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behalf of himself and all others similarly situated or aggrieved,

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

GONZALO GABRIEL LOPEZ, on behalf of
himself and all others similarly situated or
aggrieved,

Plaintiff,

v.

WILHELM ELECTRIC CO., INC., a
California corporation; JOHN WILHELM, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 30-2020-01156888-CU-OE-CXC

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT FOR:**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF;
4. FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. VIOLATION OF LABOR CODE § 2802;
8. VIOLATIONS OF BUSINESS AND PROFESSIONS CODE § 17200, *et seq.*;
9. CIVIL PENALTIES UNDER LABOR CODE § 226.3;
10. VIOLATION OF LABOR CODE § 558;
11. VIOLATION OF LABOR CODE § 1197.1; and
12. CIVIL PENALTIES UNDER LABOR CODE § 2699.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000]

Assigned for all purposes to: **Judge Peter Wilson**
Dept: CX102

COMES NOW plaintiff GONZALO GABRIEL LOPEZ (“Plaintiff”), on behalf of himself and all others similarly situated or aggrieved, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action and Representation Action, pursuant to California Code of Civil Procedure section 382 and Labor Code Section 2698, *et seq*, on behalf of Plaintiff and all other current and former similarly situated and aggrieved employees employed by or formerly employed by WILHELM ELECTRIC CO., INC., a California corporation (“Wilhelm Electric”), JOHN WILHELM (“J. Wilhelm”), and any of their respective subsidiaries or affiliated companies within the State of California (collectively with Doe defendants as further defined below, “Defendants”).

2. For at least four (4) years prior to the filing of this Action and continuing to the present, Defendants have had a consistent policy or practice of requiring their employees to work more than eight (8) hours per day, twelve (12) hours per day, forty (40) hours per week, and/or seven (7) straight work days in a work week without paying them proper overtime wages, as a result of, without limitation, routinely failing to pay Plaintiff and other non-exempt employees’ wages for all time worked, including overtime wages, as a result of, without limitation, failing to accurately track and/or pay for all hours worked; failing to pay overtime for hours worked above eight (8) in a workday or above forty (40) in a workweek; failing to pay double time for hours worked above twelve (12) in a workday or greater than eight (8) on the seventh straight day of work; failing to pay overtime for the first eight (8) hours of work on the seventh straight workday; failing to pay all reporting time pay; engaging, suffering, or permitting employees to work off the clock; detrimental rounding or auto-deduction of employee work hours; editing and/or deducting or manipulating time entries to reflect lesser hours worked by employees than actually worked; and paying employees at the regular rate or otherwise improper rate(s) of pay, all to the detriment of Plaintiff and other similarly situated employees.

3. For at least four (4) years prior to the filing of this Action and continuing to the present, Defendants have had a consistent policy or practice of failing to pay minimum wages to

1 Plaintiff and other non-exempt employees in the State of California in violation of California state
2 wage and hour laws as a result of, among other things, failing to accurately track and/or pay for all
3 hours actually worked or otherwise under Defendants' control, failing to pay all reporting time
4 pay, engaging, suffering or permitting employees to work off the clock, detrimental rounding or
5 auto-deduction of employee work hours, and editing and/or deducting or manipulating time entries
6 to reflect lesser hours worked by employees than actually worked, all to the detriment of Plaintiff
7 and other similarly situated employees.

8 4. For at least four (4) years prior to the filing of this Action and continuing to the
9 present, Defendants have had a consistent policy or practice of failing to provide Plaintiff and
10 other similarly situated employees or former employees within the State of California a thirty (30)
11 minute complete, uninterrupted, and timely meal period for days on which the employees worked
12 more than five (5) hours in a work day and a second thirty (30) minute complete, timely, and
13 uninterrupted meal period for days on which employees worked in excess of ten (10) hours in a
14 work day, and failing to provide compensation for such unprovided or incomplete, interrupted,
15 and untimely meal periods as required by California wage and hour laws.

16 5. For at least four (4) years prior to the filing of this Action and continuing to the
17 present, Defendants have had a consistent policy or practice of compelling Plaintiff and similarly
18 situated employees or former employees to work over four-hour periods (or major fractions
19 thereof) without authorizing and permitting Plaintiff and similarly situated employees or former
20 employees within the State of California to take timely, paid, uninterrupted and complete ten-
21 minute rest periods in which the employees are completely relieved of all of their duties, and
22 failing to provide compensation for such unprovided rest periods as required by California wage
23 and hour laws.

24 6. At the time of Plaintiff's employment and the employment of other former
25 employees of Defendants ended, Defendants, among other things, failed to pay overtime and
26 double time wages, minimum wages, and one hour of wages in lieu of each incomplete,
27 interrupted, or untimely meal and/or rest period, as set forth herein, prior to their resignation
28 and/or termination.

1 7. For at least one (1) year prior to the filing of this Action and continuing to the
2 present, Defendants have had a consistent policy or practice of intentionally failing to furnish
3 employees with itemized wage statements that accurately reflect: gross wages earned; total hours
4 worked; net wages earned; and all applicable hourly rates in effect during the pay period and the
5 corresponding number of hours worked at each hourly rate and other such information, as required
6 by California wage and hour laws.

7 8. For at least four (4) years prior to the filing of this Action and continuing to the
8 present, Defendants have failed and refused to indemnify Plaintiff and other similarly situated
9 employees for their necessary costs incurred in direct consequence of the discharge of their duties,
10 or of their obedience to the directions of Defendants, including, without limitation, for purchasing
11 required safety vests and hard hats, purchase and use of a personal cell-phone, and laundering
12 mandatory work uniforms separately from their other clothes as necessitated by the construction
13 and industrial tasks that resulted in dirt, debris, and mold on their uniforms, as known by
14 Defendants, in furtherance of their work duties, in violation of, among other authorities, Labor
15 Code section 2802, and other statutory and common law offenses, including conversion.

16 9. Plaintiff, on behalf of himself and all other similarly situated employees, brings this
17 Action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 226,
18 226.3, 226.7, 510, 512, 558, 558.1, 1194, 1194.2, 1197, 1197.1, 2699, 2802, and all applicable
19 wage orders, seeking, *inter alia*, overtime wages, minimum wages, premium wages for missed
20 meal and rest periods, reimbursements for incurred expenses, penalties, and reasonable attorneys'
21 fees and costs.

22 10. Plaintiff, on behalf of himself and all other similarly situated employees, pursuant
23 to California Business and Professions Code sections 17200 through 17208, also seeks all monies
24 owed but withheld and retained by Defendants to which Plaintiff and members of the Class are
25 entitled.

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1 **PARTIES**

2 **A. Plaintiff**

3 11. Plaintiff is a resident of California. At all relevant times herein, Plaintiff is
4 informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-
5 exempt employee, with various duties that included, but were not limited to, performing work in
6 connection with installing and maintaining electrical systems in the construction, industrial, and
7 service and maintenance industry from approximately July of 2019 through November of 2019.

8 **B. Defendants**

9 12. Plaintiff is informed and believes and based thereon alleges that defendant Wilhelm
10 Electric is, and at all times relevant hereto was, a corporation organized and existing under and by
11 virtue of the laws of the State of California, doing business in, among other places, Orange
12 County, State of California. Plaintiff is informed and believes and based thereon alleges that
13 Wilhelm Electric is a privately held company specializing in the construction, industrial, service
14 and maintenance industry. At all relevant times herein, defendant Wilhelm Electric employed
15 Plaintiff and other similarly situated employees within the State of California.

16 13. Plaintiff is informed and believes and based thereon alleges that defendant Wilhelm
17 Electric is, and at all times relevant hereto was, a “person” as defined in Labor Code section 17
18 and Cal. Bus. & Prof. Code § 17201.

19 14. Plaintiff is informed and believes and based thereon alleges that defendant J.
20 Wilhelm is, and at all times relevant hereto was, an individual residing in the State of California.
21 Plaintiff is informed and believes and based thereon alleges that at all relevant times J. Wilhelm is
22 and was the principal, owner, officer, director and/or managing agent of Wilhelm Electric.

23 15. Plaintiff is further informed and believes and based thereon alleges that J. Wilhelm
24 employed Plaintiff, by, among other things, exercising control over Plaintiff’s wages, hours and/or
25 working conditions. Plaintiff is further informed and believes and based thereon alleges that
26 Wilhelm violated, or caused to be violated, the above-referenced and below-referenced Labor
27 Code provisions in violation of Labor Code section 558.1.

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1 16. The true names and capacities, whether individual, corporate or associate, or
2 otherwise, of the defendants' names herein as DOES 1 through 100, inclusive, are unknown to
3 Plaintiff, who therefore sue said defendants by such fictitious names pursuant to California Code
4 of Civil Procedure section 474, and Plaintiff will amend this complaint to show their true names
5 and capacities when the same have been ascertained. Plaintiff is informed and believes and based
6 thereon alleges that all defendants sued herein as DOES are in some manner responsible for the
7 acts herein alleged and that Plaintiff's damages were proximately caused by their conduct.
8 Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall include Wilhelm
9 Electric, and any of its subsidiaries or affiliated companies within the State of California, J.
10 Wilhelm, as well as DOES 1 through 100 identified herein.

11 **ALTER EGO, AGENCY, AND JOINT EMPLOYER ALLEGATIONS**

12 17. Plaintiff is informed and believes and based thereon alleges that at all times
13 mentioned herein, each of the defendants was the agent, principal, employee, employer,
14 representative, joint venture or co-conspirator of each of the other defendants, either actually or
15 ostensibly, and in doing the things alleged herein acted within the course and scope of such
16 agency, employment, joint venture, and conspiracy.

17 18. All of the acts and conduct described herein of each and every corporate defendant
18 was duly authorized, ordered, and directed by the respective and collective defendant corporate
19 employers, and the officers, owner-managers, members and/or management-level employees of
20 said corporate employers. In addition thereto, said corporate employers participated in the
21 aforementioned acts and conduct of their said employees, agents, and representatives, and each of
22 them; and upon completion of the aforesaid acts and conduct of said corporate employees, agents,
23 and representatives, the defendant corporations respectively and collectively ratified, accepted the
24 benefits of, condoned, lauded, acquiesced, authorized, and otherwise approved of each and all of
25 the said acts and conduct of the aforementioned corporate employees, agents and representatives.

26 19. Plaintiff is informed and believes, and based thereon alleges, that there exists such
27 a unity of interest and ownership among Defendants, and each of them, that their individuality and
28 separateness have ceased to exist.

1 20. Plaintiff is informed and believes, and based thereon alleges that despite the
2 formation of the purported corporate existence of Wilhelm Electric, and DOES 1 through 50,
3 inclusive (the “Alter Ego Defendants”), they, and each of them, are one and the same with J.
4 Wilhelm and DOES 51 through 100 (“Individual Defendants”), and each of them, due to, but not
5 limited to, the following reasons:

6 a. The Alter Ego Defendants are completely dominated and controlled by the
7 Individual Defendants who personally committed the wrongful and illegal acts and violated the
8 laws as set forth in this Complaint, and who have hidden and currently hide behind the Alter Ego
9 Defendants to perpetrate frauds, circumvent statutes, or accomplish some other wrongful or
10 inequitable purpose;

11 b. The Individual Defendants derive actual and significant monetary benefits
12 by and through the Alter Ego Defendants’ unlawful conduct, and by using the Alter Ego
13 Defendants as the funding source for the Individual Defendants’ own personal expenditures;

14 c. Plaintiff is informed and believes and thereon alleges that the Individual
15 Defendants and the Alter Ego Defendants, while really one and the same, were segregated to
16 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a
17 statute, or accomplishing some other wrongful or inequitable purpose;

18 d. Plaintiff is informed and believes and thereon alleges that the business
19 affairs of the Individual Defendants and the Alter Ego Defendants are, and at all relevant times
20 mentioned herein were, so mixed and intermingled that the same cannot reasonably be segregated,
21 and the same are inextricable confusion. The Alter Ego Defendants are, and at all relevant times
22 mentioned herein were, used by the Individual Defendants as mere shells and conduits for the
23 conduct of certain of their, and each of their affairs. The Alter Ego Defendants are, and at all
24 relevant times mentioned herein were, the alter egos of the Individual Defendants;

25 e. The recognition of the separate existence of the Individual Defendants from
26 the Alter Ego Defendants would promote injustice insofar that it would permit these defendants to
27 insulate themselves from liability to Plaintiff for violations to the Civil Code, Labor Code, and
28 other statutory violations. The corporate existence of these defendants should thus be disregarded

1 in equity and for the ends of justice because such disregard is necessary to avoid fraud and
2 injustice to Plaintiff, and all other similarly situated employees, herein;

3 f. Accordingly, the Alter Ego Defendants constitute the alter ego of the
4 Individual Defendants (and vice versa), and the fiction of their separate corporate existence must
5 be disregarded;

6 21. As a result of the aforementioned facts, among others, Plaintiff is informed and
7 believes, and based thereon alleges that the Individual Defendants, the Alter Ego Defendants, and
8 each of them, are joint employers by virtue of a joint enterprise, and that Plaintiff was an
9 employee of the Alter Ego Defendants and the Individual Defendants. Plaintiff performed
10 services for each and every defendant, and to the mutual benefit of all defendants, and all
11 defendants shared control of Plaintiff and all other similarly situated and aggrieved employees,
12 either directly or indirectly, and in the manner in which defendants' business was and is
13 conducted.

14 **JURISDICTION**

15 22. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
16 of Civil Procedure section 410.10.

17 23. Venue is proper in the County of Orange, California pursuant to Code of Civil
18 Procedure section 392, *et seq.* because it is the location where defendants, or some of them, have
19 their principal place of business. It is also where performance of the employment agreement, or
20 part of it, between Plaintiff and Defendants, was due to be performed and was actually performed.
21 The unlawful acts alleged herein have a direct effect on Plaintiff and those similarly situated and
22 aggrieved within the County of Orange and the State of California. Moreover, Defendants employ
23 numerous Class Members in the County of Orange and the State of California.

24 **FACTUAL BACKGROUND**

25 24. Plaintiff and other similarly situated employees have not been paid, during the
26 relevant liability periods, overtime wages for all overtime hours worked, as a result of, including
27 but not limited to, Plaintiff and similarly situated employees routinely working over eight (8)
28 hours per day, twelve (12) hours per day, forty (40) hours per week, and/or seven (7) consecutive

1 work days in a work week without being properly compensated for the hours worked in excess of
2 (8) hours per day in a work day, twelve (12) hours per day in a work day, forty (40) hours per
3 week in a work week, and/or seven (7) consecutive work days in a workweek at the proper
4 overtime rate of pay. Specifically, among other things, Defendants routinely failed to accurately
5 track and/or pay for all hours actually worked, failed to pay all reporting time pay; engaged,
6 suffered, or permitted employees to work off the clock; detrimentally rounded or auto-deducted
7 employee work hours; edited and/or manipulated time entries to reflect lesser hours worked by
8 employees than actually worked; and/or paid overtime hours at the regular rate or otherwise
9 improper rate(s) of pay, resulting in underpayment of wages to Plaintiff and similarly situated
10 employees.

11 25. Plaintiff and other similarly situated employees have not been paid, during the
12 relevant liability periods, minimum wages for all regular hours worked, as a result of, including
13 but not limited to, a consistent policy of failing to pay minimum wages to Plaintiff and other non-
14 exempt employees in the State of California in violation of California state wage and hour laws as
15 a result of, without limitation, Defendants routinely, among other things, failing to accurately track
16 and/or pay for all hours actually worked; failing to pay all reporting time pay; engaging, suffering,
17 or permitting employees to work off the clock; detrimental rounding or auto-deduction of
18 employee work hours; and editing and/or manipulating time entries to reflect lesser hours worked
19 by employees than actually worked, all to the detriment of Plaintiff and other similarly situated
20 employees.

21 26. Defendants have had a consistent policy of failing to provide Plaintiff and other
22 similarly situated employees or former employees within the State of California a thirty (30)
23 minute uninterrupted timely meal period for days on which the employees worked more than five
24 (5) hours in a work day and a second thirty (30) minute complete, timely, and uninterrupted meal
25 period for days on which the employees worked in excess of ten (10) hours in a work day and
26 failing to provide compensation for such unprovided or incomplete, interrupted, and untimely
27 meal periods.

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1 27. Defendants have had a consistent policy of compelling Plaintiff and similarly
2 situated employees or former employees to work over four-hour periods (or major fractions
3 thereof) without authorizing and permitting Plaintiff and similarly situated employees or former
4 employees within the State of California to take timely, paid, uninterrupted and complete ten-
5 minute rest periods in which the employees are completely relieved of all their duties, and failing
6 to provide compensation for such unprovided rest periods as required by California wage and hour
7 laws.

8 28. At the time of Plaintiff's employment and the employment of other former
9 employees of Defendants ended, Defendants, among other things, willfully failed to pay overtime
10 and double time wages, minimum wages, and one hour of wages in lieu of each unprovided,
11 untimely, incomplete or interrupted meal period and unprovided, untimely, incomplete, or
12 interrupted rest period, as set forth herein, prior to their resignation and/or termination.

13 29. Defendants have failed to comply with Labor Code section 226, subdivision (a) by
14 intentionally not providing itemized wage statements that accurately reflect, among other things,
15 gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect
16 during the pay period and the corresponding number of hours worked at each hourly rate as
17 required by California wage and hour laws.

18 30. Defendants have failed and refused to indemnify or reimburse Plaintiff and other
19 similarly situated employees or former employees within the State of California for their necessary
20 costs incurred in direct consequence of the discharge of their duties, or of their obedience to the
21 directions of Defendants, including, without limitation, costs incurred in purchasing required
22 safety vests and hard hats, purchase and use of a personal cell-phone, and laundering mandatory
23 work uniforms separately from their other clothes necessitated by the construction and industrial
24 tasks that resulted in dirt, debris, and mold on their uniforms, as known by Defendants, in
25 violation of, among other authorities, Labor Code section 2802, and other statutory and common
26 law offenses, including conversion.

27 31. Plaintiff and other similarly situated employees or former employees at all times
28 pertinent hereto were not exempt from minimum wage requirements, overtime wage requirements,

1 provision of meal breaks or compensation in lieu thereof, provision of rest breaks or compensation
2 in lieu thereof, provision of accurate, itemized wage statements, provision of reimbursements for
3 expenses incurred in furtherance of work duties, provision of all wages before resignation or
4 termination, and other such provisions of California law, and the implementing rules and
5 regulations of the IWC California Wage Orders.

6 32. At all times herein, Defendants, and each of them, were liable for unpaid wages,
7 penalties arising therefrom, and related damages pursuant to, among other authorities, the joint
8 employer doctrine, the alter ego doctrine, agency doctrines, and Labor Code section 558.1.

9 **CLASS ACTION ALLEGATIONS**

10 33. Plaintiff brings this Action on behalf of himself and all others similarly situated, as
11 a class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent six (6)
12 Classes composed of and defined as follows:

13 **Non-Exempt Class**

14 All current and former non-exempt employees of Defendants within the State of
15 California at any time commencing four (4) years preceding the filing of Plaintiff's
16 complaint up until the time that notice of the class action is provided to the class
(collectively referred to as "Non-Exempt Class").

17 **Meal Period Class**

18 All current and former non-exempt employees of Defendants within the State of
19 California at any time commencing four (4) years preceding the filing of Plaintiff's
20 complaint up until the time that notice of the class action is provided to the class
21 who worked shifts of five (5) hours or more (collectively referred to as "Meal
Period Class").

22 **Rest Period Class**

23 All current and former non-exempt employees of Defendants within the State of
24 California at any time commencing four (4) years preceding the filing of Plaintiff's
25 complaint up until the time that notice of the class action is provided to the class,
who worked shifts of three and-a-half (3 ½) hours or more (collectively referred to
as the "Rest Period Class")

26 **Late Pay Class**

27 All former non-exempt employees of Defendants within the State of California at
28 any time commencing three (3) years preceding the filing of Plaintiff's complaint

up until the time that notice of the class action is provided to the class, who did not receive all their due wages upon termination and/or resignation of their employment (collectively referred to as “Late Pay Class”).

Wage Statement Class

All current and former non-exempt employees of Defendants within the State of California to whom, at any time commencing one (1) year preceding the filing of Plaintiff’s complaint up until the time that notice of the class action is provided to the class, were provided with wage statements (collectively referred to as “Wage Statement Class”).

Expense Class

All current and former employees of Defendants within the State of California at any time commencing four (4) years preceding the filing of Plaintiff’s complaint up until the time that notice of the class action is provided to the class who incurred costs in purchasing safety vests and/or hard hats, purchase and/or use of a personal cell-phone, and in laundering their work uniforms separately from their other clothes in furtherance of their work duties for Defendants (collectively referred to as the “Expense Class”).

34. Plaintiff reserves the right under California Rules of Court, rule 3.765, subdivision (b) to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues.

35. This Action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation and the proposed classes are easily ascertainable.

A. Numerosity

36. The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined yet, Plaintiff is informed and believes that there are over twenty-five (25) Class Members employed by Defendants within the State of California.

37. Accounting for employee turnover during the relevant time periods necessarily increases this number substantially. Plaintiff alleges Defendants’ employment records would provide information as to the number and location of all Class Members. Joinder of all members of the proposed Class is not practicable.

1 **B. Commonality**

2 38. There are questions of law and fact common to Class Members. These common
3 questions include, but are not limited to:

- 4 a. Did Defendants violate Labor Code sections 510 and 1194 by not
5 compensating Class Members who worked greater than 8 hours in a
6 workday, 40 hours in a workweek, and/or seven (7) consecutive work days
7 in a workweek with all overtime wages due by failing to track and/or pay
8 for all hours actually worked?
- 9 b. Did Defendants violate Labor Code sections 510 and 1194 by not
10 compensating Class Members who worked greater than 12 hours in a
11 workday or greater than 8 hours on the seventh straight day of work with all
12 double time wages due by failing to accurately track and/or pay for all hours
13 actually worked?
- 14 c. Did Defendants violate Labor Code section 510 and 1194 by not
15 compensating Class Members with overtime wages at the proper overtime
16 rate(s)?
- 17 d. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing
18 to adequately track (and therefore adequately pay minimum wages) for time
19 worked by Class Members?
- 20 e. Did Defendants violate Labor Code sections 510, 1194, and 1197 by failing
21 to adequately track and/or pay Class Members for reporting time pay?
- 22 f. Did Defendants violate Labor Code sections 510, 1194 and 1197 by editing,
23 manipulating or otherwise deducting Class Members' time entries or time
24 worked to reflect less hours than actually worked?
- 25 g. Did Defendants violate Labor Code sections 510, 1194 and 1197 by
26 detrimentally rounding or auto-deducting Class Members' work hours or
27 time worked?
- 28 h. Did Defendants violate Labor Code sections 510, 1194 and 1197 by

engaging, suffering, or permitting Class Members to work off the clock?

- i. Are Class Members entitled to liquidated damages under Labor Code section 1194.2 for Defendants' failure to pay minimum wages for all hours worked?
- j. Did Defendants violate Labor Code section 512 by not providing Class Members with compliant meal periods?
- k. Did Defendants violate Labor Code section 226.7 by not providing Class Members with additional wages for missed, untimely, incomplete or interrupted meal periods?
- l. Did Defendants violate the applicable Wage Order(s) by not providing Class Members with compliant rest periods?
- m. Did Defendants violate Labor Code section 226.7 by not providing Class Members with additional wages for missed, untimely, incomplete or interrupted rest periods?
- n. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing Class Members with accurate wage statements?
- o. Did Defendants violate Labor Code section 2802 by not indemnifying Class Members for their costs incurred in purchasing safety vests, hard hats or other equipment necessary in furtherance of their work duties as required under Labor Code section 2802?
- p. Did Defendants violate Labor Code section 2802 by not indemnifying Class Members for their costs incurred in purchase and/or use of a personal cell-phone in furtherance of their work duties?
- q. Did Defendants violate Labor Code section 2802 by not indemnifying Class Members for their costs incurred in laundering their work uniforms separately from their regular or other clothes?
- r. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class Members upon termination or resignation all wages earned?

- 1 s. Are Defendants liable to Class Members for penalties under Labor Code
2 section 203?
- 3 t. Did Defendants violate the Unfair Competition Law, Business and
4 Professions Code section 17200, *et seq.*, by their unlawful practices as
5 alleged herein?
- 6 u. Are Class Members entitled to restitution of penalty wages under Business
7 and Professions Code section 17203?
- 8 v. Are Class Members entitled to attorneys' fees?
- 9 w. Are Class Members entitled to costs?
- 10 x. Are Class Members entitled to interest?

11 **C. Typicality**

12 39. The claims of Plaintiff herein alleged are typical of those claims which could be
13 alleged by any member of the classes, and the relief sought is typical of the relief which would be
14 sought by each of the members of the classes in separate actions. Plaintiff and all members of the
15 Classes sustained injuries and damages arising out of and caused by Defendants' common course
16 of conduct in violation of laws and regulations that have the force and effect of law and statutes as
17 alleged herein.

18 **D. Adequacy of Representation**

19 40. Plaintiff will fairly and adequately represent and protect the interest of the members
20 of the Classes. Counsel who represents Plaintiff is competent and experienced in litigating wage
21 and hour class actions.

22 **E. Superiority of Class Action**

23 41. A class action is superior to other available means for the fair and efficient
24 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
25 questions of law and fact common to the Classes predominate over any questions affecting only
26 individual members of each Class. Each member of each Class has been damaged and is entitled
27 to recovery by reason of Defendants' illegal policy and/or practice of failing to pay minimum and
28 overtime wages, failing to provide meal and rest breaks or compensation in lieu thereof, failing to

1 provide accurate itemized wage statements, failing to pay all wages due upon termination and/or
2 resignation, and failing to reimburse or indemnify Class Members' costs incurred in discharging
3 their duties.

4 42. Class action treatment will allow those similarly situated to litigate their claims in a
5 manner that is most efficient and economical for the parties and the judicial system. Plaintiff is
6 unaware of any difficulties that are likely to be encountered in the management of this action that
7 would preclude its maintenance as a class action.

8 **PAGA REPRESENTATIVE ALLEGATIONS**

9 43. Plaintiff is an "aggrieved employee" under PAGA, as Plaintiff was employed by
10 Defendants during the applicable statutory period and suffered one or more of the Labor Code
11 violations set forth herein. Accordingly, Plaintiff seeks to recover, on behalf of himself and all
12 other aggrieved current and former employees of Defendants, the civil penalties provided by
13 PAGA plus reasonable attorneys' fees and costs, as the term "civil penalty" is defined under *ZB*
14 *N.A. v. Superior Court* (2019) 8 Cal.5th 175.

15 44. Plaintiff seeks to recover the PAGA civil penalties through a representative action
16 permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
17 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
18 PAGA allegations described herein is not required.

19 45. During the period beginning one (1) year preceding the provision of notice to the
20 LWDA regarding the herein-described Labor Code violations (the "Civil Penalty Period"),
21 Defendants violated, *inter alia*, Labor Code sections 200, 201, 202, 203, 226, 226.3, 226.7, 510,
22 512, 558, 1174, 1194, 1197, 1197.1, 2699, and 2802, among others.

23 46. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
24 such as Plaintiff, on behalf of himself and all other aggrieved current and former employees within
25 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
26 specified in Labor Code section 2699.3.

27 47. Plaintiff has complied with the procedures for bringing suit specific to Labor Code
28 section 2699.3. On or around January 14, 2020, Plaintiff provided written notice by certified mail,

1 with return receipt requested, of Defendants' violations of various, including the herein described,
2 provisions of the Labor Code, to the Labor and Workforce Development Agency ("LWDA"), as
3 well as to Defendants, and each of them.

4 48. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
5 provide notice of intention to investigate Defendants' alleged violations within sixty-five (65)
6 calendar days of the January 14, 2020 postmarked date of the herein-described written notice sent
7 by Plaintiff to the LWDA and Defendants.

8 49. Plaintiff is informed and believes, and based thereon alleges that Plaintiff and other
9 aggrieved employees or former employees have not been paid, during the relevant liability
10 periods, wages for all time worked, including overtime wages, as a result of, including but not
11 limited to, a consistent policy or practice by Defendants of failing to pay overtime wages to
12 Plaintiff and other non-exempt employees in the State of California in violation of California state
13 wage and hour laws as a result of, without limitation, Plaintiff and other aggrieved employees
14 routinely working over eight (8) hours per day, twelve (12) hours per day, forty (40) hours per
15 week, and/or seven (7) consecutive work days in a work week without being properly
16 compensated for all hours worked in excess of eight (8) hours per day in a work day, twelve (12)
17 hours per day in a work day, forty (40) hours per week in a work week, and/or hours worked on
18 the seventh consecutive work day in a workweek by, as a result of, among other things,
19 Defendants failing to accurately track and/or pay for all hours actually worked, failing to pay
20 overtime for hours worked above eight (8) in a workday or above forty (40) in a workweek, failing
21 to pay double time for hours worked above twelve (12) in a workday or greater than eight (8) on
22 the seventh straight day of work, failing to pay overtime for the first eight (8) hours of work on the
23 seventh straight work day, failing to pay all reporting time pay, engaging, suffering, or permitting
24 employees to work off the clock, detrimental rounding or auto-deduction of employee work hours,
25 editing and/or manipulation of time worked to reflect lesser hours worked by employees than
26 actually worked, and/or paying overtime hours at the regular rate or otherwise improper rate(s) of
27 pay, resulting in underpayment of wages to Plaintiff and other aggrieved employees.
28 Consequently, Plaintiff is informed and believes, and based thereon alleges, that Defendants

1 violated Labor Code sections 510, 1194, and applicable Wage Orders based on their practice of
2 failing to pay overtime wages, entitling Plaintiff and other aggrieved employees to relief under
3 these sections, and Labor Code section 558.1. In addition, Defendants would also be liable for
4 civil penalties pursuant to Labor Code sections 558 and 2699.

5 50. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and
6 other aggrieved employees or former employees have not been paid, during the relevant time
7 period, wages for all time worked, including minimum wages as a result of, among other things,
8 Defendants routinely failing to accurately track and/or pay for all hours actually worked or
9 otherwise under Defendants' control, failing to pay all reporting time pay, engaging, suffering, or
10 permitting employees to work off the clock, detrimental rounding or auto-deduction of employee
11 work hours, and editing and/or manipulation of time worked to reflect lesser hours worked by
12 employees than actually worked, all to the detriment of Plaintiff and other aggrieved employees.
13 As such, Plaintiff is informed and believes, and based thereon alleges that Defendants violated,
14 without limitation, Labor Code section 1197 and applicable Wage Orders, based on their
15 continued failure to pay minimum wages, entitling Plaintiff and other aggrieved employees to
16 relief under, without limitation, Labor Code sections 558.1, 1194 and 1194.2. Defendants would
17 also be liable for civil penalties pursuant to Labor Code sections 558, 1197.1, and 2699.

18 51. At all relevant times mentioned herein, Defendants had and have a policy or
19 practice of compelling their employees to work in excess of five (5) and ten (10) hours per day
20 without being afforded uninterrupted, timely, and full 30-minute meal periods or compensation in
21 lieu thereof. Consequently, Plaintiff alleges that Defendants violated Labor Code section 512,
22 entitling Plaintiff and other aggrieved employees to premium payments under Labor Code section
23 226.7 and 558.1. Defendants would also be liable for civil penalties pursuant to Labor Code
24 sections 558 and 2699.

25 52. At all relevant times mentioned herein, Defendants had and have a policy or
26 practice of compelling their non-exempt employees, including, without limitation, Plaintiff, to
27 work over four-hour periods (or major fractions thereof) without authorizing and permitting their
28 employees to take paid, timely, uninterrupted, and full ten-minute rest periods in which the

1 employees are completely relieved of all of their duties. As such, Plaintiff alleges that he and
2 other aggrieved employees are entitled to relief under, without limitation, Labor Code section
3 226.7 and 558.1. Defendants would also be liable for civil penalties pursuant to Labor Code
4 sections 558 and 2699.

5 53. At all relevant times mentioned herein, Defendants had and have a policy or
6 practice of failing and refusing to indemnify Plaintiff and other aggrieved employees or former
7 employees for their necessary costs incurred in direct consequence of the discharge of their duties,
8 or of their obedience to the directions of Defendants, including, without limitation, costs incurred
9 in purchasing required safety vests and hard hats, purchase and use of a personal cell-phone, and
10 laundering mandatory work uniforms separately from their other clothes as necessitated by the
11 construction and industrial tasks that resulted in dirt, debris, and mold on their uniforms, as known
12 by Defendants, in violation of, among other authorities, Labor Code section 2802, and other
13 statutory and common law offenses, including conversion. Among other relief that Plaintiff and
14 aggrieved employees may collect from Defendants in connection with these violations are civil
15 penalties pursuant to Labor Code sections 558, 558.1, and 2699.

16 54. At all relevant times mentioned herein, Defendants had and have a policy or
17 practice of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing
18 to furnish Plaintiff and other aggrieved employees with itemized wage statements that accurately
19 reflect gross wages earned; total hours worked; net wages earned; and all applicable hourly rates
20 in effect during the pay period and the corresponding number of hours worked at each hourly rate,
21 and other such information, as required by Labor Code section 226, subdivision (a).
22 Consequently, since Defendants would have failed to comply with Labor Code section 226,
23 subdivision (a), Plaintiff and other aggrieved employees would be entitled to recover penalties
24 under, without limitation, Labor Code section 226, subdivision (e) and 558.1. Defendants would
25 also be liable for civil penalties pursuant to Labor Code sections 226.3, 558, and 2699.

26 55. Plaintiff is informed and believes and based thereon alleges that at all relevant
27 times mentioned herein, Defendants also failed and refused, and continue to fail and refuse, to
28 timely pay compensation to Plaintiff and other terminated or resigned employees, including but

not limited to, all wages owed as a result of Plaintiff's information and belief regarding Defendants' practice or policy of failing to pay, among other wages, overtime wages, double time wages, minimum wages, and one hour of wages in lieu of each untimely, unprovided or interrupted meal period and each untimely, unprovided or interrupted rest period. Consequently, Defendants would be liable for waiting time penalties for having violated California Labor Code sections 201, 202, 203, and 558.1. Defendants would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

56. Plaintiff and other aggrieved employees or former employees at all times pertinent hereto were not exempt from overtime wage requirements, double time wage requirements, minimum wage requirements, provision of meal breaks or compensation in lieu thereof, provision of rest breaks or compensation in lieu thereof, provision of accurate, itemized wage statements, provision of reimbursements for expenses incurred in furtherance of work duties, provision of all wages before resignation or termination, and other such provisions of California law, and the implementing rules and regulations of the IWC California Wage Orders. As a result of these violations, Defendants are liable for civil penalties under PAGA.

57. Plaintiff, in his representative capacity, seeks civil penalties under Labor Code sections 226.3, 558, 1197.1, and 2699 for the herein-described acts, which violate the California Labor Code as described above, including on behalf of himself and other aggrieved employees pursuant to PAGA.

FIRST CAUSE OF ACTION

(Failure to Pay Overtime Wages – Against All Defendants)

58. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth hereat.

59. At all times relevant to this Complaint, Labor Code section 510 was in effect and provided: “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of forty hours in any one workweek and the first eight hours on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.”

1 60. At all times relevant to this Complaint, Labor Code section 510 further provided
2 that “[a]ny work in excess of twelve (12) hours in one day shall be compensated at the rate of no
3 less than twice the regular rate of pay for an employee. In addition, any work in excess of eight
4 (8) hours on any seventh day of a workweek shall be compensated at the rate of no less than twice
5 the regular rate of pay of an employee.”

6 61. Plaintiff is informed and believes and thereon alleges that at all times mentioned,
7 Plaintiff and the Non-Exempt Class worked for Defendants during shifts that consisted of more
8 than eight (8) hours in a work day, twelve (12) hours per day, and/or more than forty (40) hours in
9 a work week, and on seven straight work days were not paid overtime wages for all hours worked
10 as a result of, including but not limited to, Defendants failing to accurately track and/or pay for all
11 hours actually worked, failing to pay all reporting time pay, engaging, suffering, or permitting
12 employees to work off the clock, detrimental rounding or auto-deduction of employee work hours,
13 editing, manipulating, and/or deducting of time worked to reflect lesser hours worked by
14 employees than actually worked, and/or paying overtime hours at the regular rate or otherwise
15 improper rate(s) of pay resulting in underpayment of wages to Plaintiff and similarly situated
16 employees in violation of the Labor Code, including, among others, sections 1194, 1197 and
17 applicable Wage Orders.

18 62. Accordingly, by requiring Plaintiff and the Non-Exempt Class to work in excess of
19 eight (8) hours per day, twelve (12) hours per day, forty (40) hours per week, and seven straight
20 work days without properly compensating for overtime wages, as described above, Defendants
21 willfully violated the provisions of the Labor Code, among others, sections 510, 1194, 1197 and
22 applicable IWC Wage Orders, and California law.

23 63. As a result of the unlawful acts of Defendants, Plaintiff and the Non-Exempt Class
24 have been deprived of overtime wages in amounts to be determined at trial, and are entitled to
25 recovery of such amounts, plus interest and penalties thereon, attorneys’ fees and costs, pursuant
26 to Labor Code sections 1194 and 1199, Code of Civil Procedure sections 1021.5 and 1032, and
27 Civil Code section 3287.

28 ///

1 **SECOND CAUSE OF ACTION**

2 **(Failure to Provide Minimum Wages – Against All Defendants)**

3 64. Plaintiff realleges and incorporates by reference all of the allegations contained in
4 the preceding paragraphs of this Complaint as though fully set forth hereat.

5 65. At all relevant times, Plaintiff and the members of the Non-Exempt Class were
6 employees of Defendants covered by Labor Code section 1197 and applicable Wage Orders.
7 Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and the members of
8 the Non-Exempt Class were entitled to receive minimum wages for all hours worked or otherwise
9 under Defendants' control.

10 66. Plaintiff is informed and believes and thereon alleges that Defendants failed to pay
11 Plaintiff and members of the Non-Exempt Class minimum wages for all hours worked as a result
12 of, including but not limited to, failing to accurately track and/or pay for all hours actually worked,
13 failing to pay all reporting time pay, engaging, suffering, or permitting employees to work off the
14 clock, detrimental rounding or auto-deduction of employee work hours, and editing, deducting
15 and/or manipulating of time worked to reflect lesser hours worked by employees than actually
16 worked in violation of the Labor Code, including, among others, sections 1194, 1194.2, 1197 and
17 applicable Wage Orders.

18 67. As a result of Defendants' unlawful conduct, Plaintiff and members of the Non-
19 Exempt Class have suffered damages in an amount, subject to proof, to the extent they were not
20 paid minimum wages for all hours worked or otherwise under Defendants' control.

21 68. Pursuant to Labor Code section 1194 and 1194.2, Code of Civil Procedure sections
22 1021.5 and 1032, and Civil Code section 3287, Plaintiff and members of the Non-Exempt Class
23 are entitled to recover the full amount of unpaid minimum wages, interest and penalties thereon,
24 liquidated damages, reasonable attorneys' fees and costs of suit.

25 **THIRD CAUSE OF ACTION**

26 **(Failure to Provide Meal Periods or Compensation – Against All Defendants)**

27 69. Plaintiff realleges and incorporates by reference all of the allegations contained in
28 the preceding paragraphs of this Complaint as though fully set forth hereat.

1 70. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer
2 shall employ an employee for a work period of more than five (5) hours without a timely meal
3 break of not less than thirty (30) minutes in which the employee is relieved of all of his or her
4 duties. Furthermore, no employer shall employ an employee for a work period of more than ten
5 (10) hours per day without providing the employee with a second timely meal period of not less
6 than thirty (30) minutes in which the employee is relieved of all of his or her duties. Plaintiff and
7 other members of the Meal Period Class were not provided with requisite timely, complete, and
8 uninterrupted meal periods as contemplated under the law.

9 71. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
10 with a meal period as provided in the applicable Wage Order of the Industrial Welfare
11 Commission, the employer shall pay the employee one additional hour of pay at the employee's
12 regular rate of compensation for each work day that the meal period is not provided.

13 72. Pursuant to Labor Code section 1198, "[t]he maximum hours of work and the
14 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
15 standard conditions of labor for employees. The employment of any employee for longer hours
16 than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

17 73. Plaintiff is informed and believes and thereon alleges by their failure to provide
18 Plaintiff and members of the Meal Period Class with the meal periods contemplated by Labor
19 Code section 512, among other California authorities, and failing to provide compensation for
20 such unprovided meal periods, as alleged above, Defendants willfully violated the provisions of
21 Labor Code sections 512 and 1198, and applicable Wage Orders.

22 74. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the
23 Meal Period Class have suffered damages in an amount, subject to proof, to the extent they were
24 not paid additional pay owed for missed, untimely, interrupted, and/or incomplete meal periods.

25 75. Plaintiff and the other members of the Meal Period Class are entitled to recover the
26 full amount of their unpaid additional pay for missed meal periods, in amounts to be determined at
27 trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys'
28 fees, and costs, under Labor Code sections 226, 226.7 and 1198, Code of Civil Procedure sections

1 1021.5 and 1032, and Civil Code section 3287.

2 **FOURTH CAUSE OF ACTION**

3 **(Failure to Provide Rest Periods or Compensation – Against All Defendants)**

4 76. Plaintiff realleges and incorporates by reference all of the allegations contained in
5 the preceding paragraphs of this Complaint as though fully set forth hereat.

6 77. California law and applicable Wage Orders require that employers “authorize and
7 permit” employees to take ten (10) minute rest periods in about the middle of each four (4) hour
8 work period “or major fraction thereof.” Accordingly, employees who work shifts of three and-a-
9 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who
10 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20)
11 minutes of paid rest period, and employees who work shifts of more than ten (10) hours must be
12 provided thirty (30) minutes of paid rest period. Plaintiff and other members of the Rest Period
13 Class were not provided with requisite timely, complete, and uninterrupted rest periods as
14 contemplated under the law.

15 78. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
16 with a rest period as provided in the applicable Wage Order of the Industrial Welfare Commission,
17 the employer shall pay the employee one additional hour of pay at the employee’s regular rate of
18 compensation for each work day that the timely meal period or rest period is not provided.

19 79. Pursuant to Labor Code section 1198, “[t]he maximum hours of work and the
20 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
21 standard conditions of labor for employees. The employment of any employee for longer hours
22 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

23 80. Plaintiff is informed and believes and thereon alleges by their failure to provide
24 Plaintiff and other members of the Rest Period Class with the timely complete rest periods
25 contemplated by California law, and failing to provide compensation for such unprovided rest
26 periods, as alleged above, Defendants willfully violated the provisions of Labor Code sections
27 226.7 and 1198, and applicable Wage Orders.

28 81. As a result of Defendants’ unlawful conduct, Plaintiff and the other members of the

1 Rest Period Class have suffered damages in an amount, subject to proof, to the extent they were
2 not paid additional pay owed for missed, untimely, interrupted, and/or incomplete rest periods.

3 82. Pursuant to Labor Code sections 226.7 and 1198, Code of Civil Procedure sections
4 1021.5 and 1032, and Civil Code section 3287, Plaintiff and members of the Rest Period Class are
5 entitled to recover the full amount of their premium pay for unprovided rest periods, interest and
6 penalties thereon, and costs of suit.

7 **FIFTH CAUSE OF ACTION**

8 **(Waiting Time Penalties – Against All Defendants)**

9 83. Plaintiff realleges and incorporates by reference all of the allegations contained in
10 the preceding paragraphs of this Complaint as though fully set forth hereat.

11 84. At all relevant times, Plaintiff and other members of the Late Pay Class were
12 employees of Defendants covered by Labor Code sections 201 and 202.

13 85. Pursuant to Labor Code sections 201 and 202, Plaintiff and other members of the
14 Late Pay Class were entitled upon termination to timely payment of all wages earned and unpaid
15 prior to termination, including overtime, double time, and minimum wages. Discharged
16 employees were entitled to payment of all wages earned and unpaid, including without limitation,
17 overtime, double time, and minimum wages, prior to discharge immediately upon termination.
18 Employees who resigned were entitled to payment of all wages earned and unpaid, including,
19 without limitation, overtime, double time, and minimum wages, prior to resignation within 72
20 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were
21 entitled to payment of all wages earned and unpaid, including overtime, double time, and
22 minimum wages, at the time of resignation.

23 86. Plaintiff is informed and believes, and based thereon alleges that Defendants, due
24 to a pattern and practice of not paying all wages earned and owed, including minimum, double
25 time, and overtime wages, prior to resignation or termination, failed to pay Plaintiff and other
26 members of the Late Pay Class all wages earned and unpaid, including overtime wages, double
27 time wages, and minimum wages prior to resignation or termination in accordance with Labor
28 Code sections 201 or 202.

87. Defendants' failure to pay Plaintiff and members of the Late Pay Class all wages earned prior to termination or resignation in accordance with Labor Code sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff and other members of the Late Pay Class at the time of termination or resignation in accordance with Labor Code sections 201 and 202, but intentionally adopted policies or practices incompatible with the requirements of Labor Code sections 201 and 202.

88. Pursuant to Labor Code sections 201 and 202, Plaintiff and other members of the Late Pay Class are entitled to all wages earned prior to termination or resignation that Defendants failed to pay them.

89. Pursuant to Labor Code section 203, Plaintiff and other members of the Late Pay Class are entitled to penalties from the date their earned and unpaid wages were due, upon termination or resignation, until paid, up to a maximum of 30 days.

90. As a result of Defendants' unlawful conduct, Plaintiff and other members of the Late Pay Class have suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned prior to termination or resignation.

91. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the Late Pay Class have suffered damages in an amount subject to proof, to the extent they were not paid all waiting time penalties and penalty wages owed under Labor Code section 203.

92. Pursuant to Labor Code sections 203, 218, 218.5, 218.6, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and the other members of the Late Pay Class are entitled to recover the full amount of their unpaid wages and waiting time penalties under Labor Code section 203, reasonable attorneys' fees on their unpaid wages, interest, and costs of suit.

SIXTH CAUSE OF ACTION

(Failure to Provide Accurate Wage Statements – Against All Defendants)

93. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth hereat.

94. At all relevant times, Plaintiff and the other members of the Wage Statement Class

1 were employees of Defendants covered by Labor Code section 226.

2 95. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and the other
3 members of the Wage Statement Class were entitled to receive, semi-monthly or at the time of
4 each payment of wages, an accurate itemized statement showing gross wages earned net wages
5 earned, all applicable (and accurate) hourly rates in effect during the pay period and the
6 corresponding number of hours worked at each hourly rate by the employee, the last four digits of
7 employees' social security numbers, the accurate name and address of the legal entity that is the
8 employer, and other information necessary to accurately appear on wage statements.

9 96. Plaintiff is informed and believes and thereon alleges that Defendants failed to
10 provide Plaintiff and the other members of the Wage Statement Class accurate itemized wage
11 statements in accordance with Labor Code section 226, subdivision (a).

12 97. Plaintiff and the other members of the Wage Statement Class are informed and
13 believe and thereon allege that at all relevant times, Defendants maintained and continue to
14 maintain a policy and practice of issuing wage statements that do not accurately reflect: gross
15 wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect
16 during the pay period and the corresponding number of hours worked at each hourly rate as
17 required by California wage and hour laws. Defendants' practices resulted and continue to result
18 in the issuance of wage statements to Plaintiff and other members of the Wage Statement Class
19 that do not comply with the itemization requirement.

20 98. Defendants' failure to provide Plaintiff and other members of the Wage Statement
21 Class with accurate wage statements was knowing, intentional, and willful. Defendants had the
22 ability to provide Plaintiff and the other members of the Wage Statement Class with accurate wage
23 statements, but willfully provided wage statements that Defendants knew were not accurate.

24 99. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the
25 Wage Statement Class have suffered injury. The absence of accurate information on their wage
26 statements has delayed timely challenge to Defendants' unlawful pay practices, requires discovery
27 and mathematical computations to determine the amount of wages owed, causes difficulty and
28 expense in attempting to reconstruct time and pay records, and led to submission of inaccurate

1 information about wages and amounts deducted from wages to state and federal governmental
2 agencies.

3 100. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and other members
4 of the Wage Statement Class are entitled to recover \$50 for the initial pay period during the period
5 in which violation of Labor Code section 226 occurred and \$100 for each violation of Labor Code
6 section 226 in a subsequent pay period, not to exceed an aggregate \$4,000.00 per employee.

7 101. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
8 Procedure section 1032, Civil Code section 3287, Plaintiff and the other members of the Wage
9 Statement Class are entitled to recover the full amount of penalties due under Labor Code section
10 226, subdivision (e), reasonable attorneys' fees and costs of suit.

11 **SEVENTH CAUSE OF ACTION**

12 **(Violation of Labor Code § 2802 – Against All Defendants)**

13 102. Plaintiff realleges and incorporates by reference all of the allegations contained in
14 the preceding paragraphs of this Complaint as though fully set forth hereat.

15 103. At all relevant times, Plaintiff and the other members of the Expense Class were
16 employees of Defendants covered by Labor Code section 2802.

17 104. California Labor Code section 2802, subdivision (a) provides that “an employer
18 shall indemnify his or her employee for all necessary expenditures or losses incurred by the
19 employee in direct consequence of the discharge of his or her duties . . .”

20 105. Plaintiff is informed and believes and thereon alleges that at all relevant times,
21 Plaintiff and other members of the Expense Class were required to separately launder their
22 mandatory work uniforms from their regular clothes in furtherance of their work duties for
23 Defendants.

24 106. Plaintiff is informed and believes and thereon alleges that at all relevant times,
25 Defendants failed and refused, and still fail and refuse, to reimburse Plaintiff and other members
26 of the Expense Class for their costs incurred in laundering their mandatory work uniforms
27 separately from their regular clothes while discharging their duties for Defendants.

28 107. Plaintiff is informed and believes and thereon alleges that at all relevant times,

1 Plaintiff and other members of the Expense Class were required to purchase safety vests, hard
2 hats, and purchase and use their personal cell-phones in furtherance of their work duties for
3 Defendants.

4 108. Plaintiff is informed and believes and thereon alleges that at all relevant times,
5 Defendants failed and refused, and still fail and refuse, to reimburse Plaintiff and other members
6 of the Expense Class for their costs incurred in purchasing safety vests, hard hats, and purchasing
7 and using their personal cell-phones while discharging their duties for Defendants.

8 109. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the
9 Expense Class have suffered damages in an amount subject to proof, to the extent they were not
10 reimbursed for the actual cost of laundering their uniforms separately from their regular clothes,
11 and to the extent that they were not reimbursed for the actual cost of purchasing safety vests, hard
12 hats, and purchasing and/or using their personal cell-phones in furtherance of their work duties.

13 **EIGHTH CAUSE OF ACTION**

14 **(Unfair Competition – Against All Defendants)**

15 110. Plaintiff realleges and incorporates by reference all of the allegations contained in
16 the preceding paragraphs of this Complaint as though fully set forth hereat.

17 111. The unlawful conduct of Defendants alleged herein constitutes unfair competition
18 within the meaning of Business and Professions Code section 17200. Due to their unlawful
19 business practices in violation of the Labor Code, Defendants have gained a competitive
20 advantage over other comparable companies doing business in the State of California that comply
21 with their obligations to compensate employees in accordance with the Labor Code.

22 112. Plaintiff is informed and believes and thereon alleges that as a result of Defendants'
23 unfair competition as alleged herein, Plaintiff and similarly situated Class Members have suffered
24 injury in fact and lost money or property. Plaintiff and similarly situated Class Members have
25 been deprived of overtime, double time, and minimum wage compensation, provision of meal and
26 rest breaks or compensation in lieu thereof, reimbursement or indemnification of costs incurred in
27 laundering their mandatory work uniforms separately from their regular clothes, purchasing safety
28 vests, hard hats, and purchasing and using their personal cell-phones in furtherance of their work

1 duties, and from being provided with inaccurate wage statements, among other things.

2 113. Pursuant to Business and Professions Code section 17203, Plaintiff and similarly
3 situated Class Members are entitled to restitution of all wages and other monies owed to them
4 under the Labor Code, including interest thereon, in which they had a property interest and which
5 Defendants nevertheless failed to pay them and instead withheld and retained for themselves.
6 Restitution of the money owed to Plaintiff and similarly situated Class Members is necessary to
7 prevent Defendants from becoming unjustly enriched by their failure to comply with the Labor
8 Code.

9 114. Plaintiff and similarly situated Class Members are entitled to costs of suit under
10 Code of Civil Procedure section 1032 and interest under Civil Code section 3287.

11 **NINTH CAUSE OF ACTION**

12 **(Violation of Labor Code § 226.3 – Against All Defendants)**

13 115. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
14 and incorporates each by reference as though fully set forth hereat.

15 116. Defendants have had a consistent policy or practice of failing to comply with Labor
16 Code section 226, subdivision (a) by intentionally failing to furnish employees with itemized wage
17 statements that accurately reflect gross wages earned; total hours worked; net wages earned; the
18 correct name(s) and address(es) of the legal entity(ies) that is or are the employer(s); and all
19 applicable hourly rates in effect during the pay period and the corresponding number of hours
20 worked at each hourly rate, and other such information as required by California wage and hour
21 laws.

22 117. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
23 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
24 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
25 for each violation in a subsequent citation, for which the employer fails to provide the employee a
26 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

27 118. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
28 this section are in addition to any other penalty provided by law.”

1 119. Plaintiff is informed and believes and based thereon alleges that Defendants failed
2 and continue to fail to furnish non-exempt employees, including, without limitation, Plaintiff, with
3 itemized wage statements that accurately reflect gross wages earned; total hours worked; net
4 wages earned; the correct name(s) and address(es) of the legal entity(ies) that is or are the
5 employer(s); and all applicable hourly rates in effect during the pay period and the corresponding
6 number of hours worked at each hourly rate, and other such information as required by Labor
7 Code section 226, subdivision (a).

8 120. Pursuant to Labor Code section 226.3, Plaintiff and other aggrieved employees or
9 former employees he seeks to represent are entitled to recover civil penalties for Defendants'
10 violation of Labor Code section 226, subdivision (a) in the amount of two hundred fifty dollars
11 (\$250) for each aggrieved employee or former employee per pay period for the initial violation,
12 and one thousand dollars (\$1,000) for each aggrieved employee or former employee per pay
13 period for each subsequent violation.

14 **TENTH CAUSE OF ACTION**

15 **(Violation of Labor Code § 558 – Against All Defendants)**

16 121. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
17 and incorporates each by reference as though fully set forth hereat.

18 122. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other
19 person acting on behalf of an employer who violates, or causes to be violated . . . any provision
20 regulating hours and days of work in any order of the Industrial Welfare Commission” shall be
21 subject to a civil penalty as follows:

22 a. For any initial violation, fifty dollars (\$50) for each underpaid employee and for
23 each pay period for which the employee was underpaid in addition to an amount sufficient to
24 recover underpaid wages;

25 b. For each subsequent violation, one hundred dollars (\$100) for each underpaid
26 employee for each pay period for which the employee was underpaid in addition to an amount
27 sufficient to recover underpaid wages;

28 c. Wages recovered pursuant to this section shall be paid to the affected employee.”

123. Plaintiff believes, and thereupon alleges, that Defendants, and each of them, made the decision that Plaintiff would not be paid the wages owed to Plaintiff as alleged herein, including but not limited to wages owed to Plaintiff for all hours worked, including overtime, double time and minimum wages, and premium wages for missed meal and rest periods. As a direct and proximate result of Defendants' conduct, Plaintiff is entitled to recover directly from Defendants civil penalties pursuant to Labor Code section 558.

124. For violation of Labor Code section 558, Plaintiff is entitled to recover civil penalties in amounts to be determined at trial, as proscribed under Labor Code section 558, subdivision (a).

ELEVENTH CAUSE OF ACTION

(Violation of Labor Code § 1197.1 – Against All Defendants)

125. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs and incorporates each by reference as though fully set forth hereat.

126. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows:

a. For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

b. For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to

1 Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

2 c. Wages, liquidated damages, and any applicable penalties imposed pursuant to
3 Section 203, recovered pursuant to this section shall be paid to the affected employee.”

4 127. Plaintiff believes, and thereupon alleges, that Defendants, and each of them, made
5 the decision that Plaintiff would not be paid his due minimum wages as required due to, among
6 other things, Defendants routinely failing to accurately track and/or pay for all hours actually
7 worked, failing to pay all reporting time pay, engaging, suffering, and/or permitting employees to
8 work off-the-clock, detrimental rounding or auto-deduction of employee work hours, editing,
9 deducting and/or manipulation of time worked to reflect lesser hours worked by employees than
10 actually worked, all to the detriment of Plaintiff and other aggrieved employees. As a direct and
11 proximate result of Defendants’ conduct, Plaintiff is entitled to recover directly from Defendants,
12 civil penalties, as set forth above, pursuant to Labor Code section 1197.1.

13 **TWELFTH CAUSE OF ACTION**

14 **(Civil Penalties Under Labor Code § 2699 – Against All Defendants)**

15 128. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
16 and incorporates each by reference as though fully set forth hereat.

17 129. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by
18 Defendants during the applicable statutory period and suffered one or more of the Labor Code
19 violations set forth herein. Accordingly, Plaintiff seeks to recover, on behalf of himself and all
20 other aggrieved current and former employees of Defendants, the civil penalties provided by
21 PAGA, plus reasonable attorneys’ fees and costs, as the term “civil penalty” is defined under *ZB*
22 *N.A. v. Superior Court* (2019) 8 Cal.5th 175.

23 130. Plaintiff seeks to recover the PAGA civil penalties through a representative action
24 permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
25 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
26 PAGA allegations described herein is not required.

27 131. During the period beginning one (1) year preceding the provision of notice to the
28 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),

Defendants violated, *inter alia*, 200, 201, 202, 203, 226, 226.3, 226.7, 510, 512, 1174, 1194, 1194.2, 1197, and 2802, among others.

132. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees such as Plaintiff, on behalf of himself and all other aggrieved current and former employees within the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code section 2699.3.

133. Plaintiff has complied with the procedures for bringing suit specified in Labor Code section 2699.3. Specifically, on or about January 14, 2020, Plaintiff gave written notice to the LWDA and to Defendants of the specified provisions of the Labor Code alleged to have been violated and those included herein, and the LWDA has elected not to investigate.

134. Pursuant to Labor Code section 2699, subdivisions (a) and (f), Plaintiff seeks to represent and is entitled to recover civil penalties for and on behalf of himself and other aggrieved employees and former employees, for Defendants' violations of the herein and therein described Labor Code violations during the Civil Penalty Period in the amount of one hundred dollars (\$100) for each employee or former employee per pay period for the initial violation, and two hundred dollars (\$200) for each employee or former employee per pay period for each subsequent violation.

135. Pursuant to Labor Code section 2699, subdivision (g), Plaintiff and other aggrieved employees and former employees he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in connection with their herein-described claims for civil penalties.

DEMAND FOR JURY TRIAL

136. Plaintiff demands a trial by jury on all causes of action contained herein.

PRAYER

WHEREFORE, on behalf of himself and all others similarly situated and aggrieved, Plaintiff prays for judgment against Defendants as follows:

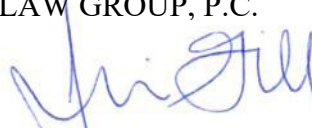
A. An Order certifying this case as a Class Action;

B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's counsel as class counsel;

- 1 C. Damages for all wages earned and owed, including minimum wages, double time
2 wages, and overtime wages under Labor Code sections 203, 510, 558.1, 1194,
3 1197, 1198, and 1199;
- 4 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- 5 E. Damages for unpaid premium wages from missed meal and rest periods under,
6 among other Labor Code sections, 512, 558.1, and 226.7;
- 7 F. Penalties for inaccurate wage statements under Labor Code section 226,
8 subdivision (e) and 558.1;
- 9 G. Damages for unpaid penalties under Labor Code sections 203 and 558.1;
- 10 H. Waiting time penalties under Labor Code sections 203 and 558.1;
- 11 I. Civil Penalties pursuant to Labor Code sections 226.3, 558, 558.1, 1197.1, and
12 2699;
- 13 J. Damages for failure to reimburse for costs and expenses incurred in furtherance of
14 work duties as required under Labor Code sections 558.1 and 2802;
- 15 K. Preliminary and permanent injunction(s) prohibiting Defendants from further
16 violating the Labor Code and requiring the establishment of appropriate and
17 effective means to prevent further violations;
- 18 L. Restitution under Business and Professions Code section 17203;
- 19 M. Pre-judgment and post-judgment interest at the maximum rate allowed by law;
- 20 N. For costs of suit incurred herein;
- 21 O. For reasonable attorneys' fees; and
- 22 P. For such other and further relief as the Court deems just and proper.

23 Dated: August 25, 2020

J. GILL LAW GROUP, P.C.

24
25 BY: 

JASMIN K. GILL

26 Attorneys for Plaintiff GONZALO GABRIEL LOPEZ,
27 on behalf of himself and all others similarly situated or
28 aggrieved