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Attorneys for Plaintiff ALEXANDER PEGUES, JR.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ALEXANDER PEGUES, JR., an individual, on behalf of himself and on behalf of all persons similarly situated,

Plaintiff,

v.

ELINK RECRUITING SOLUTIONS, INC., a Georgia Corporation; GLOBAL MAIL, INC., an Ohio Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No: **22STCV18259**

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510 *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE

ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CALIFORNIA LABOR CODE §2802;
9) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY.

DEMAND FOR A JURY TRIAL

Plaintiff ALEXANDER PEGUES, JR. (“PLAINTIFF”), an individual, on behalf of himself and all other similarly situated current and former employees, alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

THE PARTIES

1. Defendant ELINK RECRUITING SOLUTIONS, INC. (“Defendant eLink”) is a Georgia corporation that provides recruiting services and at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, including in Los Angeles County where PLAINTIFF worked.

2. Defendant GLOBAL MAIL, INC. (“Defendant Global Mail”) is an Ohio corporation that provides logistics services, operates distribution and shipping facilities, and at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, including in Los Angeles County where PLAINTIFF worked.

3. Defendant eLink and Defendant Global Mail were the joint employers of PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers for the conduct alleged herein and collectively referred to herein as “DEFENDANTS” and/or “DEFENDANT.”

4. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these DEFENDANTS by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief

1 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
2 inclusive, (hereinafter collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible
3 in some manner for one or more of the events and happenings that proximately caused the injuries
4 and damages hereinafter alleged.

5 5. The agents, servants, and/or employees of the DEFENDANTS and each of them
6 acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its
7 authority as the agent, servant and/or employee of the Defendants, and personally participated in
8 the conduct alleged herein on behalf of the DEFENDANTS with respect to the conduct alleged
9 herein. Consequently, the acts of each Defendant are legally attributable to the other
10 DEFENDANT and all DEFENDANTS are jointly and severally liable to PLAINTIFF and the
11 other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result of the
12 conduct of the Defendants’ agents, servants and/or employees.

13 6. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
14 PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or
15 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
16 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
17 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
18 at all relevant times.

19 7. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
20 PLAINTIFF’s employer either individually or as an officer, agent, or employee of another person,
21 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
22 employee a wage less than the minimum fixed by California state law, and as such, are subject to
23 civil penalties for each underpaid employee.

24 8. PLAINTIFF was employed by DEFENDANTS in California from October 2021
25 to November 2021 as an outbound mailer, and at all times was classified by DEFENDANTS as a
26 non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
27 periods and payment of minimum and overtime wages due for all time worked.

28 9. PLAINTIFF brings this Class Action on behalf of himself and a California class,
defined as all persons who are or previously were employed by Defendant eLink and/or Defendant
Global Mail in California and classified as non-exempt employees (the “CALIFORNIA CLASS”)

1 at any time during the period beginning four (4) years prior to the filing of this Complaint and
2 ending on the date as determined by the Court (the "CLASS PERIOD"). The amount in
3 controversy for the aggregate claim of the CALIFORNIA CLASS Members is under five million
4 dollars (\$5,000,000.00).

5 10. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
6 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
7 the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which failed to
8 lawfully compensate these employees. DEFENDANTS' uniform policy and practice alleged
9 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANTS
10 retained and continue to retain wages due PLAINTIFF and the other members of the
11 CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek
12 an injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
13 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
14 injured by DEFENDANTS' past and current unlawful conduct, and all other appropriate legal
and equitable relief.

15 11. DEFENDANTS' uniform policies and practices alleged herein were unlawful,
16 unfair, and deceptive business practices whereby DEFENDANTS retained and continue to retain
17 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

18 12. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an
19 injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
20 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
21 injured by DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and
22 equitable relief.

23 **JURISDICTION AND VENUE**

24 13. This Court has jurisdiction over this Action pursuant to California Code of Civil
25 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
26 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
27 DEFENDANTS pursuant to Cal. Code of Civ. Proc. § 382.
28

1 meaning the time during which an employee is subject to the control of an employer, including
2 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS
3 PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work
4 without paying them for all the time they were under DEFENDANTS' control. Specifically, as a
5 result of PLAINTIFF's demanding work requirements and DEFENDANTS' understaffing,
6 DEFENDANTS required PLAINTIFF to work during what was supposed to be PLAINTIFF's
7 off-duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a
8 partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
9 minimum wage and overtime wages by regularly working without their time being accurately
10 recorded and without compensation at the applicable minimum wage and overtime rates.
11 DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA
12 CLASS Members for all time worked is evidenced by DEFENDANTS' business records.

13 17. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
14 requirements and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
15 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-
16 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
17 other CALIFORNIA CLASS Members were required from time to time to perform work as
18 ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a
19 meal break. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and
20 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which
21 these employees were required by DEFENDANT to work ten (10) hours of work from time to
22 time. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS
23 Members does not qualify for limited and narrowly construed "on-duty" meal period exception.
24 When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS
25 Members were, from time to time, required to remain on duty and on call. PLAINTIFF and other
26 CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
27 compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

28 ///

1 **B. Rest Period Violations**

2 18. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
3 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
4 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
5 requirements and DEFENDANTS' inadequate staffing. Further, for the same reasons these
6 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
7 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
8 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and
9 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
10 hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and
11 other CALIFORNIA CLASS Members were, from time to time, required to remain on premises,
12 on duty and/or on call. PLAINTIFF and other CALIFORNIA CLASS Members were also not
13 provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules and
14 DEFENDANTS' inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members
15 were from time to time denied their proper rest periods by DEFENDANTS and DEFENDANTS'
16 managers.

17 **C. Unreimbursed Business Expenses**

18 19. DEFENDANTS as a matter of corporate policy, practice, and procedure,
19 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
20 and the CALIFORNIA CLASS for required business expenses incurred by the PLAINTIFF and
21 other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf
22 of DEFENDANTS. Under California Labor Code Section 2802, employers are required to
23 indemnify employees for all expenses incurred in the course and scope of their employment. Cal.
24 Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all
25 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
26 of his or her duties, or of his or her obedience to the directions of the employer, even though
27 unlawful, unless the employee, at the time of obeying the directions, believed them to be
28 unlawful."

1 20. In the course of their employment, DEFENDANTS required PLAINTIFF and
2 other CALIFORNIA CLASS Members to use their personal cell phones as a result of and in
3 furtherance of their job duties as employees for DEFENDANTS. But for the use of their own
4 personal cell phones, PLAINTIFF and the CALIFORNIA CLASS Members could not complete
5 their essential job duties. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF
6 and other CALIFORNIA CLASS Members for their use of their personal cell phones. As a result,
7 in the course of their employment with DEFENDANTS, the PLAINTIFF and other
8 CALIFORNIA CLASS Members incurred unreimbursed business expenses, but were not limited
9 to, costs related to the use of their personal cellular phones, all on behalf of and for the benefit of
10 DEFENDANTS.

11 **D. Wage Statement Violations**

12 21. California Labor Code Section 226 requires an employer to furnish its employees
13 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,
14 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net
15 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
16 of the employee and only the last four digits of the employee's social security number or an
17 employee identification number other than a social security number, (8) the name and address of
18 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay
19 period and the corresponding number of hours worked at each hourly rate by the employee.

20 22. From time to time during the CLASS PERIOD, when PLAINTIFF and other
21 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed
22 meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed
23 to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate
24 wage statements which failed to show, among other things, the total hours worked and all
25 applicable hourly rates in effect during the pay period and the corresponding amount of time
26 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
27 periods.

28

1 23. DEFENDANTS, from time to time, failed to provide PLAINTIFF and the
2 CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code § 226.

3 24. As a result, DEFENDANTS issued PLAINTIFF and the other members of the
4 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
5 DEFENDANTS' violations are knowing and intentional, were not isolated or due to an
6 unintentional payroll error due to clerical or inadvertent mistake.

7 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

8 25. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
9 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
10 CLASS for all hours worked.

11 26. During the CLASS PERIOD, from time-to-time DEFENDANTS required
12 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift work,
13 including but not limited to, undergoing COVID-19 health screenings, which included
14 temperature checks and health questionnaires before the beginning of his shift, and spending time
15 under DEFENDANTS' control for which he was not compensated. This resulted in PLAINTIFF
16 and other members of the CALIFORNIA CLASS to have to work while off-the-clock.

17 27. DEFENDANTS directed and directly benefited from the uncompensated off-the-
18 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

19 28. DEFENDANTS controlled the work schedules, duties, protocols, applications,
20 assignments, and employment conditions of PLAINTIFF and the other members of the
21 CALIFORNIA CLASS.

22 29. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
23 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
24 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
25 wages earned and owed for all the work they performed, including but not limited to, submitting
26 to pre-shift COVID-19 health screenings.

27 30. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
28 exempt employees, subject to the requirements of the California Labor Code.

1 31. DEFENDANTS’ policies and practices deprived PLAINTIFF and the other
2 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages
3 owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the
4 CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8)
5 hours per day, DEFENDANT’s policies and practices also deprived them of overtime pay.

6 32. DEFENDANT knew or should have known that PLAINTIFF and the other
7 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

8 33. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
9 forfeited wages due them for all hours worked at DEFENDANT’s direction, control and benefit
10 for the time spent working while off-the-clock. DEFENDANT’s uniform policy and practice to
11 not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked
12 in accordance with applicable law is evidenced by DEFENDANT’s business records.

13 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
14 **Sick Pay**

15 34. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and
16 continue to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
17 members for their overtime and double time hours worked, meal and rest period premiums, and
18 sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS members forfeited wages
19 due them for working overtime without compensation at the correct overtime and double time
20 rates, meal and rest period premiums, and sick pay rates. DEFENDANTS’ uniform policy and
21 practice to not pay the CALIFORNIA CLASS members the correct rate for all overtime and
22 double time worked, meal and rest period premiums, and sick pay in accordance with applicable
23 law is evidenced by DEFENDANTS’ business records.

24 35. State law provides that employees must be paid overtime at one-and-one-half times
25 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS members were
26 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
27 employee’s performance.
28

1 36. The second component of PLAINTIFF's and other CALIFORNIA CLASS
2 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
3 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for
4 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
5 basis with bonus compensation when the employees met the various performance goals set by
6 DEFENDANTS.

7 37. However, from-time-to-time, when calculating the regular rate of pay, in those pay
8 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double
9 time, paid meal and rest period premium payments, and/or paid sick pay, and earned non-
10 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus
11 compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked
12 rather than just all non-overtime hours worked. Management and supervisors described the
13 incentive/bonus program to potential and new employees as part of the compensation package.
14 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
15 CLASS members must be included in the "regular rate of pay." The failure to do so has resulted
16 in a systematic underpayment of overtime and double time compensation, meal and rest period
17 premiums, and sick pay to PLAINTIFF and other CALIFORNIA CLASS members by
18 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time
19 for non-employees shall be calculated in the same manner as the regular rate of pay for the
20 workweek in which the non-exempt employee uses paid sick time, whether or not the employee
21 actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by
22 failing to include the incentive compensation as part of the "regular rate of pay" for purposes of
23 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is
24 recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

25 38. In violation of the applicable sections of the California Labor Code and the
26 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
27 matter of company policy, practice and procedure, intentionally and knowingly failed to
28 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate

1 of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.
2 This uniform policy and practice of DEFENDANTS is intended to purposefully avoid the
3 payment of the correct overtime and double time compensation, meal and rest period premiums,
4 and sick pay as required by California law which allowed DEFENDANTS to illegally profit and
5 gain an unfair advantage over competitors who complied with the law. To the extent equitable
6 tolling operates to toll claims by the CALIFORNIA CLASS members against DEFENDANTS,
7 the CLASS PERIOD should be adjusted accordingly.

8 **G. Unlawful Deductions**

9 39. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
10 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do
11 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
12 DEFENDANTS violated Labor Code § 221.

13 **H. Violations for Untimely Payment of Wages**

14 40. Pursuant to California Labor Code section 204, PLAINTIFF and the
15 CALIFORNIA CLASS members were entitled to timely payment of wages during their
16 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
17 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
18 meal period premium wages, and rest period premium wages within permissible time period.

19 **I. Failure to Provide Personnel Files**

20 41. Subsequent to PLAINTIFF'S termination, on January 28, 2022, PLAINTIFF
21 caused written requests via certified mail to be delivered to DEFENDANTS for PLAINTIFF'S
22 personnel and employment records, including but not limited to (1) payroll records; (2)
23 employment contracts; (3) itemized pay stubs; and (4) PLAINTIFF'S complete employment file.

24 42. DEFENDANTS failed to provide and/or make available to PLAINTIFF his
25 personnel records, payroll records, employment contracts, and entire employment file within (30)
26 days of all his requests stated above. In fact, as of the date of filing of this complaint,
27 DEFENDANTS have still failed to pay PLAINTIFF the statutory penalty in the amount of \$750.
28 DEFENDANTS violated Cal. Lab. Code Section 1198.5 by failing to respond and provide

1 PLAINTIFF with her employment file. Section 1198.5 states that employees (and former
2 employees) have the right to inspect personnel records maintained by the employer “related to the
3 employee’s performance or to any grievance concerning the employee.” Employers must allow
4 inspection or copying within thirty (30) days of the request. PLAINTIFF requested his
5 employment file via certified mail and DEFENDANTS failed to respond. As a result, PLAINTIFF
6 is now entitled to and requests injunctive relief to obtain compliance with Cal. Lab. Code Section
7 1198.5, a statutory penalty, and an award of attorneys’ fees and costs for bringing this action.

8 **J. Plaintiff’s Individual Claims**

9 43. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
10 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
11 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
12 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
13 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
14 by DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF
15 with a rest break, they required PLAINTIFF to remain on the premises, on-duty and on-call, for
16 the rest break. DEFENDANTS’ policy caused PLAINTIFF to remain on-call, on-duty and/or on-
17 premises during what was supposed to be his off-duty meal periods. PLAINTIFF therefore
18 forfeited meal and rest breaks without additional compensation and in accordance with
19 DEFENDANTS’ strict corporate policy and practice. Moreover, DEFENDANTS also provided
20 PLAINTIFF with a paystub that failed to comply with Cal. Lab. Code § 226. Further,
21 DEFENDANTS also failed to reimburse PLAINTIFF for required business expenses related to
22 the use of his personal cell phone, on behalf of and in furtherance of his employment with
23 DEFENDANTS. Further, failed to provide and/or make available to PLAINTIFF his personnel
24 records, payroll records, employment contracts, and entire employment file within (30) days of
25 all his request on January 28, 2022. To date, DEFENDANTS have not fully paid PLAINTIFF the
26 minimum, overtime and double time compensation still owed to him or any penalty wages owed
27 to him under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does
28 not exceed the sum or value of \$75,000.

1 44. In or around October of 2021, and continuing throughout the rest of PLAINTIFF's
2 employment, PLAINTIFF engaged in protected activity by submitting multiple inquiries to
3 DEFENDANTS regarding his wages, including but not limited to, inquiries about what he
4 believed to be unlawful deductions DEFENDANTS made to his wages. Subsequent to
5 PLAINTIFF'S participation in protective activity by inquiring about what he believed to be
6 unlawful deductions made to his wages, DEFENDANT subjected PLAINTIFF to adverse
7 employment actions by retaliating against PLAINTIFF. Specifically, after PLAINTIFF inquired
8 about allegedly unlawful deductions to his wages to DEFENDANTS, DEFENDANT refused to
9 respond to PLAINTIFF'S inquiries and terminated PLAINTIFF'S employment with
10 DEFENDANT in November of 2021. As a result, there is a causal link between the protected
11 activity and DEFENDANT'S decision to terminate his employment, which is against public
12 policy.

13 **K. CLASS ACTION ALLEGATIONS**

14 45. PLAINTIFF brings the First through Eighth Causes of Action as a class action
15 pursuant to California Code of Civil Procedure § 382 on behalf of all persons who are or
16 previously were employed by Defendant eLink and/or Defendant Global Mail in California and
17 classified as non-exempt employees ("CALIFORNIA CLASS") during the period beginning four
18 years prior to the filing of the Complaint and ending on a date determined by the Court ("CLASS
19 PERIOD").

20 46. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
21 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
22 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
23 illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate
24 for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain
25 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

26 47. The members of the class are so numerous that joinder of all class members is
27 impractical.

28

1 48. Common questions of law and fact regarding DEFENDANTS’ conduct, including
2 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to
3 accurately calculate the regular rate of pay for overtime compensation, failure to accurately
4 calculate the regular rate of compensation for missed meal and rest period premiums, failing to
5 provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure
6 to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least
7 minimum wage and overtime, exist as to all members of the class and predominate over any
8 questions affecting solely any individual members of the class. Among the questions of law and
9 fact common to the class are:

- 10 a. Whether DEFENDANTS maintained legally compliant meal period policies and
11 practices;
- 12 b. Whether DEFENDANTS maintained legally compliant rest period policies and
13 practices;
- 14 c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
15 CLASS Members accurate premium payments for missed meal and rest periods;
- 16 d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
17 CLASS Members accurate overtime wages;
- 18 e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
19 CLASS Members at least minimum wage for all hours worked;
- 20 f. Whether DEFENDANTS failed to compensate PLAINTIFF and the
21 CALIFORNIA CLASS Members for required business expenses;
- 22 g. Whether DEFENDANTS issued legally compliant wage statements;
- 23 h. Whether DEFENDANTS committed an act of unfair competition by
24 systematically failing to record and pay PLAINTIFF and the other members of the
25 CALIFORNIA CLASS for all time worked;
- 26 i. Whether DEFENDANTS committed an act of unfair competition by
27 systematically failing to record all meal and rest breaks missed by PLAINTIFF
28 and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed

1 the benefit of this work, required employees to perform this work and permits or
2 suffers to permit this work;

3 j. Whether DEFENDANTS committed an act of unfair competition in violation of
4 the UCL, by failing to provide the PLAINTIFF and the other members of the
5 CALIFORNIA CLASS with the legally required meal and rest periods.

6 49. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
7 a result of DEFENDANTS' conduct and actions alleged herein.

8 50. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has
9 the same interests as the other members of the class.

10 51. PLAINTIFF will fairly and adequately represent and protect the interests of the
11 CALIFORNIA CLASS Members.

12 52. PLAINTIFF retained able class counsel with extensive experience in class action
13 litigation.

14 53. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
15 interests of the other CALIFORNIA CLASS Members.

16 54. There is a strong community of interest among PLAINTIFF and the members of
17 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
18 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
19 sustained.

20 55. The questions of law and fact common to the CALIFORNIA CLASS Members
21 predominate over any questions affecting only individual members, including legal and factual
22 issues relating to liability and damages.

23 56. A class action is superior to other available methods for the fair and efficient
24 adjudication of this controversy because joinder of all class members is impractical. Moreover,
25 since the damages suffered by individual members of the class may be relatively small, the
26 expense and burden of individual litigation makes it practically impossible for the members of the
27 class individually to redress the wrongs done to them. Without class certification and
28 determination of declaratory, injunctive, statutory and other legal questions within the class

1 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will
2 create the risk of:

- 3 a. Inconsistent or varying adjudications with respect to individual members of the
4 CALIFORNIA CLASS which would establish incompatible standards of conduct
5 for the parties opposing the CALIFORNIA CLASS; and/or,
- 6 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
7 which would as a practical matter be dispositive of the interests of the other
8 members not party to the adjudication or substantially impair or impeded their
9 ability to protect their interests.

10 57. Class treatment provides manageable judicial treatment calculated to bring an
11 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
12 the conduct of DEFENDANTS.

13 **FIRST CAUSE OF ACTION**

14 **Unlawful Business Practices**

15 **(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

16 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

17 58. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
18 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
19 Complaint.

20 59. Each of the DEFENDANTS is a “person” as that term is defined under Cal. Bus.
21 And Prof. Code § 17021.

22 60. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
23 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
24 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition
25 as follows:

26 Any person who engages, has engaged, or proposes to engage in unfair competition
27 may be enjoined in any court of competent jurisdiction. The court may make such
28 orders or judgments, including the appointment of a receiver, as may be necessary
to prevent the use or employment by any person of any practice which constitutes
unfair competition, as defined in this chapter, or as may be necessary to restore to
any person in interest any money or property, real or personal, which may have

1 been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code §
2 17203).

3 61. By the conduct alleged herein, DEFENDANTS have engaged and continue to
4 engage in a business practice which violates California law, including but not limited to, the
5 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
6 including Sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198,
7 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
8 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
9 constitute unfair competition, including restitution of wages wrongfully withheld.

10 62. By the conduct alleged herein, DEFENDANTS' practices were unlawful and
11 unfair in that these practices violated public policy, were immoral, unethical, oppressive
12 unscrupulous or substantially injurious to employees, and were without valid justification or
13 utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203
14 of the California Business & Professions Code, including restitution of wages wrongfully
15 withheld.

16 63. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
17 fraudulent in that DEFENDANTS' uniform policy and practice failed to provide the legally
18 mandated meal and rest periods and the required amount of compensation for missed meal and
19 rest periods and, due to a systematic business practice that cannot be justified, pursuant to the
20 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
21 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,
22 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

23 64. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
24 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
25 other members of the CALIFORNIA CLASS to be underpaid during their employment with
26 DEFENDANTS.

27 65. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
28 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide

1 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members
2 as required by Cal. Lab. Code §§ 226.7 and 512.

3 66. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
4 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
5 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
6 each workday in which a second off-duty meal period was not timely provided for each ten (10)
7 hours of work.

8 67. PLAINTIFF further demands on behalf of himself and on behalf of each
9 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
10 not timely provided as required by law.

11 68. By and through the unlawful and unfair business practices described herein,
12 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the
13 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
14 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
15 detriment of these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS
16 to unfairly compete against competitors who comply with the law.

17 69. All the acts described herein as violations of, among other things, the Industrial
18 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
19 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and
20 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
21 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

22 70. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
23 and do, seek such relief as may be necessary to restore to them the money and property which
24 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the
25 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
26 business practices, including earned but unpaid wages for all time worked.

27 71. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
28 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,

1 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
2 engaging in any unlawful and unfair business practices in the future.

3 72. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
4 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
5 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a
6 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
7 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
8 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
9 unlawful and unfair business practices.

10 **SECOND CAUSE OF ACTION**

11 **Failure To Pay Minimum Wages**

12 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1.)**

13 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

14 73. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
15 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
16 Complaint.

17 74. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
18 for DEFENDANTS' willful and intentional violations of the California Labor Code and the
19 Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately calculate
20 and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

21 75. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
22 policy, an employer must timely pay its employees for all hours worked.

23 76. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
24 commission is the minimum wage to be paid to employees, and the payment of a lesser wage than
25 the minimum so fixed is unlawful.

26 77. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
27 including minimum wage compensation and interest thereon, together with the costs of suit.
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1 78. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
2 the other members of the CALIFORNIA CLASS without regard to the correct amount of time
3 they worked. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully
4 and intentionally deny timely payment of wages due to PLAINTIFF and the other members of
5 the CALIFORNIA CLASS.

6 79. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
7 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
8 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
9 and the other members of the CALIFORNIA CLASS in regards to minimum wage pay.

10 80. In committing these violations of the California Labor Code, DEFENDANTS
11 inaccurately calculated the amount of time worked and consequently underpaid the actual time
12 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANTS acted
13 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
14 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
15 laws and regulations.

16 81. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
17 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
18 minimum wage compensation for their time worked for DEFENDANTS.

19 82. During the CLASS PERIOD, PLAINTIFF and the other members of the
20 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
21 failure to pay all earned wages.

22 83. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
23 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
24 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
25 suffered and will continue to suffer an economic injury in amounts which are presently unknown
26 to them, and which will be ascertained according to proof at trial.

27 84. DEFENDANTS knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA CLASS are under-compensated for their time worked.

1 DEFENDANTS systematically elected, either through intentional malfeasance or gross
2 nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy, practice
3 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
4 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
5 for their time worked.

6 85. In performing the acts and practices herein alleged in violation of California labor
7 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
8 and provide them with the requisite compensation, DEFENDANTS acted and continue to act
9 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
10 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
11 consequences to them, and with the despicable intent of depriving them of their property and legal
12 rights, and otherwise causing them injury in order to increase company profits at the expense of
13 these employees.

14 86. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
15 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
16 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
17 California Labor Code and/or other applicable statutes. To the extent minimum wage
18 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
19 terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or
20 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
21 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
22 Members. DEFENDANTS' conduct as alleged herein was willful, intentional, and not in good
23 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
24 recover statutory costs.

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1 **THIRD CAUSE OF ACTION**

2 **Failure To Pay Overtime Compensation**

3 **(Cal. Lab. Code §§ 510, 1194 and 1198)**

4 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

5 87. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

8 88. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
9 for DEFENDANTS' willful and intentional violations of the California Labor Code and the
10 Industrial Welfare Commission requirements for DEFENDANTS' failure to pay these employees
11 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
12 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

13 89. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
14 public policy, an employer must timely pay its employees for all hours worked.

15 90. Cal. Lab. Code § 510 further provides that employees in California shall not be
16 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
17 unless they receive additional compensation beyond their regular wages in amounts specified by
18 law.

19 91. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
20 including minimum wage and overtime compensation and interest thereon, together with the costs
21 of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours
22 than those fixed by the Industrial Welfare Commission is unlawful.

23 92. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
24 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
25 they worked, including overtime work.

26 93. DEFENDANTS' uniform pattern of unlawful wage and hour practices
27 manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
28 implementing a uniform policy and practice that failed to accurately record overtime worked by

1 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
2 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
3 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
4 (12) hours in a workday, and/or forty (40) hours in any workweek.

5 94. In committing these violations of the California Labor Code, DEFENDANTS
6 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
7 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANTS acted in an illegal
8 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
9 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
10 regulations.

11 95. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
12 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
13 compensation for overtime worked.

14 96. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
15 from the overtime requirements of the law. None of these exemptions are applicable to the
16 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
17 other members of the CALIFORNIA CLASS were not subject to a valid collective bargaining
18 agreement that would preclude the causes of action contained herein this Complaint. Rather,
19 PLAINTIFF brings this Action on behalf of himself and the CALIFORNIA CLASS based on
20 DEFENDANTS' violations of non- negotiable, non-waivable rights provided by the State of
21 California.

22 97. During the CLASS PERIOD, PLAINTIFF and the other members of the
23 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
24 constituting a failure to pay all earned wages.

25 98. DEFENDANTS failed to accurately pay the PLAINTIFF and the other members
26 of the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of
27 the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
28 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,

1 and did in fact work, overtime as to which DEFENDANTS failed to accurately record and pay as
2 evidenced by DEFENDANTS' business records and witnessed by employees.

3 99. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
4 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for all
5 overtime worked by these employees, PLAINTIFF and the other members of the CALIFORNIA
6 CLASS have suffered and will continue to suffer an economic injury in amounts which are
7 presently unknown to them, and which will be ascertained according to proof at trial.

8 100. DEFENDANTS knew or should have known that PLAINTIFF and the other
9 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
10 DEFENDANTS systematically elected, either through intentional malfeasance or gross
11 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
12 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
13 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

14 101. In performing the acts and practices herein alleged in violation of California labor
15 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all overtime
16 worked and provide them with the requisite overtime compensation, DEFENDANTS acted and
17 continue to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
18 members of the CALIFORNIA CLASS with a conscious and utter disregard for their legal rights,
19 or the consequences to them, and with the despicable intent of depriving them of their property
20 and legal rights, and otherwise causing them injury in order to increase company profits at the
21 expense of these employees.

22 102. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
23 request recovery of all unpaid wages, including overtime wages, according to proof, interest,
24 statutory costs, as well as the assessment of any statutory penalties against DEFENDANTS, in a
25 sum as provided by the California Labor Code and/or other applicable statutes. To the extent
26 minimum and/or overtime compensation is determined to be owed to the CALIFORNIA CLASS
27 Members who have terminated their employment, DEFENDANTS' conduct also violates Labor
28 Code §§ 201 and/or 202, and therefore these employees would also be entitled to waiting time

1 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
2 CALIFORNIA CLASS Members. DEFENDANTS' conduct as alleged herein was willful,
3 intentional, and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS
4 Members are entitled to seek and recover statutory costs.

5 **FOURTH CAUSE OF ACTION**

6 **Failure To Provide Required Meal Periods**

7 **(Cal. Lab. Code §§ 226.7 & 512)**

8 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

9 103. PLAINTIFF and the other members of the CALIFORNIA CLASS, reallege and
10 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
11 Complaint.

12 104. During the CLASS PERIOD, DEFENDANTS failed to provide all the legally
13 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
14 required by the applicable Wage Order and Labor Code. The nature of the work performed by
15 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being
16 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
17 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not
18 fully relieved of duty by DEFENDANTS for their meal periods. Additionally, DEFENDANTS'
19 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required
20 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business
21 records. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS
22 Members with a second off-duty meal period in some workdays in which these employees were
23 required by DEFENDANTS to work ten (10) hours of work. As a result, PLAINTIFF and other
24 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation
25 and in accordance with DEFENDANTS' strict corporate policy and practice.

26 105. DEFENDANTS further violated California Labor Code §§ 226.7 and the
27 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS
28 Members who were not provided a meal period, in accordance with the applicable Wage Order,

1 one additional hour of compensation at each employee's regular rate of pay for each workday that
2 a meal period was not provided.

3 106. As a proximate result of the aforementioned violations, PLAINTIFF and
4 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
5 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

6 **FIFTH CAUSE OF ACTION**

7 **Failure To Provide Required Rest Periods**

8 **(Cal. Lab. Code §§ 226.7 & 512)**

9 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

10 107. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
11 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
12 Complaint.

13 108. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
14 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
15 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
16 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
17 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
18 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
19 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
20 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
21 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
22 DEFENDANTS and DEFENDANTS' managers. In addition, DEFENDANTS failed to
23 compensate PLAINTIFF and CALIFORNIA CLASS Members for their rest periods as required
24 by the applicable Wage Order and Labor Code. As a result, DEFENDANTS' failure to provide
25 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
26 periods is evidenced by DEFENDANTS' business records.

27 109. DEFENDANTS further violated California Labor Code §§ 226.7 and the
28 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS

1 Members who were not provided a rest period, in accordance with the applicable Wage Order,
2 one additional hour of compensation at each employee's regular rate of pay for each workday that
3 rest period was not provided.

4 110. As a proximate result of the aforementioned violations, PLAINTIFF and
5 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
6 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

7 **SIXTH CAUSE OF ACTION**

8 **Failure To Provide Accurate Itemized Statements**

9 **(Cal. Lab. Code §§ 226)**

10 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

11 111. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
12 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

13 112. Cal. Labor Code § 226 provides that an employer must furnish employees with an
14 "accurate itemized" statement in writing showing:

- 15 a. Gross wages earned,
- 16 b. (2) total hours worked by the employee, except for any employee whose
17 compensation is solely based on a salary and who is exempt from payment
18 of overtime under subdivision (a) of Section 515 or any applicable order of
19 the Industrial Welfare Commission,
- 20 c. the number of piece-rate units earned and any applicable piece rate if the employee
21 is paid on a piece-rate basis,
- 22 d. all deductions, provided that all deductions made on written orders of the employee
23 may be aggregated and shown as one item,
- 24 e. net wages earned,
- 25 f. the inclusive dates of the period for which the employee is paid,
- 26 g. the name of the employee and his or her social security number, except that by
27 January 1, 2008, only the last four digits of his or her social security number of an
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1 employee identification number other than social security number may be shown
2 on the itemized statement,

- 3 h. the name and address of the legal entity that is the employer, and
- 4 i. all applicable hourly rates in effect during the pay period and the corresponding
5 number of hours worked at each hourly rate by the employee.

6 113. When DEFENDANTS did not accurately record PLAINTIFF's and other
7 CALIFORNIA CLASS Members' wages, and missed meal and rest breaks, DEFENDANTS
8 violated Cal. Lab. Code § 226 in that DEFENDANTS failed to provide an accurate wage
9 statement in writing that properly and accurately itemizes all wages, and missed meal and rest
10 periods and reporting time wages owed to PLAINTIFF and the other members of the
11 CALIFORNIA CLASS and thereby also failed to set forth the correct wages earned by the
12 employees.

13 114. DEFENDANTS knowingly and intentionally failed to comply with Cal. Lab. Code
14 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
15 CLASS. These damages include, but are not limited to, costs expended calculating the correct
16 wages for all missed meal and rest breaks and the amount of employment taxes which were not
17 properly paid to state and federal tax authorities. These damages are difficult to estimate.
18 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
19 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
20 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
21 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
22 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
23 of the CALIFORNIA CLASS herein).

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1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code §§ 203)**

4 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

5 115. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

8 116. Cal. Lab. Code § 200 provides that:

9 As used in this article:

- 10 (d) "Wages" includes all amounts for labor performed by employees of every
11 description, whether the amount is fixed or ascertained by the standard of time,
12 task, piece, Commission basis, or other method of calculation.
13 (e) "Labor" includes labor, work, or service whether rendered or performed under
14 contract, subcontract, partnership, station plan, or other agreement if the to be
15 paid for is performed personally by the person demanding payment.

16 117. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges
17 an employee, the wages earned and unpaid at the time of discharge are due and payable
18 immediately."

19 118. Cal. Lab. Code § 202 provides, in relevant part, that:

20 If an employee not having a written contract for a definite period quits his or her
21 employment, his or her wages shall become due and payable not later than 72 hours
22 thereafter, unless the employee has given 72 hours previous notice of his or her intention
23 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
24 Notwithstanding any other provision of law, an employee who quits without providing a
25 72-hour notice shall be entitled to receive payment by mail if he or she so requests and
26 designates a mailing address. The date of the mailing shall constitute the date of payment
27 for purposes of the requirement to provide payment within 72 hours of the notice of
28 quitting.

29 119. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS
30 Members' employment contract.

31 120. Cal. Lab. Code § 203 provides:

32 If an employer willfully fails to pay, without abatement or reduction, in accordance with
33 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who
34 quits, the wages of the employee shall continue as a penalty from the due date thereof at
35 the same rate until paid or until an action therefor is commenced; but the wages shall not
36 continue for more than 30 days.

1 121. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
2 terminated, and DEFENDANTS have not tendered payment of wages to these employees who
3 were underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks, as
4 required by law.

5 122. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
6 members of the CALIFORNIA CLASS whose employment has terminated, PLAINTIFF demand
7 up to thirty (30) days of pay as penalty for not paying all wages due at time of termination for all
8 employees who terminated employment during the CLASS PERIOD and demand an accounting
9 and payment of all wages due, plus interest and statutory costs as allowed by law.

10 **EIGHTH CAUSE OF ACTION**

11 **Failure To Reimburse Employees For Required Expenses**

12 **(Cal. Lab. Code §§ 2802)**

13 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

14 123. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
15 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
16 Complaint.

17 124. Cal. Lab. Code § 2802 provides, in relevant part, that:

18 An employer shall indemnify his or her employee for all necessary expenditures or losses
19 incurred by the employee in direct consequence of the discharge of his or her duties, or of
20 his or her obedience to the directions of the employer, even though unlawful, unless the
21 employee, at the time of obeying the directions, believed them to be unlawful

22 125. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal.
23 Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the
24 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for
25 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of
26 the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to
27 using their personal cellular phones all on behalf of and for the benefit of DEFENDANTS.
28 Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by
DEFENDANTS to use their personal cell phones to execute their essential job duties on behalf of
DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not reimburse

1 PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using
2 their personal cellular phones for DEFENDANTS within the course and scope of their
3 employment for DEFENDANTS. These expenses were necessary to complete their principal job
4 duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of their
5 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
6 members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse
7 PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer
8 is required to do under the laws and regulations of California.

9 126. PLAINTIFF therefore demands reimbursement on behalf of the members of the
10 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and
11 on behalf of DEFENDANTS, or his/her obedience to the directions of DEFENDANTS, with
12 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

13 **NINTH CAUSE OF ACTION**

14 **Wrongful Termination in Violation of Public Policy**

15 **(By PLAINTIFF Against All Defendants)**

16 127. PLAINTIFF realleges and incorporates by reference, as though fully set forth
17 herein, the prior paragraphs of this Complaint.

18 128. In or around October of 2021, and continuing throughout the rest of PLAINTIFF's
19 employment, PLAINTIFF engaged in protected activity by submitting multiple inquiries to
20 DEFENDANTS regarding his wages, including but not limited to, inquiries about what he
21 believed to be unlawful deductions DEFENDANTS made to his wages. Subsequent to
22 PLAINTIFF'S participation in protective activity by inquiring about what he believed to be
23 unlawful deductions made to his wages, DEFENDANT subjected PLAINTIFF to adverse
24 employment actions by retaliating against PLAINTIFF. Specifically, after PLAINTIFF inquired
25 about allegedly unlawful deductions to his wages to DEFENDANTS, DEFENDANT refused to
26 respond to PLAINTIFF'S inquiries and terminated PLAINTIFF'S employment with
27 DEFENDANT in November of 2021. As a result, there is a causal link between the protected
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1 activity and DEFENDANT’S decision to terminate his employment, which is against public
2 policy.

3 129. PLAINTIFF raised the inquiries while he worked for DEFENDANTS and was
4 believed to be willing to raise the inquiries, and DEFENDANTS retaliated against him by taking
5 adverse employment actions, including employment termination, against him.

6 130. As a proximate result of DEFENDANTS’ willful, knowing, and intentional
7 conduct, PLAINTIFF has suffered and continues to suffer humiliation, emotional distress, and
8 mental and physical pain and anguish, all to his damage in a sum according to proof.

9 131. As a result of DEFENDANT’S adverse employment actions against PLAINTIFF,
10 PLAINTIFF has suffered general and special damages in sums according to proof.

11 132. DEFENDANT’S misconduct was committed intentionally, in a malicious,
12 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages against
13 DEFENDANT.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, PLAINTIFF prays for a judgment against each Defendants, jointly and
16 severally, as follows:

- 17 1. On behalf of the CALIFORNIA CLASS:
- 18 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
19 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 20 b. An order temporarily, preliminarily and permanently enjoining and restraining
21 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
- 22 c. An order requiring DEFENDANTS to pay all overtime wages and all sums
23 unlawfully withheld from compensation due to PLAINTIFF and the other members
24 of the CALIFORNIA CLASS; and
- 25 d. Restitutionary disgorgement of DEFENDANTS’ ill-gotten gains into a fluid fund
26 for restitution of the sums incidental to DEFENDANTS’ violations due to
27 PLAINTIFF and to the other members of the CALIFORNIA CLASS.
- 28 2. On behalf of the CALIFORNIA CLASS:

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- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
 - b. Compensatory damages, according to proof at trial, including compensatory damages for minimum wage and overtime compensation, due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;
 - c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
 - d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226
 - e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
3. On behalf of PLAINTIFF for the Ninth cause of action:
- a. Compensatory damages, according to proof at trial, but in excess of \$25,000.
 - b. Special and General damages according to proof;
 - c. Statutory damages, penalties and attorney’s fees;
 - d. For punitive damages in an amount necessary to make an example of and to punish DEFENDANTS and deter DEFENDANTS from engaging in future similar conduct;
 - e. For loss of earnings (both past and future); and,
 - f. For interest at the legal rate in an amount according to proof.

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4. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

DATED: June 3, 2022

ZAKAY LAW GROUP, APLC

By:  _____

Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

DATED: June 3, 2022

ZAKAY LAW GROUP, APLC

By:  _____

Shani O. Zakay
Attorney for PLAINTIFF