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individually and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

AARON COLONELLI and DAVID
MANCERA, individually and on behalf of
all others similarly situated,

Plaintiff,

vs.

PANASONIC AVIONICS
CORPORATION; and DOES 1-100,
inclusive,

Defendants.

Case No. CIVDS2004284

**AMENDED AS A MATTER OF RIGHT
PURSUANT TO CAL. LABOR CODE
§2699.3(a)(2)(C)**

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Failure to Pay Wages Upon Separation of
Employment and Within the Required Time;
6. Failure to Furnish Accurate Wage
Statements;
7. Violation of California Business and
Professions Code §§ 17200, *et seq.*; and
8. Enforcement of Labor Code § 2698 *et seq.*
("PAGA")

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 09 2020

BY 
JONATHAN LEANDRO, DEPUTY

1 Plaintiffs Aaron Colonelli and David Mancera, individually and on behalf of all others
2 similarly situated, alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiffs Aaron Colonelli and David Mancera (collectively “Plaintiffs”) bring this
5 putative class and representative action pursuant to the Private Attorneys General Act of 2004, Cal.
6 Lab. Code § 2698, *et seq.*, against Panasonic Avionics Corporation and Does 1 through 100,
7 inclusive (collectively “Defendants” or “Panasonic”), on behalf of themselves individually and on
8 behalf of California citizens who worked for Panasonic and were classified as non-exempt
9 employees or misclassified as exempt employees.

10 2. Defendants develop inflight entertainment and communications, among other
11 avionics-related products and services.

12 3. Through this action, Plaintiffs are alleging that Defendants have engaged in a
13 systematic pattern of wage and hour violations under the California Labor Code (“Labor Code”),
14 all of which contribute to Defendants’ deliberate unfair competition.

15 4. Plaintiffs are informed and believe, and thereon allege, during the relevant time
16 period, Defendants had a consistent policy of violating state wage and hour laws by, among other
17 things:

- 18 (a) Misclassifying Plaintiffs and other employees as exempt employees;
 - 19 (b) Failing to pay at least minimum wages for all hours worked
 - 20 (c) Failing to pay overtime compensation for all overtime hours and at the
21 correct overtime rate;
 - 22 (d) Failing to provide meal periods or compensation in lieu thereof,
 - 23 (e) Failing to authorize or permit rest breaks or provide compensation in lieu
24 thereof;
 - 25 (f) Willfully failing to provide accurate semi-monthly itemized wage
26 statements; and
 - 27 (g) Failing to pay all wages due upon separation of employment.
- 28

5. Plaintiffs bring this lawsuit seeking monetary relief against Defendants on behalf of themselves and all others similarly situated to recover, among other things, unpaid wages and benefits, interest, attorney's fees, costs and expenses and penalties pursuant to Labor Code §§ 201-203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198, 2698, *et seq.*, and Code of California Civil Procedure § 1021.5.

6. Plaintiffs, on behalf of themselves and all class members, pursuant to Business and Professions Code sections 17200, *et seq*, also seeks injunctive relief and restitution for the unfair, unlawful, or fraudulent practices alleged in this Complaint

JURISDICTION AND VENUE

7. This is a class action, pursuant to California Code of Civil Procedure § 382. The monetary damages and restitution sought by Plaintiffs exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial

8. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all cases except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

9. This Court has jurisdiction over all Defendants because, upon information and belief, Defendants have sufficient minimum contacts in California or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

10. Venue is proper in this Court because, upon information and belief, Defendants transact business or have at least one facility in this county and the acts and omissions alleged herein took place in this county.

THE PARTIES

11. Plaintiffs Aaron Colonelli and David Mancera are residents of California. Plaintiffs were employed by Defendants during the relevant time period in California as alleged herein. Plaintiffs were misclassified as exempt employees and later reclassified as non-exempt employees while working for Defendants.

1 12. Plaintiffs are informed and believe, and thereon allege, that Defendants at all times
2 hereinafter mentioned, were and are employers as defined in and subject to the Labor Code and
3 IWC Wage Orders, whose employees were and are engaged throughout this county and the State of
4 California.

5 13. Plaintiffs are unaware of the true names or capacities of the defendants sued herein
6 under the fictitious names DOES 1 through 100, but will seek leave of this Court to amend this
7 Complaint and serve such fictitiously named defendants once their names and capacities become
8 known.

9 14. Plaintiffs are informed and believe, and thereon allege, that each defendant acted in
10 all respects pertinent to this action as the agent of the other defendant, carried out a joint scheme,
11 business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally
12 attributable to the other defendant. Furthermore, defendants in all respects acted as the employer
13 and/or joint employer of Plaintiffs and the class members.

14 15. Plaintiffs are informed and believe, and thereon allege, that each and all of the acts
15 and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 1
16 through 100, acting as the agent or alter ego for the other, with legal authority to act on the other's
17 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
18 policy of Defendants.

19 16. At all relevant times, Defendants, and each of them, acted within the scope of such
20 agency or employment, or ratified each and every act or omission complained of herein. At all
21 relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and
22 all the other Defendants in proximately causing the damages herein alleged.

23 17. Plaintiffs are informed and believe, and thereon allege, that each of said Defendants
24 is in some manner intentionally, negligently or otherwise responsible for the acts, omissions,
25 occurrences and transactions alleged herein.

26 **CLASS ACTION ALLEGATIONS**

27 18. Plaintiffs bring this action under Code of Civil Procedure § 382 on behalf of
28 themselves and all other members of the general public similarly situated who were affected by

Defendants' Labor Code, Business and Professions Code §§ 17200 and IWC Wage Order violations.

19. All claims alleged herein arise under California law for which Plaintiffs seek relief authorized by California law.

20. Plaintiffs' proposed Class consists of and is defined as follows:

Class

All California citizens currently or formerly working for Defendants as non-exempt employees, including those misclassified by Defendants as exempt employees whose job duties and/or salary did not meet the test for exempt classification, within four years prior to the filing of the Complaint to the date the Class is certified.

21. Plaintiffs also seek to certify the following Subclass:

Waiting Time Subclass

All Class members who separated their employment with Defendants at any time within three years prior to the filing of this action to the date the Subclass is certified.

22. Members of the Class and Subclass described above will collectively be referred to as "class members." Plaintiffs reserve the right to establish other or additional subclasses, or modify any Class or Subclass definition, as appropriate based on investigation, discovery and specific theories of liability.

23. This action has been brought and may properly be maintained as a class action under the California Code of Civil Procedure § 382 because there are common questions of law and fact as to the Class that predominate over questions affecting only individual members including, but not limited to:

- a. Whether Defendants misclassified Plaintiffs and class members as exempt employees rather than non-exempt employees;
- b. Whether Defendants failed to pay at least minimum wage for all hours worked by Plaintiffs and class members;
- c. Whether Defendants required Plaintiffs and class members to work over 8 hours per day, over 12 hours per day and/or over 40 hours per week and failed to pay them overtime compensation at the proper rate;

- d. Whether Defendants deprived Plaintiffs and class members of timely meal periods or required Plaintiffs and class members to work through meal periods without compensation;
- e. Whether Defendants deprived Plaintiffs and class members of rest breaks or required Plaintiffs and class members to work through rest breaks without compensation;
- f. Whether Defendants failed to timely pay Plaintiffs and class members all earned wages during their employment;
- g. Whether Defendants failed to timely pay Plaintiffs and Waiting Time Subclass members all wages due upon termination or within 72 hours of resignation;
- h. Whether Defendants failed to furnish Plaintiffs and class members with accurate wage statements;
- i. Whether Defendants' conduct was willful or reckless; and
- j. Whether Defendants engaged in unfair business practices in violation of Business & Professions Code §§ 17200, *et seq.*

24. There is a well-defined community of interest in the litigation and the Class is readily ascertainable.

- (a) Numerosity: The members of the Class are so numerous that joinder of all members is impractical. Although the members of the Class are unknown to Plaintiffs at this time, on information and belief, the Class is estimated to be greater than 100 individuals. The identity of the class members are readily ascertainable by inspection of Defendants' employment and payroll records.
- (b) Typicality: The claims (or defenses, if any) of Plaintiffs are typical of the claims (or defenses, if any) of the Class because Defendants' failure to comply with the provisions of California wage and hour laws entitled each class member to similar pay, benefits and other relief. The injuries sustained by Plaintiffs are also typical of the injuries sustained by the Class because

they arise out of and are caused by Defendants' common course of conduct as alleged herein.

(c) Adequacy: Plaintiffs are qualified to, and will fairly and adequately represent and protect the interests of all members of the Class because it is in her best interests to prosecute the claims alleged herein to obtain full compensation and penalties due her and the Class. Plaintiffs' attorneys, as proposed class counsel, are competent and experienced in litigating large employment class actions and are versed in the rules governing class action discovery, certification and settlement. Plaintiffs have incurred and, throughout the duration of this action, will continue to incur attorneys' fees and costs that have been and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for each Class. If appropriate this Court can, and is empowered to, fashion methods to efficiently manage this case as a class and/or collective action.

(e) Public Policy Considerations: Employers in the State of California and other states violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights at the same time as affording them privacy protections.

GENERAL ALLEGATIONS

25. Defendants misclassified Plaintiffs and other non-exempt employees as exempt employees at Defendants' California business location(s).

26. Defendants continue to employ Plaintiffs and class members within California as non-exempt employees.

27. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned herein, Defendants were advised by skilled lawyers, employees and other professionals who were knowledgeable about California wage and hour law, employment and personnel practices and the requirements of California.

28. Through this action, Plaintiffs allege that Defendants have engaged in a systematic pattern of wage and hour violations under the California Labor Code and IWC Wage Orders, all of which contribute to Defendants' deliberate unfair competition.

29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive at least minimum wage and that they were not receiving at least minimum wage for work that was required to be performed. In violation of the Labor Code and IWC Wage Orders, Plaintiffs and class members were not paid at least minimum wage for all hours worked.

30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive certain wages for overtime compensation. In violation of the Labor Code and IWC Wage Orders, Plaintiffs and class members were not paid overtime for all overtime hours worked at the correct overtime rate.

31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive all meal periods or payment of one (1) additional hour of pay at Plaintiffs' and class members' regular rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the Labor Code and IWC Wage Orders, Plaintiffs and class members did not receive all meal periods or payment of one (1) additional hour of pay at Plaintiffs' and class members' regular rate of pay when they did not

1 receive a timely, uninterrupted meal period when working more than five hours and a second
2 timely, uninterrupted meal period when working more than ten (10) hours..

3 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
4 should have known that Plaintiffs and class members were entitled to receive all rest breaks or
5 payment of one (1) additional hour of pay at Plaintiffs' and class members' regular rate of pay
6 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiffs
7 and class members did not receive all rest breaks or payment of one (1) additional hour of pay at
8 Plaintiffs' and class members' regular rate of pay when a rest break was missed.

9 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
10 should have known that Plaintiffs and class members were entitled to timely payment of wages
11 during their employment. In violation of the California Labor Code, Plaintiffs and class members
12 did not receive payment of all wages within permissible time periods.

13 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
14 should have known that Plaintiffs and Waiting Time Subclass members were entitled to timely
15 payment of wages upon separation of employment. In violation of the California Labor Code,
16 Plaintiffs and Waiting Time Subclass members did not receive payment of all wages including, but
17 not limited to, minimum wages and overtime wages within permissible time periods.

18 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
19 should have known that Plaintiffs and class members were entitled to receive complete and
20 accurate wage statements in accordance with California law. In violation of the California Labor
21 Code, Plaintiffs and class members were not furnished with complete and accurate wage statements
22 showing their total hours worked, number of hours worked at each hourly rate and gross and net
23 wages, among other things.

24 36. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned
25 herein, Defendants knew or should have known that it had a duty to compensate Plaintiffs and class
26 members, and that Defendants had the financial ability to pay such compensation but willfully,
27 knowingly and intentionally failed to do so, all in order to increase Defendants' profits.
28

37. Therefore, Plaintiffs bring this lawsuit seeking monetary and injunctive relief against Defendants on behalf of themselves and all class members to recover, among other things, unpaid wages, interest, attorneys' fees, penalties, costs and expenses.

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197; Violation of IWC Wage Order)

38. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as though fully set forth herein.

39. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

40. During the relevant time period, Defendants paid Plaintiffs and class members less than minimum wage when they failed to pay compensation for all hours worked, such as during missed and/or interrupted meal periods or other unpaid hours.

41. During the relevant time period, Defendants regularly failed to pay at least minimum wage to Plaintiffs and class members for all hours worked pursuant to Labor Code §§ 1194 and 1197.

42. Defendants' failure to pay Plaintiffs and class members the minimum wage as required violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiffs and class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs and attorney's fees.

43. Pursuant to Labor Code § 1194.2, Plaintiffs and class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

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1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME WAGES**

3 **(Violation of Labor Code §§ 510, 1194, and 1198; Violation of IWC Wage Order)**

4 44. Plaintiffs hereby re-allege and incorporate by reference the previous paragraphs, as
5 though fully set forth herein.

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

10 46. Specifically, the applicable IWC Wage Order provides that Defendants are and were
11 required to pay Plaintiffs and class members employed by Defendants, at the rate of one and one-
12 half times their regular rate of pay for all hours worked in excess of 8 hours in a day or 40 hours in
13 a workweek.

14 47. The applicable IWC Wage Order further provides that Defendants are and were
15 required to pay Plaintiffs and class members employed by Defendants, at a rate of double their
16 regular rate of pay for all hours worked in excess of 12 in a day or in excess of 8 hours in a day on
17 the seventh consecutive day of work.

18 48. California Labor Code § 510 codifies the right to overtime compensation at one and
19 one-half times the regular hourly rate for hours worked in excess of 8 hours in a day or 40 hours in
20 a week or for the first 8 hours worked on the seventh day of work, and to overtime compensation at
21 twice the regular hourly rate for hours worked in excess of 12 hours in a day or in excess of 8 hours
22 in a day on the seventh consecutive day of work.

23 49. During the relevant time period, Plaintiffs and class members worked in excess of 8
24 hours in a day, in excess of 12 hours in a day and/or in excess of 40 hours in a week.

25 50. During the relevant time period, Plaintiffs and class members were not paid proper
26 overtime compensation for all the hours they worked in excess of 8 hours in a day, in excess of 12
27 hours in a day and/or in excess of 40 hours in a week. For example, Defendants failed to properly
28 pay Plaintiffs and class members for overtime hours worked while off-the-clock.

51. During the relevant time period, Defendants willfully failed to pay all overtime wages owed to Plaintiffs and class members.

52. Defendants' failure to pay Plaintiffs and class members the unpaid balance of overtime compensation, as required by California law, violates the provisions of California Labor Code §§ 510 and 1198, and is therefore unlawful.

53. Pursuant to California Labor Code § 1194, Plaintiffs and class members are entitled to recover their unpaid balance of the full amount of unpaid overtime compensation, as well as interest, costs and attorneys' fees.

54. In committing the violations as herein alleged, Defendants have knowingly and willfully refused to perform their obligations to compensate Plaintiffs and class members for all wages earned. As a direct result, Plaintiffs and class members have suffered and continue to suffer substantial losses relating to the use and enjoyment of such compensation, wages, lost interest on such monies and expenses and attorneys' fees in seeking to compel Defendants to fully perform their obligations under state law, all to their respective damage in amounts according to proof at trial.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Violations of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order)

55. Plaintiffs hereby re-allege and incorporate by reference the previous paragraphs, as though fully set forth herein.

56. Labor Code § 226.7 provides that no employer shall require an employee to work during any meal period mandated by the IWC Wage Orders.

57. Section 11 of the applicable IWC Wage Order states, “no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.”

1 58. Labor Code § 512(a) provides that an employer may not require, cause or permit an
2 employee to work for a period of more than five (5) hours per day without providing the employee
3 with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work
4 period per day of the employee is not more than six (6) hours, the meal period may be waived by
5 mutual consent of both the employer and the employee.

6 59. Labor Code § 512(a) also provides that an employer may not employ an employee
7 for a work period of more than ten (10) hours per day without providing the employee with a
8 second meal period of not less than thirty (30) minutes, except that if the total hours worked is no
9 more than twelve (12) hours, the second meal period may be waived by mutual consent of the
10 employer and the employee only if the first meal period was not waived.

11 60. During the relevant time period, Plaintiffs and class members did not receive
12 compliant meal periods for working more than five (5) and/or ten (10) hours per day because their
13 meal periods were missed, late, short, and/or they were not permitted to take a second meal period.

14 61. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order requires
15 an employer to pay an employee one additional hour of pay at the employee's regular rate of
16 compensation for each work day that the meal period is not provided.

17 62. At all relevant times, Defendants failed to pay Plaintiffs and class members the full
18 meal period premium for missed and untimely meal periods pursuant to Labor Code § 226.7(b) and
19 section 11 of the applicable IWC Wage Order.

20 63. As a result of Defendants' failure to pay Plaintiffs and class members an additional
21 hour of pay for each day a meal period was not provided, Plaintiffs and class members suffered and
22 continue to suffer a loss of wages and compensation.

23 **FOURTH CAUSE OF ACTION**

24 **FAILURE TO PERMIT REST BREAKS**

25 **(Violation of Labor Code § 226.7; Violation of IWC Wage Order)**

26 64. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
27 though fully set forth herein.
28

65. Labor Code § 226.7(a) provides that no employer shall require an employee to work during any rest period mandated by the IWC Wage Orders.

66. Section 12 of the applicable IWC Wage Order states “every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and the “authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

67. During the relevant time period, Plaintiffs and class members did not receive a ten (10) minute net rest period for every four (4) hours or major fraction thereof worked because they were required to work through their daily rest periods and/or were not authorized to take their rest periods.

68. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires an employer to pay an employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.

69. At all relevant times, Defendants failed to pay Plaintiffs and class members the full rest period premium for missed or interrupted rest periods pursuant to Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order.

70. As a result of Defendants’ failure to pay Plaintiffs and class members an additional hour of pay for each day a rest period was not provided, Plaintiffs and class members suffered and continue to suffer a loss of wages and compensation.

FIFTH CAUSE OF ACTION

FAILURE TO PAY WAGES UPON SEPARATION

OF EMPLOYMENT AND WITHIN THE REQUIRED TIME

(Violations of Labor Code §§ 201, 202, 203 and 210; Violation of IWC Wage Order)

71. Plaintiffs hereby re-allege and incorporate by reference the previous paragraphs, as though fully set forth herein.

72. California Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately,

1 and that if an employee voluntarily leaves his or her employment, his or her wages shall become
2 due and payable not later than seventy-two (72) hours thereafter, unless the employee has given
3 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is
4 entitled to his or her wages at the time of quitting.

5 73. During the relevant time period, Defendants willfully failed to pay Plaintiffs and
6 Waiting Time Subclass Members all their earned wages upon termination including, but not limited
7 to, minimum wages, either at the time of discharge or within seventy-two (72) hours of their
8 leaving Defendants' employ.

9 74. Defendants' failure to pay Plaintiffs and Waiting Time Subclass Members all their
10 earned wages at the time of discharge or within seventy-two (72) hours of their leaving
11 Defendants' employ, is in violation of California Labor Code §§ 201 and 202.

12 75. California Labor Code § 203 provides that if an employer willfully fails to pay
13 wages owed promptly upon discharge or resignation as required under California Labor Code
14 §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and
15 at the same rate until paid or until an action is commenced; but the wages shall not continue for
16 more than thirty (30) days.

17 76. Defendants willfully failed to pay Plaintiffs and Waiting Time Subclass Members
18 all wages due and, as a result, owe Plaintiffs and Waiting Time Subclass Members regular daily
19 wages for each day they were not paid, at their regular rates of pay up to a thirty (30) day
20 maximum pursuant to California Labor Code § 203 all in an amount to be shown according to
21 proof at trial.

22 77. Based on these violations, Plaintiffs and the Waiting Time Subclass seek to
23 represent request relief as described herein and below.

24 **SIXTH CAUSE OF ACTION**

25 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**

26 **(Violation of Labor Code § 226; Violation of IWC Wage Order)**

27 78. Plaintiffs hereby re-allege and incorporate by reference the previous paragraphs, as
28 though fully set forth herein.

1 79. Defendants have intentionally and willfully failed to provide Plaintiffs and class
2 members with complete and accurate wage statements. The deficiencies include failing to
3 accurately report, among other things, gross wages earned, total hours worked by the employee, net
4 wages earned, all applicable hourly rates in effect during the pay period, and the corresponding
5 number of hours worked at each hour rate by the employee.

6 80. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiffs
7 and class members have suffered injury and damage to their statutorily protected rights.
8 Specifically, Plaintiffs and class members have been injured by Defendants' intentional violation
9 of California Labor Code § 226(a) because they were denied both their legal right to receive, and
10 their protected interest in receiving, accurate itemized wage statements under California Labor
11 Code § 226(a). In addition, because Defendants failed to provide the accurate rates of pay on wage
12 statements, Defendants have prevented Plaintiffs and class members from determining if all hours
13 worked were paid at the appropriate rate and the extent of the underpayment. Plaintiffs have had to
14 file this lawsuit in order to analyze whether in fact Plaintiffs were paid correctly and the extent of
15 the underpayment, thereby causing Plaintiffs to incur expenses and lost time. Plaintiffs would not
16 have had to engage in these efforts and incur these costs had Defendants provided the accurate rate
17 of pay. This has also delayed Plaintiffs' ability to demand and recover the underpayment of wages
18 from Defendants.

19 81. California Labor Code § 226(a) requires an employer to pay the greater of all actual
20 damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred, and one
21 hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
22 attorney's fees and costs, to each employee who was injured by the employer's failure to comply
23 with California Labor Code § 226(a).

24 82. Defendants' violations of California Labor Code § 226(a) prevented Plaintiffs and
25 class members from knowing, understanding and disputing the wages paid to them, and resulted in
26 an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
27 intentional failure to comply with California Labor Code § 226(a), Plaintiffs and class members
28

1 have suffered an injury, the exact amount of damages and/or penalties is all in an amount to be
2 shown according to proof at trial.

3 83. Plaintiffs and class members are also entitled to injunctive relief under California
4 Labor Code § 226(g), compelling Defendants to comply with California Labor Code § 226, and
5 seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

6 **SEVENTH CAUSE OF ACTION**

7 **UNFAIR BUSINESS PRACTICES**

8 **(Violation of Business and Professions Code §§ 17200 *et seq.*)**

9 84. Plaintiffs hereby re-allege and incorporate by reference the previous paragraphs, as
10 though fully set forth herein.

11 85. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair
12 competition, which includes any "unlawful, unfair or fraudulent business act or practice"

13 86. A violation of California Business and Professions Code §§ 17200, *et seq.* may be
14 predicated on the violation of any state or federal law. In the instant case, Defendants' policies and
15 practices have violated state law causing Plaintiffs and class members to suffer and continue to
16 suffer injuries in fact. As alleged herein, Defendants systematically engaged in unlawful conduct in
17 violation of the California Labor Code and IWC Wage Orders, such as willfully misclassifying
18 class members as exempt employees, failing to pay minimum and overtime wages, failing to
19 provide meal periods or compensation thereof, failing to authorize or permit paid rest breaks or
20 compensation in lieu thereof, failing to pay all wages due and owing upon separation of
21 employment and in a timely manner, and failing to furnish accurate wage statements, all in order to
22 decrease their costs of doing business and increase their profits.

23 87. At all times relevant herein, Defendants intentionally avoided paying Plaintiffs and
24 class members wages and monies, thereby creating for Defendants an artificially lower cost of
25 doing business in order to undercut their competitors and establish and/or gain a greater foothold in
26 the marketplace.

1 88. At the time Plaintiffs and class members were hired, Defendants knowingly,
2 intentionally and wrongfully misrepresented to each of them their conformance with the California
3 Labor Code and IWC Wage Orders including proper payments required by law.

4 89. At all relevant times herein, Defendants held themselves out to Plaintiffs and class
5 members as being knowledgeable concerning the labor laws of California.

6 90. At all times relevant herein, Plaintiffs and class members relied on and believed
7 Defendants' representations concerning their conformance with California's wage and hour laws
8 all to their detriment.

9 91. As a result of Defendants' intentional, willful, purposeful and wrongful
10 misrepresentation of their conformance with the California Labor Code and IWC Wage Orders,
11 Plaintiffs and class members suffered a loss of wages and monies, all in an amount to be shown
12 according to proof at trial. By violating the foregoing statutes and regulations as herein alleged,
13 Defendants' acts constitute unfair and unlawful business practices under California Business and
14 Professions Code §§ 17200, et seq.

15 92. Defendants' violations of the California Labor Code and IWC Wage Orders and
16 their scheme to lower their payroll costs as alleged herein, constitute unlawful business practices
17 because they were done in a systematic manner over a period of time to the detriment of Plaintiffs
18 and class members.

19 93. As a result of the unfair business practices of Defendants, as alleged herein,
20 Plaintiffs and class members are entitled to injunctive relief, disgorgement, and restitution in an
21 amount to be shown according to proof at trial.

22 94. Plaintiffs seek to enforce important rights affecting the public interest within the
23 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged herein,
24 has been, and continues to be, unfair, unlawful and harmful to Plaintiffs, class members and to the
25 general public. Based on Defendants' conduct as alleged herein, Plaintiffs and class members are
26 entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

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1 **EIGHTH CAUSE OF ACTION**

2 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. (“PAGA”)**

3 95. Plaintiffs hereby re-allege and incorporate by reference the previous paragraphs, as
4 though fully set forth herein.

5 96. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
6 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
7 (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or employees for
8 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by
9 an aggrieved employee on behalf of himself or herself and other current or former employees
10 pursuant to the procedures specified in Labor Code § 2699.3.

11 97. For all provisions of the Labor Code except those for which a civil penalty is
12 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
13 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
14 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
15 period in which Defendants violated those provisions of the Labor Code.

16 98. Defendants’ conduct violates numerous Wage Order and Labor Code sections,
17 including, but not limited to, the following:

- 18 (a) violation of Labor Code § 226.8 for willful misclassification of Plaintiffs and
19 other aggrieved employees as exempt employees as herein alleged;
- 20 (b) violation of Labor Code §§ 201-203, 204, 210, 510, 1182.12, 1194, 1197, and
21 1198 for failure to pay all earned wages (including minimum wage and overtime
22 wages) owed to Plaintiffs and other aggrieved employees during employment
23 and upon separation of employment as herein alleged;
- 24 (c) violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
25 Plaintiffs and other aggrieved employees and failure to pay premium wages for
26 missed meal periods as herein alleged;
- 27
28

(d) violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiffs and other aggrieved employees and failure to pay premium wages for missed rest periods as herein alleged;

(e) violation of Labor Code §§ 226 for failure to provide accurate itemized wage statements to Plaintiffs and other aggrieved employees as herein alleged; and

(f) violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and complete records showing, among other things, the hours worked daily by and the wages paid to aggrieved employees.

99. Plaintiffs are “aggrieved employees” because they were employed by the alleged violator and had one or more of the violations committed against them, and therefore are properly suited to represent the interests of all other aggrieved employees.

100. Plaintiffs have exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and are therefore able to pursue a claim for penalties on behalf of themselves and all other aggrieved employees under PAGA.

101. Pursuant to Labor Code §§ 2699(a), 2699.3, and 2699.5, Plaintiffs are entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

102. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, prays for judgment against Defendants as follows:

1. For certification of the proposed Class and Waiting Time Subclass and any other appropriate subclasses under California Code of Civil Procedure § 382;

2. For appointment of Aaron Colonelli and David Mancerna as the class representatives;

3. For appointment of Aegis Law Firm, PC as class counsel for all purposes;

4. For general damages;
5. For special damages;
6. For liquidated damages pursuant to California Labor Code § 1194.2;
7. For statutory penalties to the extent permitted by law, including those pursuant to the California Labor Code and IWC Wage Orders;
8. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;
9. For restitution as provided by California Business and Professions Code §§ 17200, *et seq.*;
10. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and, therefore, constituting unfair competition under California Business and Professions Code §§ 17200, *et seq.*;
11. For an award of damages in the amount of unpaid compensation;
12. For pre-judgment interest;
13. For civil penalties;
14. For reasonable attorney's fees, costs of suit, and interest to the extent permitted by law, including pursuant to California Code of Civil Procedure § 1021.5 and California Labor Code §§ 226(e), 1194, and 2698 *et seq.*; and
15. For such other relief as the Court deems just and proper.

Dated: June 8, 2020

AEGIS LAW FIRM, PC

By: _____



Clare M. Wernet
Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over
3 the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and
my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

4 On June 8, 2020, I served the foregoing document entitled:

- 5 • AMENDED AS A MATTER OF RIGHT PURSUANT TO CAL. LABOR CODE
§2699.3(a)(2)(C) - FIRST AMENDED CLASS AND REPRESENTATIVE ACTION
6 COMPLAINT

7 on all the appearing and/or interested parties in this action by delivering ☐ the original ☒ a true
copy thereof on the party(ies) addressed below as follows:

8 Danielle Hultenius Moore
dmoore@fisherphillips.com
9 Aaron F. Olsen
aolsen@fisherphillips.com
10 Jason A. Fischbein
jfischbein@fisherphillips.com
11 Kathryn M. Evans
kmevans@fisherphillips.com
12 FISHER & PHILLIPS LLP
4747 Executive Drive, Suite 1000
13 San Diego, CA 92121
Telephone: (858) 597-9600
14 Facsimile: (858) 597-9601

15 *Attorneys for Defendant*
16 PANASONIC AVIONICS CORPORATION

17 ☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
18 correspondence for mailing. Under that practice it would be deposited with the U.S.
Postal Service on that same day with postage thereon fully prepaid at Irvine, California
19 in the ordinary course of business. I am aware that on motion of the party served, service
is presumed invalid if postage cancellation date or postage meter date is more than one
20 day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed.*
R. Civ. Proc. 5(a); *Fed. R. Civ. Proc.* 5(c).)

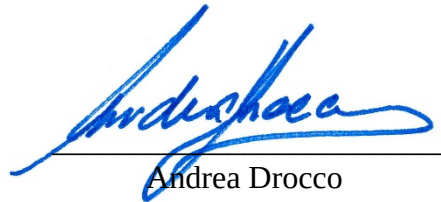
21 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business
22 practice of Aegis Law Firm PC for collection and processing correspondence for
overnight delivery, and I caused such document(s) described herein to be deposited for
23 delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal*
Code Civ. Proc. § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

24 ☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via
25 electronic transmission via the above listed email addresses on the date below. (*Cal.*
Code Civ. Proc. § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

26 ☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to
27 the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.*
5(b)(2)(A).)

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Executed on June 8, 2020, at Irvine, California.

4 
5
6 Andrea Drocco