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ENDORSED
 FILED
 ALAMEDA COUNTY

MAR 16 2020

CLERK OF THE SUPERIOR COURT
 By Jamie Thomas
 JAMIE THOMAS, Deputy

Attorneys for Plaintiff Pierre Nelms

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF ALAMEDA COUNTY

PIERRE NELMS, individually, and on
 behalf of other members of the general
 public similarly situated,

Plaintiff,

vs.

PENTAGON TECHNOLOGIES GROUP,
 INC., a Delaware corporation; and DOES 1
 through 10, inclusive,

Defendants.

Case No.: RG20049935

**FIRST AMENDED CLASS ACTION
 COMPLAINT & ENFORCEMENT
 ACTION UNDER THE PRIVATE
 ATTORNEYS GENERAL ACT,
 CALIFORNIA LABOR CODE §§ 2698, ET
 SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, et seq.;
- (10) Violation of California Business &

Professions Code §§ 17200, *et seq.*
(Unlawful Business Practices); and
(11) Violation of California Business &
Professions Code §§ 17200, *et seq.* (Unfair
Business Practices)

Jury Trial Demanded

1 Plaintiff Pierre Nelms, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all other aggrieved
3 employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice.

23 3. Venue is proper in this Court because Defendants employ persons in this county,
24 and employed Plaintiff this county, and thus a substantial portion of the transactions and
25 occurrences related to this action occurred in this county.

26 THE PARTIES

27 4. Plaintiff Pierre Nelms is a resident of Hayward, in Alameda County, California.
28 Defendants employed Plaintiff as an hourly paid, non-exempt Waste Water Technician from

1 approximately October 2017 to January 2019. Plaintiff worked for Defendants out of one of
2 their locations in Hayward, California. During his employment, Plaintiff typically worked
3 eight (8) hours or more per day, five (5) days per week, from 9:30 p.m. to 6:30 a.m.
4 Plaintiff's primary job duties included, without limitation, measuring, mixing, and
5 neutralizing chemicals; separating materials from chemicals; handling disposal of chemicals
6 and waste; reporting on tasks performed and equipment malfunctions; and cleaning and
7 maintaining work areas.

8 5. PENTAGON TECHNOLOGIES GROUP, INC. was and is, upon information
9 and belief, a Delaware corporation, and at all times hereinafter mentioned, an employer whose
10 employees are engaged throughout this county, the State of California, or the various states of
11 the United States of America.

12 6. Plaintiff is unaware of the true names or capacities of the Defendants sued
13 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
14 amend the complaint and serve such fictitiously named Defendants once their names and
15 capacities become known.

16 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
17 were the partners, agents, owners, or managers of PENTAGON TECHNOLOGIES GROUP,
18 INC. at all relevant times.

19 8. Plaintiff is informed and believes, and thereon alleges, that each and all of the
20 acts and omissions alleged herein was performed by, or is attributable to, PENTAGON
21 TECHNOLOGIES GROUP, INC. and/or DOES 1 through 10 (collectively, "Defendants" or
22 "PENTAGON"), each acting as the agent, employee, alter ego, and/or joint venturer of, or
23 working in concert with, each of the other co-Defendants and was acting within the course and
24 scope of such agency, employment, joint venture, or concerted activity with legal authority to
25 act on the others' behalf. The acts of any and all Defendants were in accordance with, and
26 represent, the official policy of Defendants.

27 9. At all relevant times, Defendants, and each of them, ratified each and every act
28 or omission complained of herein. At all relevant times, Defendants, and each of them, aided

1 and abetted the acts and omissions of each and all the other Defendants in proximately causing
2 the damages herein alleged.

3 10. Plaintiff is informed and believes, and thereon alleges, that each of said
4 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
5 omissions, occurrences, and transactions alleged herein.

6 **GENERAL ALLEGATIONS**

7 11. Defendants are a leading provider of mission-critical manufacturing support
8 services, contamination detection, and protection products to the semiconductor,
9 pharmaceutical, microelectronic, and solar industries. Upon information and belief,
10 Defendants maintain a single, centralized Human Resources (“HR”) department at their
11 company headquarters in Hayward, California, which is responsible for recruiting and hiring
12 of new employees, and communicating and implementing Defendants’ company-wide
13 policies, including timekeeping policies and meal and rest period policies, to employees
14 throughout California.

15 12. In particular, Plaintiff and class members, on information and belief, received
16 the same standardized documents and/or written policies. Upon information and belief, the
17 usage of standardized documents and/or written policies, including new-hire documents,
18 indicate that Defendants dictated policies at the corporate level and implemented them
19 company-wide, regardless of their employees’ assigned locations or positions. Upon
20 information and belief, Defendants set forth uniform policies and procedures in several
21 documents provided at an employee’s time of hire, including, but not limited to, a Cardinal
22 Rules Agreement, Time Keeping Policy (Effective 10/31/2015), Employee Handbook, and
23 Acknowledgement of Receipt of Pentagon Technologies Employee Handbook.

24 13. Upon information and belief, Defendants maintain a centralized Payroll
25 department at their company headquarters in Hayward, California, which processes payroll for
26 all non-exempt, hourly paid employees working for Defendants at their various locations and
27 jobsites in California, including Plaintiff and class members. Based upon information and
28 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid

1 employees in California, irrespective of their work locations. Upon information and belief,
2 Defendants process payroll for departing employees in the same manner throughout the State
3 of California, regardless of the manner in which each employee's employment ends.

4 14. Defendants continue to employ non-exempt or hourly paid employees in
5 California.

6 15. Plaintiff is informed and believes, and thereon alleges, that at all times herein
7 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
8 and advisors knowledgeable about California labor and wage law, employment and personnel
9 practices, and about the requirements of California law.

10 16. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
11 members were not paid for all hours worked because all hours worked were not recorded.

12 17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and class members were entitled to receive certain wages for
14 overtime compensation and that they were not receiving certain wages for overtime
15 compensation.

16 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and class members were entitled to be paid at a regular rate
18 of pay, and corresponding overtime rate of pay, that included as eligible income all income
19 derived from shift differential pay, incentive pay, nondiscretionary bonuses, and/or other
20 forms of compensation.

21 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and class members were entitled to receive at least minimum
23 wages for compensation and that they were not receiving at least minimum wages for work
24 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
25 and class members were not paid at least minimum wages for work done off-the-clock.

26 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and class members were entitled to meal periods in
28 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular

1 rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal
2 periods and that Plaintiff and class members were not provided with all meal periods or
3 payment of one (1) additional hour of pay at their regular rates of pay when they did not
4 receive a timely, uninterrupted, thirty (30) minute meal period.

5 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and class members were entitled to rest periods in
7 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)
8 additional hour of pay at their regular rates of pay when they were not authorized and
9 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
10 and class members were not authorized and permitted to take compliant rest periods, nor did
11 Defendants provide Plaintiff and class members with payment of one (1) additional hour of
12 pay at their regular rates of pay when they were not authorized and permitted to take a
13 compliant rest period.

14 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and class members were entitled to receive complete and
16 accurate wage statements in accordance with California law. In violation of the California
17 Labor Code, Plaintiff and class members were not provided complete and accurate wage
18 statements.

19 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that they had a duty to maintain accurate and complete payroll records in
21 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
22 and intentionally failed to do so.

23 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and class members were entitled to timely payment of all
25 wages earned upon termination of employment. In violation of the California Labor Code,
26 Plaintiff and class members did not receive payment of all wages due, including, but not
27 limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within
28 permissible time periods.

1 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and class members were entitled to timely payment of wages
3 during their employment. In violation of the California Labor Code, Plaintiff and class
4 members did not receive payment of all wages, including, but not limited to, overtime wages,
5 minimum wages, and/or meal and rest period premiums, within permissible time periods.

6 26. Plaintiff is informed and believes, and thereon alleges, that at all times herein
7 mentioned, that Defendants knew or should have known that they had a duty to cover the costs
8 and expenses Plaintiff and class members incurred obtaining mandatory physical examinations
9 and/or drug tests, but willfully, knowingly, and intentionally failed to do so.

10 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to receive full
12 reimbursement for all business-related expenses and costs they incurred during the course and
13 scope of their employment and that they did not receive full reimbursement of applicable
14 business-related expenses and costs incurred.

15 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
16 mentioned, Defendants knew or should have known that they had a duty to compensate
17 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
18 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
19 falsely represented to Plaintiff and class members that they were properly denied wages, all in
20 order to increase Defendants' profits.

21 **PAGA REPRESENTATIVE ALLEGATIONS**

22 29. At all times herein set forth, PAGA provides that any provision of law under
23 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
24 assessed and collected by the LWDA for violations of the California Labor Code and
25 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
26 civil action brought on behalf of themselves and other current or former employees pursuant
27 to procedures outlined in California Labor Code section 2699.3.

28 30. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any

1 person who was employed by the alleged violator and against whom one or more of the
2 alleged violations was committed.”

3 31. Plaintiff and other current and former employees of Defendants are “aggrieved
4 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
5 or former employees and one or more of the alleged violations were committed against them.

6 32. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
7 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
8 following requirements have been met:

- 9 (a) The aggrieved employee or representative shall give written notice by
10 online filing with the LWDA and by certified mail to the employer of
11 the specific provisions of the California Labor Code alleged to have
12 been violated, including the facts and theories to support the alleged
13 violation.
- 14 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
15 2699.3(a) and any employer response to that notice shall be
16 accompanied by a filing fee of seventy-five dollars (\$75).
- 17 (c) The LWDA shall notify the employer and the aggrieved employee or
18 representative by certified mail that it does not intend to investigate the
19 alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of
20 the postmark date of the aggrieved employee’s notice. Upon receipt of
21 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
22 (65) calendar days of the postmark date of the aggrieved employee’s
23 notice, the aggrieved employee may commence a civil action pursuant
24 to California Labor Code section 2699 to recover civil penalties.

25 33. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
26 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
27 provision other than those listed in Section 2699.5 after the following requirements have been
28 met:

- 1 (a) The aggrieved employee or representative shall give written notice by
2 online filing with the LWDA and by certified mail to the employer of
3 the specific provisions of the California Labor Code alleged to have
4 been violated (other than those listed in Section 2699.5), including the
5 facts and theories to support the alleged violation.
- 6 (b) An aggrieved employee's notice filed with the LWDA pursuant to
7 2699.3(c) and any employer response to that notice shall be
8 accompanied by a filing fee of seventy-five dollars (\$75).
- 9 (c) The employer may cure the alleged violation within thirty-three (33)
10 calendar days of the postmark date of the notice sent by the aggrieved
11 employee or representative. The employer shall give written notice
12 within that period of time by certified mail to the aggrieved employee or
13 representative and by online filing with the LWDA if the alleged
14 violation is cured, including a description of actions taken, and no civil
15 action pursuant to Section 2699 may commence. If the alleged violation
16 is not cured within the 33-day period, the aggrieved employee may
17 commence a civil action pursuant to Section 2699.

18 34. On January 10, 2020, Plaintiff provided written notice by online filing to the
19 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
20 Code alleged to have been violated, including facts and theories to support the alleged
21 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
22 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
23 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
24 Plaintiff PAGA Case Number LWDA-CM-766044-20. A true and correct copy of Plaintiff's
25 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

26 35. As of the filing date of this complaint, over 65 days have passed since Plaintiff
27 sent the notice described above to the LWDA, and the LWDA has not responded that it
28 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

1 36. Thus, Plaintiff has satisfied the administrative prerequisites under California
2 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
3 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510,
4 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

5 37. Labor Code section 558(a) provides “[a]ny employer or other person acting on
6 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
7 provision regulating hours and days of work in any order of the Industrial Welfare
8 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
9 dollars (\$50) for each underpaid employee for each pay period for which the employee was
10 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
11 underpaid employee for each pay period for which the employee was underpaid” Labor
12 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
13 to any other civil or criminal penalty provided by law.”

14 38. Defendants, at all times relevant to this complaint, were employers or persons
15 acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’
16 rights by violating various sections of the California Labor Code as set forth above.

17 39. As set forth below, Defendants have violated numerous provisions of both the
18 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
19 Order.

20 40. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
21 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
22 private attorney general, seeks assessment and collection of civil penalties for himself, all
23 other aggrieved employees, and the State of California against Defendants for violations of
24 California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516,
25 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

26 **CLASS ACTION ALLEGATIONS**

27 41. Plaintiff brings this action on his own behalf, as well as on behalf of each and
28 all other persons similarly situated, and thus seeks class certification under California Code of

Civil Procedure section 382.

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

43. Plaintiff's proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint until the date of trial ("Class").

44. Plaintiff's proposed subclass consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California and who received at least one wage statement within one (1) year prior to the filing of the initial complaint until the date of trial ("Subclass").

45. Members of the Class and Subclass are referred to herein as "class members."

46. Plaintiff reserves the right to redefine the Class and Subclass and to add additional subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

47. There are common questions of law and fact as to class members that predominate over questions affecting only individual members, including, but not limited to:

- (a) Whether Defendants required Plaintiff and class members to work over eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and failed to pay all legally required overtime compensation to Plaintiff and class members;
- (b) Whether Defendants failed to properly calculate the "regular rate" of pay on which Plaintiff's and class members' overtime rate of pay was based;
- (c) Whether Defendants failed to pay Plaintiff and class members at least minimum wages for all hours worked;
- (d) Whether Defendants failed to provide Plaintiff and class members with meal periods;
- (e) Whether Defendants failed to authorize and permit Plaintiff and class

- 1 members to take rest periods;
- 2 (f) Whether Defendants provided Plaintiff and class members with
- 3 complete and accurate wage statements as required by California Labor
- 4 Code section 226(a);
- 5 (g) Whether Defendants maintained accurate payroll records as required by
- 6 California Labor Code section 1174(d);
- 7 (h) Whether Defendants failed to pay earned overtime wages, minimum
- 8 wages, and meal and rest period premiums due to Plaintiff and class
- 9 members upon their discharge;
- 10 (i) Whether Defendants failed timely to pay overtime wages, minimum
- 11 wages, and meal and rest period premiums to Plaintiff and class
- 12 members during their employment;
- 13 (j) Whether Defendants failed to pay Plaintiff and class members for the
- 14 costs of mandatory physical examinations and/or drug testing;
- 15 (k) Whether Defendants failed to reimburse Plaintiff and class members for
- 16 necessary and required business-related expenditures and/or losses
- 17 incurred by them in the scope of their employment;
- 18 (l) Whether Defendants engaged in unlawful and unfair business practices
- 19 in violation of California Business & Professions Code sections 17200,
- 20 *et seq.*; and
- 21 (m) The appropriate amount of damages, restitution, or monetary penalties
- 22 resulting from Defendants' violations of California law.

23 48. There is a well-defined community of interest in the litigation and the class

24 members are readily ascertainable:

- 25 (a) Numerosity: The class members are so numerous that joinder of all
- 26 members would be unfeasible and impractical. The membership of the
- 27 entire class is unknown to Plaintiff at this time; however, the class is
- 28 estimated to be greater than one hundred (100) individuals and the

1 identity of such membership is readily ascertainable by inspection of
2 Defendants' employment records.

- 3 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
4 protect the interests of each class member with whom he has a well-
5 defined community of interest, and Plaintiff's claims (or defenses, if
6 any) are typical of all class members as demonstrated herein.
- 7 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
8 protect the interests of each class member with whom he has a well-
9 defined community of interest and typicality of claims, as demonstrated
10 herein. Plaintiff acknowledges that he has an obligation to make known
11 to the Court any relationship, conflicts or differences with any class
12 member. Plaintiff's attorneys, the proposed class counsel, are versed in
13 the rules governing class action discovery, certification, and settlement.
14 Plaintiff has incurred, and throughout the duration of this action, will
15 continue to incur costs and attorneys' fees that have been, are, and will
16 be necessarily expended for the prosecution of this action for the
17 substantial benefit of each class member.
- 18 (d) Superiority: The nature of this action makes the use of class action
19 adjudication superior to other methods. A class action will achieve
20 economies of time, effort, and expense as compared with separate
21 lawsuits, and will avoid inconsistent outcomes because the same issues
22 can be adjudicated in the same manner and at the same time for the
23 entire class.
- 24 (e) Public Policy Considerations: Employers in the State of California
25 violate employment and labor laws every day. Current employees are
26 often afraid to assert their rights out of fear of direct or indirect
27 retaliation. Former employees are fearful of bringing actions because
28 they believe their former employers might damage their future

endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime

(Against all Defendants)

49. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

50. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

51. California Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

52. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and class members working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

53. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and class members working more than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including shift differential pay, nondiscretionary bonuses, and incentive pay.

1 54. California Labor Code section 510 codifies the right to overtime compensation
2 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
3 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
4 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
5 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
6 in a day on the seventh (7th) day of work.

7 55. During the relevant time period, Defendants willfully failed to pay all overtime
8 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
9 class members were not paid overtime premiums for all of the hours they worked in excess of
10 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
11 hours in a week, because all hours worked were not recorded.

12 56. First, during the relevant time period, Defendants had a written policy and/or
13 practice of discouraging and impeding Plaintiff and class members from recording hours
14 worked that were outside of their scheduled shifts in order to limit the amount of overtime
15 employees could accrue. This policy of limiting overtime, coupled with Defendants'
16 understaffing and assigning heavy workloads, led Plaintiff and class members to work off-the-
17 clock before and after their scheduled shift times in order to complete their assigned tasks.
18 Defendants' "Time Keeping Policy (Effective 10/31/2015)" states, "Employees will be paid
19 for the exact hours worked (scheduled start time or actual clock-in time whichever is later . .
20 .)[]" and "the payroll system will continue to adjust the time you clocked in to your scheduled
21 start time if you clock in before your scheduled start time. For example[,] if you came to
22 work at 6:20am, and your scheduled time to start is 6:30am, you will be paid starting at
23 6:30am."

24 57. For example, Plaintiff arrived to work up to 30 minutes early and started
25 performing work immediately, such as mixing chemicals, but he did not clock in until his
26 designated shift start-time due to the written policy and pressure from the company not to
27 accrue overtime. Prior to clocking in at the start of his scheduled shift, Plaintiff would also
28 receive text messages on his personal cellular phone from his supervisors regarding the day's

1 assignments. Similarly, Plaintiff would clock out at his designated shift end-time and would
2 continue working to finish assignments, such as emptying the sludge machine or chemical
3 tank and performing general housekeeping tasks, such as putting away materials and tools.
4 Thus, Defendants failed to track this time spent working before and after scheduled shifts, and
5 Plaintiff and class members received no compensation for this time.

6 58. Second, during the relevant period, Defendants had, and continue to have, a
7 company-wide policy and/or practice of understaffing their worksites while assigning heavy
8 workloads and/or quotas, resulting in a failure to provide Plaintiff and class members with
9 adequate meal period coverage. On information and belief, Defendants imposed quotas on
10 some employees to meet metrics for cleaning and shipping out parts. As a result of this lack
11 of meal period coverage, Plaintiff and class members were not always afforded uninterrupted
12 30-minute meal periods during shifts when they were entitled to receive a meal period. For
13 example, Plaintiff and class members were required to perform their duties, such as fulfilling
14 chemical requests from the Chem Room or getting other assignments from Defendants'
15 supervisors, during unpaid meal periods, or would have their meal periods interrupted to
16 complete such work-related tasks. Thus, Plaintiff and class members missed or had meal
17 periods interrupted in order to complete their assigned workloads. Defendants did not pay
18 Plaintiff and class members for the time they continued to perform tasks during meal periods.

19 59. Third, Defendants, on a company-wide basis, had a practice of failing to adhere
20 to a schedule of meal periods, which further caused Plaintiff and class members to not be
21 relieved of their duties for compliant meal periods. As a result of these policies and/or
22 practices, Plaintiff and class members were required to work through and/or to return early
23 from meal periods, in order to complete their assigned tasks. Thus, Plaintiff and class
24 members performed work during meal periods for which they were not paid.

25 60. Defendants knew or should have known that as a result of these company-wide
26 practices and/or policies, Plaintiff and class members were performing assigned duties during
27 their meal periods and performing work off-the-clock before or after their shifts, and were
28 suffered or permitted to perform work for which they were not paid. Because Plaintiff and

1 class members worked shifts of eight (8) hours a day or more or forty (40) hours a week or
2 more, some of this off-the-clock work qualified for overtime premium pay. Therefore,
3 Plaintiff and class members were not paid overtime wages for all of the overtime hours they
4 actually worked.

5 61. Furthermore, Defendants did not pay Plaintiff and class members the correct
6 overtime rate for the recorded overtime hours that they generated. In addition to an hourly
7 wage, Defendants paid Plaintiff and class members shift differential pay, incentive pay,
8 nondiscretionary bonuses, and/or other forms of remuneration. For example, Defendants paid
9 Plaintiff and class members shift differentials for working graveyard shifts and
10 nondiscretionary bonuses. However, in violation of the California Labor Code, Defendants
11 failed to incorporate all compensation, including shift differential pay, incentive pay,
12 nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the
13 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during
14 times when Plaintiff and class members worked overtime and received these other forms of
15 pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than
16 required.

17 62. Defendants' failure to pay Plaintiff and class members the balance of overtime
18 compensation as required by California law, violates the provisions of California Labor Code
19 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
20 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
21 and attorneys' fees.

22 **SECOND CAUSE OF ACTION**

23 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 24 **Minimum Wages** 25 **(Against all Defendants)**

26 63. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
27 and every allegation set forth above.

28 64. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,

1 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
2 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
3 fixed is unlawful. Compensable work time is defined in Wage Order No. 4 as “the time
4 during which an employee is subject to the control of an employer, and includes all the time
5 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
6 Regs. tit. 8, § 11040(2)(K) (defining “Hours Worked”).

7 65. As stated, during the relevant time period, as a result of Defendants’ policy of
8 limiting the amount of overtime employees could accrue by utilizing a written policy that
9 discouraged and impeded Plaintiff and class members from recording hours worked that were
10 outside of their scheduled shifts, Plaintiff and class members were required to work off-the-
11 clock before and/or after their scheduled shift start and end times to complete assigned job
12 duties. And, as stated above, due to Defendants’ policy and/or practice of understaffing while
13 assigning heavy workloads and failure to adhere to a schedule of meal periods, Plaintiff and
14 class members were forced to forego meal periods, have their meal periods interrupted, and/or
15 were otherwise not relieved of all duties during meal periods.

16 66. Further, Defendants maintained and implemented a company-wide policy of
17 requiring all employees to travel to a medical clinic on their own time and using their own
18 personal vehicles to undergo mandatory drug testing and/or physical examinations, upon
19 hiring and periodically thereafter. However, Defendants did not compensate Plaintiff and
20 class members for the time they spent traveling to and from the medical clinics or for the time
21 they spent undergoing testing and/or physical examinations. At all times, Defendants were in
22 control of scheduling the date and time for the testing and/or physical examinations, selecting
23 the provider or clinic where the testing and/or physical examinations were to take place, and
24 determining the scope of the testing and/or physical examinations. For example, Defendants
25 gave Plaintiff strict instructions to obtain drug testing and a physical examination/respirator fit
26 test, and Plaintiff underwent the testing for the sole benefit of Defendants. Each time,
27 Plaintiff followed Defendants’ instructions and traveled several miles to and from the medical
28 clinic designated by Defendants, CCCMA Occupational Clinic in Hayward, California, and

1 spent 40 minutes to 2 hours waiting at the medical clinic and undergoing the requisite testing.
2 However, Defendants did not compensate Plaintiff and class members for the time they spent
3 traveling to and undergoing the mandatory drug testing and/or physical examinations.

4 67. Defendants did not pay minimum wages for off-the-clock hours that Plaintiff
5 and class members worked through that qualified for overtime premium payment. To the
6 extent that these off-the-clock hours did not qualify for overtime premium payment,
7 Defendants did not pay at least minimum wages for those hours worked off-the-clock in
8 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

9 68. Defendants' failure to pay Plaintiff and class members minimum wages violates
10 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
11 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover
12 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

13 **THIRD CAUSE OF ACTION**

14 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period** 15 **Violations** 16 **(Against all Defendants)**

17 69. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
18 and every allegation set forth above.

19 70. At all relevant times herein set forth, California Labor Code section 512(a)
20 provides that an employer may not require, cause, or permit an employee to work for a period
21 of more than five (5) hours per day without providing the employee with a meal period of not
22 less than thirty (30) minutes, except that if the total work period per day of the employee is
23 not more than six (6) hours, the meal period may be waived by mutual consent of both the
24 employer and the employee. Under California law, first meal periods must start after no more
25 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
26 2012).

27 71. At all relevant times herein set forth, California Labor Code sections 226.7,
28 512(a), 516, and 1198 provide that no employer shall require an employee to work during any

1 meal period mandated by an applicable order of the IWC.

2 72. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
3 the applicable IWC Wage Order also require employers to provide a second meal period of
4 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
5 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
6 hours worked is no more than twelve (12) hours, the second meal period may be waived by
7 mutual consent of the employer and the employee only if the first meal period was not waived.

8 73. First, during the relevant time period, Defendants maintained and implemented,
9 on a company-wide basis, a non-compliant written meal period policy that prevented Plaintiff
10 and class members from taking timely, compliant meal periods. The policy states, "For
11 employees who work less than 6-hours per day, a meal break is not required, but maybe [sp]
12 taken by an employee working at least 5-hours. Employees working more than 6-hours and
13 up to 10-hours in a day are required to have a 30-minute meal break." Defendants' written
14 meal period policy incorrectly states that employees are not entitled to a 30-minute meal
15 period if they work "less than 6-hours per day," when California law dictates that employees
16 are entitled a meal period during any shift longer than five (5) hours.

17 74. Second, as stated, Defendants had, and continue to have, a company-wide
18 policy and/or practice of understaffing while assigning heavy workloads and/or quotas for
19 fulfilling assignments. Additionally, as stated, Defendants had a company-wide practice of
20 failing to adhere to a schedule of meal periods, which further caused Plaintiff and class
21 members to not be relieved of their duties for compliant meal periods. Plaintiff's time records
22 show that he took many of his meal periods late, i.e. after the fifth hour of work, on January 3
23 (after 5.45 hours), January 4 (after 5.37 hours), January 7 (after 5.43 hours), January 8 (after
24 5.40 hours), January 9 (after 5.32 hours), and January 10, 2018 (after 5.53 hours).

25 75. Defendants' non-compliant meal period policy, coupled with Defendants'
26 practice of understaffing and assigning heavy workloads and/or quotas, and failure to adhere
27 to a schedule of meal periods, prevented Plaintiff and class members from taking all compliant
28 meal periods to which they were entitled. As a result, Plaintiff and class members would be

1 forced to work in excess of five (5) hours before taking a meal period and, at times, had their
2 meal periods interrupted and/or had to forgo their meal periods altogether. For example,
3 during his employment, Plaintiff would start his meal periods late or would have his meal
4 periods interrupted by his supervisors asking that he complete various assignments, including
5 fulfilling chemical requests from the Chem Room.

6 76. Third, during the relevant time period, Plaintiff and class members worked
7 shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal
8 period. For example, Plaintiff was not provided his second meal period when he worked
9 shifts in excess of ten (10) hours. Plaintiff and class members did not sign valid meal period
10 waivers on days that they were entitled to meal periods and were not relieved of all duties.

11 77. At all times herein mentioned, Defendants knew or should have known that, as
12 a result of these policies, Plaintiff and class members were prevented from being relieved of
13 all duties and required to perform some of their assigned duties during meal periods.
14 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
15 members meal period premium wages when meal periods were late, interrupted, shortened, or
16 missed.

17 78. Moreover, Defendants engaged in a company-wide practice and/or policy of
18 not paying all meal period premiums owed when compliant meal periods are not provided.
19 Because of Defendants' practices and/or policies, Plaintiff and class members have not
20 received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the
21 extent that Defendants did pay Plaintiff and class members premium pay for missed, late, and
22 interrupted meal periods, Defendants did not pay Plaintiff and class members at the correct
23 rate of pay for premium wages because Defendants systematically failed to include all forms
24 of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses,
25 and/or other forms of remuneration, in the regular rate of pay. As a result, Defendants failed
26 to provide Plaintiff and class members compliant meal periods in violation of California Labor
27 Code sections 226.7, 512, and 516 and failed to pay the full meal period premiums due.

28 79. Defendants' conduct violates the applicable IWC Wage Order, and California

1 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
2 entitled to recover from Defendants one (1) additional hour of pay at the employee’s regular
3 rate of compensation for each work day that the meal period was not provided.

4 **FOURTH CAUSE OF ACTION**

5 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 6 **(Against all Defendants)**

7 80. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
8 and every allegation set forth above.

9 81. At all relevant times herein set forth, the applicable IWC Wage Order and
10 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and class
11 members’ employment by Defendants.

12 82. At all relevant times, the applicable IWC Wage Order provides that “[e]very
13 employer shall authorize and permit all employees to take rest periods, which insofar as
14 practicable shall be in the middle of each work period” and that the “rest period time shall be
15 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
16 hours or major fraction thereof” unless the total daily work time is less than three and one-half
17 (3½) hours.

18 83. At all relevant times, California Labor Code section 226.7 provides that no
19 employer shall require an employee to work during any rest period mandated by an applicable
20 order of the California IWC. To comply with its obligation to authorize and permit rest
21 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
22 employer must “relinquish any control over how employees spend their break time, and
23 relieve their employees of all duties — including the obligation that an employee remain on
24 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
25 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and
26 California Labor Code section 226.7(b), Plaintiff and class members are entitled to recover
27 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day
28 that a required rest period was not authorized and permitted.

1 84. During the relevant time period, Defendants regularly failed to authorize and
2 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
3 period worked or major fraction thereof. Defendants maintained and implemented, on a
4 company-wide basis, a non-compliant written rest period policy that prevented Plaintiff and
5 class members from taking compliant rest periods. The policy states: “Employees . . . need to
6 take a 10-minute rest period for every 4-hours of work, or (2) 10-minute rest period[s] for an
7 8-hour shift.” Defendants’ written rest period policy incorrectly states that employees are
8 entitled to two paid 10-minute rest periods “for an 8-hour shift,” rather than stating that
9 employees are entitled to two 10-minute rest periods for shifts in excess of 6 hours.

10 85. In addition, Defendants’ non-compliant policy fails to correctly state the timing
11 of when rest periods must occur. Defendants’ written rest period policy states, “Due to shift
12 start times, employees have requested that they have an extended break (20 minutes) in the
13 middle of the first half of their shift, Pentagon has allowed employees to combine the first 2
14 rest periods into one 20-minute break. Should you want a 10-minute break at the midway
15 point between your start time and lunch and a second 10-minute break between your return
16 from lunch and the end of your shift[,] please notify your supervisor that you would like to
17 take this option.”—as though combining employees’ two rest periods into “an extended break
18 (20 minutes) in the middle of the first half of their shift” by default is somehow compliant
19 with California law. However, under California law, an employee is entitled to rest periods
20 for every 4 hours worked or major fraction thereof. Thus, Defendants’ written rest period
21 policy is non-compliant on its face, as it fails to authorize and permit employees to take a first
22 rest period for shifts between 3.5 and 6 hours, a second rest period for shifts between 6 and 10
23 hours, a third rest period for shifts between 10 and 14 hours, and so on.

24 86. Also, as with meal periods, Defendants’ company-wide practices, including
25 assigning heavy workloads, prevented Plaintiff and class members from being relieved of all
26 duty to take their rest periods. Additionally, Defendants failed to adhere to a schedule of rest
27 periods, which, coupled with Defendants’ failure to provide adequate rest period coverage,
28 further led to Plaintiff and class members not being authorized and permitted to take

1 compliant rest periods. Moreover, Plaintiff and class members were assigned company-issued
2 radios and were expected to carry and keep them on while clocked in for their shifts, including
3 during rest periods.

4 87. Furthermore, upon information and belief, during the relevant time period,
5 Defendants maintained implemented a company-wide on-premises rest period policy, which
6 mandated that Plaintiff and class members remain on Defendants' premises during their rest
7 periods. Upon information and belief, Defendants' company-wide on-premises rest period
8 policy prevented Plaintiff and class members from being relieved of all duties for rest periods
9 and caused them to perform work during rest periods.

10 88. As a result of Defendants' practices and policies, Plaintiff and class members
11 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
12 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
13 during his employment, Plaintiff missed his rest periods or had them cut short or interrupted,
14 due to Defendants' policy of assigning heavy workloads, failure to adhere to a schedule of rest
15 periods, and requirement that he keep his radio on at all times during his shifts.

16 89. Defendants have also engaged in a systematic, company-wide practice and/or
17 policy of not paying rest period premiums owed when rest periods are not authorized and
18 permitted. As a result, Defendants denied Plaintiff and class members rest periods and failed
19 to pay them rest period premium wages due, in violation of Labor Code section 226.7 and the
20 applicable IWC Wage Order.

21 90. Defendants have also engaged in a systematic, company-wide practice and/or
22 policy of not paying rest period premiums owed when rest periods are not authorized and
23 permitted. Alternatively, to the extent that Defendants did pay Plaintiff and class members
24 one (1) additional hour of premium pay for missed rest periods, Defendants did not pay
25 Plaintiff and class members at the correct rate of pay for premium wages because Defendants
26 failed to include all forms of compensation, such as shift differential pay, incentive pay,
27 nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. As a
28 result, Defendants denied Plaintiff and class members rest periods and failed to pay them rest

1 period premium wages due, in violation of Labor Code section 226.7, 516, and the applicable
2 IWC Wage Order.

3 91. Defendants' conduct violates the applicable IWC Wage Order and California
4 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
5 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
6 compensation for each work day that a compliant rest period was not authorized and
7 permitted.

8 **FIFTH CAUSE OF ACTION**

9 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 10 **Statements and Failure to Maintain Accurate Payroll Records** 11 **(Against all Defendants)**

12 92. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
13 and every allegation set forth above.

14 93. At all relevant times herein set forth, California Labor Code section 226(a)
15 provides that every employer shall furnish each of his or her employees an accurate and
16 complete itemized wage statement in writing, including, but not limited to, the name and
17 address of the legal entity that is the employer, the inclusive dates of the pay period, total
18 hours worked, and all applicable rates of pay.

19 94. At all relevant times, Defendants have knowingly and intentionally provided
20 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
21 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
22 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
23 applicable hourly rates in effect during the pay period, including overtime rates of pay, and
24 the corresponding number of hours worked at each hourly rate. Specifically, Defendants
25 violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

26 95. Because Defendants did not record the time Plaintiff and Subclass members
27 spent working off the clock, Defendants did not list the correct amount of gross wages and net
28 wages earned by Plaintiff and Subclass members in compliance with section 226(a)(1) and

1 226(a)(5). For the same reason, Defendants failed to accurately list the total number of hours
2 worked by Plaintiff and Subclass members in violation of section 226(a)(2), and failed to list
3 the applicable hourly rates of pay in effect during the pay period and corresponding accurate
4 number of work hours worked at each hourly rate in violation of section 226(a)(9).

5 96. Moreover, because Defendants did not calculate Plaintiff's and Subclass
6 members' regular rate of pay correctly for purposes of paying overtime, Defendants did not
7 list the correct amount of gross wages earned by Plaintiff and Subclass members in
8 compliance with section 226(a)(1). For the same reason, Defendants failed to list the correct
9 amount of net wages earned by Plaintiff and Subclass members in violation of section
10 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in effect during
11 the pay period, namely, correct overtime rates of pay and correct rates of pay for premium
12 wages, in violation of section 226(a)(9).

13 97. The wage statement deficiencies also include, without limitation, failing to list
14 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
15 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
16 only the last four digits of his or her social security number or an employee identification
17 number other than a social security number; failing to list the name and address of the legal
18 entity that is the employer; failing to list the inclusive dates of the period for which class
19 members were paid; and/or failing to state all hours worked as a result of not recording or
20 stating hours worked off-the-clock.

21 98. California Labor Code section 1198 provides that the maximum hours of work
22 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
23 set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he
24 employment of any employees for longer hours than those fixed by the order or under
25 conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC
26 Wage Order, employers are required to keep accurate time records showing when the
27 employee begins and ends each work period and meal period. During the relevant time
28 period, Defendants failed, on a company-wide basis, to keep accurate records of shift start and

1 stop times for Plaintiff and class members, in violation of section 1198. Furthermore, in light
2 of Defendants' failure to provide Plaintiff and Subclass members with first and second 30-
3 minute meal periods to which they were entitled, Defendants kept no records of meal start and
4 end times for meal periods.

5 99. California Labor Code section 1174(d) provides that "[e]very person employing
6 labor in this state shall ... [k]eep a record showing the names and addresses of all employees
7 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
8 plants or establishments at which employees are employed, payroll records showing the hours
9 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
10 applicable piece rate paid to, employees employed at the respective plants or establishments . .
11 . ." At all relevant times, and in violation of Labor Code section 1174(d), Defendants
12 willfully failed to maintain accurate payroll records for Plaintiff and Subclass members
13 showing the daily hours they worked and the wages paid thereto as a result of failing to record
14 the off-the-clock hours that they worked.

15 100. Plaintiff and Subclass members are entitled to recover from Defendants the
16 greater of their actual damages caused by Defendants' failure to comply with California Labor
17 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
18 employee.

19 **SIXTH CAUSE OF ACTION**

20 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid**

21 **Upon Termination**

22 **(Against all Defendants)**

23 101. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
24 and every allegation set forth above.

25 102. This cause of action is dependent upon, and wholly derivative of, the overtime
26 wages, minimum wages, and/or meal and rest period premium wages that were not timely paid
27 to Plaintiff and those class members no longer employed by Defendants upon their
28 termination.

1 103. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
2 that if an employer discharges an employee, the wages earned and unpaid at the time of
3 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
4 her employment, his or her wages shall become due and payable not later than seventy-two
5 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
6 his or her intention to quit, in which case the employee is entitled to his or her wages at the
7 time of quitting.

8 104. Defendants willfully failed to pay Plaintiff and class members who are no
9 longer employed by Defendants the earned and unpaid wages set forth above, including but
10 not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages,
11 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants'
12 employ.

13 105. Defendants' failure to pay Plaintiff and class members who are no longer
14 employed by Defendants their wages earned and unpaid at the time of discharge, or within
15 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
16 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
17 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
18 thirty (30) day maximum pursuant to California Labor Code section 203.

19 **SEVENTH CAUSE OF ACTION**

20 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During**
21 **Employment**
22 **(Against all Defendants)**

23 106. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
24 and every allegation set forth above.

25 107. This cause of action is dependent upon, and wholly derivative of, the overtime
26 wages, minimum wages, and/or meal and rest period premium wages that were not timely paid
27 to Plaintiff and class members during their employment.

28 108. At all times relevant herein set forth, Labor Code section 204 provides that all

1 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
2 days, inclusive, of any calendar month, other than those wages due upon termination of an
3 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
4 the month during which the labor was performed.

5 109. At all times relevant herein, Labor Code section 204 provides that all wages
6 earned by any person in any employment between the sixteenth (16th) and the last day,
7 inclusive, of any calendar month, other than those wages due upon termination of an
8 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
9 month.

10 110. At all times relevant herein, Labor Code section 204 provides that all wages
11 earned for labor in excess of the normal work period shall be paid no later than the payday for
12 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
13 204 provides that the requirements of this section are deemed satisfied by the payment of
14 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
15 seven (7) calendar days following the close of the payroll period.

16 111. During the relevant time period, Defendants willfully failed to pay Plaintiff and
17 class members all wages due including, but not limited to, overtime wages, minimum wages,
18 and/or meal and rest period premium wages, within the time periods specified by California
19 Labor Code section 204.

20 112. Defendants' failure to pay Plaintiff and class members all wages due violates
21 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
22 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

23 **EIGHTH CAUSE OF ACTION**

24 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 25 **(Against all Defendants)**

26 113. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
27 and every allegation set forth above.

28 114. At all times herein set forth, California Labor Code section 2802 provides that

1 an employer must reimburse employees for all necessary expenditures and losses incurred by
2 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
3 to prevent employers from passing off their cost of doing business and operating expenses on
4 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
5 (2014). The applicable wage order, IWC Wage Order 4-2001, provides that: "[w]hen tools or
6 equipment are required by the employer or are necessary to the performance of a job, such
7 tools and equipment shall be provided and maintained by the employer, except that an
8 employee whose wages are at least two (2) times the minimum wage provided herein may be
9 required to provide and maintain hand tools and equipment customarily required by the trade
10 or craft."

11 115. First, during the relevant time period, Defendants had a company-wide policy
12 of requiring Plaintiff and class members to utilize their own personal cellular phones and
13 cellular data to carry out their job duties, but Defendants failed to reimburse them for the costs
14 of their work-related cellular phone expenses. Plaintiff and class members were required to
15 use their personal cellular phones to complete their work-related tasks, such as discussing
16 upcoming work assignments with Defendants' managers. Plaintiff would spend several
17 minutes per instance texting or speaking with his managers/supervisors prior to the start of his
18 shift, about once a week. Although Defendants required Plaintiff and class members to utilize
19 their personal cellular phones to carry out their work-related responsibilities, Defendants
20 failed to fully reimburse them for this cost.

21 116. Second, Defendants also had a company-wide policy of requiring Plaintiff and
22 class members to travel in their own personal vehicles to obtain mandatory drug testing and/or
23 physical examinations, but did not reimburse them for their travel expenses, including
24 mileage. For example, as described above, on at least two occasions, Plaintiff followed
25 Defendants' instructions, traveled several miles roundtrip in his personal vehicle, and
26 underwent the drug testing and/or physical examinations, but was not reimbursed for his
27 mileage to and from the medical clinic. Although Defendants required Plaintiff and class
28 members to undergo drug testing and/or physical examinations, Defendants failed to

1 reimburse them for these expenses.

2 117. Third, Defendants, on a company-wide basis, expected Plaintiff and class
3 members to report to work in clean uniforms or personal protective equipment, including
4 smocks. Thus, Plaintiff and class members were required to wash their smocks more
5 frequently than they would otherwise do laundry and incur expenses for doing so. In addition,
6 due to the nature of chemical/waste water work, Plaintiff's and class members' smocks would
7 be exposed to various chemicals, which made them disinclined to mix their smocks in with
8 their other clothing in the wash. As a result, Plaintiff and class members washed their smocks
9 separately from their other clothes, increasing their overall laundry costs even more.

10 118. Defendants could have provided Plaintiff and class members with the actual
11 tools for use on the job, such as company phones and company vehicles to be used for
12 fulfilling work-related tasks and with an adequate number of smocks or access to a cleaning
13 service. Or, Defendants could have reimbursed employees for the costs of their cellular phone
14 expenses, travel, mileage, and laundering their smocks. Instead, Defendants passed these
15 operating costs off onto Plaintiff and class members. At all relevant times, Plaintiff did not
16 earn at least two (2) times the minimum wage.

17 119. Defendants' company-wide policy and/or practice of passing on their operating
18 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
19 have intentionally and willfully failed to reimburse Plaintiff and other class members for
20 necessary business-related expenses and costs.

21 120. Plaintiff and class members are entitled to recover from Defendants their
22 business-related expenses incurred during the course and scope of their employment, plus
23 interest.

24 **NINTH CAUSE OF ACTION**

25 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

26 **(Against all Defendants)**

27 121. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
28 and every allegation set forth above.

1 122. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
2 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
3 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5,
4 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section
5 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
6 violations of those Labor Code sections not found in section 2699.5, including sections 516
7 and 1182.12.

8 123. Defendants’ conduct, as alleged herein, violates numerous sections of the
9 California Labor Code, including, but not limited to, the following:

- 10 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
11 wage order for Defendants’ failure to compensate Plaintiff and other
12 aggrieved employees with all required overtime pay and failure to
13 properly calculate the overtime rates paid to Plaintiff and other
14 aggrieved employees, as alleged herein;
- 15 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
16 and the applicable IWC wage order for Defendants’ failure to
17 compensate Plaintiff and other aggrieved employees with at least
18 minimum wages for all hours worked, as alleged herein;
- 19 (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the
20 applicable IWC wage order for Defendants’ failure to provide Plaintiff
21 and other aggrieved employees with meal periods, as alleged herein;
- 22 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
23 IWC wage order for Defendants’ failure to authorize and permit
24 Plaintiff and other aggrieved employees to take rest periods, as alleged
25 herein;
- 26 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
27 wage order for failure to provide accurate and complete wage statements
28 to Plaintiff and other aggrieved employees, as alleged herein;

- 1 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
2 IWC wage order for failure to maintain payroll records as alleged
3 herein;
- 4 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
5 earned wages upon termination as alleged herein;
- 6 (h) Violation of Labor Code section 204 for failure to pay all earned wages
7 during employment, as alleged herein;
- 8 (i) Violation of Labor Code section 222.5 for failure to compensate
9 Plaintiff and other aggrieved employees for mandatory physical
10 examinations and/or drug testing as set forth below; and
- 11 (j) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
12 and other aggrieved employees for all business expenses necessarily
13 incurred, as alleged herein.

14 124. At all relevant times herein, California Labor Code section 222.5 requires
15 employers to pay for the costs an employee incurs for obtaining any medical or physical
16 examination taken.

17 125. At all times relevant herein, Defendants implemented, on a company-wide
18 basis, an employer-imposed requirement that Plaintiff and/or other aggrieved employees
19 undergo mandatory physical examinations and/or drug tests, but required them to do so at
20 their own expense. As stated, Defendants had a company-wide policy requiring that all
21 employees, including Plaintiff and/or other aggrieved employees, travel to a specified medical
22 clinic on their own time and using their own personal vehicles to undergo physical
23 examinations and/or drug testing. At all times, Defendants were in control of scheduling the
24 date and time for the examination and/or testing, selecting the provider/clinic where the
25 examination and/or testing were to take place, and determining the scope of the examination
26 and/or testing.

27 126. During the relevant time period, Plaintiff was instructed by Defendants to travel
28 to CCCMA Occupational Clinic in Hayward, California, and obtain a drug test and a physical

1 examination/respirator fit test. Plaintiff followed Defendants' instructions, traveled to the
2 clinic Defendants selected, and underwent the testing and/or physical examination. Plaintiff
3 was required to travel to and from a medical clinic selected by Defendants using his own
4 vehicle. Each time, Plaintiff followed Defendants' instructions and drove several miles
5 roundtrip to and from the medical clinic designated by Defendants, and then spent 40 minutes
6 to 2 hours waiting at the medical clinic and undergoing the requisite tests. Other aggrieved
7 employees similarly were required to travel in their own vehicles to medical clinics selected
8 by Defendants and undergo drug testing and/or physical examinations.

9 127. However, Defendants did not compensate Plaintiff and/or other aggrieved
10 employees for the time they spent traveling to and from the medical clinics, for the time they
11 spent undergoing the physical examinations and/or drug testing, or reimburse them for the
12 travel expenses they incurred getting to and from the medical clinics. Defendants' policy
13 and/or not paying for all costs Plaintiff and/or other aggrieved employees incurred obtaining
14 the physical examinations and/or drug testing is in violation of California Labor Code section
15 222.5. Plaintiff and/or other aggrieved employees are therefore entitled to recover civil
16 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

17 **TENTH CAUSE OF ACTION**

18 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

19 **Unlawful Business Practices**

20 **(Against all Defendants)**

21 128. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
22 and every allegation set forth above.

23 129. Defendants are "persons" as defined by California Business & Professions
24 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
25 and/or associations.

26 130. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
27 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
28 suffered injury in fact and has lost money as a result of Defendants' unlawful business

1 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
2 meaning of Code of Civil Procedure section 1021.5.

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

6 132. A violation of California Business & Professions Code sections 17200, *et seq.*
7 may be predicated on the violation of any state or federal law. In the instant case, Defendants'
8 policies and practices have violated state law in at least the following respects:

- 9 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
10 class members, to work overtime without paying them proper
11 compensation in violation of California Labor Code sections 510 and
12 1198 and the applicable IWC Order, and paying Plaintiff and class
13 members overtime at a lower rate than required by law by failing to
14 properly calculate the regular rate of pay for purposes of overtime, as
15 alleged herein;
- 16 (b) Failing to pay at least minimum wage to Plaintiff and class members in
17 violation of California Labor Code sections 1182.12, 1194, 1197,
18 1197.1, and 1198 and the applicable IWC Order, as alleged herein;
- 19 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
20 members in violation of California Labor Code sections 226.7, 512(a),
21 516, 1198, and the applicable IWC Order, as alleged herein;
- 22 (d) Failing to authorize and permit Plaintiff and class members to take
23 uninterrupted rest periods in violation of California Labor Code sections
24 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;
- 25 (e) Failing to provide Plaintiff and class members with accurate wage
26 statements and failing to maintain accurate payroll records in violation
27 of California Labor Code sections 226(a), 1174(d), 1198, and the
28 applicable IWC Order, as alleged herein;

- 1 (f) Failing timely to pay all earned wages to Plaintiff and class members in
2 violation of California Labor Code section 204 and the applicable IWC
3 Order, as alleged herein;
- 4 (g) Failing to pay Plaintiff and class members the costs of mandatory
5 physical examinations and/or drug testing in violation of California
6 Labor Code section 222.5, as set forth below; and
- 7 (h) Failing to reimburse Plaintiff and class members for all business
8 expenses necessarily incurred in violation of California Labor Code
9 sections 2802, as alleged herein.

10 133. At all relevant times herein, California Labor Code section 222.5 requires
11 employers to pay for the costs an employee incurs for obtaining any medical or physical
12 examination taken.

13 134. At all times relevant herein, Defendants implemented, on a company-wide
14 basis, an employer-imposed requirement that Plaintiff and class members undergo a
15 mandatory physical examination and/or drug test, upon hiring and periodically thereafter, but
16 required them to do so at their own expense. As stated, Defendants had a company-wide
17 policy requiring that all employees, including Plaintiff and class members, travel to a
18 specified medical clinic on their own time and using their own personal vehicles to undergo
19 physical examinations and/or drug testing. At all times, Defendants were in control of
20 scheduling the date and time for the examination and/or testing, selecting the provider/clinic
21 where the examination and/or testing was to take place, and determining the scope of the
22 examination and/or testing.

23 135. During the relevant time period, Plaintiff was instructed by Defendants to travel
24 to CCCMA Occupational Clinic in Hayward, California, and obtain a drug test on or about
25 October 31, 2017, and a physical examination/respirator fit test on or about September 5,
26 2018. Plaintiff followed Defendants' instructions, traveled to the clinic Defendants selected,
27 and underwent the testing and/or physical examination. Plaintiff was required to travel to and
28 from a medical clinic selected by Defendants using his own vehicle. Each time, Plaintiff

1 followed Defendants' instructions and drove several miles roundtrip to and from the medical
2 clinic designated by Defendants, and then spent 40 minutes to 2 hours waiting at the medical
3 clinic and undergoing the requisite tests.

4 136. However, Defendants did not compensate Plaintiff and class members for the
5 time they spent traveling to and from the medical clinics, for the time they spent undergoing
6 the physical examinations and/or drug testing, or reimburse them for the travel expenses they
7 incurred getting to and from the medical clinics. Defendants' policy and/or not paying for all
8 costs Plaintiff and class members incurred obtaining mandatory physical examinations and/or
9 drug testing is in violation of California Labor Code section 222.5.

10 137. As a result of the violations of California law herein described, Defendants
11 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
12 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
13 herein.

14 138. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
15 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
16 Defendants during a period that commences four years prior to the filing of this complaint; a
17 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
18 class members; and an award of attorneys' fees pursuant to California Code of Civil
19 Procedure section 1021.5 and other applicable laws; and an award of costs.

20 **ELEVENTH CAUSE OF ACTION**

21 **Violation of California Business & Professions Code §§ 17200, et seq. –**

22 **Unfair Business Practices**

23 **(Against all Defendants)**

24 139. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
25 and every allegation set forth above.

26 140. Defendants are "persons" as defined by California Business & Professions
27 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
28 and/or associations.

1 141. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
2 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
3 injury in fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff
4 seeks to enforce important rights affecting the public interest within the meaning of Code of
5 Civil Procedure section 1021.5.

6 142. Defendants’ activities, namely Defendants’ company-wide practice and/or
7 policy of not paying Plaintiff and class members all meal and rest period premium wages due
8 to them under Labor Code section 226.7, deprived Plaintiff and class members of the
9 compensation guarantee and enhanced enforcement implemented by section 226.7. The
10 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
11 compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior*
12 *Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were
13 guaranteed to Plaintiff and class members as part of their employment with Defendants, and
14 thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an
15 unfair business practice in violation of California Business & Professions Code sections
16 17200, *et seq.* (Id.)

17 143. A violation of California Business & Professions Code sections 17200, *et seq.*
18 may be predicated on any unfair business practice. In the instant case, Defendants’ policies
19 and practices have violated the spirit of California’s meal and rest break laws and constitute
20 acts against the public policy behind these laws.

21 144. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
22 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
23 benefits implemented by section 226.7 withheld and retained by Defendants during a period
24 that commences four years prior to the filing of this complaint; a permanent injunction
25 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
26 Plaintiff and class members; an award of attorneys’ fees pursuant to California Code of Civil
27 Procedure section 1021.5 and other applicable laws; and an award of costs.

28 //

1 **REQUEST FOR JURY TRIAL**

2 Plaintiff requests a trial by jury.

3 **PRAYER FOR RELIEF**

4 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
5 against Defendants, jointly and severally, as follows:

6 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
7 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
8 reserves the right to amend his prayer for relief to seek a different amount.

9 **Class Certification**

10 2. That this case be certified as a class action;

11 3. That Plaintiff be appointed as the representative of the Class and Subclass;

12 4. That counsel for Plaintiff be appointed as class counsel.

13 **As to the First Cause of Action**

14 5. That the Court declare, adjudge, and decree that Defendants violated California
15 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to
16 pay all overtime wages due to Plaintiff and class members;

17 6. For general unpaid wages at overtime wage rates and such general and special
18 damages as may be appropriate;

19 7. For pre-judgment interest on any unpaid overtime compensation commencing
20 from the date such amounts were due, or as otherwise provided by law;

21 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
22 California Labor Code section 1194(a); and

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

25 **As to the Second Cause of Action**

26 10. That the Court declare, adjudge and decree that Defendants violated California
27 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay
28 minimum wages to Plaintiff and class members;

1 11. For general unpaid wages and such general and special damages as may be
2 appropriate;

3 12. For pre-judgment interest on any unpaid compensation from the date such
4 amounts were due, or as otherwise provided by law;

5 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
6 California Labor Code section 1194(a);

7 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

8 15. For such other and further relief as the Court may deem equitable and
9 appropriate.

10 **As to the Third Cause of Action**

11 16. That the Court declare, adjudge, and decree that Defendants violated California
12 Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order(s) by
13 willfully failing to provide all meal periods to Plaintiff and class members;

14 17. That the Court make an award to the Plaintiff and class members of one (1)
15 hour of pay at each employee's regular rate of pay for each workday that a meal period was
16 not provided;

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

19 19. For premiums pursuant to California Labor Code section 226.7(b);

20 20. For pre-judgment interest on any unpaid meal period premiums from the date
21 such amounts were due, or as otherwise provided by law;

22 21. For attorneys' fees pursuant to California Code of Civil Procedure section
23 1021.5, or as otherwise provided by law; and

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

26 **As to the Fourth Cause of Action**

27 23. That the Court declare, adjudge and decree that Defendants violated California
28 Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Orders by willfully

1 failing to authorize and permit Plaintiff and class members to take all rest periods;

2 24. That the Court make an award to the Plaintiff and class members of one (1) hour
3 of pay at each employee's regular rate of pay for each workday that a rest period was not
4 authorized and permitted;

5 25. For all actual, consequential, and incidental losses and damages, according to
6 proof;

7 26. For premiums pursuant to California Labor Code section 226.7(b);

8 27. For pre-judgment interest on any unpaid rest period premiums from the date
9 such amounts were due, or as otherwise provided by law;

10 28. For attorneys' fees pursuant to California Code of Civil Procedure section
11 1021.5, or as otherwise provided by law; and

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

14 **As to the Fifth Cause of Action**

15 30. That the Court declare, adjudge and decree that Defendants violated the
16 recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage
17 Orders as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized
18 wage statements thereto;

19 31. For all actual, consequential, and incidental losses and damages, according to
20 proof;

21 32. For injunctive relief pursuant to California Labor Code section 226(h);

22 33. For statutory penalties pursuant to California Labor Code section 226(e);

23 34. For attorneys' fees and costs pursuant to California Labor Code section
24 226(e)(1); and

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

27 **As to the Sixth Cause of Action**

28 36. That the Court declare, adjudge and decree that Defendants violated California

1 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
2 and/or meal and rest period premiums owed at the time of termination of the employment of
3 Plaintiff and other terminated class members;

4 37. For all actual, consequential and incidental losses and damages, according to
5 proof;

6 38. For waiting time penalties according to proof pursuant to California Labor
7 Code section 203 for all employees who have left Defendants' employ;

8 39. For pre-judgment interest on any unpaid wages from the date such amounts
9 were due, or as otherwise provided by law;

10 40. For attorneys' fees pursuant to California Code of Civil Procedure section
11 1021.5, or as otherwise provided by law; and

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

14 **As to the Seventh Cause of Action**

15 42. That the Court declare, adjudge and decree that Defendants violated California
16 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
17 overtime wages, minimum wages, and/or meal and rest period premiums, during their
18 employment;

19 43. For all actual, consequential and incidental losses and damages, according to
20 proof;

21 44. For statutory penalties according to proof pursuant to California Labor Code
22 section 210;

23 45. For pre-judgment interest on any unpaid wages from the date such amounts
24 were due, or as otherwise provided by law;

25 46. For attorneys' fees pursuant to California Code of Civil Procedure section
26 1021.5, or as otherwise provided by law; and

27 47. For such other and further relief as the Court may deem equitable and
28 appropriate.

As to the Eighth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related expenses and costs incurred by Plaintiff and class members;

49. For unpaid business-related expenses and such general and special damages as may be appropriate;

50. For pre-judgment interest on any unpaid business-related expenses from the date such amounts were due, or as otherwise provided by law;

51. For all actual, consequential, and incidental losses and damages, according to proof;

52. For attorneys' fees and costs pursuant to California Labor Code section 2802(c), or as otherwise provided by law; and

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

As to the Ninth Cause of Action

54. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay all earned wages upon termination); 204 (by failing timely to pay all earned wages during employment); 222.5 (by failing to pay the costs of mandatory drug testing and/or physical examinations); and 2802 (by failing to reimburse business expenses);

55. For civil penalties pursuant to California Labor Code sections 210, 225.5, 226.3, 256, 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,

1194, 1197, 1197.1, 1198, and 2802;

56. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

57. For pre-judgment and post-judgment interest as provided by law; and

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

As to the Tenth Cause of Action

59. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members, failing timely to pay Plaintiff and class members all earned wages during employment, failing to reimburse Plaintiff and class members for the costs of mandatory physical examinations and/or drug testing, and failing to reimburse Plaintiff and class members for business-related expenses, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

60. For restitution of unpaid wages to Plaintiff and all class members and prejudgment interest from the day such amounts were due and payable;

61. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200 *et seq.*;

62. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5; and

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

As to the Eleventh Cause of Action

64. That the Court declare, adjudge and decree that Defendants' conduct of denying Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes an unfair business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

65. For restitution of the statutory benefits under section 226.7 unfairly withheld from Plaintiff and class members and prejudgment interest from the day such amounts were due and payable;

66. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200 *et seq.*;

67. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

68. For pre-judgment and post-judgment interest as provided by law; and

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

Dated: March 16, 2020

Respectfully submitted,

Capstone Law APC

By:

Robert Drexler
Molly DeSario
Jonathan Lee

Attorneys for Plaintiff Pierre Nelms

Exhibit 1

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

January 10, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/260>)

Subject: *Pierre Nelms v. Pentagon Technologies Group, Inc.*

Dear PAGA Administrator:

This office represents Pierre Nelms in connection with his claims under the California Labor Code. Mr. Nelms was an employee of PENTAGON TECHNOLOGIES GROUP, INC. ("PENTAGON").

The employer may be contacted directly at the address below:

PENTAGON TECHNOLOGIES GROUP, INC.
21031 ALEXANDER CT
HAYWARD CA 94545

Mr. Nelms intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Nelms seeks relief on behalf of himself, the State of California, and other persons who are or were employed by PENTAGON in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

PENTAGON employed Mr. Nelms as a non-exempt, hourly paid Waste Water Technician from approximately October 2017 to January 2019. Mr. Nelms worked for PENTAGON out of one of its locations in Hayward, California. During his employment, Mr. Nelms typically worked eight (8) hours or more per day, five (5) days per week, from 9:30 p.m. to 6:30 a.m. Mr. Nelms's primary job duties included, without limitation, measuring, mixing, and neutralizing chemicals; separating materials from chemicals; handling disposal of chemicals and waste; reporting on tasks performed and equipment malfunctions; and cleaning and maintaining work areas.

PENTAGON has committed one or more of the following Labor Code violations against Mr. Nelms, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

PENTAGON’s Company-Wide and Uniform Payroll and HR Practices

PENTAGON INDUSTRIES, INC. is a Delaware corporation, a leading provider of mission-critical manufacturing support services, contamination detection, and protection products to the semiconductor, pharmaceutical, microelectronic, and solar industries. Upon information and belief, PENTAGON maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Hayward, California, for all non-exempt, hourly paid employees working for PENTAGON in California, including Mr. Nelms and other aggrieved employees. At all relevant times, PENTAGON issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Nelms and other aggrieved employees, regardless of their location or position.

Upon information and belief, PENTAGON maintains a centralized Payroll department at its corporate headquarters in Hayward, California, which processes payroll for all non-exempt, hourly paid employees working for PENTAGON in California, including Mr. Nelms and other aggrieved employees. Further, PENTAGON issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Nelms and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, PENTAGON utilized the same methods and formulas when calculating wages due to Mr. Nelms and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

PENTAGON willfully failed to pay all overtime wages owed to Mr. Nelms and other aggrieved employees. During the relevant time period, Mr. Nelms and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in

¹ These facts, theories, and claims are based on Mr. Nelms’s experience and counsel’s review of those records currently available relating to Mr. Nelms’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Nelms reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, PENTAGON had a written policy and/or practice of discouraging and impeding Mr. Nelms and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. This policy of limiting overtime, coupled with PENTAGON's understaffing and assigning heavy workloads, led Mr. Nelms and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks. PENTAGON's "Time Keeping Policy (Effective 10/31/2015)" states, "Employees will be paid for the exact hours worked (scheduled start time or actual clock-in time whichever is later . . .)" and "the payroll system will continue to adjust the time you clocked in to your scheduled start time if you clock in before your scheduled start time. For example[,] if you came to work at 6:20am, and your scheduled time to start is 6:30am, you will be paid starting at 6:30am." For example, Mr. Nelms arrived to work up to 30 minutes early and started performing work immediately, such as mixing chemicals, but he did not clock in until his designated shift start-time due to the written policy and pressure from the company not to accrue overtime. Prior to clocking in at the start of his scheduled shift, Mr. Nelms would also receive text messages on his personal cellular phone from his supervisors regarding the day's assignments. Similarly, Mr. Nelms would clock out at his designated shift end-time and would continue working to finish assignments, such as emptying the sludge machine or chemical tank and performing general housekeeping tasks, such as putting away materials and tools. Furthermore, other aggrieved employees were limited to clocking in and out at two timekeeping machines, so a line would form at a shift change, when more than 50 employees were attempting to clock in and out at the same time for their scheduled shifts. As a result, other aggrieved employees would be required to arrive to work early for their shifts and clock in early, time for which they were not paid. Thus, PENTAGON failed to track this time spent working before and after scheduled shifts, and Mr. Nelms and other aggrieved employees received no compensation for this time.

Second, during the relevant period, PENTAGON had, and continues to have, a company-wide policy and/or practice of understaffing its worksites while assigning heavy workloads and/or quotas, resulting in a failure to provide Mr. Nelms and other aggrieved employees with adequate meal period coverage. On information and belief, PENTAGON imposed quotas on other aggrieved employees to meet metrics for cleaning and shipping out parts. As a result of this lack of meal period coverage, Mr. Nelms and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Nelms and other aggrieved employees were required to perform their duties, such as fulfilling chemical requests from the Chem Room or getting other assignments from PENTAGON's supervisors, during unpaid meal periods, or would have their meal periods interrupted to complete such work-related tasks. Thus, Mr. Nelms and other aggrieved employees missed or had meal periods interrupted in order to complete their assigned workloads. PENTAGON did not pay Mr. Nelms and other aggrieved employees for the time they continued to perform tasks during meal periods.

Third, PENTAGON, on a company-wide basis, had a practice of failing to adhere to a schedule of meal periods, which further caused Mr. Nelms and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of these policies and/or practices, Mr. Nelms and other aggrieved employees were required to work through and/or to return early from meal periods, in order to complete their assigned tasks. Thus, Mr. Nelms and other aggrieved employees performed work during meal periods for which they were not paid.

PENTAGON knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Nelms and other aggrieved employees were performing their assigned duties during their meal periods and performing work off-the-clock before or after their shifts, and were suffered or permitted to perform work for which they were not paid. PENTAGON also knew, or should have known, that it did not compensate Mr. Nelms and other aggrieved employees applicable overtime rates of pay for overtime hours that they worked.

Because Mr. Nelms and other aggrieved employees regularly worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Nelms and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. PENTAGON's failure to pay Mr. Nelms and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, PENTAGON did not pay Mr. Nelms and other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, PENTAGON paid Mr. Nelms and other aggrieved employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. For example, PENTAGON paid Mr. Nelms and other aggrieved employees shift differentials for working graveyard shifts and nondiscretionary bonuses. However, in violation of the California Labor Code, PENTAGON failed to incorporate all remunerations, including shift differential pay, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Nelms and other aggrieved employees worked overtime and received these other forms of pay, PENTAGON failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Nelms and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 5 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11040(2)(K) (defining "Hours Worked").

As set forth above, during the relevant time period, as a result of PENTAGON's policy of limiting the amount of overtime employees could accrue by utilizing a written policy that discouraged and impeded Mr. Nelms and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, Mr. Nelms and other aggrieved employees were required to work off-the-clock before and/or after their scheduled shift start and end times to complete assigned job duties. And, as stated above, due to PENTAGON's policy and/or practice of understaffing while assigning heavy workloads and failure to adhere to a schedule of meal periods, Mr. Nelms and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods.

Furthermore, PENTAGON maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, PENTAGON was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. For example, PENTAGON gave Mr. Nelms strict instructions to obtain drug testing and/or a physical examination/respirator fit test, and Mr. Nelms underwent the testing and/or examinations for the sole benefit of PENTAGON. Each time, Mr. Nelms followed PENTAGON's instructions and traveled several miles to and from the medical clinic designated by PENTAGON, CCCMA Occupational Clinic in Hayward, California, and spent 40 minutes to 2 hours waiting at the medical clinic and undergoing the requisite testing. However, PENTAGON did not compensate Mr. Nelms and other aggrieved employees for the time they spent traveling to and undergoing the mandatory drug testing and/or physical examinations.

Thus, PENTAGON did not pay minimum wages for all hours worked by Mr. Nelms and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, PENTAGON did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Accordingly, PENTAGON regularly failed to pay at least minimum wages to Mr. Nelms and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Mr. Nelms and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal and rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal break of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, during the relevant time period, PENTAGON maintained and implemented, on a company-wide basis, a non-compliant written meal period policy that prevented Mr. Nelms and other aggrieved employees from taking timely, compliant meal periods. The policy states, "For employees who work less than 6-hours per day, a meal break is not required, but maybe [sp] taken by an employee working at least 5-hours. Employees working more than 6-hours and up to 10-hours in a

day are required to have a 30-minute meal break.” PENTAGON’s written meal period policy incorrectly states that employees are not entitled to a 30-minute meal period if they work “less than 6-hours per day,” when California law dictates that employees are entitled a meal period during any shift longer than five (5) hours.

Second, as stated, PENTAGON had, and continues to have, a company-wide policy and/or practice of understaffing while assigning employees heavy workloads and/or quotas for fulfilling assignments. Additionally, as stated, PENTAGON had a company-wide practice of failing to adhere to a schedule of meal periods, which further caused Mr. Nelms and other aggrieved employees to not be relieved of their duties for compliant meal periods. Mr. Nelms’s time records show that he took many of his meal periods late, i.e. after the fifth hour of work, on January 3 (after 5.45 hours), January 4 (after 5.37 hours), January 7 (after 5.43 hours), January 8 (after 5.40 hours), January 9 (after 5.32 hours), and January 10, 2018 (after 5.53 hours).

PENTAGON’s non-compliant meal period policy, coupled with PENTAGON’s practice of understaffing and assigning heavy workloads and/or quotas, and failure to adhere to a schedule of meal periods, prevented Mr. Nelms and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Mr. Nelms and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted and/or had to forgo their meal periods altogether. For example, during his employment, Mr. Nelms would start his meal periods late or would have his meal periods interrupted by his supervisors asking that he complete various assignments, including fulfilling chemical requests from the Chem Room.

Third, PENTAGON did not provide Mr. Nelms and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, Mr. Nelms was not provided his second meal period when he worked shifts in excess of ten (10) hours. Mr. Nelms and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

As a result of PENTAGON’s practices and/or policies, Mr. Nelms and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. PENTAGON knew or should have known that as a result of its policies, Mr. Nelms and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. PENTAGON further knew or should have known that it did not pay Mr. Nelms and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

PENTAGON also has engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Nelms and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that PENTAGON did pay meal period premium wages to Mr. Nelms and other aggrieved employees, it did so at the incorrect rates. Because PENTAGON did not properly calculate Mr. Nelms’s and other aggrieved employees’ regular rates of pay by including all remunerations, such as shift differential pay, incentive pay, and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Accordingly, PENTAGON failed to provide all meal periods in violation of California Labor Code sections 226.7, 512, 516, and 1198. Mr. Nelms and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

First, during the relevant time period, PENTAGON regularly failed to authorize and permit Mr. Nelms and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. PENTAGON maintained and implemented, on a company-wide basis, a non-compliant written rest period policy that prevented Mr. Nelms and other aggrieved employees from taking compliant rest periods. The policy states: “Employees . . . need to take a 10-minute rest period for every 4-hours of work, or (2) 10-minute rest period[s] for an 8-hour shift.” PENTAGON’s written rest period policy incorrectly states that employees are entitled to two paid 10-minute rest periods “for an 8-hour shift,” rather than stating that employees are entitled to two 10-minute rest periods for shifts in excess of 6 hours. In addition, PENTAGON’s non-compliant policy fails to correctly state the timing of when rest periods must occur. PENTAGON’s written rest period policy states:

Due to shift start times, employees have requested that they have an extended break (20 minutes) in the middle of the first half of their shift, Pentagon has allowed employees to combine the first 2 rest periods into one 20-minute break. Should you want a 10-minute break at the midway point between your start time and lunch and a second 10-minute break between your return from lunch and the end of your shift[,] please notify your supervisor that you would like to take this option.

—as though combining employees’ two rest periods into “an extended break (20 minutes) in the middle of the first half of their shift” by default is somehow compliant with California law. However, under California law, an employee is entitled to rest periods for every 4 hours worked or major fraction thereof. Thus, PENTAGON’s written rest period policy is non-compliant on its face, as it fails to authorize and permit employees to take a first rest period for shifts between 3.5 and 6 hours, a second rest period for shifts between 6 and 10 hours, a third rest period for shifts between 10 and 14 hours, and so on.

Second, as with meal periods, PENTAGON's company-wide practices, including assigning heavy workloads, prevented Mr. Nelms and other aggrieved employees from being relieved of all duty to take compliant rest periods. PENTAGON also failed to adhere to a schedule of rest periods, which, coupled with PENTAGON's failure to provide adequate rest period coverage, further led to Mr. Nelms and other aggrieved employees not being authorized and permitted to take compliant rest periods. Moreover, Mr. Nelms and other aggrieved employees were assigned company-issued radios and were expected to carry and keep them on while clocked in for their shifts, including during rest periods.

Third, PENTAGON maintained and implemented a company-wide practice and/or policy requiring that Mr. Nelms and other aggrieved employees remain on PENTAGON's premises during their rest periods. Because Mr. Nelms and other aggrieved employees were restricted from leaving PENTAGON's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, PENTAGON effectively maintained control over Mr. Nelms and other aggrieved employees during rest periods, and, as a result of this rest period policy, PENTAGON did not relinquish control over Mr. Nelms and other aggrieved employees during rest periods.

As a result of PENTAGON's practices and policies, Mr. Nelms and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout his employment, Mr. Nelms missed his rest periods or had them cut short or interrupted, due to PENTAGON's policy of assigning heavy workloads, failure to adhere to a schedule of rest periods, and requirement that he keep his radio on at all times during his shifts.

PENTAGON also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Nelms and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that PENTAGON did pay rest period premium wages to Mr. Nelms and other aggrieved employees, it did so at the incorrect rates. Because PENTAGON did not properly calculate Mr. Nelms's and other aggrieved employees' regular rates of pay by including all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

Accordingly, PENTAGON failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Nelms and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. PENTAGON has not provided Mr. Nelms and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00

for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, PENTAGON has knowingly and intentionally provided Mr. Nelms and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, PENTAGON issued uniform wage statements to Mr. Nelms and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, PENTAGON violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because PENTAGON did not record the time Mr. Nelms and other aggrieved employees spent working off-the-clock, PENTAGON did not list the correct amount of gross wages and net wages earned by Mr. Nelms and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, PENTAGON failed to accurately list the total number of the hours worked by Mr. Nelms and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Further, because PENTAGON did not calculate Mr. Nelms's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, PENTAGON did not list the correct amount of gross wages earned by Mr. Nelms and other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by Mr. Nelms and other aggrieved employees in violation of section 226(a)(5). PENTAGON also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments..." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), PENTAGON willfully failed to maintain accurate payroll records for Mr. Nelms and other

aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. At all relevant times, as stated, PENTAGON engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of shift start and end times for Mr. Nelms and other aggrieved employees. Furthermore, in light of PENTAGON’s failure to provide Mr. Nelms and other aggrieved employees with first and second 30-minute meal periods to which they were entitled, PENTAGON kept no records of meal start and end times for meal periods.

Because PENTAGON failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Nelms and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Nelms and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Nelms and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, PENTAGON failed to pay Mr. Nelms and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, reporting time pay, and/or meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Mr. Nelms and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (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.

PENTAGON willfully failed to pay Mr. Nelms and other aggrieved employees who are no longer employed by PENTAGON all their earned wages, including, but not limited to, overtime wages, minimum wages, reporting time pay, and/or meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving PENTAGON's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Nelms and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, PENTAGON implemented, on a company-wide basis, an employer-imposed requirement that Mr. Nelms and other aggrieved employees undergo mandatory drug tests and/or physical examinations, upon hiring and periodically thereafter, but required them to do so at their own expense. As stated, PENTAGON had a company-wide policy requiring that Mr. Nelms and other aggrieved employees travel to a specified medical clinic on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, PENTAGON was in control of scheduling the date and time for the drug testing and/or physical examinations, selecting the provider/facility where the drug testing and/or physical examinations were to take place, and determining the scope of the drug test and/or physical examinations.

During the relevant time period, Mr. Nelms was instructed by PENTAGON to travel to CCCMA Occupational Clinic in Hayward, California, and obtain a drug test and a physical examination/respirator fit test. Mr. Nelms followed PENTAGON's instructions, traveled to the clinic PENTAGON selected, and underwent the testing and/or physical examination. Mr. Nelms was required to travel to and from a medical clinic selected by PENTAGON using his own vehicle. Each time, Mr. Nelms followed PENTAGON's instructions and drove several miles roundtrip to and from the medical clinic designated by PENTAGON, and then spent 40 minutes to 2 hours waiting at the medical clinic and undergoing the requisite tests.

However, PENTAGON did not compensate Mr. Nelms and other aggrieved employees for the time they spent traveling to and from their drug tests and/or physical examinations, or for the time they spent undergoing the testing and/or examinations, or reimburse them for the travel expenses they incurred getting to and from the medical clinics. PENTAGON's policy and/or practice of not paying

for all costs Mr. Nelms and other aggrieved employees incurred obtaining mandatory drug tests and/or physical examinations violates California Labor Code section 222.5.

Mr. Nelms and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, PENTAGON had a company-wide policy of requiring Mr. Nelms and other aggrieved employees to utilize their own personal cellular phones and cellular data to carry out their job duties, but PENTAGON failed to reimburse them for the costs of their work-related cellular phone expenses. Mr. Nelms and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as discussing upcoming work assignments with PENTAGON's managers. Mr. Nelms would spend several minutes per instance texting or speaking with his managers/supervisors prior to the start of his shift, about once a week. Although PENTAGON required Mr. Nelms and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, PENTAGON failed to fully reimburse them for this cost.

Second, PENTAGON also had a company-wide policy of requiring Mr. Nelms and other aggrieved employees to travel in their own personal vehicles to medical facilities to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. For example, as described above, on at least two occasions, Mr. Nelms followed PENTAGON's instructions, traveled several miles roundtrip in his personal vehicle, and underwent the drug testing and/or physical examinations, but was not reimbursed for his mileage to and from the medical clinic. Although PENTAGON required Mr. Nelms and other aggrieved employees to undergo drug testing and/or physical examinations, PENTAGON failed to reimburse them for these expenses.

Third, PENTAGON, on a company-wide basis, expected Mr. Nelms and other aggrieved employees to report to work in clean uniforms or personal protective equipment, including smocks. Thus, Mr. Nelms and other aggrieved employees were required to wash their smocks more frequently than they would otherwise do laundry and incur expenses for doing so. In addition, due to the nature of chemical/waste water work, Mr. Nelms's and other aggrieved employees' smocks would be exposed to various chemicals, which made them disinclined to mix their smocks in with their other clothing in the wash. As a result, Mr. Nelms and other aggrieved employees washed their smocks separately from their other clothes, increasing their overall laundry costs even more.

Fourth, PENTAGON, on a company-wide basis, mandated that other aggrieved employees purchase special safety shoes such as steel-toed boots, which they were required to wear while at work. Other aggrieved employees purchased steel-toed boots to wear inside PENTAGON's facilities, but were not reimbursed for these costs.

PENTAGON could have provided Mr. Nelms and/or other aggrieved employees with the actual tools for use on the job, such as company phones, company vehicles, and steel-toed boots to be used for fulfilling work-related tasks, and with an adequate number of smocks or access to a cleaning service. Or, PENTAGON could have reimbursed employees for their cellular phone expenses, travel, mileage, laundry expenses, and boots. Instead, PENTAGON passed these operating costs off onto Mr. Nelms and/or other aggrieved employees. At all relevant times, Mr. Nelms did not earn at least two (2) times the minimum wage.

Thus, PENTAGON had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Nelms and/or other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

PENTAGON failed to provide other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). PENTAGON's failure to provide other aggrieved employees with written notice of basic information regarding their employment with PENTAGON is in violation of Labor Code section 2810.5.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent

violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” PENTAGON, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Nelms’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Nelms seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Nelms, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against PENTAGON for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Nelms seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Mao Shiokura
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read "Mao Shiokura", with a stylized flourish at the end.

Mao Shiokura

Copy: PENTAGON TECHNOLOGIES GROUP, INC. (via U.S. Certified Mail)

UNITED STATES POSTAGE
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SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

PENTAGON TECHNOLOGIES GROUP, INC.
21031 ALEXANDER CT
HAYWARD CA 94545



9590 9403 0424 5163 3659 14

2. Article Number (Transfer from service label)

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PS Form 3811, April 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

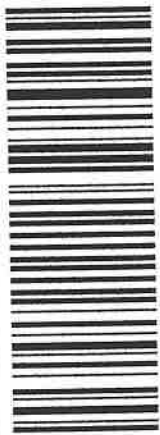
C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
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- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt



7019 0700 0001 7653 0585

PENTAGON TECHNOLOGIES GROUP, INC.
21031 ALEXANDER CT
HAYWARD CA 94545

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**

Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

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Certified Mail Fee

\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.90
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.42

Total Postage and Fees

\$ 7.72

Sent To

PENTAGON TECHNOLOGIES GROUP, INC.
21031 ALEXANDER CT

City, State, ZIP+4®
HAYWARD CA 94545

Postmark
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Pierre Nelms v. Pentagon
Technologies Group,
Inc.

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

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Park East, Ste 1000
CA 90067

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

PENTAGON TECHNOLOGIES GROUP, INC.
21031 ALEXANDER CT
HAYWARD CA 94545

**9590 9403 0424 5163 3659 14**

2. Article Number (Transfer from service label)

7019 0700 0001 7653 0585

PS Form 3811, April 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X*Marilyn*☐ Agent☐ Addressee

B. Received by (Printed Name)

Marilyn Dupuch

C. Date of Delivery

*01/15/2020*D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

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- ☒ Certified Mail®

- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
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Domestic Return Receipt

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I am employed in the County of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is: Capstone Law APC, 1875 Century Park East, Suite 1000, Los Angeles, California 90067.

**FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION
UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR
CODE §§ 2698, ET SEQ.**

Thomas M. Mcinerney
Carolyn Hall
Justin White
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
Steuart Tower, Suite 1300
One Market Plaza
San Francisco, CA 94105

- EXECUTED** this document on March 16, 2020, at Los Angeles, California.


Sandy S. Acevedo