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CASE NUMBER:

RG20060600

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pursuant to the Private Attorneys General Act
9

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

12 MANUEL RIVAS, JAVIER TORRES,
13 MISAEAL RAMOS, on behalf of themselves, all
14 other similarly situated individuals, and acting
in the interest of the State of California,

Plaintiffs,

vs.

17 ICTENTS LLC, a California Limited Liability
18 Company; LANTIER TENT STRUCTURES,
19 LIMITED, a California Corporation; MILES F.
20 LANTIER, an individual, and DOES 1 through
20,

Defendants.

**CLASS ACTION & PAGA
COMPLAINT FOR:**

1. Failure to Pay Minimum Wage;
2. Failure to Pay Overtime;
3. Failure to Provide Rest Periods or Pay Additional Wages in Lieu Thereof;
4. Failure to Provide Timely and Complete Meal Periods or Pay Additional Wages in Lieu Thereof;
5. Failure to Provide Reimbursement for Necessary Business Expenditures;
6. Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions;
7. Failure to Pay All Wages Owed Upon Termination or Resignation;
8. Violation of Unfair Competition Law (Bus. & Prof. Code §§ 17200 et seq.);
9. Penalties Pursuant to the Private Attorneys General Act (Labor Code §§ 2698 et seq.)

DEMAND FOR JURY TRIAL

1 **I. INTRODUCTION**

2 1. Plaintiffs MANUEL A. RIVAS, JAVIER TORRES, and MISAEEL RAMOS
3 (collectively “PLAINTIFFS”) bring this class and PAGA action against Defendants ICTENTS
4 LLC, a California Limited Liability Company; LANTIER TENT STRUCTURES, LIMITED, a
5 California Corporation; MILES F. LANTIER, an individual; and DOES 1 through 20 (collectively
6 “DEFENDANTS”) for failure to pay minimum wages, failure to pay overtime, failure to provide
7 proper rest and meal breaks, failure to provide reimbursement for necessary business expenditures,
8 failure to provide accurate wage statements, failure to pay all wages owed upon termination,
9 violation of unfair competition law, and for violation of the Private Attorneys General Act
10 (PAGA). The allegations in this complaint are made on the basis of PLAINTIFFS’ personal
11 knowledge and, where stated, on information and belief based upon reasonable investigation.

12 **II. JURISDICTION AND VENUE**

13 2. This case is subject to the jurisdiction of this court pursuant to the California Labor
14 Code, California Business and Professions Code, and California Code of Civil Procedure.
15 DEFENDANTS are entities, partnerships, businesses, and persons who conduct business in the
16 State of California. The events giving rise to this action took place in California.

17 3. Venue is proper in this judicial district because DEFENDANTS operate in and
18 around Alameda County, California. Further, many of the alleged wage and hour violations arose
19 in while PLAINTIFFS performed work in and around Alameda County for the DEFENDANTS.

20 **III. PARTIES**

21 4. Plaintiff MANUEL A. RIVAS (“RIVAS”) is an individual residing in California
22 who was directly or jointly employed by Defendants ICTENTS LLC (“ICTENTS”) and LANTIER
23 STRUCTURES, LIMITED (“TENT STRUCTURES”) as a Driver/Installer in California and who
24 also performed work in Defendants’ warehouse and performed work in and around Alameda
25 County, including Oakland. Plaintiff RIVAS was employed by ICTENTS and TENT
26 STRUCTURES from approximately 2012 through February 2019. At all times relevant to this
27 action, RIVAS was denied proper compensation for all hours worked, proper rest and meal breaks,
28

1 and reimbursement for necessary business expenditures. Plaintiff RIVAS has suffered injury in
2 fact and loss of property as a result of DEFENDANTS' conduct described in this Complaint.

3 5. Plaintiff JAVIER TORRES ("TORRES") is an individual residing in California
4 who was directly or jointly employed by Defendants ICTENTS LLC ("ICTENTS") and LANTIER
5 STRUCTURES, LIMITED ("TENT STRUCTURES") as an installer in California and who also
6 performed work in Defendants' warehouse and performed work in and around Alameda County,
7 including Oakland. Plaintiff TORRES was employed by ICTENTS and TENT STRUCTURES
8 from approximately 2011 through July 2018. At all times relevant to this action, TORRES was
9 denied proper compensation for all hours worked, proper rest and meal breaks, and reimbursement
10 for necessary business expenditures. Plaintiff TORRES has suffered injury in fact and loss of
11 property as a result of DEFENDANTS' conduct described in this Complaint.

12 6. Plaintiff MISAEL RAMOS ("RAMOS") is an individual residing in California who
13 was directly or jointly employed by Defendants ICTENTS LLC ("ICTENTS") and LANTIER
14 STRUCTURES, LIMITED ("TENT STRUCTURES") as an installer in California and who also
15 performed work in Defendants' warehouse and performed work in and around Alameda County,
16 including Oakland. Plaintiff RAMOS was employed by ICTENTS and TENT STRUCTURES
17 from at least 2012 through April 2018. At all times relevant to this action, RAMOS was denied
18 proper compensation for all hours worked, proper rest and meal breaks, and reimbursement for
19 necessary business expenditures. Plaintiff RAMOS has suffered injury in fact and loss of property
20 as a result of DEFENDANTS' conduct described in this Complaint.

21 7. The following allegations as to DEFENDANTS are made on information and belief
22 and are likely to have evidentiary support after a reasonable opportunity for further investigation or
23 discovery.

24 8. ICTENTS is a California Limited Liability Company located in the City of
25 Richmond, in Contra Costa County, California. Its address is 900 Brookside Drive, Suite E,
26 Richmond, California. Its CEO, manager, and agent for service of process is Miles F. Lantier.
27 ICTENTS has been registered with the Secretary of State since 2012. ICTENTS is an "event
28 tents" business. It manufactures, supplies, sets up, and dismantles engineered fabric structures,

1 event tent and temporary structures, insulated buildings, and all-weather enclosed shelters.
2 ICTENTS sells and rents its tent and shelter structures, including staging them for events of
3 varying size and duration. Non-exempt employees, including but not limited to installers, drivers,
4 and equipment operators, work year-round manufacturing the tent structures and then travelling to
5 different locations installing and dismantling them for various events, including frequent events
6 and installations in Alameda County. Installers work in a warehouse and in the field, installing
7 and dismantling tent structures for ICTENTS's customers. ICTENTS jointly or directly employed
8 PLAINTIFFS during all or part of the relevant time period of this action.

9 9. TENT STRUCTURES is a California corporation located in the City of Richmond,
10 in Contra Costa County, California. Its principal business address in California is 900 Brookside
11 Drive, Richmond, California. Its CEO and director is Miles F. Lantier. TENT STRUCTURES has
12 been registered with the Secretary of State since 2002 and describes itself as a corporation
13 involved in the "tent structures" business. Like ICTENTS, TENT STRUCTURES is a supplier
14 and manufacturer of engineered fabric structures, insulated buildings, and all-weather enclosed
15 shelters. TENT STRUCTURES sells and rents its tent and shelter structures, including staging
16 them for events of varying size and duration. Non-exempt employees, including but not limited to
17 installers, drivers, and equipment operators, work year-round travelling to different locations
18 installing and dismantling tent structures for various events, including frequent events and
19 installations in Alameda County. Installers work in a warehouse and in the field, installing and
20 dismantling tent structures for TENT STRUCTURES' customers. On information and belief,
21 TENT STRUCTURES jointly or directly employed PLAINTIFFS during all or part of the relevant
22 time period of this action.

23 10. MILES F. LANTIER ("LANTIER") is the Chief Executive Officer, director, and
24 managing member of both ICTENTS and TENT STRUCTURES and is in charge of making major
25 corporate decisions and managing the operations of the entities. LANTIER was on notice, whether
26 actual or constructive, of all of the violations described herein, failed to prevent or address them,
27 and has caused the alleged violations to have occurred. LANTIER has caused the violations at
28 issue here either by making illegal policies, implementing illegal policies, or failing to correct

1 illegal policies. On information and belief, LANTIER caused the violations at issue in this
2 complaint because he exercised ultimate control over policies involving compensation and hours
3 and either (a) knowingly authorized the unlawful practices; or (b) with knowledge of unlawful
4 practices did nothing to stop them, instead ratifying them.

5 11. PLAINTIFFS are ignorant of the true names or capacities of the Defendants sued
6 herein under the fictitious names Does 1 through 20 who also caused the violations. PLAINTIFFS
7 will amend this complaint to allege the true names or capacities of these DOE DEFENDANTS
8 once they have been ascertained and verified.

9 12. The acts and failures to act alleged herein were duly performed by and attributable
10 to all DEFENDANTS, each acting as a successor, agent, alter ego, employee, indirect employer,
11 joint employer, and/or integrated enterprise, at the direction and control of the others, except as
12 specifically alleged otherwise. Said acts and failures to act were within the scope of such agency
13 and/or employment, and each defendant participated in, approved of and/or ratified the unlawful
14 acts and omissions by the other DEFENDANTS complained of herein.

15 13. On information and belief, PLAINTIFFS further assert that the damages herein
16 alleged were actually and proximately caused by each Defendant's conduct.

17 **IV. FACTUAL ALLEGATIONS**

18 14. The claims of this lawsuit spring from a pattern of employer misconduct and
19 wrongdoing that, as a matter of course, deprived employees of lawfully earned wages.
20 DEFENDANTS systemically understaff their operations. As a result of the chronic understaffing,
21 coupled with the event-based nature of the work (*e.g.*, manufacturing, preparing, installing, and
22 uninstalling tent structures for events like music festivals), DEFENDANTS require their
23 employees work as necessary toward the completion of the task (*e.g.*, finishing an on-site
24 installation in as little time possible) rather than observe the bounds of the law. The following
25 paragraphs detail specific violations of law comprising the wage-related claims applicable to
26 employees that PLAINTIFFS seek to represent on a class basis.

27 15. For significantly longer than four years prior to the filing of this action and through
28 to the present, DEFENDANTS and their subsidiaries, parents, or affiliate companies have

1 maintained and enforced unlawful labor policies against employees that revolve around
2 DEFENDANTS' hourly system of compensation, their meal and rest break practices, their
3 practices around indemnification of expenditure by employees, and their record-keeping
4 procedures.

5 16. DEFENDANTS' warehouse and manufacturing center is in Richmond, California.
6 There is a punch clock at the warehouse. On information and belief, DEFENDANTS apply an
7 unlawful rounding policy to punch card entries or shave hours from employees' timecards or
8 DEFENDANTS have a practice of requiring off the clock work. In short, PLAINTIFFS and other
9 current and former employees of DEFENDANTS are not paid for all hours worked while working
10 in DEFENDANTS' warehouse and themselves utilizing the punch clock.

11 17. When working at the warehouse, DEFENDANTS do not provide their employees
12 with lawful rest breaks. Because employees are often working toward deadlines (*i.e.*, preparing
13 the tent structures for the next client event(s)), DEFENDANTS push their employees to have the
14 tent structures ready by the time they are needed to be delivered. In setting and making their
15 employees meet these unrealistic deadlines, DEFENDANTS systematically deprive their
16 employees of lawful, paid rest breaks.

17 18. When working at the warehouse, DEFENDANTS do not provide their employees
18 with lawful meal breaks. Although DEFENDANTS' employees are able to eat lunches while
19 working at the warehouse, the meal breaks are late, short, interrupted, or employees are not fully
20 off duty. On information and belief, DEFENDANTS do not provide second meal breaks to
21 employees working shifts greater than ten (10) hours long.

22 19. DEFENDANTS' unlawful labor practices are only worse when their employees
23 work off-site installing and uninstalling tent structures.

24 20. When off-site, DEFENDANTS' crew managers call in employees' hours to
25 someone on-site who, in turn, creates employees' time records, either manually writing time onto
26 punch cards or actually punching employees' timecards. These time records are systematically
27 false and do not correspond to actual hours worked. Actual hours worked are chronically
28 underreported, shaved, or falsified to cheat employees who, when off-site, frequently work shifts

1 in excess of ten (10) and twelve (12) hours.

2 21. As with the warehouse work, DEFENDANTS did not provide lawful rest breaks or
3 rest break premiums to employees when working off-site.

4 22. As with the warehouse work, DEFENDANTS did not provide lawful meal breaks
5 or meal break premiums to employees when working off-site. Meals, when given, are short,
6 interrupted, and – most notably for off-site work – late, given that DEFENDANTS require the tent
7 structures to be delivered, installed, or disassembled as quickly as possible to please customers.
8 Employees are not provided second meal breaks when off-site even though off-site work shifts are
9 frequently longer than ten (10) hours.

10 23. On information and belief, DEFENDANTS do not pay rest break premiums.

11 24. On information and belief, DEFENDANTS do not pay meal break premiums.

12 25. Beyond not compensating for all hours worked and failing to provide premium pay,
13 on information and belief, DEFENDANTS systematically do not calculate employee pay and
14 compensate employees in conformance with California state law. DEFENDANTS do not correctly
15 calculate regular, overtime, and double time hours.

16 26. In sum, DEFENDANTS failed to compensate for all “hours worked” (within the
17 meaning of the applicable Wage Orders) and failed to pay overtime and double time premium
18 wages for work performed. This includes, but is not limited to, regular hours worked that were not
19 compensated at minimum or agreed upon rates, overtime hours worked that were either not
20 compensated or compensated at rates lower than the applicable overtime premium wage rate
21 and/or without properly calculating the regular rate of pay for purposes of paying overtime, and
22 uncompensated or undercompensated time spent working through rest and meal periods, and other
23 “off-the-clock” work.

24 27. DEFENDANTS have made it difficult to account with precision for the unlawfully
25 withheld wages due to DEFENDANTS’ non-exempt employees, including PLAINTIFFS, during
26 all relevant times herein, because they have not implemented an adequate record-keeping method
27 to record all hours worked and wages earned by their employees as required for non-exempt
28 employees by California Labor Code sections 226 and 1174(d).

28. In part because DEFENDANTS do not compensate all hours worked nor provide rest or meal breaks or premiums in lieu thereof, DEFENDANTS willfully provide inaccurate itemized wage statements that do not reflect all wages owed.

29. DEFENDANTS also systematically do not reimburse employees for necessary business expenses. DEFENDANTS require employees to wear steel-toed boots and gloves. Employees purchase these items as a condition of employment out of pocket without reimbursement.

30. Defendants ICTENTS, TENT STRUCTURES, and LANTIER have employed PLAINTIFFS and the class directly or as agents of one another, and/or is liable under California Labor Code section 558.1. PLAINTIFFS allege that DEFENDANTS and DOES are “persons” who violated or caused to be violated California Labor Code sections 558, 1197.1, 2699 (f), and IWC Wage Orders.

31. By their conduct, DEFENDANTS make clear that they are intentionally and maliciously subverting California minimum and overtime wage requirements, resulting in loss of property to PLAINTIFFS and the Class that occurs as a result of Defendants’ payroll policies. On information and belief, DEFENDANTS were on notice of the improprieties alleged herein by their employees, and intentionally refused to rectify their unlawful policies.

32. On January 10, 2020, Plaintiff RIVAS, through counsel, submitted a notice of aggrieved employee to the California Labor & Workforce Development Agency (LWDA). The letter constituted the statutory notice required by the PAGA statute. More than 65 days have elapsed since the submission of Plaintiff RIVAS’s PAGA notice, and RIVAS has not received any notice from the LWDA of their intent to investigate the alleged Labor Code violations by DEFENDANTS against RIVAS.

V. CLASS ALLEGATIONS

33. PLAINTIFFS bring this action on behalf of themselves and all others, pursuant to Section 382 of the California Code of Civil Procedure, on the basis that there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable. PLAINTIFFS seek to represent the following Class:

1 All non-exempt workers employed at DEFENDANTS' facilities in
2 California at any time between four years prior to the filing of the original
3 complaint in this action and the final disposition of this action.

34. On information and belief, the injury and loss of money to class members is
4 substantial and exceeds the minimum jurisdiction of this Court. PLAINTIFFS and the class were
5 regularly subjected to the policy violations described in this Complaint. On information and
6 belief, the legal and factual issues are common to the class and affect all class members.
7 PLAINTIFFS reserve the right to amend or modify the class description with greater specificity or
8 further division into subclasses, as well as to limit the class or subclasses to particular issues, as
9 warranted.

10 **A. Numerosity**

11 35. The potential members of the class as defined are so numerous that joinder of all of
12 them is impracticable. While the precise number of class members has not been determined at this
13 time, PLAINTIFFS are informed and believe that the class is comprised of more than forty (40)
14 individuals.

15 36. On information and belief, PLAINTIFFS allege that DEFENDANTS' employment
16 records will provide information as to the number and location of all class members.

17 **B. Commonality & Predominance**

18 37. There are questions of law and fact that are common to the class and predominate
19 over individualized questions. These common questions of law and fact include, without
20 limitation:

- 21 a. Whether DEFENDANTS violated the rights of class members to receive proper
22 overtime wages for all hours worked;
- 23 b. Whether DEFENDANTS violated the Labor Code, the applicable IWC Wage
24 Order, and/or public policy by enforcing a policy or practice of not maintaining
25 accurate records of overtime pay;
- 26 c. Whether DEFENDANTS violated the Labor Code, the applicable IWC Wage
27 Order, and/or public policy by enforcing a policy or practice of denying
28

- 1 compensation for all hours worked at agreed-upon rates;
- 2 d. Whether DEFENDANTS violated the minimum wage by enforcing a policy or
- 3 practice of denying compensation for all hours worked;
- 4 e. Whether DEFENDANTS violated Labor Code section 226, the applicable IWC
- 5 Wage Order, and/or public policy by maintaining a policy or practice of failing to
- 6 state accurately the total hours worked, the overtime hours, and the gross pay and
- 7 net pay in employee wage statements;
- 8 f. Whether DEFENDANTS violated the Labor Code, the applicable IWC Wage
- 9 Order, and/or public policy by failing to maintain accurate time records or
- 10 wrongfully editing time records;
- 11 g. Whether DEFENDANTS violated the Labor Code, the applicable IWC Wage
- 12 Order, and/or public policy by failing to pay all wages owed at resignation or
- 13 termination;
- 14 h. Whether DEFENDANTS violated the California Labor Code, the applicable IWC
- 15 Wage Order, and/or public policy by failing to provide statutorily required rest
- 16 periods or provide premium wages in lieu thereof;
- 17 i. Whether DEFENDANTS violated the California Labor Code, the applicable IWC
- 18 Wage Order, and/or public policy by failing to provide statutorily required meal
- 19 periods or provide premium wages in lieu thereof;
- 20 j. Whether DEFENDANTS violated the Labor Code, the applicable IWC Wage
- 21 Order, and/or public policy by enforcing a policy or practice of refusing to
- 22 indemnify non-exempt employees for necessary business expenses;
- 23 k. Whether DEFENDANTS violated sections 17200 et seq. of the Business and
- 24 Professions Code by the actions alleged in this complaint;
- 25 l. Whether PLAINTIFFS and other class members are entitled to damages, restitution,
- 26 statutory penalties, premium wages, declaratory, injunctive and declaratory relief,
- 27 attorneys' fees, interest, and costs, and other relief pursuant to California Labor
- 28 Code and Wage Orders, and Business and Professions Code sections 17200, et seq.

There are no individualized factual or legal issues for the court to resolve other than the application of a formula to calculate each class member's damages.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGE
(Cal. Lab. Code §§ 1194, 1194.2, 1197 & Wage Orders)
PLAINTIFFS AGAINST ALL DEFENDANTS

38. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth herein.

39. California Labor Code section 1197, entitled "Pay of Less Than Minimum Wage"

states:

The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

40. The applicable minimum wages fixed by the commission for work \$10.00 effective January 1, 2016, \$10.50 effective January 1, 2017, \$11.00 effective January 1, 2018, \$12.00 effective January 1, 2019, and \$13.00 effective January 1, 2020.

41. The minimum wage provisions of California Labor Code are enforceable by private action pursuant to California Labor Code section 1194(a) which states:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees and costs of suit.

42. As described in California Labor Code sections 1185 and 1194.2, any action for incorporates the applicable Wage Orders of the California Industrial Welfare Commission.

43. California Labor Code section 1194.2 also provides for the following remedies:

In any action under Section 1194 ... to recover wages because of the payment of a wage less than the minimum wages fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

44. DEFENDANTS failed to pay PLAINTIFFS and the class for all “hours worked” at minimum or wage rates. For example, DEFENDANTS maintained a pay policy whereby

1 PLAINTIFFS and the class were not credited with all hours worked, particularly when working
2 off-site, or DEFENDANTS knowingly permitted PLAINTIFFS and the class to perform numerous
3 work activities that were uncompensated.

4 45. Specifically, non-exempt employees work through completion of the installation or
5 uninstallation of large tent structures, often working between 10 to 15 hours a day.
6 Supervisors/managers are incentivized to push employees to work as quickly as possible. This
7 practice, coupled with DEFENDANTS' record-keeping practices, results in the inconsistent
8 recording of all hours worked and has caused non-exempt employees to not be accurately paid all
9 hours worked. At all relevant times, PLAINTIFF and the class were subject to DEFENDANTS'
10 control during that uncompensated time. In particular, employee time was either not recorded
11 correctly or altered to eliminate worked time so as to avoid paying for all hours worked.

12 46. Under Labor Code section 558.1, any natural person who is an owner, director,
13 officer, or managing agent of an employer, acting on behalf of the employer, who violates or
14 causes to be violated any provision regulating minimum wages or hours and days of work in any
15 order of the Industrial Welfare Commission, or violates, or causes to be violated, Labor Code
16 sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such
17 violation. Therefore, Defendant LANTIER is liable for the violations herein alleged.

18 47. WHEREFORE, PLAINTIFFS and the class are entitled to recover the unpaid
19 minimum wages, liquated damages in an amount equal to the minimum wages unlawfully unpaid,
20 interest thereon, reasonable attorneys' fees and costs of suit pursuant to California Labor Code
21 sections 218.5 and 1194(a).

22 **SECOND CAUSE OF ACTION**

23 **FAILURE TO PAY OVERTIME PREMIUM WAGES** 24 **(Cal. Lab. Code §§ 200, et seq., 510, 1194 & Wage Order(s))** **PLAINTIFFS AGAINST ALL DEFENDANTS**

25 48. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth herein.

26 49. Labor Code section 510(a) establishes the eight (8) hour workday and 40 hour
27 workweek, and provides that work in excess of eight (8) hours in one day or 40 hours in one week
28

1 is to be compensated at one and one-half (1/2) the regular rate of pay (“overtime rate”). The Wage
2 Order, which is authorized under California Labor Code section 1185 and apply in this case,
3 further provide that work in excess of 12 hours in a workday or eight hours on the seventh
4 consecutive workday is to be compensated at the rate of twice the regular rate of pay (“double-time
5 rate”).

6 50. DEFENDANTS violated California Labor Code section 510 and the applicable
7 Wage Order (or caused the violations) by subjecting employees to employer control, or knowingly
8 suffering or permitting employees to work, in excess of the statutory overtime and double-time
9 thresholds, without paying the applicable premium rate.

10 51. PLAINTIFFS and the class routinely worked shifts greater than eight (8) and twelve
11 (12) hours and worked greater than forty (40) hours in a week without being compensated
12 correctly by DEFENDANTS; hours worked that should have been compensated as overtime or
13 double time were compensated as regular or overtime hours.

14 52. PLAINTIFFS may enforce these provisions pursuant to Labor Code section 1194(a)
15 and Business and Professions Code sections 17200 et seq.

16 53. California Labor Code section 1194(a) states:

17 Notwithstanding any agreement to work for a lesser wage, any employee
18 receiving less than the legal minimum wage or the legal overtime compensation
19 applicable to the employee is entitled to recover in a civil action the unpaid
20 balance of the full amount of this minimum wage or overtime compensation,
21 including interest thereon, reasonable attorney's fees and costs of suit.

22 54. DEFENDANTS refused to pay for all hours worked and failed to compensate at the
23 agreed upon and statutory rates, rendering DEFENDANTS’ overtime computations unlawful.

24 55. PLAINTIFFS and, on information and belief, the class are entitled to wages at the
25 applicable premium rate as a result of DEFENDANTS’ practice of not compensating them at the
26 required premium rate, as well as for failing to compensate them for all “hours worked.”
27 DEFENDANTS failed to pay said wages when due, as required by Labor Code section 204, and
28 have not been paid them to date. The violation of California’s premium wage laws is substantial
and occurred regularly, and the failure of DEFENDANTS to maintain accurate time records will

1 shift the burden of proof.

2 56. PLAINTIFFS and the class are entitled to payment of wages owed under California
3 Labor Code sections 510, 1197, 1194(a) and the applicable Wage Order.

4 57. Under Labor Code section 558.1, any natural person who is an owner, director,
5 officer, or managing agent of an employer, acting on behalf of the employer, who violates or
6 causes to be violated any provision regulating minimum wages or hours and days of work in any
7 order of the Industrial Welfare Commission, or violates, or causes to be violated, Labor Code
8 sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such
9 violation. Therefore, Defendant LANTIER is liable for the violations herein alleged.

10 58. WHEREFORE, PLAINTIFFS and the class request relief against DEFENDANTS
11 as described herein and below, including unpaid wages, interest, attorney's fees and cost of suit.

12 **THIRD CAUSE OF ACTION**

13 REST PERIOD VIOLATIONS

(Cal. Lab. Code § 226.7)

14 PLAINTIFFS AGAINST ALL DEFENDANTS

15 59. PLAINTIFFS incorporates all preceding paragraphs as though fully set forth herein.

16 60. PLAINTIFFS allege that DEFENDANTS failed to provide proper rest periods, both
17 for work completed in the Richmond warehouse and off-site work.

18 61. DEFENDANTS failed to authorize and permit rest periods by failing to provide the
19 requisite number of breaks per shift and to allow net 10 minutes of rest, in violation of the
20 applicable Wage Orders and Labor Code section 226.7.

21 62. Rest periods were not voluntarily waived. Any express or implied waivers obtained
22 from PLAINTIFFS and, on information and belief, current and former employees and members of
23 the class they seeks to represent, were not willfully obtained, were not voluntarily agreed to, were
24 a condition of employment, or were part of an unlawful contract of adhesion.

25 63. DEFENDANTS instructed employees to continue to work during their shifts –
26 rather than provide and allow employees to take rest breaks – so as to complete work tasks as
27 quickly as possible. PLAINTIFFS and, on information and belief, current and former employees
28

1 and members of the class they seek to represent, were not provided nor allowed rest breaks.

2 64.

3 DEFENDANTS failed to pay additional wages for rest periods that were not
4 provided. PLAINTIFFS and the class seek to represent are entitled to premium rest period wages
5 pursuant to Labor Code section 226.7.

6 65.

7 Under Labor Code section 558.1, any natural person who is an owner, director,
8 officer, or managing agent of an employer, acting on behalf of the employer, who violates or
9 causes to be violated any provision regulating minimum wages or hours and days of work in any
10 order of the Industrial Welfare Commission, or violates, or causes to be violated, Labor Code
11 section 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such
12 violation. Therefore, Defendant LANTIER is liable for the violations herein alleged.

13 66.

14 WHEREFORE, PLAINTIFFS and the class they seek to represent are entitled to
15 recover the full amount of their unpaid rest period wages and all related penalties and remedies.

16 **FOURTH CAUSE OF ACTION**

17 MEAL PERIOD VIOLATIONS

18 (Cal. Lab. Code §§ 226.7, 512)

19 PLAINTIFFS AGAINST ALL DEFENDANTS

20 67.

21 PLAINTIFFS incorporate all preceding paragraphs as though fully set forth herein.

22 68.

23 PLAINTIFFS alleges that DEFENDANTS failed to provide lawful meal periods
24 and/or made employees work off the clock during meal periods.

25 69.

26 California Labor Code section 226.7 states:

27 (a) No employer shall require any employee to work during any meal or rest
28 period mandated by an applicable order of the Industrial Welfare
Commission.

(b) If an employer fails to provide an employee a meal period or rest period
in accordance with an applicable order of the Industrial Welfare
Commission, the employer shall pay the employee one additional hour of pay
at the employee's regular rate of compensation for each work day that the
meal or rest period is not provided.

70.

The applicable IWC Wage Orders contain similar language.

71.

PLAINTIFFS and, on information and belief, other current or former employees
and members of the class they seeks to represent, worked more than five hours from the start of the

1 shift without a duty-free meal period of no less than 30 minutes. DEFENDANTS also failed to
2 provide PLAINTIFFS and, on information and belief, other current or former employees or
3 members of the class they seek to represent, with a second meal period for shifts greater than 10 or
4 12 hours. When meals were taken, they were late, often shorter than 30 minutes, and/or employees
5 were not relieved of duty during their meal periods. DEFENDANTS pushed its employees to
6 finish installations and uninstallations as quickly as possible, resulting missed, late, and short
7 breaks.

8 72. Meal periods were not voluntarily waived. Any express or implied waivers
9 obtained from PLAINTIFFS and, on information and belief, current and former employees and
10 members of the class they seek to represent, were not willfully obtained, were not voluntarily
11 agreed to, were a condition of employment, or were part of an unlawful contract of adhesion.

12 73. Employees were instructed to miss meal periods and to record breaks and meal
13 periods that they did not actually take. Non-exempt employees also often missed either their first
14 or second meal period while working over 10 hours in a day, and sometimes missed both meal
15 periods.

16 74. DEFENDANTS failed to pay additional wages for meal periods that were not
17 provided. PLAINTIFFS and the class they seek to represent are entitled to premium meal period
18 wages pursuant to Labor Code section 226.7.

19 75. Under Labor Code section 558.1, any natural person who is an owner, director,
20 officer, or managing agent of an employer, acting on behalf of the employer, who violates or
21 causes to be violated any provision regulating minimum wages or hours and days of work in any
22 order of the Industrial Welfare Commission, or violates, or causes to be violated, Labor Code §§
23 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
24 Therefore, Defendant LANTIER is liable for the violations herein alleged.

25 76. WHEREFORE, PLAINTIFFS and the Class they seek to represent are entitled to
26 recover the full amount of their unpaid meal period wages and all related penalties and remedies.

27 **FIFTH CAUSE OF ACTION**
28 **FAILURE TO PROVIDE REIMBURSEMENT FOR NECESSARY BUSINESS
EXPENDITURES**

(Cal. Lab. Code § 2802)
PLAINTIFFS AGAINST DEFENDANTS ICTENTS & TENT STRUCTURES

77. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth herein.

78. Labor Code section 2802 required DEFENDANTS to indemnify PLAINTIFFS and the class they seek to represent for all necessary expenditures or losses incurred by these employees in direct consequence of the discharge of their duties.

79. DEFENDANTS failed to provide to PLAINTIFFS and the class they seek to represent with all supplies that were necessary to perform their duties as directed by DEFENDANTS and further failed to indemnify PLAINTIFFS and the class for all necessary expenditures and losses incurred by PLAINTIFFS and the class for the benefit of DEFENDANTS and to their detriment.

80. PLAINTIFFS and the class had to purchase and wear steel toed boots and gloves to do the installation work. This necessary equipment was purchased out of pocket by non-exempt employees, who were not reimbursed. Throughout their employment with DEFENDANTS, PLAINTIFFS and the Class were never reimbursed for these necessary expenses in violation of California labor law.

81. As a direct and proximate cause of the failure of DEFENDANTS to indemnify employees, PLAINTIFFS and the class incurred out of pocket expenses and suffered a loss of wages in an amount to be proven at trial.

82. Wherefore, PLAINTIFFS and the class request relief as described herein and below.

SIXTH CAUSE OF ACTION

KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED WAGE
STATEMENT PROVISIONS

(Cal. Lab. Code § 226)

PLAINTIFFS AGAINST DEFENDANTS ICTENTS & TENT STRUCTURES

83. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth herein.

84. California Labor Code section 226(a) requires that employees be provided accurate itemized wage statements containing gross and net wages earned, total hours worked and applicable wage rates, among other statutory requirements.

85. PLAINTIFFS, the class, and, on information and belief, other current or former employees were not provided “accurate itemized statements” within the meaning of California Labor Code section 226, because of the violations described in this complaint. For example, the wage statements provided by DEFENDANTS falsely understated the wages earned due to the failure to pay at the correct rates of pay and the failure to pay for all hours worked and for rest and meal period premiums.

86. California Labor Code section 226(e) and (g) provide that employees may recover fifty dollars (\$50) for an initial violation and one hundred dollars (\$100) thereafter up to four thousand dollars (\$4,000), costs and reasonable attorney's fees for violating the obligation to provide a proper, itemized wage statement. Additionally, an employee may seek injunctive relief to ensure compliance with this requirement under the UCL.

87. DEFENDANTS failed to comply with Labor Code section 226 as a result of the wage violations and timekeeping violations described above. These violations apply to PLAINTIFFS and, on information and belief, other current or former employees. By failing to comply with the Labor Code section 226, DEFENDANTS have injured PLAINTIFFS and the class within the meaning of the statute, entitling PLAINTIFFS and the class to relief. DEFENDANTS also failed to maintain records, in particular, maintain records of correct overtime rates, correct hours worked, and correct wages earned.

88. WHEREFORE, PLAINTIFFS and the class seek relief against DEFENDANTS as described herein and below, including penalties in an amount to be determined at trial, injunctive relief, cost of suit and attorneys’ fees.

SEVENTH CAUSE OF ACTION
FAILURE TO TIMELY PAY WAGES DUE AT TERMINATION
(Cal. Lab. Code §§ 201, 202, 203)

PLAINTIFFS AGAINST DEFENDANTS ICTENTS & TENT STRUCTURES

89. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth herein.

90. California Labor Code section 201(a) states: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately....”

91.

California Labor Code section 202(a) states:

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

92.

DEFENDANTS willfully failed to timely pay PLAINTIFFS and, on information and belief, the class all of their wages due for work performed and this failure continued through the time in which PLAINTIFFS and class members quit or were discharged from their employment with DEFENDANTS. As a result, DEFENDANTS violated California Labor Code sections 201 and 202.

93.

California Labor Code section 203 states:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days... Suit may be filed for these penalties at any time before the expiration of the statute of limitations on any action for the wages from which the penalties arose.

94.

As noted above, DEFENDANTS violated California Labor Code sections 201 and 202 by failing to pay non-exempt employees who quit, were involuntarily terminated, released after a specific job assignment or time duration, or were otherwise discharged all of the wages due pursuant to the timelines provided in those sections. DEFENDANTS willfully failed to pay all

1 wages due as the failure to pay was not inadvertent or accidental.

2 95. DEFENDANTS violated Labor Code sections 203 and 1197.1 by failure to pay all
3 forms of wages earned, including, but not limited to, compensation for all “hours worked” at the
4 minimum rate; premium wages for unprovided rest periods; and other wages described herein that
5 to date have not been received. A similar provision applies to PAGA claims under section 256.

6 96. More than 30 days have passed since PLAINTIFFS and, on information and belief,
7 many former employee class members have left DEFENDANTS’ employ and have not received
8 payment pursuant to Labor Code sections 201 and 202.

9 97. Wherefore, PLAINTIFFS and the class request relief as described herein and below.

10 **EIGHTH CAUSE OF ACTION**
11 **UNFAIR AND UNLAWFUL ACTS IN VIOLATION OF UNFAIR COMPETITION LAW**
12 **(California Bus. & Prof. Code §§ 17200 et seq.)**
13 **PLAINTIFFS AGAINST ALL DEFENDANTS**

14 98. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth herein.

15 99. On information and belief, and at all relevant times, PLAINTIFFS allege that
16 DEFENDANTS, by and through all of the policies and practices described above, engaged in
17 unlawful activity prohibited by Business and Professions Code sections 17200, et seq., including
18 the following:

- 19 a. Failing to compensate PLAINTIFFS and the class for all hours worked by,
20 for example, not reporting and compensating off-site work correctly;
- 21 b. Failing to indemnify employees for necessary business expenses in violation
22 of Labor Code section 2802;
- 23 c. Failing to provide rest periods and meal periods or compensation in lieu
24 thereof, in violation of state law;
- 25 d. Failing to pay all wages owed timely upon termination of the employment
26 relationship, in violation of state law; and
- 27 e. Failing to provide accurate itemized wage statements stating all hours
28 worked, all applicable pay rates, or all gross and net wages earned, in

violation of state law.

100.

The actions of DEFENDANTS as alleged herein constitute false, fraudulent, unlawful, unfair, and deceptive business practices, within the meaning of Business and Professions Code sections 17200 et seq. PLAINTIFFS and the class have suffered injury in fact and has lost money or property as a result of such unfair competition.

101.

PLAINTIFFS and the class are entitled to an injunction and other equitable relief against DEFENDANTS for such unlawful practices to prevent future damage for which there is no adequate remedy at law, and to avoid a multiplicity of lawsuits.

102.

As a result of the unlawful acts of DEFENDANTS described herein, DEFENDANTS have reaped and continue to reap unfair benefits and unlawful profits at the expense of PLAINTIFFS and the class they seek to represent. DEFENDANTS should be enjoined from this activity and made to disgorge the ill-gotten gains and restore to PLAINTIFFS and the class the wrongfully withheld wages, pursuant to Business and Professions Code section 17203, as well as to enforce penalty provisions pursuant to section 17202.

103.

PLAINTIFFS and the class are informed and believe, and thereon allege, that DEFENDANTS have been and continue to be unjustly enriched through false, fraudulent, unlawful, unfair, and deceptive business practices as alleged throughout this complaint. PLAINTIFFS and the class are and have been prejudiced by the unfair trade practices of DEFENDANTS.

104.

As a direct and proximate result of the unfair business practices of DEFENDANTS, PLAINTIFFS and the class are entitled to equitable and injunctive relief from DEFENDANTS, including full restitution and/or disgorgement of all wages which have been unlawfully withheld from them, and enjoinder of DEFENDANTS to cease and desist from engaging in the practices described herein.

105.

As a direct and proximate result of the unfair business practices of DEFENDANTS, PLAINTIFFS and the class are entitled, in accordance with Business and Professions Code section 17202, to enforcement of penalties resulting from the business acts and practices described herein, and entitled to enjoinder of DEFENDANTS to cease and desist from

engaging in the practices described herein.

106.

On information and belief, the unlawful conduct alleged herein is continuing, and there is no indication that DEFENDANTS will cease such activity. PLAINTIFFS and the class allege that if DEFENDANTS are not enjoined from the conduct set forth in this complaint, DEFENDANTS will continue the practice of failing to properly compensate employees for all wages owed; provide accurate wage statements; maintain required records; or pay all wages owed upon discharge.

107.

Wherefore, PLAINTIFFS and the class request relief against DEFENDANTS as described herein and below and as deemed just and proper by this Court.

NINTH CAUSE OF ACTION

VIOLATIONS OF THE PRIVATE ATTORNEYS GENERAL ACT

(California Labor Code §§ 2698 et seq.)

PLAINTIFF RIVAS AGAINST ALL DEFENDANTS

108.

PLAINTIFF RIVAS incorporates all preceding paragraphs as though fully set forth herein.

109.

Plaintiff Rivas brings this claim for the State of California, as expressly authorized by Labor Code sections 2699 et seq. PAGA is an enforcement action that empowers an aggrieved employee to seek penalties on behalf of themselves, current and former employees, and the State, without the need to certify a class. For purposes of this claim only, therefore, Plaintiff will bring this claim for the State of California and need not comply with class action requirements.

110.

Plaintiff Rivas is an aggrieved employee as defined in Labor Code section 2699(a). On behalf of the State of California, they bring this representative cause of action on behalf of themselves and other current or former employees affected by the labor law violations alleged in this complaint.

111.

The pre-lawsuit notice requirements set forth in Labor Code section 2699.3 have been satisfied by written notice by certified mail to Defendants ICTENTS and TENT STRUCTURES and online submission to the Labor and Workforce Development Agency. The notice detailed the Labor Code and IWC Wage Order violations averred herein. More than 65

1 days have elapsed since Plaintiff noticed the LWDA, giving Plaintiff Rivas the standing to submit
2 this claim.

3 112. Plaintiff Rivas will seek civil penalties as provided under applicable Labor Code
4 sections for all violations of the Labor Code alleged herein pursuant to Labor Code section
5 2699(a). Claims for relief number one through seven as alleged in this Complaint, although
6 pleaded herein as class wage and hour claims on behalf of PLAINTIFFS and the class, also serve
7 as predicate bases for which penalties are recoverable in the PAGA statute. The factual bases for
8 Plaintiff Rivas' claims one through seven also, on information and belief, concern other current
9 and former employees of DEFENDANTS, as was described in Plaintiff Rivas' PAGA notice letter.
10 To the extent that any violation alleged herein does not carry a specific penalty, Plaintiff Rivas will
11 seek civil penalties pursuant to Labor Code section 2699(f) for Plaintiff, other current or former
12 employees, and the State for violations of those sections.

13 113. Labor Code section 2699(f) provides:

14 For all provisions of this code except those for which a civil penalty is
15 specifically provided, there is established a civil penalty for a violation
16 of these provisions, as follows: . . . (2) If, at the time of the alleged
17 violation, the person employs one or more employees, the civil penalty
is one hundred dollars (\$100) for each aggrieved employee per pay
period for the initial violation and two hundred dollars (\$200) for each
aggrieved employee per pay period for each subsequent violation.

18 114. Plaintiff Rivas will seek penalties due from DEFENDANTS on behalf of
19 themselves, other current and former employees, and the State as provided by Labor Code §
20 2699(i), including but not limited to, penalties due pursuant to Labor Code sections 210 and 558 as
21 a result of DEFENDANTS' violation of the provisions of the Labor Code and applicable Wage
22 Order.

23 115. DEFENDANTS are liable to Plaintiff Rivas and "other current or former employees
24 and the state" for the civil penalties arising from the violations alleged in this Complaint. Plaintiff
25 Rivas is also entitled to an award of attorneys' fees and costs as set forth below. Defendants
26 ICTENTS and LANTIER are liable to Plaintiff Rivas and "other current or former employees and
27 the state" as direct employers or joint employers for the civil penalties arising from the violations
28 alleged in this Complaint. Defendant LANTIER is liable to Plaintiff Rivas and "other current or

former employees and the state” for the civil penalties arising from the violations alleged in this Complaint as a causal agent of certain wage and hours described in this Complaint. (See, e.g., Lab. Code, §§ 558, 1197.1; *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 824.)

116. Plaintiff Rivas and on behalf of themselves, other current or former employees, and the State request relief as described herein and below.

VII. PRAYER

Wherefore, PLAINTIFFS and the class pray for judgment as follows:

117. For all remedies as provided by the above statutes and related provisions;
118. For compensatory damages in an amount according to proof with interest thereon;
119. For economic and/or special damages in an amount according to proof with interest thereon;

120. For a declaratory judgment that DEFENDANTS violated the rights of PLAINTIFFS and the class under the California Labor Code and applicable Wage Orders as set forth in this complaint;

121. For an award to PLAINTIFFS and the class of statutory damages or, in the alternative, statutory damages for DEFENDANTS’ violations of the California Labor Code and applicable Wage Orders;

122. For statutory minimum or agreed upon wages and interest thereon, as well as attorneys’ fees and cost of suit, pursuant to Labor Code sections 200, et seq., 1194, 1194.2, 1197.1, applicable Wage Orders, and, if applicable, pursuant to local wage ordinances and third-party contractual agreements;

123. For attorneys’ fees, costs and interest and any other remedies provided by third party contracts and/or local wage ordinances;

124. For premium (overtime) wages and interest thereon, as well as attorneys’ fees and cost of suit, pursuant to Labor Code sections 200, et seq., 510, 1194, 1194.2, 1197.1 and applicable Wage Orders;

125. For an award of a preliminary and permanent injunction ordering DEFENDANTS to cease the unlawful and unfair business practices as herein alleged;

126. For restitution to PLAINTIFFS and the class in amounts to be proven at trial
against DEFENDANTS for the violation of Business and Professions Code § 17200, *et. seq.*;
127. Attorneys' fees and costs pursuant to Labor Code sections 218.5, 1194, 1197.1 and
wage orders;
128. For attorneys' fees, costs and interest on wages, pursuant to Code of Civil
Procedure section 1021.5;
129. For attorneys' fees and costs pursuant to Labor Code section 218.5;
130. For interest pursuant to Labor Code section 218.6;
131. For an award of (a) actual damages for failure to maintain time records reflecting all
hours worked in an amount to be proven at trial, (b) statutory amounts, or in the alternative (c)
\$50.00 for the first violation and \$100.00 for each subsequent violation up to a maximum of
\$4,000.00 per employee;
132. For an award of injunctive relief ordering DEFENDANTS to comply with Labor
Code § 226 (e), plus attorneys' fees and costs;
133. For penalties and attorneys' fees and costs pursuant to Labor Code sections 226(e),
226(f), 226(h);
134. For an award of post-judgment interest as authorized under the law against all
Defendants;
135. For all available PAGA penalties under Labor Code section 2698 et seq. and all
available relief pursuant to all predicate provisions of the Labor Code as described above,
including but not limited to Labor Code sections 226, 226.3, 226.7, 210, 256, 203, 558, 1197.1,
and all remedy provisions associated with the claims described above;
136. For a permanent injunction enjoining DEFENDANTS, their officers, successors,
assigns, and all persons in active concert or participation with it, from engaging in retaliation
against employees for participating in a protected activity;
137. For all available relief pursuant to Labor Code section 558.1; and
138. For such other relief as this Court deems just and proper.

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1 **VIII. DEMAND FOR JURY TRIAL**

2 PLAINTIFFS hereby demand trial of their claims by jury to the extent authorized by law.

3 Dated: March 17, 2020

4 **MALLISON & MARTINEZ**

5 By: 

6 Hector Martinez

7 Stan Mallison

8 Matthew Turnbull

9 Attorneys for Plaintiffs