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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

DANIEL KNOX, individually on behalf of and
all others similarly situated;

Plaintiff,

vs.

PLANET FITNESS, INC.; PF CHULA VISTA
LLC; PF EL CENTRO LLC; PF LAKESIDE
LLC; PF UNIVERSITY AVENUE LLC; PF
EUCLID LLC; PF NATIONAL CITY LLC;
PF NATIONAL CITY II LLC; PF OTAY
RANCH LLC; PF SORRENTO LLC; and
DOES 1 through 250;

Defendants.

Case No. 37-2019-00043225-CU-OE-CTL

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay All Wages
2. Failure to Pay Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Failure to Provide Accurate Itemized Wage Statements
6. Waiting Time Penalties
7. Failure to Reimburse Business Expenses
8. Unfair Business Practices
9. Enforcement of the Private Attorneys General Act of 2004

Judge: Hon. Carolyn Caietti
Dept.: C-70
Action Filed: August 16, 2019

1 Plaintiff DANIEL KNOX (“Plaintiff”), individually, on behalf of all others similarly situated,
2 and as a proxy of the State of California under the Labor Code Private Attorneys General Act of 2004
3 (“PAGA”), hereby submits this SECOND AMENDED CLASS AND REPRESENTATIVE ACTION
4 COMPLAINT (“Complaint”) against Defendants PLANET FITNESS, INC.; PF CHULA VISTA
5 LLC; PF EL CENTRO LLC; PF LAKESIDE LLC; PF UNIVERSITY AVENUE LLC; PF EUCLID
6 LLC; PF NATIONAL CITY LLC; PF NATIONAL CITY II LLC; PF OTAY RANCH LLC; PF
7 SORRENTO LLC; and DOES 1 through 250 (collectively, “Defendants”), and, on information and
8 belief, alleges as follows:

9 **SUMMARY OF THE CASE**

10 1. This is a wage and hour class and representative action. Plaintiffs allege Defendants
11 maintained a policy and practice of calling Plaintiff and Class Members in to work, off-the-clock, to
12 complete onboarding and new hire paperwork at the worksite without pay before their first day of paid
13 work; requiring Plaintiff and Class Members to complete online Planet Fitness University and CPR
14 training off-the-clock from home without pay and without reimbursement for using personal devices
15 and internet to complete such training; failing to pay overtime for time worked in excess of 8 hours on
16 a work shift for overnight shift employees or during times when employees worked “off the clock”;
17 automatically deducting 30-minutes of time for meal periods not actually taken by employees,
18 resulting in an underpayment of wages; failure to pay minimum wage for all hours worked; requiring
19 employees to work through their meal periods pursuant to an unlawful and invalid on-duty meal period
20 agreement; providing untimely, late, short and interrupted meal periods and failing to provide meal
21 period premiums in lieu of a compliant meal period; failing to provide rest periods or rest period
22 premiums in lieu of a compliant rest period; and failing to maintain and provide accurate itemized
23 wage statements. As a result, Defendants are liable for the unpaid wages, premiums, reimbursements,
24 and penalties, as well as attorneys’ fees and costs.

25 2. Defendants, as a common and systematic policy and practice, have violated the
26 California Labor Code, Industrial Welfare Commission Wage Orders and California Business and
27 Professions Code, causing substantial losses to Plaintiff and Class Members. Now comes Plaintiff, a
28 former employee of Defendants, who has retained counsel to prosecute this action against Defendants

1 and to recover all damages, monetary relief, wages, premiums, liquidated damages, reimbursements,
2 restitution, and statutory and civil penalties, along with attorneys' fees and costs and on behalf of the
3 Class Members.

4 3. Plaintiff gave written notice of the claims in this Complaint to Defendants and to the
5 California Labor and Workforce Development Agency ("LWDA"), seeking intervention. As there
6 has been no LWDA intervention within 65 days of that original notice or subsequent notices, Plaintiff
7 asserts in this amended Complaint claims for civil penalties as a representative "aggrieved employee"
8 for and on behalf of all other aggrieved employees and the State of California in a representative
9 capacity under the California Private Attorneys General Act of 2004 ("PAGA").

10 **JURISDICTION AND VENUE**

11 4. Jurisdiction of this action is proper in the Superior Court of California under Article VI,
12 § 10 of the California Constitution. The monetary damages, restitution, penalties and other amounts
13 sought in this Complaint exceed the minimal jurisdictional limits of this Court. Defendants have
14 sufficient minimum contacts in California or otherwise intentionally avail themselves of the California
15 market, thus rendering them subject to the jurisdiction of this Court in accordance with traditional
16 notions of fair play and substantial justice. Plaintiff's claims arise under California law.

17 5. Venue as to Defendants is proper in this judicial district under Code of Civil Procedure
18 § 395(a) and 395.5 because at least some of the acts and omissions complained of in this Complaint
19 occurred in this county. Defendants either own, maintain offices, transact business, or have an agent
20 or agents within this county.

21 6. Plaintiff is informed and believes, and thereon alleges, that more than two-thirds of the
22 proposed Class Members are citizens of California; that the principal injuries resulting from
23 Defendants' alleged conduct were incurred in California; and that no class action asserting the same
24 factual allegations has been filed against Defendants in the preceding three years. Plaintiff is informed
25 and believes, and thereon alleges, that at least one Defendant is a California citizen whose alleged
26 conduct forms a significant basis for the claims asserted and relief sought by Plaintiff on behalf of the
27 proposed Class Members.

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THE PARTIES

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2 7. Plaintiff DANIEL KNOX is a California resident who worked for Defendants in
3 California as an hourly, non-exempt employee until the termination of his employment on
4 April 29, 2019. Plaintiff worked as a Front Desk Associate in Defendants’ Chula Vista location, which
5 is organized as PF CHULA VISTA, LLC. At all relevant times, he was entitled to all the protections
6 of California’s employment laws.

7 8. Defendant PLANET FITNESS, INC. is a Delaware corporation that does business
8 throughout California, including San Diego County. Plaintiff is informed and believes, and thereon
9 alleges, that PLANET FITNESS, INC. is an agent, and/or franchisor of the other Defendants and a
10 legal employer of Plaintiff and Class Members. Defendant PF CHULA VISTA LLC is a limited
11 liability company that does business throughout California, including San Diego County. Plaintiff is
12 informed and believes, and thereon alleges, that PF CHULA VISTA LLC is a legal employer of
13 Plaintiff and Class Members.

14 9. Defendant PF EL CENTRO LLC is a limited liability company that does business
15 throughout California, including San Diego County. Plaintiff is informed and believes, and thereon
16 alleges, that PF EL CENTRO LLC is a legal employer of Plaintiff and Class Members.

17 10. Defendant PF LAKESIDE LLC is a limited liability company that does business
18 throughout California, including San Diego County. Plaintiff is informed and believes, and thereon
19 alleges, that PF LAKESIDE LLC is a legal employer of Plaintiff and Class Members.

20 11. Defendant UNIVERSITY AVENUE LLC is a limited liability company that does
21 business throughout California, including San Diego County. Plaintiff is informed and believes, and
22 thereon alleges, that PF UNIVERSITY AVENUE LLC is a legal employer of Plaintiff and Class
23 Members.

24 12. Defendant PF EUCLID LLC is a limited liability company that does business
25 throughout California, including San Diego County. Plaintiff is informed and believes, and thereon
26 alleges, that PF EUCLID LLC is a legal employer of Plaintiff and Class Members.

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1 13. Defendant PF NATIONAL CITY LLC is a limited liability company that does business
2 throughout California, including San Diego County. Plaintiff is informed and believes, and thereon
3 alleges, that PF NATIONAL CITY LLC is a legal employer of Plaintiff and Class Members.

4 14. Defendant NATIONAL CITY II LLC is a limited liability company that does business
5 throughout California, including San Diego County. Plaintiff is informed and believes, and thereon
6 alleges, that PF NATIONAL CITY II LLC is a legal employer of Plaintiff and Class Members.

7 15. Defendant PF OTAY RANCH LLC is a limited liability company that does business
8 throughout California, including San Diego County. Plaintiff is informed and believes, and thereon
9 alleges, that PF OTAY RANCH LLC is a legal employer of Plaintiff and Class Members.

10 16. Defendant PF SORRENTO LLC is a limited liability company that does business
11 throughout California, including San Diego County. Plaintiff is informed and believes, and thereon
12 alleges, that PF SORRENTO LLC is a legal employer of Plaintiff and Class Members.

13 17. Plaintiff is informed and believes, and thereon alleges, that each Defendant acted in
14 relation to this action as the agent of the other Defendants, carried out in a joint venture, scheme, plan
15 or policy, and that the acts of each Defendant are legally attributable to all others. Furthermore,
16 Plaintiff alleges each Defendant in all respects acted as the employer and/or joint employer of Plaintiff
17 and the Class Members.

18 18. Plaintiff is informed and believes, and thereon alleges, that each Defendant directly or
19 indirectly, through agents or other persons or entities, employed or otherwise exercised control over
20 the wages, hours, and working conditions of Plaintiff. Plaintiff further alleges that each Defendant
21 acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint
22 venturer, co-conspirator, partner, within a common integrated enterprise, or other liable affiliate of all
23 other Defendants.

24 19. Defendant DOES 1 through 250 (“DOES”), are sued under fictitious names pursuant
25 to Code of Civil Procedure § 474 because Plaintiff does not know their true names or capacities. On
26 information and belief, Plaintiff alleges that DOES 1 through 250 are liable based on the allegations
27 set forth in this Complaint and proximately caused Plaintiff and other current and former employees
28 harm as a result of their acts and omissions. Plaintiff will seek leave of court to amend this Complaint

1 if and when the true names and capacities are ascertained. Specifically, Plaintiff is informed and
2 believes, and thereon alleges, that Defendants own and operate other Planet Fitness locations
3 throughout California that maintain common payroll and employment policies and practices.

4 20. Plaintiff is informed and believes, and thereon alleges that at all times mentioned in
5 this Complaint, Defendants were and are subject to the California Labor Code and Industrial Welfare
6 Commission Wage Orders (“IWC Wage Orders”) as employers of individuals who were and currently
7 are engaged as employees throughout this county and the State of California.

8 **FACTUAL ALLEGATIONS**

9 21. ***Background.*** At all relevant times mentioned herein, Defendants employed Plaintiff
10 and other persons as non-exempt employees throughout California. Plaintiff was subject to all of the
11 protections of California law during his employment with Defendants. Defendants continue to employ
12 non-exempt employees within California or who are otherwise subject to the protections of California
13 law.

14 22. Plaintiff worked as a Front Desk Associate for Defendants at the Chula Vista location.
15 He earned \$12.00 per hour. His job duties included greeting and checking in guests, answering phone
16 calls, maintaining records, resolving customer concerns, cleaning the gym and customer areas, and
17 advising on billing issues, among other things.

18 23. Plaintiff is informed and believes, and thereon alleges, that at all times herein
19 mentioned, Defendants were advised by skilled management, employees, lawyers, and other
20 professionals who were knowledgeable about California wage and hour and employment laws that
21 applied to Plaintiff and Class Members.

22 24. ***Unpaid Wages.*** Plaintiff is informed and believes, and thereon alleges, that Defendants
23 knew or should have known that Plaintiff and Class Members were entitled to receive at least minimum
24 wages and that they were not receiving minimum wages for all work that was required to be performed.
25 In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class Members were not paid at
26 least minimum wage for *all* hours worked or for work performed off-the-clock due to the work
27 demands and policies of Defendants. Specifically, Defendants required Plaintiff and the Class
28 Members to do the following without compensation: (1) report to Defendants’ worksites (post-hire,

1 but before the first shift) to review and sign Defendants' employment policies and agreements and
2 new hire paperwork, (2) complete online CPR certification (post-hire, but before the first shift),
3 (3) memorize tour scripts prior to their first shift, (4) complete numerous online training modules and
4 quizzes post-hire and throughout their employment, and (5) work during meal periods.

5 25. First, after receiving and accepting an offer of employment, Plaintiff and the other Class
6 Members were required to appear at their assigned worksite to review and sign Defendants'
7 employment policies and agreements and complete new hire paperwork, including but not limited to
8 timekeeping policies, on-duty meal period agreement, job description, schedule, employee handbook,
9 various notices and forms, etc. Plaintiff is informed and believes that he and the Class Members could
10 not work their first shift or enter hours worked into the timekeeping system until their new hire
11 paperwork/policies were processed by a central human resources team known as Human Resources.
12 Reporting to the worksite post-hire to review and complete Defendants' policies and forms was not
13 voluntary.

14 26. Second, Defendants required Plaintiff and the Class Members to be CPR certified
15 before their first shift. If an employee did not already have CPR certification at the time they applied
16 for a job, Defendants provided them with a web link to obtain a certification online. This occurred
17 after each person had accepted employment with Defendants. Defendants required the certification
18 certificate to be submitted prior to the first shift, but did not compensate employees for the time they
19 spent obtaining the certification.

20 27. Third, Defendants required Plaintiff and other Class Members to study and memorize
21 Planet Fitness scripts and complete Planet Fitness online training through PLANET FITNESS
22 UNIVERSITY ("PFU"), both without compensation. After hire, Defendants provided Planet Fitness
23 scripts (an "info call script" and "tour script") that each employee was required to memorize at home,
24 without compensation. It was Defendants practice to test employees during their first shift and/or
25 other times within the first two weeks of their employment. Defendants also provided Plaintiff and
26 other Class Members with each of their login information (username and password) for PFU and
27 instructed them to complete numerous mandatory trainings within the first two weeks of employment
28 (and at various times during their employment). As part of PFU, Plaintiff and other Class Members

1 were required to watch Planet Fitness training videos and complete the corresponding quizzes with a
2 certain degree of accuracy. Plaintiff and Class Members were not compensated for the time they spent
3 completing the mandatory and time-consuming PFU trainings because they were not provided with
4 adequate time and resources (*i.e.*, relief from other work duties and access to a computer) to complete
5 the training during work hours and/or were instructed that Defendants required them to complete the
6 trainings off-the-clock away from the workplace. Defendants were aware that employees were
7 completing PFU at home off-the-clock.

8 28. Fourth, during times when employees clocked out for a meal period, they were required
9 to work or were interrupted such that they did not receive a duty-free meal period of 30 minutes.
10 Employees were not compensated for these hours worked. At the end of the workday, employees who
11 had not taken any meal period or a timely meal period were instructed to complete a time card
12 correction form indicating that the employee took a timely, 30-minute meal period. The time card
13 correction form was then submitted to Human Resources so that employees' time records could be
14 altered.

15 29. Plaintiff and certain other Class Members also worked consecutive overnight shifts on
16 certain occasions without receiving a split-shift premium each shift their daily schedule was split
17 between two shifts in violation of the California Labor Code and section 4 of the IWC Wage Orders.
18 Because Plaintiff and certain other Class Members did not receive split shift premiums at the lawful
19 rate, those split shift premiums were not factored into or included in the regular rate of pay or
20 compensation for overtime, meal and rest period premiums and other amounts.

21 30. ***Unpaid Wages (On-Duty Meal Period Agreement)***. Additionally, Defendants
22 required Plaintiff and Class Members to sign an "ON-DUTY MEAL PERIOD AGREEMENT" which
23 stated:

- 24
- 25 • "[T]he nature of Employee's work prevents Employee from being relieved of all
26 duties during Employee's meal period."
 - 27 • "Employer and Employee agree that Employee will be "on duty" and paid for
28 working during the meal period."

1 31. Despite this unlawful ON-DUTY MEAL PERIOD AGREEMENT, prepared by
2 Defendants and presented to Plaintiff and Class Members on a take-it-or-leave it basis, Plaintiff was
3 not paid for working through his meal periods at the minimum wage. Instead, and despite the ON-
4 DUTY MEAL PERIOD AGREEMENT, Defendants would require Plaintiff and Class Members
5 record their meal period and remain on-duty, yet not receive compensation for such time as promised
6 in the ON-DUTY MEAL PERIOD AGREEMENT and as required by the California Labor Code.
7 Plaintiff alleges that the ON-DUTY MEAL PERIOD AGREEMENT, which Defendants required
8 Plaintiff and Class Members to sign, is invalid and unlawful because the nature of the work did *not*
9 prevent Plaintiff and Class Members from being relieved of all duty and Defendants did *not* pay
10 Plaintiff or Class Members at the lawful minimum wage or at the “regular rate of pay”—the rate which
11 Defendants state in their Employee Handbooks (p. 8) it will pay Plaintiff and Class Members for “on
12 duty” meal periods.

13 32. Plaintiff earned less than the required minimum wage for all hours worked each pay
14 period due to the off-the-clock work demands and off-the-clock work of Defendants.

15 33. ***Unpaid Overtime.*** Plaintiff is informed and believes, and thereon alleges, that
16 Defendants knew or should have known that Plaintiff and Class Members were entitled to be paid
17 overtime for all overtime hours worked. In violation of the Labor Code and IWC Wage Orders,
18 Plaintiff and Class Members were not paid at their lawful overtime rate for all overtime hours for work
19 performed off-the-clock.

20 34. For example, Plaintiff and Class Members routinely worked more than 8 hours in a day
21 and, on information and belief, more than 40 hours in a workweek without receiving payment at the
22 lawful overtime rate (i.e., time and a half or double-time). Plaintiff is informed and believes, and
23 thereon alleges, that Defendants would short him and his fellow Class Members on overtime pay, pay
24 the incorrect overtime rate, not accurately track their overtime hours worked, not accurately calculate,
25 credit, or allocate hours over the appropriate workday, or otherwise fail to pay all overtime pay for all
26 overtime hours actually worked. Underpayment of overtime also occurred as a result of Plaintiff and
27 his co-workers’ uncompensated off-the-clock work during training, meal and rest periods, and on other
28 occasions where Plaintiff worked overtime hours but did not receive full overtime pay. As a result,

1 Plaintiff and his fellow Class Members were not paid all of their overtime wages based on the lawful
2 regular rate. Because Defendants failed to provide Plaintiff and other Class Members with wage
3 statements or records, the extent of Defendants' overtime wage violations will have to be further
4 uncovered in discovery.

5 35. Plaintiff and Class Members worked unpaid overtime each pay period in which they
6 had an on-duty meal period that went unpaid pursuant to the ON-DUTY MEAL PERIOD
7 AGREEMENT and Defendants' concurrent practice of requiring Plaintiff and Class Members to clock
8 out for meal periods and each pay period in which Plaintiff and Class Members were required to
9 complete training through PLANET FITNESS UNIVERSITY.

10 36. Further, Defendants paid overtime based only on hours worked in a calendar day of
11 12:00 a.m. to 11:59 p.m., rather than based on the actual shift length. So, if an employee works
12 overnight (before and after midnight), then their hours were effectively split into two separate days.
13 In turn, the employee can work 9 total hours (5 before midnight and 4 after midnight) and not earn
14 any overtime pay for that shift.

15 37. ***Meal Period Violations.*** Plaintiff is informed and believes, and thereon alleges, that
16 Defendants knew or should have known that Plaintiff and Class Members were entitled to receive all
17 meal periods or payment of one additional hour of pay at their respective regular rate of
18 pay/compensation when they did not receive a timely, fully-compliant and uninterrupted meal period.
19 In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class Members did not receive
20 all meal periods or payment of one additional hour of pay at their respective regular rate of
21 pay/compensation when they missed or received non-compliant meal periods (i.e., untimely, short or
22 interrupted).

23 38. Specifically, Plaintiff alleges that Defendants knew or should have known that Plaintiff
24 and Class Members regularly missed or had their meal periods provided late, cut short or interrupted
25 as a result of Defendants' common employment policies and practices. Defendants' common actions,
26 choices, and desire to cut down on labor costs effectively deprived Plaintiff and Class Members of the
27 opportunity to take fully compliant meal periods on a regular basis. On those occasions, Defendants
28 failed to pay a meal period premium to Plaintiff and Class Members. To the extent any meal period

1 premiums were provided to Plaintiff and Class Members for a deficient meal period, the premiums
2 were not paid based on the regular rate applicable to Plaintiff and Class Members.

3 39. Defendants did not maintain a lawful meal period waiver policy. Instead, Defendants
4 maintained an unlawful ON-DUTY MEAL PERIOD AGREEMENT that did not reflect reality
5 because the nature of the work did not actually preclude Plaintiff or Class Members from being
6 relieved of all duties. And although the “ON-DUTY MEAL PERIOD AGREEMENT stated that
7 Plaintiff and Class Members would be paid for such hours worked, they were not. Defendants were
8 required to pay a meal period premium of one hour at each employee’s regular rate of compensation
9 but failed to do so. As a result, Plaintiff and Class Members were underpaid and deprived of meal
10 period premiums at the lawful rate.

11 40. Defendants maintained a common policy and practice of not paying meal period
12 premiums to Plaintiff and Class Members for non-compliant meal periods, including meal periods that
13 were taken pursuant to the invalid ON-DUTY MEAL PERIOD AGREEMENT.

14 41. ***Rest Period Violations.*** Plaintiff is informed and believes, and thereon alleges, that
15 Defendants knew or should have known that Plaintiff and Class Members were entitled to receive all
16 rest breaks or payment of one additional hour of pay at their respective regular rate of
17 pay/compensation when they did not receive a timely, fully compliant uninterrupted rest period. In
18 violation of the Labor Code and IWC Wage Orders, Plaintiff and Class Members did not receive all
19 rest breaks or payment of one additional hour of pay at their respective regular rate of
20 pay/compensation when they missed or received non-complaint rest periods (i.e., short or interrupted).

21 42. Specifically, Plaintiff alleges that Defendants knew or should have known that Plaintiff
22 and Class Members regularly missed or had their rest periods cut short or interrupted as a result of
23 Defendants’ common employment policies and practices. Defendants’ demands and lack of any
24 meaningful oversight or employment policies and practices effectively deprived Plaintiff and Class
25 Members of the opportunity to take fully compliant rest periods on a regular basis. On those occasions,
26 Defendants failed to pay a rest period premium to Plaintiff and Class Members. To the extent any rest
27 period premiums were provided to Plaintiff and Class Members for a deficient rest period, the
28 premiums were not paid based on the regular rate applicable to Plaintiff and Class Members. As a

1 result, Plaintiff and Class Members were underpaid and deprived of rest period premiums at the lawful
2 rate.

3 43. Defendants maintained a common policy and practice of not paying rest period
4 premiums to Plaintiff and Class Members for non-compliant rest periods.

5 44. ***Wages Upon Separation.*** Plaintiff is informed and believes, and thereon alleges, that
6 Defendants knew or should have known that Plaintiff and Class Members who left their employment
7 with Defendants during the relevant statutory period were entitled to timely payment of all wages due
8 upon separation. In violation of the Labor Code, Plaintiff and those Class Members did not receive
9 payment of all wages owed upon separation within the permissible time period because of Defendants'
10 policies and practices which underpaid wages and premiums to Plaintiff and Class Members
11 throughout their employment.

12 45. Specifically, Plaintiff alleges that Defendants knew or should have known that Plaintiff
13 and Class Members were being shorted on their wages during their employment, including meal and
14 rest period premiums and unpaid wages based on the unpaid onboarding and PLANET FITNESS
15 UNIVERSITY training time, unpaid meal periods pursuant to the ON-DUTY MEAL PERIOD
16 AGREEMENT, and Defendants' practice of not paying overtime to employees who worked overnight.
17 Plaintiff and Class Members were not paid all wages or premiums owed to them each pay period as a
18 result of Defendants' systemic employment violations. Plaintiff and, on information and belief, other
19 Class Members notified Defendants of their defective payroll policies and unlawful failure to pay all
20 wages owed, but Defendants failed to take meaningful action to ensure that all amounts owed were in
21 fact paid. Plaintiff did not receive his final paycheck upon separation and the amount eventually paid
22 did not include the full balance owed. Plaintiff is informed and believes, and thereon alleges, that
23 Defendants maintained noncompliant common payroll practices that naturally resulted in systemic
24 untimely payment of wages upon separation.

25 46. As a result, Plaintiff and other Class Members were not paid all wages owed upon
26 separation of employment. Plaintiff and other Class Members did not receive a final wage statement
27 upon termination of their employment. Defendants are liable for waiting time penalties for each
28 employee who separated from employing during the relevant statutory period.

1 47. ***Wage Statement Violations.*** Plaintiff is informed and believes, and thereon alleges
2 that Defendants knew or should have known that Plaintiff and Class Members were entitled to receive
3 complete and accurate wage statements. In violation of the Labor Code and IWC Wage Orders,
4 Plaintiff and Class Members were not furnished with complete and accurate wage statements that show
5 all of the information required by Labor Code sections 226 or 246.

6 48. Plaintiff alleges that the wage statements inaccurately and incompletely state the gross
7 and net wages earned, the total hours worked, the name and address of the legal employers, all hourly
8 rates in effect and the total number of hours worked at each rate during the pay period and all paid
9 sick leave information required by Labor Code section 246.

10 49. Plaintiff is informed and believes, and thereon alleges, that these wage statement
11 violations are the result of Defendants' failure to pay wages and premiums when owed (rendering the
12 wage statements inaccurate) and Defendants' failure to accurately list all required information.

13 50. These knowing and intentional wage statement violations are significant because they
14 sowed confusion among Plaintiff and, on information and belief, other Class Members with respect to
15 what amounts were owed and when those amounts were due. As a result of the wage statement
16 violations, Defendants have been able to avoid liability, until now, for the wage violations set forth in
17 this Complaint.

18 51. ***Unreimbursed Expenses.*** Plaintiff is informed and believes, and thereon alleges, that
19 Defendants knew or should have known that Plaintiff and Class Members were entitled to receive
20 reimbursement for their work-related business expenses because they were aware that employees were
21 incurring work-related expenses as a result of Defendants' work-related requirements. In violation of
22 the Labor Code and IWC Wage Orders, Plaintiff and Class Members were not reimbursed for all
23 expenses necessarily incurred in the direct discharge of their employment with Defendants.

24 52. Defendants knew or should have known that Plaintiff and other Class Members used
25 their personal cell phones, laptops, home internet and other communications devices to complete
26 online CPR certification through the weblink provided by Defendants as well as training through
27 PLANET FITNESS UNIVERSITY, which was repeatedly accessed by employees using the login
28 credentials provided by Defendants. Defendants managers also conducted "audits" to ensure that

1 employees were meeting the PFU training completion deadlines, otherwise employees would be
2 disciplined. Defendants knew or should have known that their employees were required to pay for the
3 online CPR certification training. Defendants did not reimburse Plaintiff and Class Members and
4 failed to provide a mechanism for reimbursement of those associated work-related costs.

5 53. ***Intentional Violations.*** Plaintiff is informed and believes, and thereon alleges, that
6 Defendants, jointly and severally, have acted knowingly, intentionally and with deliberate indifference
7 and conscious disregard to the rights of Plaintiff and Class Members. Defendants did not reimburse
8 Plaintiff and Class Members or and failed to provide a mechanism for reimbursement of those
9 associated work-related costs.

10 54. ***Systemic and Continuing Violations.*** Plaintiff is informed and believes, and thereon
11 alleges, that Defendants have engaged in systemic violations of the Labor Code and IWC Wage Orders
12 by creating and maintaining policies, practices and customs that knowingly deny Plaintiff and Class
13 Members of their employment rights. Plaintiff is informed and believes, and thereon alleges, that all
14 violations are ongoing.

15 **CLASS ALLEGATIONS**

16 55. ***Class Period.*** The class period shall be defined to cover, at a minimum, the time period
17 beginning four years before the filing of the original complaint in this matter, through final judgment,
18 plus any and all additional time periods that should be added by way of equitable tolling, statutory
19 tolling, the discovery rule, or any other doctrine that would toll, delay, or stop the running of the usual
20 statutes of limitations (the "Class Period").

21 56. ***Class Definition.*** Plaintiff seeks class certification, pursuant to Code of Civil
22 Procedure section 382 on behalf of all California citizens currently or formerly employed by
23 Defendants as non-exempt employees in California within the Class Period (the "Class" or
24 "Class Members"). Plaintiff further seeks to represent the following subclasses:

25 (a) ***PFU Subclass.*** All current and former non-exempt employees who worked for
26 Defendants in California during the Class Period, who were required to complete Planet
27 Fitness University training online, and were not compensated for the time they spent
28 completing the training ("PFU Subclass").

- 1 (b) ***New Hire Subclass***. All current and former non-exempt employees who worked for
2 Defendants in California during the Class Period, who after they were hired were
3 required to review and complete new hire paperwork and employment policies, and
4 were not compensated for the time they spent reviewing and completing the paperwork
5 (“New Hire Subclass”).
- 6 (c) ***Minimum Wage Subclass***. All current and former non-exempt employees who worked
7 for Defendants in California during the Class Period to whom Defendants failed to pay
8 the required minimum wage (“Minimum Wage Subclass”).
- 9 (d) ***Meal Period Subclass***. All current and former non-exempt employees who worked for
10 Defendants in California during the Class Period, and who worked at least one shift
11 longer than five hours in a workday, to whom Defendants failed to provide the legally
12 requisite meal periods (“Meal Period Subclass”).
- 13 (e) ***Rest Period Subclass***. All current and former non-exempt employees who worked for
14 Defendants in California during the Class Period, and who worked at least one shift
15 longer than three and a half hours in a workday, to whom Defendants failed to provide
16 the legally requisite rest periods (“Rest Period Subclass”).
- 17 (f) ***Overtime Subclass***. All current and former non-exempt employees who worked for
18 Defendants in California during the Class Period, and who worked at least one shift
19 longer than eight hours in a workday and/or worked more than 40 hours during the
20 workweek, and to whom Defendants failed to pay the overtime minimum wages
21 (“Overtime Subclass”).
- 22 (g) ***Reimbursement Subclass***. All current and former non-exempt employees who worked
23 for Defendants in California during the Class Period, incurred necessary and reasonable
24 expenses in connection with performing their job duties, and were subject to a policy
25 and/or practice under which such expenses were not reimbursed (“Reimbursement
26 Subclass”).
- 27 (h) ***Waiting Time Subclass***. All current and former non-exempt employees who worked
28 for Defendants in California during the Class Period, who separated from their

1 employment with Defendants at any time within three years prior to the filing of this
2 action to resolution of this action and who did not receive payment of all unpaid wages
3 upon separation of employment withing their statutory time period, including
4 paychecks for their final period worked (“Waiting Time Subclass”).

5 (i) ***Inaccurate Wage Statement Subclass***. All current and former non-exempt employees
6 who worked for Defendants in California during the Class Period, who received
7 inaccurate wage statements from Defendants. (“Inaccurate Wage Statement
8 Subclass”).

9 (j) ***UCL Subclass***. All current and former non-exempt employees who worked for
10 Defendants in California during the Class Period, who are owed restitution as a result
11 of Defendants’ business acts and practices, to the extent such acts and practices are
12 found to be unlawful, deceptive, and/or unfair.

13 57. Plaintiff reserves the right to modify or redefine the Class, establish additional
14 subclasses, or modify or re-define any class or subclass definition as appropriate based on
15 investigation, discovery, and specific theories of liability.

16 58. ***Numerosity/Ascertainability***. The members of the Class are so numerous that joinder
17 of all Class Members would be impractical. Although the members of the entire Class and Subclass
18 are unknown to Plaintiff at this time, Plaintiff is informed and believes, and thereon alleges, that the
19 class is estimated to be greater than 40 individuals. The identity of the Class Members is currently
20 unknown to Plaintiff; however, the identities of the Class Members are readily ascertainable from
21 Defendants’ employment and payroll records.

22 59. ***Typicality***. The claims of Plaintiff are typical of the claims of all Class Members in
23 that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner as the Class
24 Members because of Defendants’ failure to comply with the provisions of California wage and hour
25 laws, which entitled Plaintiff and Class Members to similar employment rights, pay requirements, and
26 other legal protections. Defendants have committed the same or similar labor violations against
27 Plaintiff and the Class Members. The injuries sustained by Plaintiff are also typical of the injuries

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1 sustained by the Class Members because they arise out of and are caused by Defendants' common
2 unlawful employment and payroll policies, practice, conduct, and customs.

3 60. **Adequacy.** Plaintiff is fully prepared to take all necessary steps to fairly and adequately
4 represent the interests of the Class. Plaintiff's attorneys are ready, willing and able to fully and
5 adequately represent Plaintiff and the Class Members. Plaintiff's attorneys have prosecuted and
6 defended wage and hour class actions in state and federal courts and are committed to vigorously
7 prosecuting this action.

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

12 62. **Public Policy.** Employment and labor law violations in California are violated every
13 day. Current employees are often afraid to assert their rights out of fear of direct or indirect
14 retaliation. Former employees are fearful of bringing actions because they believe their former
15 employers might damage their future endeavors through negative references and through other
16 means. Many California employees simply do not know their employment rights and rely on their
17 employer to get it right. A class action provides the Class Members who are not named in the
18 Complaint with a type of anonymity that allows for the vindication of their rights while also protecting
19 their privacy.

20 63. **Commonality.** There are common questions of law and fact as to the Class which
21 predominate over questions affecting only individual Class Members, thus creating a well-defined
22 community of interest. Plaintiff and Class Members have suffered their common injuries as a result
23 of Defendants' systemic employment policies and practices. Looking to Defendants' employment
24 policies and practices, the Court can adjudicate the lawfulness of those policies and practices on a
25 class-wide basis, according to proof, and issue an award to Plaintiff and Class Members accordingly.
26 Answers to the common questions raised in this Complaint will advance resolution of each individual
27 proposed Class Member's claims.

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FIRST CAUSE OF ACTION
FAILURE TO PAY ALL WAGES
(AGAINST ALL DEFENDANTS)

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2
3
4 64. Plaintiff incorporates in this cause of action all paragraphs outside this section with the
5 same force and effect as if fully set forth herein.

6 65. At all times herein relevant, Defendants had a duty to comply with Labor Code sections
7 204, 1182.12, 1194, 1194.2, 1197, 1198, the applicable IWC Wage Orders, and all applicable local
8 minimum wage ordinances in effect throughout California.

9 66. Labor Code section 204 and the IWC Wage Orders require timely payment of all wages
10 owed on regularly scheduled paydays at least twice during each calendar month, on days designated
11 in advance by the employer as the regular paydays. All wages earned in excess of the normal work
12 period must be paid no later than the payday for the next regular payroll period.

13 67. The IWC Wage Orders define “hours worked” as “the time during which an employee
14 is subject to the control of an employer and includes all time the employee is suffered or permitted to
15 work, whether or not required to do so.”

16 68. Labor Code section 1182.12 sets forth the minimum hourly wage that must be paid to
17 all employees in California for all hours worked. Local minimum wage ordinances, including but not
18 limited to San Diego Municipal Code section 39.0107, provide for higher minimum wage rates that
19 must be paid to employees for all hours worked in those locales where each local ordinance is in effect.
20 Labor Code section 1197 affirms that it is unlawful to pay less than the state or local minimum wage,
21 whichever is higher, for any hour of work.

22 69. Labor Code section 1194 requires that employers pay employees at least the legal
23 minimum wage rate for all hours worked, notwithstanding any agreement to work for a lesser wage.
24 Labor Code section 1194 further authorizes any employee receiving less than the legal minimum wage
25 applicable to the employee to recover in a civil action the unpaid balance of the full amount of wages,
26 along with interest thereon, reasonable attorneys’ fees and costs of suit.

27 70. Labor Code section 1194.2 authorizes the recovery of liquidated damages in an amount
28 equal to the wages unlawfully unpaid and interest thereon for unpaid wage violations.

1 71. Labor Code section 1198 prohibits employers from employing for longer hours or less
2 favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise set by
3 the Labor Commissioner.

4 72. As a direct and proximate result of Defendants' failure to pay Plaintiff and Class
5 Members in the Minimum Wage Subclass, the PFU Subclass, and the New Hire Subclass in
6 accordance with Labor Code sections 204, 1182.12, 1194, 1194.2, 1197, 1198, 2751, the applicable
7 IWC Wage Orders, and all applicable local minimum wage ordinances in effect throughout California,
8 Plaintiff and Class Members in the Minimum Wage Subclass, the PFU Subclass, and the New Hire
9 Subclass are entitled to recover the full amount of unpaid wages, liquidated damages, prejudgment
10 interest, and statutory penalties, along with attorneys' fees and costs in amounts that will be established
11 at trial.

12 **SECOND CAUSE OF ACTION**
13 **FAILURE TO PAY OVERTIME WAGES**
14 **(AGAINST ALL DEFENDANTS)**

15 73. Plaintiff incorporates in this cause of action all paragraphs outside this section with the
16 same force and effect as if fully set forth herein.

17 74. At all relevant times, Defendants had a duty to comply with Labor Code sections 204,
18 510, 558, 1194 and 1198 and the applicable IWC Wage Orders.

19 75. Labor Code section 204 and the IWC Wage Orders require timely payment of all wages
20 owed, including overtime, on regularly scheduled paydays at least twice during each calendar month,
21 on days designated in advance by the employer as the regular paydays. All wages in excess
22 of the normal work period must be paid no later than the payday for the next regular payroll period.

23 76. Labor Code section 510 and the IWC Wage Orders require that employers pay
24 employees for all overtime hours at a rate of one and one-half times the employee's regular rate of pay
25 for hours worked in excess of eight hours in one workday, 40 hours in one workweek, and after the
26 first eight hours on the seventh consecutive workday in one work week. Labor Code section 510 and
27 the IWC Wage Orders further require that employers pay employees double their regular rate of pay
28 for hours work in excess of 12 hours in a workday and after eight hours on the seventh consecutive

1 workday in one workweek. Labor Code section 510 requires payment of overtime wages at the
2 “regular rate of pay,” which includes all forms of remuneration earned by the employee, including
3 wages, commissions, bonuses, and other incentive pay earned by the employee.

4 77. Labor Code section 558, which applies to any provision of the Labor Code or IWC
5 Wage Orders regulating hours and days of work, entitles an employee to recover from an employer all
6 penalties and amounts sufficient to recover the underpaid wages. Labor Code section 558(a)(3)
7 provides that wages recovered pursuant to this section “shall be paid to the affected employee.”

8 78. Labor Code section 1194 requires that employers pay employees at least the legal
9 overtime rate for all overtime hours worked, notwithstanding any agreement to work for a lesser wage.
10 Labor Code section 1194 further authorizes any employee receiving less than the legal overtime
11 compensation applicable to the employee to recover in a civil action the unpaid balance of the full
12 amount of overtime compensation, along with interest thereon, reasonable attorneys’ fees and costs of
13 suit.

14 79. Labor Code section 1198 prohibits employers from employing for longer hours or less
15 favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise set by
16 the Labor Commissioner.

17 80. To the extent Defendants claim to have implemented an Alternative Workweek
18 Schedule, the schedule is invalid for failing to comply with the requirements and registrations required
19 by Labor Code section 511.

20 81. As a direct and proximate result of Defendants’ failure to pay overtime to Plaintiff and
21 Class Members in the Overtime Subclass in accordance with Labor Code sections 204, 510, 511, 558,
22 1194 and 1198 and the IWC Wage Orders, Plaintiff and Class Members in the Overtime Subclass are
23 entitled to recover the full amount of unpaid wages, prejudgment interest, and statutory penalties,
24 along with attorneys’ fees and costs in amounts that will be established at trial.

25 **THIRD CAUSE OF ACTION**
26 **MEAL PERIOD VIOLATIONS**
27 **(AGAINST ALL DEFENDANTS)**
28

1 82. Plaintiff incorporates in this cause of action all paragraphs outside this section with the
2 same force and effect as if fully set forth herein.

3 83. At all relevant times, Defendants had a duty to comply with Labor Code sections 226.7,
4 512 and 516 and the applicable IWC Wage Orders.

5 84. Labor Code section 512 and the IWC Wage Orders prohibit an employer from
6 employing any person for a work period of more than 5 hours per day without providing the employee
7 with a meal period of not less than 30 minutes (commencing before the employee's fifth hour of work),
8 except that if the total work period per day is no more than 6 hours, the meal period may be waived
9 by mutual consent of the employer and employee. A second meal period of not less than 30 minutes
10 is required if an employee works more than 10 hours per day and must begin before the employee's
11 tenth hour of work, except if the total hours worked is no more than 12 hours, the second meal period
12 may be waived by mutual consent of the employer and employee, but only if the first meal period was
13 not waived. For all meal periods, an employer must relieve an employee of all duties during meal
14 periods.

15 85. The applicable IWC Wage Orders state that "[u]nless the employee is relieved of all
16 duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period
17 and counted as time worked."

18 86. Labor Code section 226.7(b) and the IWC Wage Orders prohibit an employer from
19 requiring any employee to work during a meal period mandated by any California statute, regulation,
20 standard or order. If an employer fails to provide an employee with a meal period in accordance with
21 state law, Labor Code section 226.7(c) and the IWC Wage Orders require that the employer pay the
22 employee one additional hour of pay at the employee's regular rate of compensation for each workday
23 that the meal period is noncompliant.

24 87. Labor Code section 516 authorizes the IWC to adopt or amend protections relating to
25 meal and rest periods.

26 88. As a direct and proximate result of Defendants' failure to provide compliant meal
27 periods or meal period premiums to Plaintiff, the Meal Period Subclass, and Class Members in
28 accordance with the IWC Wage Orders and Labor Code sections 226.7, 512 and 516, Plaintiff and the

1 Meal Period Subclass, and Class Members are entitled to recover the full amount of unpaid meal period
2 premiums, prejudgment interest, and statutory penalties, along with attorneys' fees and costs in
3 amounts that will be established at trial.

4 **FOURTH CAUSE OF ACTION**
5 **REST PERIOD VIOLATIONS**
6 **(AGAINST ALL DEFENDANTS)**

7 89. Plaintiff incorporates in this cause of action all paragraphs outside this section with the
8 same force and effect as if fully set forth herein.

9 90. At all relevant times, Defendants had a duty to comply with Labor Code sections 226.7,
10 and 516 and the applicable IWC Wage Orders.

11 91. Labor Code section 516 authorizes the IWC to adopt or amend protections relating to
12 meal and rest periods. The IWC Wage Orders require employers to authorize and permit all employees
13 to take 10-minute duty-free rest periods for each four hours worked (or major fraction thereof).

14 92. If an employer fails to provide an employee with a rest period in accordance with state
15 law, Labor Code section 226.7(c) and the IWC Wage Orders require that the employer pay the
16 employee one additional hour of pay at the employee's regular rate of compensation for each workday
17 that the rest period is noncompliant.

18 93. As a direct and proximate result of Defendants' failure to provide compliant rest
19 periods or rest period premiums to Plaintiff, the Rest Period Subclass, and Class Members in
20 accordance with the IWC Wage Orders and Labor Code sections 226.7 and 516, Plaintiff, the Rest
21 Period Subclass, and Class Members are entitled to recover the full amount of unpaid rest period
22 premiums, prejudgment interest, and statutory penalties, along with attorneys' fees and costs in
23 amounts that will be established at trial.

24 **FIFTH CAUSE OF ACTION**
25 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
26 **(AGAINST ALL DEFENDANTS)**

27 94. Plaintiff incorporates in this cause of action all paragraphs outside this section with the
28 same force and effect as if fully set forth herein.

1 95. At all relevant times, Defendants had a duty to comply with Labor Code section 226.

2 96. Labor Code section 226(a) requires that, semimonthly or at the time of each payment
3 of wages, employers must furnish each employee with an accurate itemized wage statement in writing
4 that accurately shows (1) gross wages earned, (2) total number of hours worked, (3) the number of any
5 piece-rate units earned and all applicable piece rates, (4) all deductions made from wages, (5) net
6 wages earned, (6) the inclusive dates of the pay period, (7) the name and last four digits or employment
7 identification number of the employee, (8) the name and address of the legal entity that is the
8 employer, and (9) all applicable hourly rates in effect and the corresponding number of hours worked
9 at each hourly rate.

10 97. Labor Code section 226(e)(1) authorizes an employee suffering injury as a result of a
11 knowing and intentional failure by an employer to provide an accurate itemized wage statement to
12 recover the greater of all actual damages or \$50 for the initial pay violation and \$100 for each violation
13 in a subsequent pay period, not to exceed an aggregate penalty of \$4,000 per employee, in addition to
14 an award of costs and attorneys' fees.

15 98. As a direct and proximate result of Defendants' knowing and intentional failure to
16 provide timely, accurate itemized wage statements at the time of each payment of wages in accordance
17 with Labor Code section 226, Plaintiff and the Inaccurate Wage Statement Subclass are entitled to
18 recover all damages including prejudgment interest, statutory penalties, along with attorneys' fees and
19 costs in amounts that will be established at trial.

20 **SIXTH CAUSE OF ACTION**
21 **WAITING TIME PENALTIES**
22 **(AGAINST ALL DEFENDANTS)**

23 99. Plaintiff incorporates in this cause of action all paragraphs outside this section with the
24 same force and effect as if fully set forth herein.

25 100. At all relevant times, Defendants had a duty to comply with Labor Code sections 201,
26 202 and 203. Defendants failed to comply with these final paycheck requirements with respect to
27 Plaintiff and Class Members.

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1 101. Labor Code section 201 requires that if an employer discharges an employee, the wages
2 earned and unpaid at the time of discharge are due and payable immediately. Labor Code section 202
3 requires that if “an employee not having a written contract for a definite period” quits, the employee’s
4 wages shall become due and payable not later than 72 hours thereafter, unless the employee has given
5 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or
6 her wages at the time of quitting.

7 102. Labor Code section 203 provides that if an employer willfully fails to pay, without
8 abatement or reduction, any wages of an employee who is discharged or quits, the wages of the
9 employee shall continue as a penalty from the due date thereof at the same rate until paid or until an
10 action therefor is commenced, but that the wages shall not continue for more than 30 days per
11 employee.

12 103. As a direct and proximate result of Defendants’ failure to timely pay all wages owed to
13 Plaintiff and Class Members in the Waiting Time Subclass in accordance with Labor Code
14 sections 201, 202 and 203, Plaintiff and Class Members in the Waiting Time Subclass are entitled to
15 recover the full amount waiting time penalties, prejudgment interest, and statutory penalties, along
16 with attorneys’ fees and costs in amounts that will be established at trial.

17 **SEVENTH CAUSE OF ACTION**

18 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

19 **(AGAINST ALL DEFENDANTS)**

20 104. Plaintiff incorporates in this cause of action all paragraphs outside this section with the
21 same force and effect as if fully set forth herein.

22 105. At all relevant times, Defendants had a duty to comply with Labor Code sections 2800
23 and 2802. Defendants failed to comply with these indemnification and reimbursement requirements
24 with respect to Plaintiff and Class Members in the Reimbursement Subclass.

25 106. Labor Code section 2800 requires employers to always indemnify employees for losses
26 caused by the employer’s want of ordinary care. To the extent Defendants claim that Plaintiff and
27 Class Members failed to request, demand, notify or otherwise seek reimbursement for their expenses

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1 and losses, Defendants were obligated to nevertheless indemnify Plaintiff and Class Members due to
2 their own negligence.

3 107. Labor Code section 2802(a) requires that employers indemnify and reimburse
4 employees for all business expenses, which are defined as all necessary expenditures or losses incurred
5 by the employee in direct consequence of the discharge of the employee's duties or otherwise incurred
6 based on the employee's obedience to the employer's directions. Labor Code section 2802(b)
7 authorizes employees to recover in a court action interest which shall accrue from the date on which
8 the employee incurred the necessary expenditure or loss. Labor Code section 2802(c) authorizes
9 employees who to enforce their right to reimbursements under Labor Code section 2802 to also
10 recover attorneys' fees and costs.

11 108. As a direct and proximate result of Defendants' failure to indemnify and reimburse
12 Plaintiff and Class Members in the Reimbursement Subclass for all business and work-related costs,
13 expenditures, losses and expenses in accordance with Labor Code sections 2800 and 2802, Plaintiff
14 and Class Members are entitled to recover the full unreimbursed balance of reimbursements,
15 expenditures and losses, prejudgment interest, and statutory penalties, along with attorneys' fees and
16 costs in amounts that will be established at trial.

17 **EIGHTH CAUSE OF ACTION**
18 **UNFAIR BUSINESS PRACTICES**
19 **(AGAINST ALL DEFENDANTS)**

20 109. Plaintiff incorporates in this cause of action all paragraphs outside this section with the
21 same force and effect as if fully set forth herein.

22 110. At all relevant times, Defendants have engaged in unlawful and unfair business
23 practices in violation of Business and Professions Code section 17200 et seq. through common and
24 systemic employment policies and practices by failing to provide the employment protections, wages,
25 premiums, reimbursements and other funds and property owed to Plaintiff and Class Members in the
26 UCL Subclass, as alleged throughout this Complaint, in violation of the Labor Code and IWC Wage
27 Orders.

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1 111. Defendants' business practices deprived Plaintiff and Class Members of compensation,
2 reimbursements and other funds to which they are legally entitled, constitutes unlawful and unfair
3 fraudulent business practices, and provides an unfair advantage to Defendants over its competitors
4 who have been or are currently in honest compliance with applicable wage and hour and employment
5 laws. Plaintiff is informed, believes, and based thereon alleges, that Defendants are unjustly enriched
6 as a result of their unlawful and unfair business practices.

7 112. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct, as alleged in
8 throughout this Complaint, Plaintiff, as an individual and on behalf of the Class Members, seeks
9 restitution of all monies and property withheld, acquired or converted by Defendants pursuant to
10 Business and Professions Code sections 17202, 17203, 17204, and 17208.

11 113. Plaintiff and Class Members in the UCL Subclass are entitled to an injunction,
12 restitution, and other equitable relief against such unlawful practices to return all funds over which
13 Plaintiff and Class Members in the UCL Subclass have an ownership interest and to prevent future
14 damage pursuant to Business and Professions Code section 17200 et seq.

15 114. Plaintiff was compelled to retain the services of counsel to file this court action to
16 protect their interests and those of the Class Members and to enforce important employment rights
17 affecting the public interest. Plaintiff has thereby incurred attorneys' fees, which Plaintiff is entitled
18 to recover on all causes of action under Code of Civil Procedure section 1021.5.

19 **NINTH CAUSE OF ACTION**

20 **ENFORCEMENT OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**
21 **(AGAINST ALL DEFENDANTS)**

22 115. Plaintiff incorporates in this cause of action all paragraphs outside this section with the
23 same force and effect as if fully set forth herein. Specifically, Plaintiff incorporates all Labor Code
24 violations and pleads all associated civil penalties recoverable for each violation set forth in this
25 Complaint.

26 116. Plaintiff has satisfied Labor Code section 2699.3's pre-filing requirements by notifying
27 the LWDA via its website and Defendants via certified mail (with a courtesy copy via email) of the
28 specific sections of the Labor Code Defendants violated, including the facts and theories to support

1 the alleged violations. Plaintiff paid the associated filing fee to the LWDA. Now that 65 days have
2 passed from Plaintiff's notifying of the LWDA of these allegations and violations, and the LWDA has
3 not notified Plaintiff's representative by certified mail of its intent to investigate, Plaintiff has
4 exhausted his administrative requirements for bringing a civil action under the PAGA.

5 117. Plaintiff is an "aggrieved employee" within the meaning of Labor Code section
6 2699(a) and (c) because he is a person who was employed by Defendants and against whom one or
7 more of the alleged violations was committed.

8 118. As set forth in this Complaint, Defendants have committed a series of Labor Code
9 violations against Plaintiff and Class Members who worked for Defendants on or after July 23, 2018
10 (the "aggrieved employees") and are liable for civil penalties and other relief provided by the PAGA
11 for those violations committed within this one-year statutory period (the "PAGA Period").

12 119. For all provisions of the Labor Code except those for which a civil penalty is
13 specifically provided, Labor Code section 2699(f) imposes upon Defendants a civil penalty of \$100 for
14 each aggrieved employee per pay period for each initial Labor Code violation and \$200 for each
15 aggrieved employee per pay period for each subsequent Labor Code violation.

16 120. Defendants' conduct with respect to Plaintiff and the other aggrieved employees
17 violates numerous sections of the Labor Code including, but not limited to, the following:

18 121. ***Unpaid Wage Violations.*** Defendants have violated and are liable pursuant to Labor
19 Code sections 201 to 204, 204b, 210, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 for
20 failing to timely pay all earned wages owed for all hours worked at the lawful rate of pay to Plaintiff
21 and the aggrieved employees.

22 122. ***Meal and Rest Period Violations.*** Defendants have violated and are liable pursuant to
23 Labor Code sections 226.7, 512 and 558 for failing to provide and permit meal and rest periods and
24 failing to pay all premiums wages owed in lieu of such breaks to Plaintiff and the aggrieved employees.

25 123. ***Wage Statement Violations.*** Defendants have violated and are liable pursuant to Labor
26 Code sections 226 and 226.3 for failing to provide accurate and complete itemized wage statements
27 to Plaintiff and the aggrieved employees.

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- 1 10. For an order for post judgment interest on all amounts awarded to Plaintiff and Class
2 Members as provided by law;
- 3 11. For recovery attorneys' fees and costs provided by Labor Code §§ 226, 1194, 2802,
4 2699(g), and Code of Civil Procedure § 1021.5; and
- 5 12. For such other and further relief as the Court deems just and proper.

7 Dated: December 21, 2020

FERRARO EMPLOYMENT LAW, INC.
&
NICHOLAS & TOMASEVIC, LLC


10 
11 NICHOLAS J. FERRARO, ESQ.
12 Attorney for Plaintiff Daniel Knox

13 **DEMAND FOR JURY TRIAL**

14 Plaintiff hereby re-states his demand for a jury trial with respect to all issues triable by jury.

15 Dated: December 21, 2020

FERRARO EMPLOYMENT LAW, INC.
&
NICHOLAS & TOMASEVIC, LLC

18 
19 NICHOLAS J. FERRARO, ESQ.
20 Attorney for Plaintiff Daniel Knox