plaintiff is informed and believes and thereon alleges that Defendants CRASH CHAMPIONS and DOES 1-50 are authorized to do business within the State of California and are doing business in the State of California and/or that Defendants DOES 1-50 are, and at all times relevant hereto were persons acting on behalf of Defendants in the establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies. Defendants CRASH CHAMPIONS and DOES 1-50 operate in Santa Clara County and employed Plaintiff and other putative class members in Santa Clara County at its business located at 533 Burke Street, San Jose, California 95112.

9. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51-75 are corporations, or are other business entities or organizations of a nature unknown to Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and working conditions of employment of Plaintiff and aggrieved employees.

10. Plaintiff is informed and believes and thereon alleges that Defendants DOES 76-100 are individuals unknown to Plaintiff. Each individual Defendant is sued individually in his or her capacity as an agent, shareholder, owner, representative, manager, supervisor, independent contractor

1 and/or employee of each Defendant and participated in the establishment of, or ratification of, the
2 aforementioned illegal wage and hour practices or policies.

3 11. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
4 sues said Defendants by said fictitious names, and will amend this Complaint when the true names
5 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted
6 by law or by the Court. Plaintiff is informed and believes that each of the fictitiously named
7 Defendants is in some manner responsible for the events and allegations set forth in this Complaint.

8 12. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each
9 Defendant was an employer, was the principal, agent, partner, joint venturer, officer, director,
10 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
11 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
12 the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all
13 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
14 Complaint. Plaintiff is further informed and believes and thereon alleges that each Defendant acted
15 pursuant to and within the scope of the relationships alleged above, and that at all relevant times, each
16 Defendant knew or should have known about, authorized, ratified, adopted, approved, controlled,
17 aided and abetted the conduct of all other defendants. As used in this Complaint, "Defendants" means
18 "Defendants and each of them," and refers to the Defendants named in the particular cause of action
19 in which the word appears and includes Defendants CRASH CHAMPIONS and DOES 1 to 100,
20 inclusive.

21 13. At all times mentioned herein, each Defendant was the co-conspirator, agent, servant,
22 employee, and/or joint venturer of each of the other Defendants and was acting within the course and
23 scope of said conspiracy, agency, employment, and/or joint venture and with the permission and
24 consent of each of the other Defendants.

25 14. Plaintiff makes the allegations in this Complaint without any admission that, as to any
26 particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff
27 reserves all of Plaintiff rights to plead in the alternative.
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16. **Failure to Pay Wages for All Hours Worked at the Legal Minimum Wage:** Defendants employed many of their employees, including Plaintiff, as hourly non-exempt employees. In California, an employer is required to pay hourly employees for all “hours worked” at least the minimum wage rate of pay which includes all time that an employee is under the control of the employer and all time the employee is suffered and permitted to work as established by the Industrial Welfare Commission (“IWC”) and the Wage Orders. This includes the time an employee spends, either directly or indirectly, performing services which inure to the benefit of the employer.

- a. Defendants paid Plaintiff and other non-exempt employees similarly situated for their scheduled hours instead of properly keeping track of their time. As a result, Defendants failed to properly track the actual hours Plaintiff and other non-exempt employees worked. Otherwise, Defendants unlawfully “rounded” and/or “shaved” Plaintiff and other non-exempt employees’ hours and failed to properly compensate them for time spent working in a given shift.

18. Therefore, Defendants suffered, permitted, and required their hourly non-exempt employees to be subject to Defendants' control without paying wages for that time. This resulted in Plaintiff and similarly situated employees working time for which they were not compensated any wages, in violation of Labor Code §§1194, 1197, and Wage Order 1.

1 **19. Failure to Pay Overtime Wages Due to Rounding Down Hours Worked to the**
2 **Nearest Quarter Hour.** Defendants employed many of their employees, including Plaintiff, as non-
3 exempt, hourly employees. In California, an employer is required to pay hourly employees for all
4 “hours worked,” which includes all time that an employee is under control of the employer and all
5 time the employee is suffered and permitted to work. This includes the time an employee spends,
6 either directly or indirectly, performing services that inure to the benefit of the employer.

7 **20.** Labor Code §§510 and 1194 require an employer to compensate employees a higher
8 rate of pay for hours worked in excess of 8 hours in a workday, 40 hours in a workweek, and on any
9 seventh consecutive day of work in a workweek:

10 Any work in excess of eight hours in one workday and any work in excess of 40 hours
11 in any one workweek and the first eight hours worked on the seventh day of work in
12 any one workweek shall be compensated at the rate of no less than one and one-half
13 times the regular rate of pay for an employee. Any work in excess of 12 hours in one
14 day shall be compensated at the rate of no less than twice the regular rate of pay for an
15 employee. In addition, any work in excess of eight hours on any seventh day of a
16 workweek shall be compensated at the rate of no less than twice the regular rate of pay
17 of an employee.

18 (Lab. Code §510).

19 **21.** In this case, Defendants “rounded down” or “shaved down” Plaintiff and similarly
20 situated employees’ total daily hours worked to the nearest quarter of an hour at the clock-in and
21 clock-out times, to the benefit of Defendants. This occurred on days where Plaintiff and similarly
22 situated employees worked at least 8 hours or in workweeks where Plaintiff and similarly situated
23 employees worked at least 40 hours. This resulted in Defendants failing to pay Plaintiff and similarly
24 situated hourly non-exempt employees at their overtime rate of pay for this time, but was not paid
25 any wages in violation of Labor Code §§510, 1194, and Wage Order 1, §3.

26 **22. Failure to Pay Wages for Overtime Hours Worked at the Overtime Rate of Pay:**
27 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt employees.
28 In California, an employer is required to pay hourly employees for all “hours worked,” which includes
all time that an employee is under the control of the employer and all time the employee is suffered
or permitted to work. This includes the time an employee spends, either directly or indirectly,
performing services which inure to the benefit of the employer.

1 23. Labor Code §§510 and 1194 and Wage Order 1 require an employer to compensate
2 employees at a higher rate of pay for hours worked in excess of eight (8) hours in a workday, more
3 than forty (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

4 Any work in excess of eight hours in one workday and any work in excess of 40 hours
5 in any one workweek and the first eight hours worked on the seventh day of work in
6 any one workweek shall be compensated at the rate of no less than one and one-half
7 times the regular rate of pay for an employee. Any work in excess of 12 hours in one
8 day shall be compensated at the rate of no less than twice the regular rate of pay for
an employee. In addition, any work in excess of eight hours on any seventh day of a
workweek shall be compensated at the rate of no less than twice the regular rate of pay
of an employee.

9 Labor Code §510; Wage Order 1, §3.

10 24. Defendants failed to pay Plaintiff and similarly situated employees all wages at the
11 applicable minimum wage for all hours worked due to Defendants' policies, practices, and/or
12 procedures including, but not limited to:

13 a. Defendants paid Plaintiff and other non-exempt employees similarly situated for their
14 scheduled hours instead of properly keeping track of their time. As a result,
15 Defendants failed to properly track the actual hours Plaintiff and other non-exempt
16 employees worked, including overtime and double overtime. Otherwise, Defendants
17 unlawfully "rounded down" and/or "shaved down" Plaintiff and other non-exempt
18 employees' hours and failed to properly compensate them for time spent working in a
19 given shift.

20 25. To the extent Plaintiff and similarly situated employees had already worked 8 hours
21 in the workday and/or during workweeks Plaintiff and similarly situated employees had already
22 worked 40 hours in a workweek, the employees should have been paid overtime for this unpaid time.
23 This resulted in hourly non-exempt employees working time which should have been paid at the legal
24 overtime rate but was not paid any wages in violation of Labor Code §§510, 1194, and Wage Order
25 16, §3.

26 26. Defendants' foregoing policy, practice, and/or procedure resulted in Defendants
27 failing to pay Plaintiffs and similarly situated employees for all overtime hours worked, in violation
28 of Labor Code §§510, 1194, 1198, and the Wage Order.

1 27. **Failure to Pay Overtime at the Proper Overtime Rate by Failing to Include all**
2 **Remuneration in Calculating the Regular Rate of Pay for Purposes of Paying Overtime:**

3 Defendants employ hourly non-exempt employees, including Plaintiff and others similarly situated,
4 with a compensation structure that includes additional remuneration, including an additional
5 “production bonus”.

6 28. California Labor Code §§510 and 1194 require an employer to compensate employees
7 a higher rate of pay for hours worked in excess of eight hours in a workday:

8 Any work in excess of eight hours in one workday and any work in excess of 40 hours
9 in any one workweek and the first eight hours worked on the seventh day of work in
10 any one workweek shall be compensated at the rate of no less than one and one-half
11 times the regular rate of pay for an employee. Any work in excess of 12 hours in one
12 day shall be compensated at the rate of no less than twice the regular rate of pay for
13 an employee. In addition, any work in excess of eight hours on any seventh day of a
14 workweek shall be compensated at the rate of no less than twice the regular rate of pay
15 of an employee.

16 (Cal. Lab. Code §510).

17 29. Regarding the “regular rate,” overtime is based upon an employee’s regular rate of
18 pay. “The regular rate at which an employee is employed shall be deemed to include all remuneration
19 for employment paid to, or on behalf, of the employee.” *See* Division of Labor Standards
20 Enforcement – Enforcement Policies and Interpretations Manual, Section 49.1.2.

21 30. At times, Plaintiff and similarly situated employees worked overtime hours under state
22 law during pay periods that they earned additional “production bonus”. Despite the fact that California
23 law requires employers to include all remuneration as part of the regular rate of pay for determining
24 overtime premium pay, Defendants entirely excluded Plaintiff’s and similarly situated hourly non-
25 exempt employees’ additional “production bonus” in calculating those employees’ overtime rate of
26 pay.

27 31. Defendants’ foregoing policies, practices, and/or procedures resulted in Plaintiff and
28 other similarly situated hourly non-exempt employees working hours in excess of eight hours in a
29 workday and/or 40 hours in a workweek and Defendants paying them less overtime than they earned
30 pursuant to California law.

1 **32. Failure to Pay Hourly Non-Exempt Employees Wages to Compensate Them for**
2 **Workdays Defendants Failed to Provide Required Meal Periods:** California law requires an
3 employer to authorize or permit an employee an uninterrupted meal period of no less than 30-minutes
4 in which the employee is relieved of all duties and the employer relinquishes control over the
5 employee's activities prior to the employee's sixth hour of work. Cal. Lab. Code §§226.7, 512; Wage
6 Order 9-2001, 11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer
7 may not employ an employee for a work period of more than 10 hours per day without providing the
8 employee with a second such meal period of not less than 30 minutes prior to the start of the eleventh
9 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
10 shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal
11 period is only permitted when: (1) the nature of the work prevents an employee from being relieved
12 of all duty; and (2) the parties have a written agreement agreeing to on duty meal periods. If an
13 employer fails to provide an employee a meal period in accordance with the law, the employer must
14 pay the employee one hour of pay at the employee's regular rate of pay for each workday that a legally
15 required meal period was not timely provided or was not duty-free. *Id.*

16 33. During the four years prior to the filing of the complaint, Plaintiff and similarly
17 situated employees regularly worked shifts of more than 5 hours in length. Nevertheless, Plaintiff and
18 similarly situated employees were not given an uninterrupted 30-minute meal break for every five
19 hours of work because Defendants' systematic company policy pressured and/or required employees
20 to work without receiving meal periods, or the meal breaks were interrupted, untimely, taken while
21 working, and/or were shorter than 30 minutes. Nevertheless, Defendants automatically deducted 30
22 minutes from Plaintiff's and similarly situated employees' daily hours worked and attributed that time
23 to a first meal period.

24 34. At times, Plaintiff and California non-exempt employees would work in excess of 10
25 hours which would entitled them to a second meal period before the 10th hour of work. Defendants
26 did not provide Plaintiff and California non-exempt employees with a second meal period when they
27 worked in excess of 10 hours. Defendants did not have a procedure in place to pay Plaintiff and
28 California non-exempt employees a premium wage for their missed meal periods when they did not

1 receive a second meal period. Accordingly, Defendants did not pay Plaintiff and California non-
2 exempt employees a premium wage when they did not receive a second meal period.

3 35. Defendants also failed to pay Plaintiff and similarly situated employees one hour of
4 pay at their regular rate of pay for each workday Plaintiff and similarly situated employees did not
5 receive all legally compliant meal periods. Defendants lacked a policy and procedure for
6 compensating Plaintiff and similarly situated employees with premium wages when they did not
7 receive all legally required meal periods in a legally compliant manner.

8 36. During pay periods Defendants paid Plaintiffs and similarly situated employees
9 additional “production bonus” and meal period premium wages for missed, late, short, or interrupted
10 meal periods, Defendants failed to pay the meal period premium wages at one (1) hour of pay at
11 Plaintiff’s and similarly situated employees’ regular rate of pay due to Defendants’ failure to include
12 the additional “production bonus” when calculating Plaintiff’s and similarly situated employees
13 regular rate of pay for the purpose of paying premium wages. For example:

14 37. These practices and procedures resulted in Plaintiff and all other similarly situated
15 employees not receiving wages to compensate them for workdays which Defendants did not provide
16 them with legally compliant meal periods in compliance with California law.

17 38. **Failure to Pay Hourly Employees Wages to Compensate Them for Workdays**
18 **Defendants Failed to Provide Required Rest Periods:** Defendants often employed hourly
19 employees, including the named Plaintiff and all others similarly-situated, for shifts at least three and
20 one-half (3.5) hours in length.

21 39. California law states that “[e]very employer shall authorize and permit all employees
22 to take rest periods, which insofar as practicable shall be in the middle of each work period. The
23 authorized rest period time shall be based on the total hours worked daily at the rate of ten (10)
24 minutes net rest time per four (4) hours or major fraction thereof. ... If an employer fails to provide
25 an employee a rest period in accordance with the applicable provisions of this order, the employer
26 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each
27 workday that the rest period is not provided.” (Wage Order 1, §12; see Lab. Code §226.7). Under
28 California law, “[e]mployees are entitled to 10 minutes’ rest for shifts from three and one-half to six

1 hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of
2 more than 10 hours up to 14 hours, and so on.” (*Brinker v. Superior Court* (2012) 53 Cal.4th 1004,
3 1029; Lab. Code §226.7; Wage Order 1, §12). Rest periods must be in the middle of each work period.
4 (Wage Order 1, §12). If an employer fails to provide an employee a timely and legally compliant rest
5 period, the employer must pay the employee one hour of pay at the employee’s regular rate of
6 compensation for each work day that a legally required meal period was not provided or was not duty
7 free. (*Id.*)

8 40. Despite that California law requires employers to provide employees with one 10
9 minute rest break when an employee’s work shift is in excess of 3.5 hours, a second 10 minute rest
10 break when a shift is in excess of 6 hours, a third 10-minute rest break when a shift is in excess of 10
11 hours, Defendants regularly failed to do so. As a result, Plaintiff and similarly situated non-exempt,
12 employees did not receive legally compliant rest periods as they were untimely, on-duty, or were not
13 taken at all.

14 41. Defendants also failed to pay employees one hour of pay at their regular rate of pay
15 for each workday Plaintiff and similarly situated employees did not receive all timely and legally
16 compliant rest periods.

17 42. This practice resulted in Plaintiff and all other similarly situated California non-
18 exempt employees not receiving wages to compensate them for workdays which Defendants did not
19 provide them with rest periods in compliance with California law.

20 43. **Failure to Pay Sick Pay at the Proper Rate:** Defendants failure to pay sick pay to
21 Plaintiff and similarly situated employees at the correct rate. Plaintiff received compensation in
22 addition to hourly wages, such as “production bonus”, but those additional amounts were not included
23 when calculating sick pay wages. Instead, Defendants paid Plaintiff and similarly situated employees
24 at their base hourly rate of pay.

25 44. **Failure to Timely Pay Earned Wages During Employment:** In California, wages
26 must be paid at least twice during each calendar month on days designated in advance by the employer
27 as regular paydays, subject to some exceptions. Labor Code §204(a). Wages earned between the 1st
28 and 15th days, inclusive, of any calendar month must be paid between the 16th and the 26th day of

1 that month and wages earned between the 16th and the last day, inclusive, of any calendar month
2 must be paid between the 1st and 10th day of the following month. *Id.* Other payroll periods such as
3 those that are weekly, biweekly, or semimonthly, must be paid within seven (7) calendar days
4 following the close of the payroll period in which wages were earned. Labor Code §204(d).

5 45. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed to
6 timely pay Plaintiff's and similarly situated employees' earned wages (including minimum wages,
7 overtime wages, meal period premium wages, rest period premium wages, and sick pay), in violation
8 of Labor Code §204.

9 46. Defendants' aforementioned policies, practices, and/or procedures resulted in their
10 failure to pay Plaintiff and similarly situated employees their earned wages within the applicable time
11 frames outlined in Labor Code §204.

12 47. **Failure to Timely Pay All Wages Due at the Time of Termination/Resignation:**
13 An employer is required to pay all unpaid wages timely after an employee's employment ends. The
14 wages are due immediately upon termination (Labor Code §201) or within 72 hours of resignation
15 (Labor Code §202).

16 48. As a result of the aforementioned violations of the Labor Code, Plaintiff alleges that
17 he, and other similarly situated employees, were not paid their final wages in a timely manner upon
18 separation of employment, whether voluntary or involuntary, as required by Labor Code §201, 202,
19 and 203.

20 49. **Failure to Provide Accurate Wage Statements:** Labor Code §226(a) provides (inter
21 alia) that, upon paying an employee his or her wages, the employer must "furnish each of his or her
22 employees ... an itemized statement in writing showing: (1) gross wages earned, (2) total hours
23 worked by the employee, except for any employee whose compensation is solely based on a salary
24 and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable
25 order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any
26 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that
27 all deductions made on written orders of the employee may be aggregated and shown as one item, (5)
28 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the

1 name of the employee and his or her social security number, (8) the name and address of the legal
2 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the
3 corresponding number of hours worked at each hourly rate by the employee.”

4 50. Defendants failed to provide accurate and complete wage statements to Plaintiff and
5 similarly situated employees. Because Defendants provided to employees wage statements which
6 were inadequate as a result of the aforementioned conduct, Plaintiff and similarly situated employees
7 wage statements inaccurately stated: the gross wages earned, total hours worked by the employee, the
8 net wages earned, and applicable hourly rates in effect in a pay period with corresponding number of
9 hours worked.

10 51. Defendants applied these policies and procedures to Plaintiff and other similarly
11 situated employees which resulted in Defendants failing to provide complete and accurate wage
12 statements to non-exempt employees in compliance with Labor Code §226 (a).

13 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

14 52. Plaintiff brings this action on behalf of himself, on behalf of all others similarly
15 situated, and on behalf of the General Public, and as a member of a Class defined as follows:

16 A. **Minimum Wage Class:** All current and former hourly non-exempt employees
17 employed by Defendants in California at any time within the four years prior to the filing of the initial
18 Complaint in this action and through the date notice is mailed to a certified class who were not paid
19 at least at minimum wage for all time they were subject to Defendants’ control.

20 B. **Overtime Class:** All current and former hourly non-exempt employees
21 employed by Defendants in California at any time within the four years prior to the filing of the initial
22 Complaint in this action and through the date notice is mailed to a certified class who worked more
23 than eight hours in a in a workday or 40 hours in a workweek and to whom Defendants did not pay
24 all overtime wages owed.

25 C. **Regular Rate Class:** All current and former non-exempt employees employed
26 by Defendants in California at any time within the four years prior to the filing of the initial complaint
27 in this action and through the date notice is mailed to a certified class, who earned commissions,
28 bonuses, service charges, shift-differential pay or other non-hourly compensation, such as

1 “production bonus”, which were not included in calculating the overtime pay earned during pay
2 periods the employees earned the bonuses and worked in excess of 8 hours in a workday, 40 hours in
3 a workweek, or on a seventh consecutive day of work in a workweek.

4 **D. Meal Period Class:** All current and former hourly non-exempt employees
5 employed by Defendants in California at any time within the four years prior to the filing of the initial
6 Complaint in this action and through the date notice is mailed to a certified class who worked more
7 than 5 hours during a workday and did not receive wages to compensate them for missed meal periods,
8 late meal periods, interrupted meal periods, meal periods taken onsite and/or short meal periods,
9 and/or take a second meal period when they worked shifts over 10 hours.

10 **E. Meal Period Premium Wages Class:** All current and former hourly non-
11 exempt employees employed by Defendants in California at any time from four (4) years prior to the
12 filing of the initial Complaint in this matter through the date notice is mailed to a certified class who
13 received additional remuneration including, but not limited to, an additional “production bonus”
14 during pay periods in which they were owed and/or paid meal period premium wages and whose
15 regular rate of pay did not include additional remuneration including, but not limited to, an additional
16 “production bonus” when Defendants calculated those employees’ meal period premium wages.

17 **F. Rest Period Class:** All current and former hourly non-exempt employees
18 employed by Defendants in California at any time within the four years prior to the filing of the initial
19 Complaint in this action and through the date notice is mailed to a certified class who worked at least
20 three and one-half (3.5) or more hours in a day who did not receive required rest periods of ten net
21 minutes rest time for every four hours worked between three and one-half and six hours, six and ten
22 hours, or ten and fourteen hours.

23 **G. Rest Period Premium Wages Class:** All current and former hourly non-
24 exempt employees employed by Defendants in California at any time from four (4) years prior to the
25 filing of the initial Complaint in this matter through the date notice is mailed to a certified class who
26 received additional remuneration including, but not limited to, an additional “production bonus”
27 during pay periods in which they were owed and/or paid rest period premium wages and whose
28 regular rate of pay did not include additional remuneration including, but not limited to, an additional

1 “production bonus” when Defendants calculated those employees’ rest period premium wages

2 H. **Sick Pay Class:** All current and former non-exempt employees employed by
3 Defendants in California as direct employees as well as temporary employees employed through
4 temporary employment agencies at any time from four (4) years prior to the filing of the initial
5 Complaint in this matter through the date notice is mailed to a certified class who were paid sick pay
6 in a period in which they earned any other pay that should have been included, including but not
7 limited to, bonus compensation, commissions, and/or incentives, including “production bonus”, in
8 their sick pay wages.

9 I. **Pay Day Class:** All current and former hourly non-exempt employees
10 employed by Defendants in California at any time from four (4) years prior to the filing of the initial
11 Complaint in this action through the date notice is mailed to a certified class who were not timely
12 paid earned wages during their employment.

13 J. **Waiting Time Class:** All current and former hourly non-exempt employees
14 employed by Defendants in California at any time within the three years prior to the filing of the
15 initial Complaint in this action and through the date notice is mailed to a certified class who did not
16 receive payment of all unpaid wages upon separation of employment within the statutory time period.

17 K. **Wage Statement Class:** All current and former non-exempt employees
18 employed by Defendants in California at any time within the one year prior to the filing of the initial
19 complaint in this action and through the date notice is mailed to a certified class who received
20 inaccurate or incomplete wage statements.

21 L. **California Class:** All aforementioned classes are here collectively referred to
22 as the “California Class.”

23 53. There is a well defined community of interest in the litigation and the classes are
24 ascertainable:

25 A. **Numerosity:** While the exact number of class members in each class is
26 unknown to Plaintiff at this time, the Plaintiff classes are so numerous that the individual joinder of
27 all members is impractical under the circumstances of this case.

28 B. **Common Questions Predominate:** Common questions of law and fact exist

1 as to all members of the Plaintiff classes and predominate over any questions that affect only
2 individual members of each class. The common questions of law and fact include, but are not limited
3 to:

4 i. Whether Defendants violated Labor Code §§1194 and 1197 by not
5 paying employees' wages at a minimum wage rate for all time that the Minimum Wage Class
6 Members were subject to Defendants' control but were not paid;

7 ii. Whether Defendants violated Labor Code §§510 and 1194 by not
8 paying employees' wages at an overtime wage rate for all overtime hours that the Overtime Class
9 Members were subject to Defendants' control but were not paid.

10 iii. Whether Defendants violated Labor Code §§510 and 1194 by failing to
11 include all remuneration when calculating the overtime rate of pay for the members of the Regular
12 Rate Class.

13 iv. Whether Defendants violated Labor Code §§512 and 226.7, as well as
14 the applicable Wage Order, by employing Meal Period Class Members without providing all their
15 required meal periods or paying meal period premium wages;

16 v. Whether Defendants violated Labor Code §§512 and 226.7, as well as
17 the applicable Wage Order, by employing Meal Period Class Members and Meal Period Premium
18 Class Members without providing all their required meal periods, paying meal period premium
19 wages, or not including all remuneration when paying meal period premium wages;

20 vi. Whether Defendants violated the Wage Order and Labor Code §226.7
21 and the applicable Wage Order by employing Rest Period Class Members without providing all their
22 required rest periods or paying rest period premium wages;

23 vii. Whether Defendants failed to pay sick pay to the Sick Pay Class at the
24 correct rate;

25 viii. Whether Defendants violated Labor Code §204 by employing Pay Day
26 Class Members without timely paying them all earned wages during their employment;

27 ix. Whether Defendants failed to provide the Waiting Time Class
28 Members with all of their earned wages upon separation of employment within the statutory time

1 period;

2 x. Whether Defendants unlawfully failed to furnish the Wage Statement
3 Class with proper accurate itemized wage statements;

4 xi. Whether Defendants committed unlawful business acts or practice
5 within the meaning of Business and Professions Code §17200 *et seq.*;

6 xii. Whether California Class Members are entitled to unpaid wages,
7 penalties and other relief pursuant to their claims;

8 xiii. Whether, as a consequence of Defendants' unlawful conduct, the
9 California Class Members are entitled to restitution, and/or equitable relief; and

10 xiv. Whether Defendants' affirmative defenses, if any, raise any common
11 issues of law or fact as to Plaintiff and as to the California Class Members as a whole.

12 C. **Typicality:** Plaintiff' claims are typical of the claims of the class members in
13 each of the classes. Plaintiff and the members of the Minimum Wage Class sustained damages arising
14 out of Defendants' failure to pay wages at least at minimum wage for all time the employees were
15 subject to Defendants' control. Plaintiff and the members of the Overtime Wage Class sustained
16 damages arising out of Defendants' failure to pay the overtime wages for overtime hours worked.
17 Plaintiff and members of the Regular Rate Class sustained damages arising out of Defendants' failure
18 to pay them at the proper overtime rate by failing to include all remuneration when calculating their
19 regular rate of pay for purposes of determining their overtime rate of pay. Plaintiff and the members
20 of the Meal Period Class sustained damages arising out of Defendants' failure to provide employees
21 all legally required meal periods and failure to pay meal period premium wages as compensation.
22 Plaintiff and the members of the Meal Period Class and Meal Period Premium Wages Class sustained
23 damages arising out of Defendants' failure to provide employees meal periods of not less than 30
24 minutes and failure to pay meal period premium wages as compensation or failure to pay meal period
25 premiums wages at the regular rate of pay. Plaintiff and the members of the Rest Period Class
26 sustained damages arising out of Defendants' failure to provide employees all legally required rest
27 periods and failure to pay rest period premium wages as compensation. Plaintiff and the Members of
28 the Rest Period Class and Rest Period Premium Wages Class sustained damages arising out of

1 Defendants' failure to provide non-exempt employees rest periods of a net 10 minutes and failure to
2 pay rest period premium wages as compensation or failure to pay rest period premium wages at the
3 regular rate of pay. Plaintiff and members of the Sick Pay Class sustained damages arising out of
4 Defendants' failure to properly calculate and pay sick pay. Plaintiff and members of the Pay Day
5 Class sustained damages arising out of Defendants' failure to timely pay them all wages earned during
6 their employment in compliance with Labor Code §204. Plaintiff and the members of the Waiting
7 Time Class sustained damages arising out of Defendants' failure to provide all unpaid yet earned
8 wages due upon separation of employment within the statutory time limit. Plaintiff and the members
9 of the Wage Statement Class sustained damages arising out of Defendants' failure to furnish them
10 with accurate and/or complete itemized wage statements in compliance with Labor Code §226.

11 D. **Adequacy of Representation:** Plaintiff will fairly and adequately protect the
12 interests of the members of each class. Plaintiff has no interest that is adverse to the interests of the
13 other class members.

14 E. **Superiority:** A class action is superior to other available means for the fair and
15 efficient adjudication of this controversy. Because individual joinder of all members of each class is
16 impractical, class action treatment will permit a large number of similarly situated persons to
17 prosecute their common claims in a single forum simultaneously, efficiently, and without the
18 unnecessary duplication of effort and expense that numerous individual actions would engender. The
19 expenses and burdens of individual litigation would make it difficult or impossible for individual
20 members of each class to redress the wrongs done to them, while important public interests will be
21 served by addressing the matter as a class action. The cost to and burden on the court system of
22 adjudication of individualized litigation would be substantial, and substantially more than the costs
23 and burdens of a class action. Individualized litigation would also present the potential for
24 inconsistent or contradictory judgments.

25 F. **Public Policy Consideration:** Employers throughout the state violate wage
26 and hour laws. Current employees often are afraid to assert their rights out of fear of direct or indirect
27 retaliation. Former employees fear bringing actions because they perceive their former employers
28 can blacklist them in their future endeavors with negative references and by other means. Class

1 actions provide the class members who are not named in the Complaint with a type of anonymity that
2 allows for vindication of their rights.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY WAGES FOR ALL HOURS OF WORK AT THE LEGAL MINIMUM**
5 **WAGE RATE IN VIOLATION OF LABOR CODE SECTIONS 1194 AND 1197**
6 **(By Plaintiff and the Minimum Wage Class As Against All Defendants and Doe Defendants)**

7 54. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein
8 by reference.

9 55. At all times relevant to this Complaint, Plaintiff and the members of the Minimum
10 Wage Class were hourly non-exempt employees of Defendants.

11 56. Pursuant to Labor Code §§1194, 1197, and Wage Orders, Plaintiff and the Minimum
12 Wage Class are entitled to receive wages for all hours worked, i.e., all time subject to Defendants'
13 control, and those wages must be paid at least at the minimum wage rate in effect during the time the
14 Minimum Wage Class members earned the wages.

15 57. Defendants' payroll policies and procedures required members of the Minimum Wage
16 Class to be engaged, suffered, or permitted to work without being paid wages for all of the time in
17 which they were subject to Defendants' control.

18 58. Specifically, Defendants "rounded down" or "shaved down" Plaintiff's and Minimum
19 Wage Class Members' total daily hours worked at their clock-in and clock-out times to the nearest
20 quarter of an hour, to the benefit of Defendants. Plaintiff and Minimum Wage Class Members' were
21 not paid for this time.

22 59. In addition, Defendants employed a policy, practice, and/or procedure whereby they
23 automatically deducted 30 minutes from Plaintiff and Minimum Wage Class Members hours worked
24 and attributed that time to a first meal period, even though Defendants routinely provided Plaintiff
25 and Minimum Wage Class Members meal periods of less than the 30 minutes. The 30-minute
26 automatic deduction from Plaintiff's and Minimum Wage Class Members timecards resulted in hours
27 worked during meal periods that were not properly reflected on their time sheets and therefore not
28 compensated for in violation of Labor Code §§1194, 1197, and the Wage Order.

60. As a result of Defendants' unlawful conduct, Plaintiff and members of the Minimum Wage Class have suffered damages in an amount subject to proof, to the extent that they were not paid wages at a minimum wage rate for all hours worked.

61. Pursuant to Labor Code §§1194 and 1194.2, Plaintiff and the Minimum Wage Class members are entitled to recover unpaid minimum wage, interest thereon, liquidated damages in the amount of their unpaid minimum wage, and attorneys' fees and costs.

SECOND CAUSE OF ACTION

**FAILURE TO PAY OVERTIME WAGES FOR DAILY OVERTIME WORKED, AND
FAILURE TO INCLUDE ADDITIONAL REMUNERATION WHEN CALCULATING
OVERTIME WAGES IN VIOLATION OF LABOR CODE SECTIONS 510, 1194, AND 1198
(By Plaintiff and the Overtime Class and Regular Rate Class As Against All Defendants and
Doe Defendants)**

62. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein by reference.

63. At times relevant to this Complaint, Plaintiff and the members of the Overtime Class were hourly non-exempt employees of Defendants, covered by Labor Code §§510 and 1194 and the Wage Order.

64. Pursuant to Labor Code §§510 and 1194 and the Wage Order, hourly non-exempt employees are entitled to receive a higher rate of pay for all hours worked in excess of eight hours in a workday and/or 40 hours in a workweek.

65. Labor Code §510 (a) states in relevant part:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

1 66. Further, Labor Code §1198 provides,

2 The maximum hours of work and the standard conditions of labor fixed by the
3 commission shall be the maximum hours of work and the standard conditions of labor
4 for employees. The employment of any employee for longer hours than those fixed by
5 the order or under conditions of labor prohibited by the order is unlawful.

6 67. Despite that California law requires employers to pay employees a higher rate of pay
7 for all hours worked more than eight hours in a workday, Defendants failed to pay Plaintiff and
8 Overtime Class Members overtime wages due them for their daily overtime hours worked.

9 68. Defendants “rounded down” or “shaved down” Plaintiff and Overtime Class
10 Members’ total daily hours worked to the nearest quarter of an hour at the clock-in and clock-out
11 times, to the benefit of Defendants. This occurred on days where Plaintiff and Overtime Class
12 Members worked at least 8 hours or in workweeks where Plaintiff and Overtime Class Members
13 worked at least 40 hours. This resulted in Defendants failing to pay Plaintiff and Overtime Class
14 Members at their overtime rate of pay for this time.

15 69. In addition, Defendants employed a policy, practice, and/or procedure whereby they
16 automatically deducted 30 minutes from Plaintiff and Overtime Class Members daily hours worked
17 and attributed that time to a first meal period, even though Defendants routinely provided Plaintiff
18 and Overtime Class Members meal periods of less than the 30 minutes. The 30-minute automatic
19 deduction from Plaintiff’s and Overtime Class Members timecards resulted in hours worked during
20 meal periods that were not properly reflected on their time sheets. This occurred on days where
21 Plaintiff and Overtime Class Members worked at least 8 hours or in workweeks where Plaintiff and
22 Overtime Class Members worked at least 40 hours. This resulted in Defendants failing to pay Plaintiff
23 and Overtime Class Members at their overtime rate of pay for this time in violation of Labor Code
24 §§510, 1194, and the Wage Order

25 70. Lastly, Defendants failed to include non-discretionary bonus compensation, such as
26 “production bonus” in calculating their regular rate of pay for purposes of paying overtime. The
27 foregoing resulted in time during each workday which Plaintiff and Regular Rate Class Members
28 were under the control of Defendants, but were not compensated at their proper overtime rate of pay
29 when they worked more than eight hours in a day or 40 hours in a week, in violation of Labor Code

1 §§510, 1194, and 1198, and the Wage Order.

2 71. As a result of Defendants' unlawful conduct, Plaintiff and members of the Overtime
3 Class and Regular Rate Class have suffered damages in an amount subject to proof, to the extent that
4 they were not paid premium wages at an overtime rate of pay for all hours worked or at the proper
5 overtime rate of pay.

6 72. Pursuant to Labor Code §1194, Plaintiff and the Overtime Class members are entitled
7 to recover the full amount of their unpaid overtime wages, prejudgment interest and attorneys' fees
8 and costs.

9 **THIRD CAUSE OF ACTION**

10 **FAILURE TO AUTHORIZE OR PERMIT MEAL PERIODS IN VIOLATION OF**

11 **LABOR CODE SECTIONS 512 AND 226.7**

12 **(By Plaintiff, the Meal Period Class, and the Meal Period Premium Wages Class As Against**
13 **All Defendants and Doe Defendants)**

14 73. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein
15 by reference.

16 74. California law requires an employer to provide an employee an uninterrupted meal
17 period of no less than 30-minutes before the end of a five hour work period. (Lab. Code §512; Wage
18 Order 1 at §10). An employer may not employ an employee for a work period of more than 10 hours
19 per day without providing the employee with a second meal period of not less than 30 minutes before
20 the end of a ten hour work period. (*Id.*) If the employee is not relieved of all duty during a meal period,
21 the meal period shall be considered an "on duty" meal period and counted as time worked. A paid
22 "on duty" meal period is only permitted when 1) the nature of the work prevents an employee from
23 being relieved of all duty and 2) the parties have a written agreement agreeing to on duty meal periods.
24 If the employee is not free to leave the work premises or worksite during the meal period, even if the
25 employee is relieved of all other duty during the meal period, the employee is subject to the
26 employer's control and the meal period is counted as time worked. If an employer fails to provide an
27 employee a meal period in accordance with the law, the employer must pay the employee one hour
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1 of pay at the employee's regular rate of compensation for each work day that a legally required meal
2 period was not provided or was not duty free. (*Id.*)

3 75. Plaintiff and Meal Period Class Members would work on workdays in shifts long
4 enough to entitle them to meal periods under California law. Despite that California law requires
5 employers to provide employees with timely duty free meal periods when they have worked a
6 sufficient amount of hours, Defendants failed to provide employees a timely full thirty minute meal
7 period for each five hour period of work as required by law.

8 76. Defendants would automatically deduct 30 minutes from Plaintiff and Meal Period
9 Class Members' daily hours worked even when Defendants failed to authorize or permit Plaintiff and
10 Meal Period Class Members to take a full 30-minute meal period or a meal period at all.

11 77. At times, Plaintiff and California non-exempt employees would work in excess of 10
12 hours which would entitled them to a second meal period before the 10th hour of work. Defendants
13 did not provide Plaintiff and California non-exempt employees with a second meal period when they
14 worked in excess of 10 hours. Defendants did not have a procedure in place to pay Plaintiff and
15 California non-exempt employees a premium wage for their missed meal periods when they did not
16 receive a second meal period. Accordingly, Defendants did not pay Plaintiff and California non-
17 exempt employees a premium wage when they did not receive a second meal period.

18 78. Defendants' policies and procedures resulted in Plaintiff and Meal Period Class
19 Members not receiving wages to compensate them for workdays which Defendants did not provide
20 them with legally compliant meal periods in compliance with California law.

21 79. Defendants' policies and procedures made it impossible for Plaintiff and other Meal
22 Period Class members from receiving all legally required and timely meal breaks or from Defendants
23 making such meal breaks available to Plaintiff and other Meal Period Class Members when they
24 worked a minimum of five hours in a work period.

25 80. On occasions Defendants paid Plaintiff and Meal Period Premium Wages Class
26 members meal period premium wages for missed, late, short, or interrupted meal periods in the same
27 pay period they earned additional remuneration including, but not limited to, an additional \$5/hour
28 "production bonus", Defendants failed to pay the meal period premium wages at one (1) hour of pay

1 at the regular rate of pay due to Defendants' failure to include additional remuneration including, but
2 not limited to, an additional "production bonus" when calculating Plaintiff's and Meal Period
3 Premium Wages Class members' regular rate of pay for the purpose of paying meal period premiums.

4 81. Defendants employed policies and procedures which ensured Plaintiff, Meal Period
5 Class members, and Meal Period Premium Class members did not receive premium wages, or
6 premium wages at the regular rate, to compensate them for workdays that they did not receive legally
7 compliant meal periods. This practice resulted in Plaintiff, Meal Period Class members, and Meal
8 Period Premium Class members, not receiving premium wages, or receiving less premium wages, to
9 compensate them for workdays which Defendants did not provide them with all required meal
10 periods, in compliance with California law.

11 82. Defendants' unlawful conduct alleged herein occurred in the course of employment of
12 Plaintiff and Meal Period Class Members and such conduct has continued through the filing of this
13 Complaint.

14 83. Because Defendants failed to provide employees with meal periods and/or pay meal
15 period premium wages in compliance with the law, Defendants are liable to Plaintiff, Meal Period
16 Class Members, and Meal Period Premium Class for one (1) hour of additional pay at the regular rate
17 of compensation for each workday that Defendants did not provide all legally required and legally
18 compliant meal periods and/or pay proper meal period premium wages, pursuant to Labor Code
19 §226.7 and the Wage Order.

20 84. Plaintiff, on behalf of himself, the Meal Period Class, and the Meal Period Premium
21 Class seeks damages and all other relief allowable, including a meal period premium wage for each
22 workday Defendants failed to provide all legally required and legally compliant meal periods and/or
23 pay proper meal period premium wages, plus pre-judgment interest.

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO AUTHORIZE OR PERMIT REST PERIODS IN VIOLATION OF**
3 **LABOR CODE SECTION 226.7**

4 **(By Plaintiff, the Rest Period Class, and the Rest Period Premium Wages Class As Against All**
5 **Defendants and Doe Defendants)**

6 85. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein
7 by reference.

8 86. At all times relevant to this Complaint, Plaintiff and members of the Rest Period Class
9 were employees of Defendants, covered by Labor Code §226.7 and the Wage Order.

10 87. California law requires that “[e]very employer shall authorize and permit all
11 employees to take rest periods, which insofar as practicable shall be in the middle of each work period.
12 The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10)
13 minutes net rest time per four (4) hours or major fraction thereof...” Wage Order 1 at §11. Employees
14 are entitled to 10 minutes’ rest for shifts from three and one-half to six hours in length, 20 minutes
15 for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14
16 hours, and so on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029;
17 Labor Code §226.7. Additionally, the rest period requirement “obligates employers to permit – and
18 authorizes employees to take – off-duty rest periods.” *Augustus v. ABM Security Services, Inc.*, (2016)
19 5 Cal.5th 257, 269. That is, during rest periods employers must relieve employees of all duties and
20 relinquish control over how employees spend their time. *Id.* If an employer fails to provide an
21 employee a rest period in accordance with the applicable provisions of this Order, the employer shall
22 pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each
23 workday that the rest period is not provided.” Wage Order 1 at §11; Labor Code §226.7.

24 88. In this case, Plaintiff and members of the Rest Period Class regularly worked shifts of
25 more than three-and-a-half (3.5) hours. Nevertheless, Defendants employed policies, practices, and/or
26 procedures that resulted in their failure to authorize or permit all legally required and compliant rest
27 periods to Plaintiff and Rest Period Class Members. Specifically, Defendants’ policies, practices,
28 and/or procedures failed to provide Plaintiff and Rest Period Class members with duty free rest

1 periods of a net 10-minutes for every four hours worked or major fraction thereof.

2 89. Additionally, Defendants failed to pay Plaintiff and members of the Rest Period Class
3 one (1) hour of pay at their regular rate of pay for each workday they did not receive all legally
4 required and legally compliant rest periods. Defendants lacked a policy and procedure for
5 compensating Plaintiff and Rest Period Class Members with premium wages when they did not
6 receive all legally required and legally compliant rest periods.

7 90. On occasions Defendants paid Plaintiff and Rest Period Premium Wages Class
8 members rest period premium wages for missed, late, short, or interrupted rest periods in the same
9 pay period they earned bonus compensation, commissions, and/or incentives, Defendants failed to
10 pay the rest period premium wages at one (1) hour of pay at the regular rate of pay due to Defendants'
11 failure to include additional remuneration including, but not limited to, an additional bonus
12 compensation, commissions, and/or incentives, "production bonus", when calculating when
13 calculating Plaintiff's and Rest Period Premium Wages Class members' regular rate of pay for the
14 purpose of paying rest period premiums.

15 91. Defendants employed policies and procedures which ensured Plaintiff, Rest Period
16 Class members, and Rest Period Premium Class members did not receive premium wages, or
17 premium wages at the regular rate, to compensate them for workdays that they did not receive legally
18 compliant rest periods. This practice resulted in Plaintiffs, Rest Period Class members, and Rest
19 Period Premium Class member, not receiving premium wages, or receiving less premium wages, to
20 compensate them for workdays which Defendants did not provide them with all required rest periods,
21 in compliance with California law.

22 92. Defendants' unlawful conduct alleged herein occurred in the course of employment of
23 Plaintiff Rest Period Class members, and Rest Period Premium Wages Class members and such
24 conduct has continued through the filing of this Complaint.

25 93. Plaintiff, on behalf of himself, the Rest Period Class, and Rest Period Premium
26 Wages Class, seeks damages and all other relief allowable, including a rest period premium wage for
27 each workday Defendants failed to provide all required rest periods and/or failed to include all
28 remuneration when calculating the rest period premiums, plus pre-judgment interest.

1 94. Thus, Plaintiff, Rest Period Class members, and Rest Period Premium Class members
2 are entitled to one hour of pay for each workday Defendants did not provide them all required rest
3 periods, and/or pay them rest period premiums at the regular rate, plus pre-judgment interest.

4 **FIFTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE SICK PAY IN VIOLATION OF LABOR CODE SECTION 246**

6 **(By Plaintiff and the Sick Pay Class As Against All Defendants and Doe Defendants)**

7 95. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein
8 by reference.

9 96. Sick pay must be compensated at the employee's regular rate of pay, for the workweek
10 in which the paid leave was taken, or at a rate determined by averaging over 90 days. Labor Code
11 §246(1).

12 97. By failing to pay Plaintiff and the Sick Pay Class for sick pay at the correct rate,
13 Defendants willfully violated Labor Code §246.

14 98. In addition, Plaintiff and the Sick Pay Class earned wages other than their regular pay,
15 including but not limited to, additional bonus compensation, commissions, and/or incentives, and/or
16 "production bonus", that should have been included in their sick pay wages, but were not included.
17 As a result, Plaintiff and the Sick Pay Class are entitled to proper sick pay compensation.

18 99. Defendants' unlawful acts deprived Plaintiff and the Sick Pay Class of sick pay in
19 amounts to be determined at trial, and they are entitled to recover these amounts, with interest,
20 attorneys' fees, and costs.

21 **SIXTH CAUSE OF ACTION**

22 **FAILURE TO TIMELY PAY EARNED WAGES DURING EMPLOYMENT IN**

23 **VIOLATION OF LABOR CODE SECTION 204**

24 **(By Plaintiff and the Pay Day Class As Against All Defendants and Doe Defendants)**

25 100. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein
26 by reference.

27 101. Plaintiff and the Pay Day Class have been employed by Defendants in the State of
28 California. In California, wages must be paid at least twice during each calendar month on days

1 designated in advance by the employer as regular paydays, subject to some exceptions. Labor Code
2 §204(a). Wages earned between the 1st and 15th days, inclusive, of any calendar month must be paid
3 between the 16th and the 26th day of that month and wages earned between the 16th and the last day,
4 inclusive, of any calendar month must be paid between the 1st and 10th day of the following month.
5 *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be paid within
6 seven (7) calendar days following the close of the payroll period in which wages were earned. Labor
7 Code §204(d).

8 102. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed to
9 timely pay Plaintiff's and the Pay Day Class' earned wages (including minimum wages, overtime
10 wages, meal period premium wages, rest period premium wages, sick pay), in violation of Labor Code
11 §204.

12 103. Defendants' aforementioned policies, practices, and/or procedures resulted in their
13 failure to pay Plaintiff and the Pay Day Class their earned wages within the applicable time frames
14 outlined in Labor Code §204.

15 104. Defendants' failure to timely pay Plaintiff and the Pay Day Class their earned wages
16 in accordance with Labor Code §204 was willful. Defendants had the ability to timely pay all wages
17 earned by hourly workers in accordance with Labor Code §204, but intentionally adopted policies or
18 practices incompatible with the requirements of Labor Code §204. When Defendants failed to timely
19 pay Plaintiff and the Pay Day Class all earned wages, they knew what they were doing and intended
20 to do what they did.

21 105. As a result of Defendants' unlawful conduct, Plaintiff and the Pay Day Class have
22 suffered damages in an amount subject to proof, to the extent that they were not timely paid their
23 earned wages pursuant to Labor Code §204.

24 106. Pursuant to Labor Code §210, Plaintiff and the Pay Day Class are entitled to recover
25 civil penalties as follows: (1) for any initial violation, one hundred dollars (\$100) for each failure to
26 pay each employee; and (2) for each subsequent violation, or any willful or intentional violation, two
27 hundred dollars (\$200) for each failure to pay each employee, plus twenty-five (25%) percent of the
28 amount unlawfully withheld.

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107. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein by reference.

108. At all times relevant to this Complaint, Plaintiff and the other members of the Waiting Time Class were employees of Defendants, covered by Labor Code §§201 and 202.

109. Pursuant to Labor Code §§201 and 202, Plaintiff and members of the Waiting Time Class were entitled upon termination to timely payment of all wages earned and unpaid prior to termination. Discharged employees were entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Employees who resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and unpaid prior to resignation at the time of resignation.

110. Defendants failed to pay Plaintiff and members of the Waiting Time Class all wages earned and unpaid prior to separation of employment, in accordance with either Labor Code §§201 or 202. Plaintiff is informed and believes and thereon alleges that at all relevant times within the limitations period applicable to this cause of action Defendants maintained a policy or practice of not paying hourly employees all earned wages timely upon separation of employment.

111. Defendants' failure to pay Plaintiff and members of the Waiting Time Class all wages earned prior to separation of employment timely in accordance with Labor Code §§201 and 202 was willful. Defendants had the ability to pay all wages earned by Waiting Time Class Members prior to separation of employment in accordance with Labor Code §§201 and 202, but intentionally adopted policies or practices incompatible with the requirements of Labor Code §§201 and 202. Defendants' practices include failing to pay at least minimum wage for all time worked, failing to pay overtime wages for overtime hours worked, failing to pay overtime wages at the proper overtime rate of pay,

1 failing to pay premium wages for workdays Defendants did not provide employees all meal periods
2 in compliance with California law, failing to pay premium wages for workdays Defendants did not
3 provide employees all rest periods in compliance with California law, and failure to provide proper
4 sick pay. When Defendants failed to pay its hourly non-exempt workers all earned wages timely upon
5 separation of employment, it knew what they were doing and intended to do what it did.

6 112. Pursuant to either Labor Code §§201 or 202, Plaintiff and members of the Waiting
7 Time Class are entitled to all wages earned prior to separation of employment that Defendants did not
8 pay them.

9 113. Pursuant to Labor Code §203, Plaintiff and members of the Waiting Time Class are
10 entitled to continuation of their wages, from the day their earned and unpaid wages were due upon
11 separation until paid, up to a maximum of 30 days.

12 **EIGHTH CAUSE OF ACTION**

13 **FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS IN** 14 **VIOLATION OF LABOR CODE SECTION 226**

15 **(By Plaintiff and the Wage Statement Class As Against All Defendants and Doe Defendants)**

16 114. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein
17 by reference.

18 115. At all relevant times, Plaintiff and the members of the Wage Statement Class were
19 non-exempt employees of Defendants and covered by Labor Code §226.

20 116. Pursuant to Labor Code §226 (a), Plaintiff and members of the Wage Statement Class
21 were entitled to receive, semimonthly or at the time of each payment of wages, an itemized wage
22 statement accurately stating the following:

23
24 (1) gross wages earned, (2) total hours worked by the employee, except for any employee
25 whose compensation is solely based on a salary and who is exempt from payment of
26 overtime under subdivision (a) of Section 515 or any applicable order of the Industrial
27 Welfare Commission, (3) the number of piece-rate units earned and any applicable piece
28 rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
deductions made on written orders of the employee may be aggregated and shown as one
item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
paid, (7) the name of the employee and his or her social security number, except that by
January 1, 2008, only the last four digits of his or her social security number or an employee

1 identification number other than a social security number may be shown on the itemized
2 statement, (8) the name and address of the legal entity that is the employer, and (9) all
3 applicable hourly rates in effect during the pay period and the corresponding number of
4 hours worked at each hourly rate by the employee.

5 117. Defendants' illegal practices (described in more detail above and below, including but
6 not limited to, Defendants' failure to pay all minimum wage and overtime for all hours worked, failure
7 to pay meal and rest period premiums, and failure to pay proper sick pay wages) resulted in
8 Defendants not providing Plaintiff and other California non-exempt employees with accurate and
9 complete itemized wage statements in violation of Labor Code §226. The wage statements
10 Defendants provided to employees were inadequate for reasons including but not limited to
11 Defendants inaccurately or failing to state the following: the number of hours worked, the gross wages
12 earned, the net wages earned, and hourly rates in place during the pay period with corresponding
13 hours worked.

14 118. Defendants' failure to provide Plaintiff and members of the Wage Statement Class
15 with accurate and complete wage statements was knowing and intentional. Defendants had the ability
16 to provide Plaintiff and members of the Class with accurate and complete wage statements but
17 intentionally provided wage statements that Defendants knew were not accurate. Defendants
18 knowingly and intentionally put in place practices which deprived employees of wages and resulted
19 in Defendants' knowing and intentional providing of inaccurate wage statements.

20 119. As a result of Defendants unlawful conduct, Plaintiff and members of the Wage
21 Statement Class have suffered injury in that the wage statements inaccurately stated and/or failed to
22 state the aforementioned items of information and Plaintiff and the members of the class could not
23 promptly and easily determine from the wage statement alone an accurate statement of: the gross
24 wages earned, and the net wages earned.

25 120. Pursuant to Labor Code §226(e), Plaintiff and members of the Wage Statement Class
26 are entitled to recover actual damages or fifty dollars for the initial pay period in which a violation of
27 Labor Code §226 occurred and one-hundred dollars for each violation of Labor Code §226 in a
28 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars per employee.

121. Pursuant to Labor Code §226(g), Plaintiff and members of the Wage Statement Class

1 are entitled to bring an action for injunctive relief to ensure Defendants' compliance with Labor Code
2 §226(a). Injunctive relief is warranted because Defendants continue to provide currently employed
3 members of the Class with inaccurate wage statements in violation of Labor Code §226(a) and
4 currently employed members of the Class have no adequate legal remedy for the continuing injuries
5 that will be suffered as a result of Defendants' ongoing unlawful conduct. Injunctive relief is the only
6 remedy available for ensuring Defendants comply with Labor Code §226(a).

7 122. Pursuant to Labor Code §226(e) and 226(g), Plaintiff and members of the Class are
8 entitled to recover the full amount of penalties due under Labor Code §226(e), reasonable attorney
9 fees, and costs of suit.

10 **NINTH CAUSE OF ACTION**

11 **UNFAIR BUSINESS PRACTICES, IN VIOLATION OF** 12 **BUSINESS AND PROFESSIONS CODE SECTION 17200, *et seq.***

13 **(By Plaintiff and the California Class As Against All Defendants and Doe Defendants)**

14 123. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein
15 by reference.

16 124. The unlawful conduct of Defendants alleged herein constitutes unfair competition
17 within the meaning of California Business and Professions Code §17200. This unfair conduct includes
18 Defendants' use of policies and procedures which resulted in the following: failing to pay employees
19 at least the minimum wage rate for all hours which they worked; failure to pay overtime wages for
20 overtime hours worked; failing to pay overtime wages at the proper overtime rate of pay; failure to
21 provide all required meal periods or pay meal period premium wages; failure to authorize or permit,
22 or provide, all required rest periods or pay rest period premium wages; failure to provide proper sick
23 pay; statutory penalties for failure to timely pay earned wages during employment; statutory waiting
24 time penalties in the form of continuation wages for failure to timely pay employees all wages due
25 upon separation of employment; statutory penalties for failure to provide accurate wage statements.
26 Due to their unfair and unlawful business practices in violation of the Labor Code, Defendants have
27 gained a competitive advantage over other comparable companies doing business in the State of
28 California that comply with their obligations to pay employees for all hours worked, to provide meal

1 periods or pay meal period premium wages, to authorize or permit rest periods or pay rest period
2 premium wages, to provide sick pay, to timely pay wages during employment, to timely pay all wages
3 due upon separation of employment, and to provide proper wage statements during the course of
4 employment.

5 125. As a result of Defendants' unfair competition as alleged herein, Plaintiff and members
6 of the Minimum Wage Class, Overtime Class, Regular Rate Class, Meal Period Class, Meal Period
7 Premium Wages Class, Rest Period Class, Rest Period Premium Wages Class Sick Pay Class, Pay
8 Day Class, Waiting Time Class, and Wage Statement Class, have suffered injury in fact and lost
9 money or property, as described in more detail above.

10 126. Pursuant to California Business and Professions Code §17203, Plaintiff and members
11 of the Minimum Wage Class, Overtime Class, Regular Rate Class, Meal Period Class, Meal Period
12 Premium Wages Class, Rest Period Class, Rest Period Premium Wages Class Sick Pay Class, Pay
13 Day Class, Waiting Time Class, and Wage Statement Class are entitled to restitution of all wages and
14 other monies rightfully belonging to them that Defendants failed to pay and wrongfully retained by
15 means of their unlawful and unfair business practices. Plaintiff also seeks an injunction against
16 Defendants on behalf of the California Class enjoining Defendants, and any and all persons acting in
17 concert with them, from engaging in each of the unlawful practices, policies and patterns set forth
18 herein.

19 **PRAYER FOR RELIEF**

20 **WHEREFORE, PLAINTIFF ON HIS OWN BEHALF AND ON BEHALF OF THOSE**
21 **SIMILARLY-SITUATED, PRAYS AS FOLLOWS:**

22 **ON ALL CAUSES OF ACTION:**

23 1. That the Court determine that this action may be maintained as a class action (for the
24 entire California Class and/or any and all of the specified sub-classes) pursuant to California Code of
25 Civil Procedure §382 and any other applicable law;

26 2. That the named Plaintiff be designated as class representative for the California Class
27 (and all sub-classes thereof);

28 3. A declaratory judgment that the practices complained herein are unlawful; and,

4. An injunction against Defendants enjoining them, and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies and patterns set forth herein.

ON THE FIRST CAUSE OF ACTION

1. That Defendants be found to have violated the minimum wage provisions of the Labor Code and the IWC Wage Order as to Plaintiff and the Minimum Wage Class;

2. For damages, according to proof, including but not necessarily limited to unpaid wages;

3. For any and all legally applicable penalties;

4. For liquidated damages pursuant to Labor Code §1194.2;

5. For pre-judgment interest, including but not limited to that recoverable under Labor Code §1194, and post-judgment interest;

6. For attorneys' fees and costs of suit, including but not limited to that recoverable under Labor Code §1194;

7. For pre-judgment interest, including but not limited to that recoverable under Labor Code §218.6, and post-judgment interest; and,

8. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE FIRST CAUSE OF ACTION

1. That Defendants be found to have violated the overtime provisions of the Labor Code and the IWC Wage Order as to Plaintiff and the Overtime Class;

2. For damages, according to proof, including but not limited to unpaid wages;

3. For any and all legally applicable penalties;

4. For pre-judgment interest, including but not limited to that recoverable under Labor Code §1194, and post-judgment interest;

5. For attorneys' fees and costs of suit, including but not limited to that recoverable under Labor Code §1194; and

6. For such other further relief, in law and/or equity, as the Court deems just or

appropriate.

ON THE THIRD CAUSE OF ACTION

1. That Defendants be found to have violated the meal period provisions of the Labor Code and the Wage Order as to Plaintiff and the Meal Period Class;

2. For damages, according to proof, including unpaid premium wages;

3. For any and all legally applicable penalties;

4. For pre-judgment interest, including but not limited to that recoverable under Labor Code §218.6, and post-judgment interest; and

5. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE FOURTH CAUSE OF ACTION

1. That Defendants be found to have violated the rest period provisions of the Labor Code and the Wage Order as to Plaintiff and the Rest Period Class;

2. For damages, according to proof, including unpaid premium wages;

3. For any and all legally applicable penalties;

4. For pre-judgment interest, including but not limited to that recoverable under Labor Code §218.6, and post-judgment interest; and

5. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE FIFTH CAUSE OF ACTION

1. That Defendants be found to have violated the provisions of the Labor Code regarding correct payment of sick pay to Plaintiff and the Sick Pay Class;

2. For damages and/or penalties, according to proof, including damages and/or statutory penalties under the Labor Code and any other legally applicable damages or penalties; and

3. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

1 **ON THE SIXTH CAUSE OF ACTION**

- 2 1. That Defendants be found to have violated Labor Code 204 as to Plaintiff and the Pay
3 Day Class;
- 4 2. For damages, according to proof;
- 5 3. For any and all legally applicable penalties, including but not limited to those
6 recoverable pursuant to Labor Code §210(a);
- 7 4. For pre-judgment interest, including but not limited to that recoverable under Labor
8 Code §218.6, and post-judgment interest; and
- 9 5. For such other further relief, in law and/or equity, as the Court deems just or
10 appropriate.

11

12 **ON THE SEVENTH CAUSE OF ACTION**

- 13 1. That Defendants be found to have violated the provisions of the Labor Code regarding
14 payment of all unpaid wages due upon resignation or termination as to the Waiting Time Class;
- 15 2. For damages and/or penalties, according to proof, including damages and/or statutory
16 penalties under Labor Code §203 and any other legally applicable damages or penalties;
- 17 3. For pre-judgment interest, including under Labor Code §218.6, and post-judgment
18 interest; and,
- 19 4. For such and other further relief, in law and/or equity, as the Court deems just or
20 appropriate.

21 **ON THE EIGHTH CAUSE OF ACTION**

- 22 1. That Defendants be found to have violated the provisions of the Labor Code regarding
23 proper itemized paystubs as to the Wage Statement Class.
- 24 2. For damages and/or penalties, according to proof, including damages and/or statutory
25 penalties under Labor Code §226(e) and any other legally applicable damages or penalties;
- 26 3. For pre-judgment interest and post-judgment interest; and,
- 27 4. For attorneys' fees and costs of suit, including but not limited to that recoverable under
28 Labor Code §226(e); and,

5. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE NINTH CAUSE OF ACTION

1. That Defendants be found to have violated California Business and Professions Code §17200, *et seq.*, for the conduct alleged herein as to all Classes;

2. A declaratory judgment that the practices complained herein are unlawful;

3. An injunction against Defendants enjoining them, and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies and patterns set forth herein;

4. For restitution to the full extent permitted by law; and,

5. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

Dated: March 11, 2024

Respectfully submitted,
E&L, LLP

By:

David Lavi, Esq.

Arie Ebrahimian, Esq.

Attorneys for PLAINTIFF ANTHONY RODARTE
on behalf of himself and other managers similarly
situated

DEMAND FOR JURY TRIAL

PLAINTIFF ANTHONY RODARTE demands a trial by jury for himself and the California Class on all claims so triable.

Dated: March 11, 2024

Respectfully submitted,
E&L, LLP

By: _____

David Lavi, Esq.

Arie Ebrahimian, Esq.

Attorneys for PLAINTIFF ANTHONY RODARTE
on behalf of himself and other managers similarly
situated