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11 *behalf of himself and all others similarly situated*

12 SUPERIOR COURT OF CALIFORNIA
13 COUNTY OF SACRAMENTO

14 TYRON COOLEY, on behalf of himself and all
15 others similarly situated,

16 Plaintiff,

17 vs.

18 THE SERVICEMASTER COMPANY, LLC,
19 TERMINIX INTERNATIONAL, INC., THE
20 TERMINIX INTERNATIONAL COMPANY
21 LIMITED PARTNERSHIP, and Does 1 through 50,
22 inclusive,

23 Defendants.
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FILED
Superior Court Of California,
Sacramento
05/08/2020
jhall1
By _____, Deputy
Case Number:
34-2020-00278350

Case No.:

**CLASS ACTION AND INDIVIDUAL
COMPLAINT**

Unlimited Civil Case
The Amount Demanded Exceeds \$25,000

1 Plaintiff Tyron Cooley (“Plaintiff”), on behalf of himself, all others similarly situated,
2 complains and alleges as follows:

3 **JURISDICTIONAL ALLEGATIONS**

4 1. This class action lawsuit alleges that The ServiceMaster Company, LLC, Terminix
5 International, Inc. and The Terminix International Company Limited Partnership (collectively
6 referred to as “Defendants”), engaged in unlawful conduct by their: (1) failure to pay all wages
7 when due, including failure to pay all proposed class members whose employment with
8 Defendants terminated within the last four years, all wages due immediately upon termination or
9 within seventy-two hours of resignation, and all associated waiting time penalties, in violation of
10 California Labor Code sections 201-203; (2) failure to provide Plaintiff, and proposed class
11 members with meal breaks and/or proper compensation for missed meal breaks, in violation of
12 California Labor Code sections 512 and 226.7 and the applicable Industrial Welfare Commission
13 Wage Order (“Wage Orders”); (3) failure to provide Plaintiff, and proposed class members, with
14 rest breaks and/or proper compensation for missed rest breaks, in violation of California Labor
15 Code section 226.7 and the applicable Wage Order; (4) failure to pay Plaintiff, and proposed class
16 members, for all hours worked, including all overtime wages earned, in violation of California
17 Labor Code sections 510 and 1194 and the applicable Wage Order; (5) failure to provide accurate
18 itemized wage statements to Plaintiff and proposed class members, in violation of California
19 Labor Code section 226; (6) failure to provide Plaintiff and proposed class members, whom
20 Defendants paid commissions, with signed written contracts that set forth the method by which
21 commissions would be computed and paid, in violation of California Labor Code section 2751;
22 and (7) failure to reimburse Plaintiff and proposed class members for work-related expenses,
23 including, but not limited to, the use of their personal vehicles to do their jobs, the use of their
24 personal cell phones and internet to do their jobs, and the purchase of required steel-toed safety
25 shoes, in violation of California Labor Code section 2802. These failures further constitute unfair
26 business practices, in violation of California Business and Professions Code section 17200, et.
27 seq., and violations of California Labor Code section 2698, et. seq., the Private Attorneys General
28 Act of 2004 (“the PAGA”), through which Plaintiff seeks civil penalties.

2. Defendants are, and at all relevant times were, corporations doing business within the State of California and are employers under applicable Industrial Welfare Commission Wage Orders. Defendants maintain places of business located throughout the State of California, including in Sacramento, California.

3. Venue is proper in the County of Sacramento because work was performed by Plaintiff for Defendants in the County of Sacramento and the legal obligations of Defendants to Plaintiff were breached in the County of Sacramento.

4. The California Superior Court has jurisdiction in this matter because Plaintiff is a resident of California, Defendants are qualified to do business in California, and Defendants regularly conduct business in California. Further, there is no federal question at issue, as the claims herein are based solely on California law.

GENERAL ALLEGATIONS

5. This action seeks relief for unremedied violations of California law, including, inter alia; damages, reimbursements, restitution, penalties, interest and attorneys' fees, as appropriate, to Plaintiff, members of the proposed class, aggrieved employees, and to victims of the practices at issue, who have not been timely paid for all wages due immediately or within seventy-two hours of termination or resignation, and all associated waiting time penalties, in violation of California Labor Code sections 201-203; who have not been provided meal breaks and/or paid compensation for missed meal breaks, in violation of California Labor Code sections 226.7 and 512 and the applicable Wage Order; who have not been provided rest breaks and/or paid compensation for missed rest breaks, in violation of California Labor Code section 226.7 and the applicable Wage Order; who have not been paid overtime wages due, in violation of California Labor Code sections 510 and 1194 and the applicable Wage Order; who have not been provided accurate, itemized, wage statements, in violation of California Labor Code section 226; who have not been provided with signed written contracts that set forth the method by which commissions would be computed and paid, in violation of California Labor Code section 2751; and who were not adequately reimbursed for all costs incurred during the performance of their jobs, in violation of California Labor Code section 2802. Plaintiff is informed and believes that the damages, reimbursements,

1 restitution, penalties, interest and attorneys' fees do not exceed an aggregate of \$4,999,999.99 and
2 that Plaintiff's individual claims do not exceed \$74,999.99.

3 6. The names and capacities of defendants sued herein under California Code of Civil
4 Procedure section 474 as Does 1 through 50, inclusive, are presently not known to Plaintiff, who
5 therefore sues these defendants by such fictitious names. Plaintiff will seek to amend this
6 Complaint and include these Doe defendants' names and capacities when they are ascertained.
7 Each fictitiously named defendant is responsible in some manner for the conduct alleged herein
8 and for the injuries suffered by Plaintiff, the members of the class, aggrieved employees, and the
9 general public.

10 7. At all times mentioned in the causes of action alleged herein, each and every
11 Defendant was an agent and/or employee of each and every other Defendant. In doing the things
12 alleged in the causes of action stated herein, each and every Defendant was acting within the
13 course and scope of this agency or employment and was acting with the consent, permission and
14 authorization of each of the remaining Defendants. All actions of each Defendant as alleged in the
15 causes of action stated herein were ratified and approved by every other Defendant or their
16 officers or managing agents.

17 8. Plaintiff is a former employee of Defendants. Defendants employed Plaintiff as a
18 field representative, also referred to by Defendants as an "outside sales representative." Plaintiff
19 began working for Defendants in approximately November 2014. Plaintiff's job duties included
20 traveling to potential customers locations, providing estimates to potential customers based on
21 customers' requests, attending required meetings, and completing administrative requirements
22 related to customer purchases of Defendants' services.

23 9. Defendants classified Plaintiff and those similarly situated field representatives as
24 non-exempt employees, and paid them hourly, plus commissions, including some overtime
25 payments. Plaintiff brings claims on behalf of himself and the proposed class members for unpaid
26 wages, for missed meal and rest breaks, and unpaid overtime.

27 10. During the relevant period, the employment of Plaintiff and numerous proposed
28 class members with Defendants ended. Defendants did not pay Plaintiff and these proposed class

1 members all wages due either immediately upon termination or within seventy-two hours of
2 resignation, and failed to pay those sums for up to thirty days thereafter, in violation of California
3 Labor Code sections 201-202. Plaintiff therefore seeks wages as civil penalties on behalf of those
4 proposed class members who were not paid all wages due either immediately upon termination or
5 within seventy-two hours of resignation, pursuant to California Labor Code section 203.

6 11. Throughout Plaintiff's employment with Defendants, Defendants routinely required
7 Plaintiff, and similarly situated employees, to work more than five hours per day without receiving
8 mandated off-duty meal periods. Specifically, Defendants required Plaintiff and those similarly
9 situated to work Monday through Saturday, from approximately 8:00am to at least 6:00pm, at
10 back-to-back, two-hour appointment slots without any time for a meal break. In order to make all
11 of the appointments assigned by Defendant, Plaintiff and those similarly situated did not have time
12 to stop to take such breaks. As a result, Plaintiff and those similarly situated did not receive 30-
13 minute uninterrupted off-duty meal breaks. When Plaintiff and those similarly situated reported a
14 timesheet to a manager reflecting that they did not receive such breaks, managers required them to
15 "fix" or "correct" their timesheets to reflect that they had taken meal breaks that they did not take.
16 As such, Defendants did not pay Plaintiff, or similarly situated employees, the additional hour of
17 compensation required for missed meal breaks by California Labor Code sections 226.7 and 512,
18 and applicable Wage Orders. As a result, Defendants did not pay Plaintiff, or those similarly
19 situated employees, with all wages due as required by California Labor Code sections 201-204.

20 12. Throughout Plaintiff's employment with Defendants, Defendants routinely required
21 Plaintiff, and similarly situated employees, to work without receiving mandated off-duty rest
22 periods. As stated, Defendants required Plaintiff and those similarly situated to work Monday
23 through Saturday, from approximately 8:00am to at least 6:00pm, at back-to-back, two-hour
24 appointment slots without any time for a rest break. In order to make all of the appointments
25 assigned by Defendant, Plaintiff and those similarly situated did not have time to stop to take such
26 breaks. As a result, Plaintiff and those similarly situated did not receive 10-minute uninterrupted
27 off-duty rest breaks. When Plaintiff and those similarly situated did not receive uninterrupted off-
28 duty rest breaks, Defendants did not pay Plaintiff, or similarly situated employees, with the

1 additional hour of compensation as required by California Labor Code section 226.7 and
2 applicable Wage Orders. As a result, Defendants did not pay Plaintiff, or those similarly situated
3 employees, with all wages due as required by California Labor Code sections 201-204.

4 13. During Plaintiff's employment, Defendants failed to timely pay Plaintiff and
5 similarly situated employees for all hours worked, in violation of California Labor Code sections
6 201-204. To do their jobs, Plaintiff, and similarly situated employees began their days and ended
7 their days working from home: returning customer calls, calling customers to confirm
8 appointments and services, and filling out contracts and other required paperwork. This work took
9 Plaintiff as much as 1-2 hours each morning before his appointments on a given day, and 1-2
10 additional hours after all of his appointments were complete. Although Plaintiff and similarly
11 situated employees began and ended their work days at their homes working, Defendants failed to
12 pay Plaintiff and those similarly situated for the time actually spend doing this work and for the
13 time spent driving from their homes to their first appointments of the day, and from their last
14 appointments of the day to their homes. Further, Defendants required Plaintiff and similarly
15 situated employees to conduct off-the-clock work while on scheduled vacation days and holidays.
16 Defendants had an unwritten policy whereby they expected Plaintiff and similarly situated
17 employees to answer and respond to customers, and Defendants, and complete sales if possible,
18 while on vacation days and holidays. Defendants did not pay Plaintiff or those similarly situated
19 for this time worked. In addition, Defendants forced Plaintiff and those similarly situated to
20 record that they took meal breaks that they did not take because they were working, and did not
21 pay Plaintiff or those similarly situated for this time worked. Further, Defendants required
22 Plaintiff and similarly situated employees to "fix" or "change" any timesheet listing more than two
23 hours of overtime worked in one workday, to state that the employee worked only two hours of
24 overtime. As such, Defendants regularly provided wage statements that incorrectly listed the
25 hours actually worked by Plaintiff and those similarly situated employees. The wage statements
26 often reflected a lesser number of hours than actually worked. Therefore, Defendants failed to
27 timely pay Plaintiff and those similarly situated employees all wages due in violation of California
28 Labor Code sections 201-204.

1 14. During all relevant periods, Plaintiff and similarly situated employees often worked
2 more than 8 hours per day or 40 hours per week. Throughout Plaintiff's employment with
3 Defendants, Defendants required Plaintiff and similarly situated employees to work Monday
4 through Saturday, from approximately 8:00am to at least 6:00pm, at back-to-back, two-hour
5 appointment slots. Often times, Defendants double-booked or triple-booked Plaintiff and similarly
6 situated employees, meaning they would have to complete multiple assignments within one two-
7 hour time slot. Plaintiff and similarly situated employees often could not complete all of the
8 appointments assigned by Defendants in the finite time scheduled for them and often worked extra
9 hours before 8:00am, or after 6:00pm, to complete all assignments. In addition, Plaintiff and
10 similarly situated employees spent as many as two hours working from home (to confirm
11 appointments and contract terms with clients, and complete all documentation) prior to leaving for
12 their first appointment that began at 8:00am, and as many as two hours working when they got
13 home from their last appointments of the day, that were originally scheduled to conclude at
14 6:00pm. Plaintiff and similarly situated employees regularly worked more than two hours of
15 overtime in one day, but Defendants would only approve a timesheet with two hours of overtime
16 or less. As such, while Defendants purport to pay its employees overtime, the overtime paid is
17 inadequate due Defendants' reduction of hours worked on Plaintiff's and proposed class members'
18 timesheets. Defendants either do not pay any overtime to Plaintiff and similarly situated
19 employees, or pay the overtime rate for fewer hours than actually worked, in violation of
20 California Labor Code sections 510, 558, and 1194, and the applicable Wage Order. By failing to
21 compensate Plaintiff, and those similarly situated, for this time, Defendants required Plaintiff and
22 proposed class members to work in excess of 8 hours per day and 40 hours per week without
23 receiving compensation for this time.

24 15. Because Defendants failed to pay Plaintiff and similarly situated employees
25 premiums for missed meal and rest breaks and for all overtime and regular hours worked,
26 Defendants failed to furnish accurate itemized statements to Plaintiff and proposed class members.
27 For the same reasons, Defendants failed to provide accurate wage statements to Plaintiff and
28 similarly situated employees as required by California Labor Code section 226. The wage

1 statements did not reflect all gross wages earned (§ 226(a)(1)), all hours worked (§ 226(a)(2)), all
2 net wages earned (§ 226(a)(5)), or all applicable hourly rates and the corresponding hours worked
3 (§ 226(a)(9)).

4 16. Defendants failed to provide Plaintiff and proposed class members with signed,
5 written contracts that set forth the method by which commissions would be computed and paid.
6 Defendants implemented a new commission plan every year. Although Defendants discussed new
7 commission plans for each year in annual meetings, and directed Plaintiff to a Terminix-affiliated
8 website where Plaintiff was instructed to acknowledge the new commission plan, Defendants
9 failed to provide a copy of the commission contract to Plaintiff and proposed class members, in
10 violation of California Labor Code section 2751(a). Defendants further failed to obtain from
11 Plaintiff and proposed class members a signed receipt for the commission contracted, in violation
12 of California Labor Code section 2751(b).

13 17. When Plaintiff started working for Defendants in approximately 2014 and until
14 approximately 2017, Defendants required Plaintiff, and proposed class members, to drive their
15 personal vehicles to scheduled sales appointments, required work meetings, and mandatory
16 trainings. Plaintiff and proposed class members began their work days at their residences, reading
17 and responding to emails, obtaining sales appointments, preparing materials for sales
18 appointments, and routing their trips. Plaintiff and proposed class members ended their work days
19 at their residences, filling out required paperwork and finalizing contracts. Defendants did not
20 reimburse Plaintiff, and proposed class members, for all the miles they drove for work, including
21 the substantial amount of miles Plaintiff and proposed class members drove from their residences
22 to their first scheduled sales appointment and from their last scheduled sales appointment to their
23 residences. In addition, during the time period in which Plaintiff and similarly situated employees
24 drove their personal vehicles to do their jobs, Defendants did not reimburse Plaintiff or those
25 similarly situated additional amounts for maintenance of their vehicles. In so doing, Defendants
26 failed to reimburse Plaintiff and proposed class members for all costs incurred in the process of
27 doing their jobs, in violation of California Labor Code section 2802. In approximately 2017,
28 Defendants provided Plaintiff, and similarly situated employees with company vehicles to drive

1 for work, and gas cards.

2 18. Throughout Plaintiff's employment, Defendants required Plaintiff and similarly
3 situated employees to wear steel-toed or hard-toed shoes during the performance of their work for
4 Defendants. Plaintiff alleges that he had to purchase approximately 2-3 pairs of either steel-toed
5 or hard-toed shoes for work each year. Defendants failed to reimburse Plaintiff and similarly
6 situated employees for any hard-toed or steel-toed shoes, in violation of California Labor Code
7 section 2802.

8 19. When Plaintiff started working for Defendants in approximately 2014 and until
9 approximately 2017, Defendants required Plaintiff, and proposed class members, to use their
10 personal cell phones and wireless internet for work. During this time, Defendants required
11 Plaintiff and similarly situated employees to use their personal smart phones and internet for the
12 following purposes: to place calls to prospective clients to confirm all appointments prior to the
13 appointment; to answer calls and emails; to use a phone application, e.g., "Timesheet" to log hours
14 worked, and email such records to the manager; and to complete other forms, contracts, and
15 paperwork. However, during this time Defendants never reimbursed Plaintiff or similarly situated
16 employees for their smart phones; smart phone cell service; or wireless internet fees they incurred
17 to do their jobs, in violation of California Labor Code section 2802. In approximately 2017,
18 Defendants provided Plaintiff and similarly situated employees with work phones to do their jobs.

19 20. Given the violations of the aforementioned California Labor Code sections and
20 Wage Orders, Defendants are therefore liable for unfair business practices, in violation of
21 California Business & Professions Code section 17200, et. seq.

22 21. Given the violations of the aforementioned California Labor Code sections and
23 Wage Orders, Defendants are therefore liable for civil penalties set forth within, and authorized
24 by, the PAGA, California Labor Code section 2698, et. seq.

25 **CLASS ALLEGATIONS**

26 22. Plaintiff is, and at all relevant times was, a resident of the State of California.
27 Plaintiff sues on behalf of himself and the following subclasses of employees of Defendants in
28 California:

- 1 (1) Subclass A: all field representatives (also referred to by Defendants as
2 “outside sales representatives”) employed by Defendants in California
3 during the four years preceding the filing of this complaint to the
4 present;
- 5 (2) Subclass B: all California employees who received a wage statement
6 during the one year preceding the filing of this complaint to the present;
- 7 (3) Subclass C: all California employees who Defendants required to use
8 their personal cell phones, cell service, or internet, to do their jobs,
9 during the four years preceding the filing of this complaint to the
10 present.

11 23. Because Defendants failed to provide Plaintiff, in his employment with
12 Defendants as a field representative, payment for all wages when due, including after 72 hours
13 of resignation, and waiting time penalties; meal breaks, or one hour of premium pay for each
14 missed meal break; rest breaks or one hour of premium pay for each missed rest break;
15 payment for all overtime hours worked; accurate itemized wage statements; signed written
16 contracts that set forth the method by which commissions would be computed and paid; and
17 full reimbursement for all necessary expenditures incurred in direct consequence of the
18 discharge of his duties, including for driving his personal vehicle for work during the claim
19 period, and for using his personal cell phone, cell service, and wireless internet during the
20 claim period; Plaintiff’s claims are typical of those of the proposed subclasses.

21 24. Plaintiff will fairly and adequately represent and protect the interests of the
22 members of the proposed subclasses in that he has no disabling conflict of interest that would
23 be antagonistic to those of the other members of the proposed subclasses. Plaintiff retained
24 counsel who are competent and experienced in the prosecution of class action wage and hour
25 violations.

26 25. The proposed subclasses are sufficiently numerous and the class members are
27 geographically dispersed throughout California, the joinder of whom in one action is
28 impracticable, such that the disposition of whose claims in a class action will provide

1 substantial benefits to both the parties and the Court.

2 26. There is a well-defined community of interest in the questions of law and fact
3 involved affecting the parties to be represented. The questions of law and fact common to the
4 proposed subclasses predominate over questions that may affect individual class members,
5 include but are not limited to the following:

- 6 (a) Subclass A: Whether Defendants implemented and engaged in a pattern and
7 practice whereby Defendants failed to timely pay Plaintiff and proposed
8 Subclass A members all wages when due, including wages due immediately
9 upon termination or within seventy-two hours of resignation, and all associated
10 waiting time penalties;
- 11 (b) Subclass A: Whether Defendants implemented and engaged in a practice
12 whereby Defendants unlawfully failed to provide meal breaks, or provide
13 compensation for missed meal breaks, to Plaintiff and proposed Subclass A
14 members;
- 15 (c) Subclass A: Whether Defendants implemented and engaged in a practice
16 whereby Defendants unlawfully failed to provide rest breaks, or provide
17 compensation for missed rest breaks, to Plaintiff and proposed Subclass A
18 members;
- 19 (d) Subclass A: Whether Defendants implemented and engaged in a practice
20 whereby Defendants failed to pay Plaintiff and the proposed Subclass A all
21 regular and overtime wages owed;
- 22 (e) Subclasses A and B: Whether Defendants implemented and engaged in a
23 pattern and practice whereby Defendants failed to provide proposed Subclass
24 A and B members accurate itemized wage statements;
- 25 (f) Subclass A: Whether Defendants implemented and engaged in a pattern and
26 practice of failing to provide proposed Subclass A members with signed
27 written contracts that set forth the method by which commissions would be
28 computed and paid;

- 1 (g) Subclasses A and C: Whether Defendants implemented and engaged in a
2 pattern and practice whereby Defendants unlawfully failed to reimburse field
3 representatives for work-related expenses, as required by law
- 4 (h) Whether the acts and practices of Defendants as alleged herein violated, inter
5 alia, applicable provisions of the California Labor Code, including but not
6 limited to sections 201-204, 226, 226.7, 510, 512, 1194, 2751, 2802, the
7 applicable Industrial Welfare Commission Orders, California Business &
8 Professions Code section 17200, et seq., and the Private Attorneys General Act
9 of 2004 (the PAGA), California Labor Code section 2698, et. seq.

10 27. Plaintiff and proposed class members have all similarly suffered irreparable harm
11 and damages as a result of Defendants' unlawful and wrongful conduct, including, but not limited
12 to, Defendants' pattern and practice of: (1) failing to pay all wages when due, including
13 immediately upon termination or within seventy-two hours of resignation, and all associated
14 waiting time penalties; (2) failing to provide meal breaks and/or proper compensation for missed
15 meal breaks; (3) failing to provide rest breaks and/or proper compensation for missed rest breaks;
16 (4) failing to pay all overtime wages earned; (5) failing to provide accurate itemized wage
17 statements in violation of section 226; (6) failing to provide Plaintiff and proposed class members,
18 whom Defendants paid commissions, with signed written contracts that set forth the method by
19 which commissions would be computed and paid; and (7) failing to provide full reimbursement
20 for work-related expenses. These failures further constitute unfair business practices, in violation
21 of California Business and Professions Code section 17200, et. seq., and violations of California
22 Labor Code section 2698, et. seq., the Private Attorneys General Act of 2004 ("the PAGA"),
23 through which Plaintiff seeks civil penalties. These issues are common to all proposed class
24 members, making class treatment especially appropriate. Because the action of Defendants toward
25 proposed class members follow common patterns, all of which are reflected in the records
26 possessed by Defendants, this action will provide substantial benefits to all proposed class
27 members. Absent this action, Defendants' unlawful conduct will continue unremedied and
28 uncorrected.

1 **FIRST CAUSE OF ACTION**

2 **(On Behalf of Plaintiff and Subclass A)**
3 **(Failure To Pay Wages When Due, Including at Termination:**
4 **Violation of Cal. Lab. Code §§ 201-204)**

5 28. Plaintiff and proposed class members incorporate by reference the allegations
6 contained the foregoing paragraphs of this complaint as if fully set forth herein.

7 29. During Plaintiff's employment, Defendants failed to timely pay Plaintiff and
8 similarly situated employees for all hours worked, when due, in violation of California Labor
9 Code sections 201-204. To do their jobs, Plaintiff, and similarly situated employees began their
10 days and ended their days working from home: returning customer calls, calling customers to
11 confirm appointments and services, and filling out contracts and other required paperwork.
12 Plaintiff alleges that this took him as much as 1-2 hours each morning before his appointments
13 that day, and 1-2 additional hours after all of his appointments that day. Although Plaintiff and
14 similarly situated employees began and ended their work days at their homes working, Defendants
15 failed to pay Plaintiff and those similarly situated for time spent driving from their homes to their
16 first appointments of the day, and from their last appointments of the day to their homes.

17 30. Further, Defendants required Plaintiff and similarly situated employees to conduct
18 off-the-clock work while on scheduled vacation days and holidays. Defendants had an unwritten
19 policy whereby they expected Plaintiff and similarly situated employees to answer and respond to
20 customers and Defendants, and complete sales if possible, while on vacation days and holidays.
21 Defendants did not pay Plaintiff or those similarly situated for this time worked.

22 31. In addition, Defendants forced Plaintiff and those similarly situated to record that
23 they took meal breaks that they did not take because they were working, and did not pay Plaintiff
24 or those similarly situated for this time worked.

25 32. Further, Defendants required Plaintiff and similarly situated employees to "fix" or
26 "change" any timesheet listing more than two hours of overtime worked in one workday, to state
27 that the employee worked only two hours of overtime.

28 33. As such, Defendants regularly provided wage statements that incorrectly listed the

1 hours actually worked by Plaintiff and those similarly situated employees. The wage statements
2 often reflected a lesser number of hours than actually worked. Therefore, Defendants failed to
3 timely pay Plaintiff and those similarly situated employees all wages when due, in violation of
4 California Labor Code sections 201-204.

5 34. During the relevant period, the employment of Plaintiff and numerous proposed
6 class members with Defendants ended.

7 35. Defendants did not pay Plaintiff and these proposed class members all wages due
8 either immediately upon termination or within seventy-two hours of resignation, and failed to pay
9 those sums for up to thirty days thereafter, in violation of California Labor Code sections 201-202.
10 Plaintiff therefore seeks wages as civil penalties on behalf of those proposed class members who
11 were not paid all wages due either immediately upon termination or within seventy-two hours of
12 resignation, pursuant to California Labor Code section 203.

13 36. Defendants' willful failure to pay wages to the Plaintiff and other proposed class
14 members violates California Labor Code section 203 because Defendants knew or should have
15 known wages were due to Plaintiff and other proposed class members, but Defendants failed to
16 pay them.

17 37. These violations give rise to civil penalties, pursuant to California Labor Code
18 section 203. Plaintiff and proposed class members are therefore entitled to the relief requested
19 below.

20 38. Pursuant to California Labor Code section 218.6, and Civil Code section 3287, the
21 members of the Subclass A seeks recovery of pre-judgment interest on all amounts recovered
22 herein.

23 39. Pursuant to California Labor Code section 218.5 the members of Subclass A
24 request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

25 **SECOND CAUSE OF ACTION**

26 **(On Behalf of Plaintiff and Subclass A)**
27 **(Meal Break Violations: Cal. Lab. Code §§ 226.7, 512**
& Applicable Industrial Welfare Commission Wage Orders)

28 40. Plaintiff and the proposed class members incorporate by reference the

1 allegations contained in the foregoing paragraphs of this complaint as if fully set forth herein.

2 41. During all relevant periods, Defendants failed to provide Plaintiff and the
3 proposed class members with mandated, off-duty, 30-minute meal breaks. Defendants
4 likewise did not pay Plaintiff or proposed class members an additional hour of compensation if
5 Plaintiff or the proposed class members did not receive the mandated, off-duty, 30-minute
6 meal breaks. This failure violated California Labor Code sections 226.7 and 512, and the
7 applicable Wage Order.

8 42. Throughout Plaintiff's employment with Defendants, Defendants routinely required
9 Plaintiff, and similarly situated field representatives, to work more than five hours per day without
10 receiving mandated off-duty 30-minute meal periods. Defendants required Plaintiff and those
11 similarly situated to work Monday through Saturday, from approximately 8:00am to
12 approximately 6:00pm, at back-to-back, two-hour appointment slots without any time scheduled
13 for a meal break. In order to make all of the appointments assigned by Defendant, Plaintiff and
14 those similarly situated did not have time to stop to take such breaks. As a result, Plaintiff and
15 those similarly situated did not receive 30-minute uninterrupted off-duty meal breaks, in violation
16 of California Labor Code sections 226.7 and 512, and the applicable Wage Order.

17 43. Throughout Plaintiff's employment, when the field representatives did not receive
18 statutory, uninterrupted, 30-minute off-duty meal breaks, Defendants did not pay Plaintiff, or
19 similarly situated employees, with the additional hour of compensation as required by California
20 Labor Code sections 226.7, 512, and applicable Wage Orders. When Plaintiff and those similarly
21 situated reported a timesheet to a manager reflecting that they did not receive such breaks,
22 managers required them to "fix" or "correct" their timesheets to reflect that they had taken meal
23 breaks that they did not take. As such, Defendants did not pay Plaintiff, or similarly situated
24 employees, with the additional hour of compensation required for missed meal breaks by
25 California Labor Code sections 226.7 and 512, and the applicable Wage Order.

26 44. As a result, Defendants also did not pay Plaintiff, or those similarly situated
27 employees, with all wages due as required by California Labor Code sections 201-204.

28 45. As Defendants did not pay the additional hour of compensation when Plaintiff and

1 similarly situated employees were not provided meal breaks as required by sections 226.7 and
2 512, Defendants did not furnish Plaintiff, or the similarly situated field representatives with
3 accurate wage statements, as the wage statements do not reflect all gross wages earned (§
4 226(a)(1)), all hours worked (§ 226(a)(2)), net wages earned (§ 226(a)(5)), or all applicable hourly
5 rates and the corresponding hours worked (§ 226(a)(9)), among other deficiencies incorporated
6 herein.

7 46. As a result of Defendants' failures, Plaintiff and the proposed class members are
8 entitled to recover the additional hour of compensation as set forth in California Labor Code
9 section 226.7.

10 **THIRD CAUSE OF ACTION**

11 **(On Behalf of Plaintiff and Subclass A)** 12 **(Rest Break Violations: Cal. Lab. Code § 226.7** **& Industrial Welfare Commission Wage Orders)**

13 47. Plaintiff and the proposed class members incorporate by reference the
14 allegations contained in the foregoing paragraphs of this complaint as if fully set forth herein.

15 48. During all relevant periods, Defendants routinely required Plaintiff, and similarly
16 situated employees, to work more than four hours per day without receiving statutory,
17 uninterrupted, 10-minute off-duty rest breaks. Defendants required Plaintiff and those similarly
18 situated to work from approximately 8:00am to at least 6:00pm, at back-to-back, two-hour
19 appointment slots without any time for a rest break. In order to make all of the appointments
20 assigned by Defendant, Plaintiff and those similarly situated did not have time to stop to take such
21 breaks. As a result, Plaintiff and those similarly situated did not receive 10-minute uninterrupted
22 off-duty rest breaks. Defendants' failure to provide such breaks violates California Labor Code
23 section 226.7 and the applicable Industrial Welfare Commission Wage Order.

24 49. When Plaintiff and those similarly situated did not receive uninterrupted off-duty
25 rest breaks, Defendants did not pay Plaintiff, or similarly situated employees, with the additional
26 hour of compensation as required by California Labor Code section 226.7 and applicable Wage
27 Orders.

28 50. Throughout Plaintiff's employment, when Plaintiff and similarly situated

1 employees did not receive their statutory, uninterrupted, 10-minute off-duty rest breaks for every
2 four hours worked, Defendants did not pay Plaintiff, or similarly situated employees, with the
3 additional hour of compensation as required by California Labor Code section 226.7 and
4 applicable Wage Orders. As a result, Defendants did not pay Plaintiff, or those similarly situated
5 employees, with all wages due as required by California Labor Code sections 201-204.

6 51. As Defendants did not pay the additional hour of compensation when Plaintiff and
7 similarly situated employees were not provided rest breaks, as required by section 226.7,
8 Defendants did not furnish Plaintiff, or the similarly situated employees, with accurate wage
9 statements, as the wage statements did not reflect all gross wages earned (§ 226(a)(1)), all hours
10 worked (§ 226(a)(2)), net wages earned (§ 226(a)(5)), or all applicable hourly rates and the
11 corresponding hours worked (§ 226(a)(9)), among other wage statement deficiencies incorporated
12 herein.

13 52. As a result of Defendants' failures, Plaintiff and the proposed class members are
14 entitled to recover the additional hour of compensation as set forth in California Labor Code
15 section 226.7.

16 **FOURTH CAUSE OF ACTION**

17 **(On Behalf of Plaintiff and Subclass A)** 18 **(Failure To Pay Overtime And Wages:** **Violation of Cal. Lab. Code §§ 510, & 1194)**

19 53. Plaintiff and the proposed class members incorporate by reference the allegations
20 contained in the foregoing paragraphs of this complaint as if fully set forth herein.

21 54. During all relevant periods, Plaintiff and similarly situated employees often worked
22 more than 8 hours per day or 40 hours per week. Throughout Plaintiff's employment with
23 Defendants, Defendants required Plaintiff and similarly situated employees to work Monday
24 through Saturday, from approximately 8:00am to at least 6:00pm, at back-to-back, two-hour
25 appointment slots. Often times, Defendants double-booked or triple-booked Plaintiff and similarly
26 situated employees, meaning they would have to complete multiple assignments within one two-
27 hour time slot. Plaintiff and similarly situated employees often could not complete all of the
28 appointments assigned by Defendants in the finite time slot scheduled for them and often worked

1 extra hours before 8:00am, or after 6:00pm, to complete all assignments.

2 55. In addition, Plaintiff and similarly situated employees spent as many as two hours
3 working from home (to confirm appointments and contract terms with clients, and complete all
4 documentation) prior to leaving for their first appointment that began at 8:00am, and as many as
5 two hours working when they got home from their last appointments of the day, that were
6 originally scheduled to conclude at 6:00pm.

7 56. During all relevant time periods, Plaintiff and similarly situated employees
8 regularly worked more than two hours of overtime in one day, but Defendants would only approve
9 a timesheet with two hours of overtime or less. If Plaintiff or similarly situated employees
10 submitted a timesheet with greater than two hours of overtime in one day, the manager rejected the
11 time sheet and instructed them to “fix” it to reflect a maximum of two hours of overtime worked.

12 57. During all relevant periods, Defendants did not pay Plaintiff, and other similarly
13 situated field representatives, for all hours worked. Because Defendants reduced hours worked on
14 timesheets, Defendants failed to pay for all wages owed, including overtime wages at the
15 appropriate rate of pay to Plaintiff and proposed class members.

16 58. While Defendants purport to pay their employees overtime, the overtime paid is
17 inadequate due Defendants’ reduction of hours worked on Plaintiff’s and proposed class members’
18 timesheets. Defendants either do not pay any overtime to Plaintiff and similarly situated
19 employees, or pay the overtime rate for fewer hours than actually worked, in violation of
20 California Labor Code sections 510, 558, and 1194, and the applicable Wage Order. By failing to
21 compensate Plaintiff, and those similarly situated, for this time, Defendants required Plaintiff and
22 proposed class members to work in excess of 8 hours per day and 40 hours per week without
23 receiving compensation for this time.

24 59. During all relevant periods, both the California Labor Code and the pertinent
25 Industrial Welfare Commission Wage Orders required that employers pay employees for all hours
26 worked and that all work performed by an employee in excess of 8 hours per day and 40 hours per
27 week be compensated at no less than one and one-half times the employee’s regular rate of pay.
28 Defendants failed to pay for all hours worked; failed to pay overtime wages for overtime hours

1 worked. Therefore, Defendants failed to compensate Plaintiff, and other similarly situated
2 employees, for all hours they worked. As a result, Defendants failed to pay Plaintiff, and similarly
3 situated employees, earned overtime wages; and failed to properly calculate overtime
4 compensation; failed to provide Plaintiff and class members accurate wage statements as required
5 by California Labor Code section 226.

6 60. Plaintiff and proposed class members are entitled to recover their overtime
7 compensation and penalties arising therefrom.

8 **FIFTH CAUSE OF ACTION**

9 **(On Behalf of Plaintiff and Subclasses A & B)**
10 **(Wage Statement Violations: Cal. Lab. Code § 226)**

11 61. Plaintiff and proposed class members incorporate by reference the allegations
12 contained in the foregoing paragraphs of this complaint as if fully set forth herein.

13 62. During the relevant time period, Defendants failed to furnish accurate itemized
14 wage statements to Plaintiff and proposed class members of Subclasses A and B, containing
15 information as required by California Labor Code sections 226(a)(1) gross wages earned, (2) total
16 hours worked, (5) net wages earned, and (9) all applicable hourly rates in effect during the pay
17 period and number of hours worked at each hourly rate.

18 63. These failures caused Plaintiff and proposed members of Subclasses A and B to
19 suffer injury as defined by California Labor Code section 226(e)(2)(B)(i).

20 64. As a result of Defendants' failures, Plaintiff and proposed members of Subclasses
21 A and B are entitled to recover the penalties and attorneys' fees as set forth in California Labor
22 Code section 226(e)(1).

23 65. As a result of Defendants' violations of California Labor Code section 226(a),
24 Plaintiff and proposed class members are also entitled to recover the penalties, and interest
25 thereon, as set forth in California Labor Code section 226.3.

26 66. Pursuant to California Labor Code section 226(h), the currently-employed
27 members of proposed Subclasses A and B are entitled to injunctive relief to ensure Defendants'
28 compliance with California Labor Code section 226.

67. Plaintiff also seeks penalties for Defendants' violations of California Labor Code section 226(a)(1), (2), (5), and (9), pursuant to California Labor Code sections 2699.3 and 2699.5, and attorneys' fees pursuant to section 2699(g)(1).

68. Plaintiff and proposed class members are therefore entitled to the relief requested below.

SIXTH CAUSE OF ACTION

(On Behalf of Plaintiff and Subclasses A and C)
(Reimbursement Violations: Cal. Lab. Code § 2802)

69. Plaintiff and proposed class members incorporate by reference the allegations contained in the foregoing paragraphs of this complaint as if fully set forth herein.

70. Pursuant to California Labor Code section 2802(a), “an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

71. Throughout Plaintiff's employment, Defendants required Plaintiff and members of proposed Subclass A to wear steel-toed or hard-toed shoes during the performance of their work for Defendants. Defendants required Plaintiff, and similarly aggrieved employees, to purchase and wear steel-toed safety shoes while working at customer's residence. Due to natural wear and tear based on constant use for work, Plaintiff and similarly situated employees, purchased multiple steel-toed safety shoes every year for work, in compliance with Defendants' policies. Defendants would not reimburse Plaintiff, and similarly aggrieved employees, for the purchase of these steel-toed safety shoes. Defendants failed to reimburse Plaintiff and proposed Subclass A members for any hard-toed or steel-toed shoes, during the four years preceding the filing of this complaint, in violation of California Labor Code section 2802.

72. As a matter of Defendants' established policy, Plaintiff and proposed members of Subclass A were and are required to personally incur work-related expenses in the course of their employment, including costs associated with the use of their personal vehicles. When Plaintiff started working for Defendants in approximately 2014 and until approximately 2017, Defendants

1 required Plaintiff, and proposed Subclass A members, to drive their personal vehicles to scheduled
2 sales appointments, required work meetings, and mandatory trainings. Plaintiff and similarly
3 situated employees began their work days at their residences, reading and responding to emails,
4 obtaining sales appointments, preparing materials for sales appointments, and routing their trips.
5 Plaintiff and similarly situated employees ended their work days at their residences, filling out
6 required paperwork and finalizing contracts. Defendants did not reimburse Plaintiff, and proposed
7 Subclass A members, for all the miles they drove for work, including the substantial amount of
8 miles Plaintiff and proposed class members drove from their residences to their first scheduled
9 sales appointment and from their last scheduled sales appointment to their residences. In addition,
10 during the time period in which Plaintiff and proposed Subclass A members drove their personal
11 vehicles to do their jobs, Defendants did not reimburse Plaintiff or proposed Subclass A members
12 additional amounts for maintenance of their vehicles. In so doing, Defendants failed to reimburse
13 Plaintiff and proposed Subclass A members for all costs incurred in the process of doing their
14 jobs, in violation of California Labor Code section 2802. In approximately 2017, Defendants
15 provided Plaintiff, and similarly situated employees with company vehicles to drive for work, and
16 gas cards.

17 73. As a matter of Defendants' established policy, Plaintiff and proposed members of
18 Subclass C were and are required to personally incur work-related expenses in the course of their
19 employment, including costs incurred to purchase smart phones, cell service, and internet, to do
20 their jobs. When Plaintiff started working for Defendants in approximately 2014 and until
21 approximately 2017, Defendants required Plaintiff, and proposed Subclass C members, to use their
22 personal cell phones and wireless internet for work. During this time, Defendants required
23 Plaintiff and similarly situated employees to use their personal smart phones and internet for the
24 following purposes: to place calls to prospective clients to confirm all appointments prior to the
25 appointment; to answer calls and emails; to use a phone application, e.g., "Timesheet" to log hours
26 worked, and email such records to the manager; and to complete other forms, contracts, and
27 paperwork. However, during this time, Defendants never reimbursed Plaintiff or proposed
28 Subclass C members for their smart phones; smart phone cell service; or wireless internet fees

1 they incurred to do their jobs, in violation of California Labor Code section 2802. In
2 approximately 2017, Defendants provided Plaintiff and similarly situated employees with work
3 phones to do their jobs.

4 74. Defendants' work-related expense reimbursement policies applied to Plaintiff and
5 proposed members of Subclasses A and C, such that all are due reimbursement, and interest
6 thereon, for Defendants' failure to comply with California Labor Code section 2802.

7 75. Plaintiff also seeks penalties and attorneys' fees for Defendants' violation of
8 California Labor Code section 2802, pursuant to sections 2802(b) and (c), and the PAGA,
9 including California Labor Code sections 2699(g)(1), 2699.3, and 2699.5.

10 76. Plaintiff and proposed class members are therefore entitled to the relief requested
11 below.

12 **SEVENTH CAUSE OF ACTION**

13 **(On Behalf of Plaintiff and All Subclasses)** 14 **(Unlawful, Unfair And Fraudulent Business Practices:** 15 **Business & Professions Code § 17200, et seq.)**

16 77. Plaintiff and proposed class members incorporate by reference the allegations
17 contained in the foregoing paragraphs of this complaint as if fully set forth herein.

18 78. At all relevant times, California Business & Professions Code section 17200, et
19 seq., prohibited acts of unfair competition, defined as an "unlawful, unfair, or fraudulent business
20 act or practice."

21 79. The aforementioned policies, acts and practices described were and are unlawful
22 business acts or practices because Defendants' (1) failure to pay all wages when due, including
23 failure to pay all class members whose employment with Defendants terminated within the last
24 four years, all wages due immediately upon termination or within seventy-two hours of
25 resignation, and all associated waiting time penalties, in violation of California Labor Code
26 sections 201-203; (2) failure to provide Plaintiff, and proposed class members with meal breaks
27 and/or proper compensation for missed meal breaks, and the applicable Industrial Welfare
28 Commission Wage Order ("Wage Orders"); (3) failure to provide Plaintiff, and proposed class

1 members, with rest breaks and/or proper compensation for missed rest breaks, in violation of
2 California Labor Code section 226.7 and the applicable Wage Order; (4) failure to pay Plaintiff,
3 and proposed class members, all overtime wages earned, in violation of California Labor Code
4 sections 510 and 1194 and the applicable Wage Order; (5) failure to provide accurate itemized
5 wage statements to Plaintiff and proposed class members, in violation of California Labor Code
6 section 226; (6) failure to provide Plaintiff and proposed class members, whom Defendants paid
7 commissions, with signed written contracts that set forth the method by which commissions
8 would be computed and paid, in violation of California Labor Code section 2751; and (7) failure
9 to reimburse Plaintiff and proposed class members for work-related expenses, in violation of
10 California Labor Code section 2802; violate applicable California Labor Code sections, Industrial
11 Welfare Commission Wage Orders, the Private Attorneys General Act of 2004, Labor Code
12 section 2698 et seq., and other provisions of California common and/or statutory law. Plaintiff
13 reserves the right to allege additional statutory and common law violations by Defendants.

14 80. Further, the policies, acts or practices described herein were and are an unfair
15 business acts or practices because any justifications for Defendants' illegal and wrongful conduct
16 were and are vastly outweighed by the harm such conduct caused to Plaintiff, proposed class
17 members, aggrieved employees, and the members of the general public.

18 81. As a result of their unlawful and/or unfair and/or fraudulent acts, Defendants
19 reaped unfair benefits and illegal profits at the expense of Plaintiff and proposed class members.
20 Defendants should be made to disgorge ill-gotten gains and provide restitution to Plaintiff and
21 proposed class members for the wrongfully withheld wages pursuant to Business and Professions
22 Code section 17203.

23 82. Accordingly, Plaintiff and proposed class members respectfully request that the
24 Court award judgment and relief in their favor, to provide restitution, and other types of equitable
25 relief.

26 83. Plaintiff and the proposed class members are therefore entitled to the relief
27 requested below.
28

EIGHTH CAUSE OF ACTION

**(On Behalf of Plaintiff and All Subclasses)
(Labor Code Private Attorneys General Act of 2004 (the "PAGA")):
Cal. Lab. Code § 2698, et. seq.)**

84. Plaintiff and proposed class members incorporate by reference the allegations contained in the foregoing paragraphs of this complaint as if fully set forth herein.

85. The policies, acts and practices heretofore described were and are unlawful because Defendants' (1) failure to pay all wages when due, including failure to pay all class members whose employment with Defendants terminated within the last four years, all wages due immediately upon termination or within seventy-two hours of resignation, and all associated waiting time penalties, in violation of California Labor Code sections 201-203; (2) failure to provide Plaintiff, and proposed class members with meal breaks and/or proper compensation for missed meal breaks, and the applicable Industrial Welfare Commission Wage Order ("Wage Orders"); (3) failure to provide Plaintiff, and proposed class members, with rest breaks and/or proper compensation for missed rest breaks, in violation of California Labor Code section 226.7 and the applicable Wage Order; (4) failure to pay Plaintiff, and proposed class members, all overtime wages earned, in violation of California Labor Code sections 510 and 1194 and the applicable Wage Order; (5) failure to provide accurate itemized wage statements to Plaintiff and proposed class members, in violation of California Labor Code section 226; (6) failure to provide Plaintiff and proposed class members, whom Defendants paid commissions, with signed written contracts that set forth the method by which commissions would be computed and paid, in violation of California Labor Code section 2751; and (7) failure to reimburse Plaintiff and proposed class members for work-related expenses, in violation of California Labor Code section 2802; violates applicable California Labor Code sections and gives rise to statutory and civil penalties as a result of such conduct, including but not limited to penalties as provided by Labor Code sections 203, 226(e), 226.3, 2698, 2699(f), 2699.3, and 2699.5, and applicable Industrial Welfare Commission Wage Orders. Plaintiff, as an aggrieved employee, hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 on behalf of himself and other current and formers employees of Defendants against whom one or more of the violations of the Labor Code was committed.

1 86. On February 14, 2020, Plaintiff exhausted his administrative resources by filing a
2 PAGA complaint with the California Department of Industrial Relations, alleging that Defendants
3 violated the California Labor Code.

4 87. Plaintiff seeks attorneys' fees to achieve the same, pursuant to the Labor Code
5 section 2699(g)(1).

6 **PRAYER FOR RELIEF**

7 WHEREFORE Plaintiff prays for judgment and relief as follows:

- 8 1. An order certifying that the action may be maintained as a class action;
- 9 2. Compensatory and statutory damages, penalties and restitution, as appropriate and
10 available under each cause of action, in an amount to be proven at trial based
11 on, inter alia, the unpaid balance of compensation Defendants owe;
- 12 3. Reasonable attorneys' fees pursuant to the California Labor Code, including
13 sections 218.5, 226, 1194, and 2698, et seq.;
- 14 4. Costs of this suit;
- 15 5. Pre- and post-judgment interest; and
- 16 6. Such other and further relief as the Court deems just and proper.
- 17 7. Plaintiff is informed and believes that the damages, back wages, restitution, value of
18 injunctive relief sought, penalties, interest and attorneys' fees do not exceed an
19 aggregate of \$4,999,999.99 and that the pro-rata value of Plaintiff's individual claims,
20 including damages, back wages, restitution, injunctive relief, interest, attorneys' fees,
21 and penalties, does not exceed \$74,999.99.

22 **JURY DEMAND**

23 Plaintiff hereby demands a trial by jury.

24 Date: May 27, 2020

25 WORKMAN LAW FIRM, PC

26 By: 

27 Robin G. Workman
28 Attorneys for Tyron Cooley, and all others
 similarly situated