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Page: 5 of 35

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California and all aggrieved employees

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ALAMEDA**

EDGAR DIAZ, on behalf of himself and all  
others similarly situated,

Plaintiff,

vs.

TAK COMMUNICATIONS CA, INC.;  
TAK COMMUNICATIONS, INC.; and  
DOES 1-50, inclusive,

Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR PENALTIES  
PURSUANT TO SECTIONS 2699(a) and (f)  
OF THE CALIFORNIA LABOR CODE  
PRIVATE ATTORNEYS GENERAL ACT  
AND DEMAND FOR JURY TRIAL**

**DEMAND FOR A JURY TRIAL**

COMPLAINT PURSUANT TO THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004 AND  
DEMAND FOR JURY TRIAL

*Diaz v. TAK Communications CA, Inc., et al.*

1 **COMPLAINT**

2 Plaintiff Edgar Diaz, on behalf of himself and all others similarly situated (collectively,  
3 “Plaintiff”), complains and alleges as follows:

4 **INTRODUCTION**

5 1. Plaintiff brings this action pursuant to the Labor Code Private Attorneys General Act  
6 of 2004 (“PAGA”). As aggrieved employees, Plaintiff seeks to recover: (a) all civil penalties for  
7 violations of the Labor Code provisions identified herein to be assessed and collected by the Labor  
8 and Workforce Development Agency; and (b) all civil penalties set forth in the PAGA for those  
9 Labor Code sections that do not contain a specific provision for a civil penalty. Plaintiff brings this  
10 action on behalf of himself and other aggrieved employees who have worked for TAK  
11 Communications CA Inc. and TAK Communications (collectively “TAK” or “Defendants”).

12 2. Plaintiff brings this representative action against TAK and Does 1-50 to challenge  
13 their policies and practices of (1) failing to compensate employees for all hours worked; (2) failing  
14 to pay employees minimum wage for all hours worked; (3) failing to pay employees overtime and  
15 double time wages; (4) failing to authorize and permit employees to take meal and rest breaks to  
16 which they are entitled by California law and failing to pay premium compensation for missed  
17 breaks; (5) failing to reimburse employees for necessary business expenditures; (6) failing to  
18 accurately compensate employees for nonproductive work time; (7) failing to provide employees  
19 accurate itemized wage statements; and (8) failing to timely pay employees wages upon termination  
20 of employment.

21 3. Plaintiff and the aggrieved employees are current and former non-exempt employees  
22 of TAK, who carried out TAK’s installation service business (hereinafter referred to collectively as  
23 “Technicians”).

24 4. TAK requires Plaintiff and other Technicians to work long schedules – typically  
25 between 10 to 14 hours per day, 5 to 6 days per week. Technicians work these long hours without  
26 proper compensation and breaks. In particular, TAK rarely pays Technicians for all hours worked,  
27 including minimum wage, overtime, and double time. Instead, TAK manipulates time records so  
28 that Technicians’ hours worked are significantly underreported. TAK also does not provide

1 Technicians with proper meal and rest breaks, although it requires Technicians to falsely report  
2 taking breaks. TAK also routinely fails to properly compensate Technicians for nonproductive  
3 work time.

4 5. Plaintiff and other Technicians are not compensated for off-the-clock work,  
5 including, but not limited to, time spent while clocked out for lunch, as well as time spent working  
6 before Technicians are allowed to clock in at the beginning of their workday and/or time spent  
7 working after Technicians are allowed to clock out at the end of their work day.

8 6. TAK requires Technicians to incur numerous work-related expenses, including but  
9 not limited to tools and supplies, that are not reimbursed. At all relevant times, TAK has been fully  
10 aware that jobs assigned cannot be completed unless the Technician has the proper equipment. TAK  
11 does not supply the tools necessary to complete the jobs assigned, nor do they reimburse the  
12 Technicians for tools and supplies purchased by the Technicians. Instead, Technicians are required  
13 to purchase these items themselves.

14 7. TAK also deducts payment for health insurance premiums from Technician's wages,  
15 yet fails to provide the health insurance purchased. TAK therefore unlawfully reduces Technicians'  
16 wages.

17 8. Plaintiff and other Technicians experience a number of derivative issues from TAK's  
18 wage and hour practices, including but not limited to receiving incorrect wage statements, and not  
19 receiving all pay owing to them at the end of their employment. Wage statements do not accurately  
20 reflect the actual hours worked, piece rates, rate of compensation, or gross wages for rest and  
21 recovery periods and other nonproductive time. Compensation for off-the-clock work, overtime,  
22 and premium pay for missed breaks remains outstanding after termination. Proper compensation  
23 for rest and recovery periods and other nonproductive time also remains outstanding after  
24 termination.

25 9. Ultimately, the daily time that TAK requires Technicians to work without  
26 compensation along with the unlawful deduction from wages deprives them of substantial amounts  
27 of pay to which they are entitled under the laws of the state of California.

28 10. As a result of these violations, Plaintiff seeks all civil penalties available under the

1 PAGA. In addition to all civil penalties, Plaintiff also seeks all other declaratory, equitable, and  
2 injunctive relief to which they are entitled.

3 11. Finally, Plaintiff seeks reasonable attorneys' fees and costs under the Labor Code  
4 and California Code of Civil Procedure § 1021.5.

5 **JURISDICTION AND VENUE**

6 12. This Court has personal jurisdiction over Defendants because Defendants do business  
7 in California, and Plaintiff is a resident of California. This Court has jurisdiction over TAK  
8 Communications CA, Inc. because it does business in California, is authorized to do business in the  
9 State of California, and is registered with the California Secretary of State. This Court has  
10 jurisdiction over Defendant TAK Communications, Inc. because it does business in the State of  
11 California; exercises pervasive and continual control over the operations of TAK Communications  
12 CA, Inc.; this lawsuit relates to and TAK Communications, Inc.'s contacts with California; and is  
13 the alter ego of TAK Communications CA, Inc.

14 13. This Court has general jurisdiction over Plaintiff's and the aggrieved employees'  
15 claims pursuant to the California Labor Code Private Attorneys General Act.

16 14. Venue is proper in this County pursuant to Code of Civil Procedure § 393. Defendants  
17 conduct business, employ aggrieved employees, and have jobsites in this County. Plaintiff is  
18 informed, believes, and alleges that events giving rise to these causes of action occurred in this  
19 County, and some part of these causes of action arose in this County.

20 **PARTIES**

21 15. The named Plaintiff Edgar Diaz is an individual over the age of eighteen, and at all  
22 times relevant to this Complaint were residents of the State of California.

23 16. Plaintiff worked for TAK from approximately May 2019 until March 2020 in and  
24 around Sacramento, Stockton, and Fresno, California. He worked in the non-exempt position of  
25 technician.

26 17. Plaintiff is informed, believes, and alleges that Defendant TAK Communications,  
27 Inc. is a South Dakota corporation that maintains its headquarters in Sioux Fall, South Dakota. TAK  
28 Communications, Inc. does business throughout the United States, including in California.

1           18.     Plaintiff is informed, believes, and alleges that Defendant TAK Communications CA,  
2 Inc. is a California corporation that maintains its principal place of business in Sacramento,  
3 California.

4           19.     Plaintiff is informed, believes, and alleges that TAK Communications, Inc. serves in  
5 a capacity of direct control over the operations of TAK Communications CA, Inc., and TAK  
6 Communications CA, Inc. is the agent of TAK Communications, Inc. On information and belief,  
7 TAK Communications, Inc. and TAK Communications CA, Inc. jointly exercise control over  
8 Plaintiff and the aggrieved employees.

9           20.     Plaintiff refers to TAK and Doe Defendants collectively as “Defendants.”

10          21.     Plaintiff is informed, believes, and alleges that at all times mentioned in this  
11 Complaint, each Defendant was the agent and employee of the other Defendant and in doing the  
12 things alleged in this Complaint were acting within the course and scope of such agency and  
13 employment. Plaintiff is further informed, believes, and alleges that each of the Defendants gave  
14 consent to, ratified, and authorized the acts alleged herein. Defendants are sued both in their own  
15 right and on the basis of respondent superior.

16          22.     Plaintiff is informed, believes, and alleges that Defendants are either solely or jointly  
17 and severally liable for the conduct described in this complaint and the resulting remedies available  
18 under the PAGA.

19          23.     The true names and capacities, whether individual, corporate, associate, or otherwise,  
20 of Does 1-50, inclusive, are unknown to Plaintiff, who therefore sues the Doe Defendants by  
21 fictitious names. Plaintiff is informed, believes, and alleges that each of these fictitiously-named  
22 Doe Defendants is responsible in some manner for the occurrences and Plaintiff’s and the aggrieved  
23 employees’ damages as herein alleged. Plaintiff will amend this Complaint to show their true names  
24 and capacities when they have been ascertained.

25          24.     At all relevant times, Defendants have done business under the laws of the State of  
26 California, have had places of business in the States of California, including in this judicial district,  
27 and have employed aggrieved employees in this judicial district. Defendants are a “person” as  
28 defined in California Labor Code § 18 and California Business and Professions Code § 17201.

1 Defendants are also “employers” as that term is used in the Labor Code and the IWC Wage Orders  
2 regulating wages, hours, and working conditions.

3 **FACTUAL ALLEGATIONS**

4 25. TAK is a national fulfillment contractor for low-voltage installations, providing cable  
5 and communication equipment installations on behalf of cable operators throughout the United  
6 States.

7 26. Plaintiff and aggrieved employees are all current and former non-exempt employees  
8 of TAK who carried out TAK’s installation service business throughout the state of California.  
9 Plaintiff is informed, believes, and thereon alleges that the policies and practices of TAK have at  
10 all relevant times been similar for Plaintiff and aggrieved employees, regardless of location.

11 27. Technicians’ job duties include but are not limited to: driving to customers’  
12 residences; installing cable, telephone, internet, and alarm services; making repairs;  
13 troubleshooting; and educating customers.

14 **WORKING AS A TECHNICIAN FOR TAK**

15 28. TAK requires Plaintiff and other Technicians to begin their days early in the morning.  
16 Technicians receive their first assignments of the day between 6:50 a.m. and 7:00 each morning.

17 29. Technicians then report to TAK’s warehouse and wait in line with other Technicians  
18 to pick up supplies provided by TAK, such as cable wires, wall plates, cable fittings, cable boxes,  
19 house boxes, and internet boxes.

20 30. Technicians then head out for their first of many jobs for the day. TAK requires each  
21 Technician to complete between 5 to 11 jobs per day. Following the first job of the day, TAK  
22 schedules Technicians for jobs for the rest of the day.

23 31. Most jobs take between one and four hours to complete, however, some jobs can take  
24 an entire day.

25 32. Technicians’ days do not end until they complete all the job assignments received  
26 from TAK for the day. This is often not until 8:00 or 9:00 p.m.

27 33. Regardless of location, TAK requires Plaintiff and Technicians to work a grueling  
28 schedule, often 5-6 days per week and well over 10 hours per day.

1           34.     Plaintiff typically worked over 10-13 hours per day, 5 days per week. It was common  
2 for him to begin his day around 7:30 a.m. and work until 6:00 or 8:00 p.m. He often worked 50 to  
3 over 65 hours per week.

4           35.     Much of Technicians' work time, however, is unreported or is outright eliminated  
5 from Technicians' compensation. TAK systematically pressures Technicians to underreport their  
6 hours, and threatens to – and in fact does – unilaterally change Technician time records.

7           36.     Upon information and belief, TAK specifically instructs Technician supervisors and  
8 upper management employees to reduce Technicians' hours.

9           37.     TAK also urges Technicians to document fewer work hours to supposedly increase  
10 their hourly rate, when in fact TAK pays Technicians less compensation for more hours worked  
11 because of TAK's pressure tactics. TAK also instructs Technicians to document fewer work hours  
12 to give the appearance of greater productivity to TAK's customers. This results in significant unpaid  
13 time.

14          38.     TAK's policies and practices results in Technicians performing substantial off-the-  
15 clock work, including overtime work, which goes unrecorded and unpaid by TAK. TAK's  
16 directives cause Plaintiff and other Technicians to underreport several hours per day.

17          39.     In addition, TAK instructs Technicians to falsely report on their time sheets that they  
18 took a meal break, with complete indifference as to whether Technicians in fact were able to, and  
19 did, take a meal break. Moreover, if Technicians fail to falsely report that they took a meal break,  
20 TAK will do so for them, altering the Technicians' time records to reflect a meal period that was  
21 never taken. TAK does not compensate Technicians for work completed during these falsely  
22 reported meal periods.

23          40.     TAK also routinely denies Technicians with timely and compliant off-duty meal  
24 periods and rest periods. Specifically, TAK routinely refuses to authorize, permit, and/or make  
25 available to Technicians timely and compliant thirty-minute meal periods as required by California  
26 law. Furthermore, TAK often requires Technicians to work in excess of 10 hours per day, but does  
27 not authorize, permit, and/or make available to them a second thirty-minute meal period as required  
28 by California law. Likewise, TAK routinely refuses to authorize or permit Technicians to take ten-

1 minute rest periods as required by California law. TAK fails to pay Technicians premium wages  
2 for their missed breaks. This uniformly violates California law.

3 41. Beyond TAK's failure to authorize or permit meal and rest breaks, Technicians'  
4 schedules are too busy, and TAK's pressure to complete job assignments is too constant, for  
5 Technicians' to take meal or rest breaks. TAK monitors Plaintiff and other Technicians throughout  
6 the day, including by telephone, directing them to go from customer to customer without breaks.  
7 As a result, Technicians are routinely forced to eat in their trucks while driving to the next job  
8 assignment.

9 42. TAK is aware of the fact that Technicians do not get the meal and rest periods to  
10 which they are entitled under California law and that it maintains policies and practices that deprive  
11 its Technicians of compensation for time worked, including overtime compensation. In fact, TAK  
12 has been involved in similar litigation in the past yet continues to engage in these practices.  
13 Therefore, the denial of meal and rest periods and denial of wages to Technicians is knowing and  
14 willful.

### 15 **TECHNICIANS' COMPENSATION MODEL**

16 43. TAK's compensation system utilizes a piece-rate system that compensates  
17 Technicians for: (1) piece-rate work per job, (2) hours worked, and (3) non-productive time.  
18 However, the hours worked, including the non-productive time, are not accurately recorded and in  
19 fact are severely underreported. Similarly, job codes completed are not accurately recorded and are  
20 severely underreported.

21 44. Under this compensation model, each discrete task has a corresponding dollar  
22 amount. Throughout the day, and for each job, Technicians are required to document and submit  
23 these codes to TAK as they are completed.

24 45. However, TAK pressures Technicians to either not submit code entries for tasks they  
25 complete, or alter code entries for tasks that have been already been submitted. TAK also modifies  
26 and alters the codes submitted by Technicians. Upon information and belief, TAK specifically  
27 instructs Technician supervisors and upper management employees to erase or alter job codes.  
28 Technician supervisors and upper management employees routinely delete or alter job codes that

1 Technicians have submitted for completed job tasks. Often times after Plaintiff and Technicians  
2 successfully complete a specific installation, instead of being paid for the corresponding job codes,  
3 Plaintiff's and Technicians' actual job codes are either deleted or altered to a lower paying code so  
4 that they are not paid for the total amount due for the work completed.

5 46. TAK also both alters Technicians' time records and requires that Technicians alter  
6 their time records to reduce the amount of nonproductive time reported. Upon information and  
7 belief, TAK specifically instructs Technician supervisors and upper management employees to  
8 erase or alter time records to reflect less nonproductive time. Technician supervisors and upper  
9 management employees either delete that time or alter Technicians' hours to show that time as  
10 productive time.

11 47. Plaintiff and other Technicians elect health insurance coverage through TAK. For  
12 those Technicians who elect to have health insurance coverage, TAK deducts a health insurance  
13 premium payment each pay period. However, TAK fails to provide these employees, including  
14 Plaintiff and other Technicians with health insurance. On information and belief, TAK keeps the  
15 money it deducts from Technicians wages for itself.

16 48. Plaintiff and other Technicians also incur numerous work-related expenses for which  
17 TAK does not reimburse them, including but not limited to tools and supplies. TAK does not  
18 compensate Plaintiff and Technicians for the costs associated with their work-related expenses.

19 49. TAK is aware that the company is required to compensate Technicians for work-  
20 related expenses, yet refuses to do so. TAK's unlawful conduct has been widespread, repeated, and  
21 willful throughout the State of California.

22 50. Plaintiff is informed, believes, and thereon alleges that TAK's compensation policies  
23 and practices have been similar for Plaintiff and the aggrieved employees, regardless of location.

24 51. As a result of TAK's wage and hour practices, wage statements do not accurately  
25 reflect the actual hours worked by Plaintiff and Technicians, the piece rates earned, the correct value  
26 of piece rates completed, the amount of compensation for each piece rate, or the amount of non-  
27 productive time.

52. Because Technicians are systematically deprived of the wages to which they are due and entitled, Plaintiff and aggrieved employees also do not receive all pay owing to them at the end of their employment. Compensation for off-the-clock work, missing piece rates, overtime, unreimbursed expenses, and premium pay for missed breaks remains outstanding after termination.

**FIRST CAUSE OF ACTION**  
**Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code §§ 226.7 and 512 (Meal Periods and Rest Breaks)**  
**(Against All Defendants)**

53. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

54. Labor Code §§ 226.7 and 512 and the applicable Wage Orders require Defendants to authorize and permit meal and rest periods to their employees. Labor Code §§ 226.7 and 512 and the applicable Wage Orders prohibit employers from employing an employee for more than five hours without a meal period of not less than thirty minutes. Labor Code § 226.7 and the applicable Wage Orders also require employers to authorize and permit employees to take ten minutes of net rest time per four hours or major fraction thereof of work, and to pay employees their full wages during those rest periods. Unless the employee is relieved of all duty during the thirty-minute meal period and ten-minute rest period, the employee is considered “on duty” and the meal or rest period is counted as time worked under the applicable Wage Orders.

55. Under Labor Code § 226.7(b) and the applicable Wage Orders, an employer who fails to authorize, permit, and/or make available a required meal period must, as compensation, pay the employee one hour of pay at the employee’s regular rate of compensation for each workday that the meal period was not authorized and permitted. Similarly, an employer must pay an employee denied a required rest period one hour of pay at the employee’s regular rate of compensation for each workday that the rest period was not authorized and permitted and/or not made available.

56. Despite these requirements, TAK knowingly and willfully refused to perform its obligations to authorize and permit Plaintiff and aggrieved employees to take the timely and

1 compliant off-duty meal and rest periods to which they are entitled. Plaintiff and aggrieved  
2 employees are routinely denied rest periods and work through their meal periods.

3 57. TAK also fails to pay Plaintiff and aggrieved employees one hour of pay for each  
4 untimely, non-compliant meal and/or rest period that they are denied.

5 58. Labor Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for  
6 each aggrieved employee per pay period for the initial violation of a Labor Code provision that  
7 does not provide a civil penalty if, at the time of the violation, the employer employs one or more  
8 employees. Labor Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for  
9 each aggrieved employee per pay period for each subsequent violation of a Labor Code provision  
10 that does not provide a civil penalty if, at the time of the violation, the employer employs one or  
11 more employees.

12 59. Plaintiff seeks to recover civil penalties from Defendants for their violations of the  
13 meal period and rest break requirements of Labor Code §§ 226.7 and 512 throughout California on  
14 behalf of himself, the State of California, and other aggrieved employees pursuant to Labor Code §  
15 2699(g)(i).

16 60. On March 30, 2020, Plaintiff gave written notice to the Labor and Workforce  
17 Development Agency (“LWDA”) and to TAK of his intent to pursue civil penalties for  
18 Defendants’ violations of the meal period and rest break requirements of Labor Code §§ 226.7 and  
19 512 pursuant to the PAGA. Over 65 days have passed since Plaintiff provided the LWDA with  
20 notice, yet, Plaintiff has not received a response from the LWDA or TAK. Accordingly, pursuant  
21 to Labor Code § 2699.3(2)(a), Plaintiff has satisfied the administrative pre-requisites to commence  
22 a PAGA action.

23 61. Defendants are liable to Plaintiff, the State of California, and aggrieved employees  
24 for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to  
25 an award of attorneys’ fees and costs as set forth below.

26 62. Wherefore, Plaintiff requests relief as hereinafter provided.  
27  
28

**SECOND CAUSE OF ACTION**  
**Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code §§ 204, 1194, and 1198 (Failure to Pay for all Hours Worked)**  
**(Against All Defendants)**

63. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

64. Plaintiff alleges that Defendants willfully engaged and continue to engage in a policy and practice of not compensating aggrieved employees for all hours worked or spent in Defendants' control. Defendants regularly require aggrieved employees to perform uncompensated off-the-clock work.

65. Labor Code § 200 defines wages as "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or method of calculation."

66. Labor Code § 204(a) provides that "[a]ll wages ... earned by any person in any employment are due and payable twice during each calendar month...."

67. Labor Code § 1194(a) provides as follows:

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

68. Labor Code § 1198 makes it unlawful for employers to employ employees under conditions that violate the Wage Order.

69. IWC Wage Order 4-2001(2)(K) defines hours worked as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

70. In violation of California law, Defendants knowingly and willfully refuse to provide aggrieved employees with compensation for all time worked. TAK requires Plaintiff and aggrieved employees to work off-the-clock without compensation for their work performed. TAK requires Plaintiff and aggrieved employees to underreport their hours and falsely claim they took meal

1 periods. When Plaintiff and aggrieved employees fail to do as instructed, TAK manipulates their  
2 time records to achieve the same result. Likewise, TAK reduces or deletes piece rates, and pressure  
3 Technicians to not report completed piece rates. In other words, Plaintiff and aggrieved employees  
4 are forced to perform work for the benefit of TAK without compensation.

5 71. Therefore, Defendants committed, and continue to commit, the acts alleged herein  
6 knowingly and willfully, and in conscious disregard of the aggrieved employees' rights.

7 72. Labor Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for  
8 each aggrieved employee per pay period for the initial violation of a Labor Code provision that  
9 does not provide a civil penalty if, at the time of the violation, the employer employs one or more  
10 employees. Labor Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for  
11 each aggrieved employee per pay period for each subsequent violation of a Labor Code provision  
12 that does not provide a civil penalty if, at the time of the violation, the employer employs one or  
13 more employees.

14 73. Plaintiff seeks to recover civil penalties from Defendants for their failure to pay for  
15 all hours worked in violation of Labor Code §§ 204, 1194, and 1198 throughout California on  
16 behalf of himself, the State of California, and other aggrieved employees pursuant to Labor Code §  
17 2699(f).

18 74. On March 30, 2020, Plaintiff gave written notice to the LWDA and to TAK of his  
19 intent to pursue civil penalties for Defendants' failure to pay for all hours worked pursuant to the  
20 PAGA. Over 65 days have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff has  
21 not received a response from the LWDA or TAK. Accordingly, pursuant to Labor Code §  
22 2699.3(2)(a), Plaintiff has satisfied the administrative pre-requisites to commence a PAGA action.

23 75. Defendants are liable to Plaintiff, the State of California, and aggrieved employees  
24 for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to  
25 an award of attorneys' fees and costs as set forth below.

26 76. Wherefore, Plaintiff requests relief as hereinafter provided.  
27  
28

**THIRD CAUSE OF ACTION**  
**Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code §§ 1182.12, and 1197 (Failure to Pay Minimum Wage)**  
**(Against All Defendants)**

77. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

78. TAK maintains policies and procedures that force Plaintiff and aggrieved employees to work off the clock, without compensation – let alone the minimum wage. Due to their grueling work schedules, the systematic denial of piece rates, the unlawful deductions from wages, and the uncompensated, on duty time, Plaintiff and aggrieved employees are routinely compensated at a rate that is less than the statutory minimum wage.

79. During the applicable statutory period, Labor Code §§ 1182.12, and 1197, and the Minimum Wage Order were in full force and effect and required that employees receive the minimum wage for all hours worked at the rate of nine dollars (\$9.00) per hour commencing July 1, 2014; the rate of ten dollars a fifty cents (\$10.50) per hour commencing January 1, 2017; the rate of eleven dollars (\$11.00) per hour commencing January 1, 2018; the rate of twelve dollars (\$12.00) per hour commencing January 1, 2019; and the rate of thirteen dollars (\$13.00) per hour commencing January 1, 2020.

80. IWC Wage Order 4-2001(2)(K) defines hours worked as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

81. Labor Code § 1194(a) provides as follows:

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

82. Labor Code § 1198 makes it unlawful for employers to employ employees under conditions that violate the Wage Order.

1           83.     Plaintiff and aggrieved employees regularly work well in excess of eight hours per  
2 day and forty hours per week.

3           84.     Plaintiff and aggrieved employees also regularly had deductions unlawfully taken  
4 from their pay, including to pay for health insurance that was never provided. They also pay  
5 expenses necessary to their employment with TAK, and are not reimbursed for these expenditures.

6           85.     The combination of long work schedules, unlawful deductions, and unreimbursed  
7 expenses regularly result in payment at rates below the minimum wage, as determined by the IWC.

8           86.     Labor Code § 1194.2 provides that, in any action under § 1194 to recover wages  
9 because of the payment of a wage less than minimum wage fixed by an order of the commission,  
10 an employer shall be entitled to recover liquidated damages in an amount equal to the wages  
11 unlawfully unpaid and interest thereon.

12          87.     California law further requires that employers pay their employees for all hours  
13 worked at the statutory or agreed upon rate. No part of the rate may be used as a credit against a  
14 minimum wage obligation.

15          88.     By failing to maintain adequate time records as required by Labor Code §1174(d)  
16 and IWC Wage Order 4-2001(7), Defendants have made it difficult to calculate the minimum wage  
17 compensation due to Plaintiff and aggrieved employees.

18          89.     Labor Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for  
19 each aggrieved employee per pay period for the initial violation of a Labor Code provision that  
20 does not provide a civil penalty if, at the time of the violation, the employer employs one or more  
21 employees. Labor Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for  
22 each aggrieved employee per pay period for each subsequent violation of a Labor Code provision  
23 that does not provide a civil penalty if, at the time of the violation, the employer employs one or  
24 more employees.

25          90.     Plaintiff seeks to recover civil penalties from Defendants for their failure to pay  
26 minimum wages in violation of Labor Code §§ 1182.12, and 1197 throughout California on behalf  
27 of himself, the State of California, and other aggrieved employees pursuant to Labor Code §  
28 2699(f).

1           91.     On March 30, 2020, Plaintiff gave written notice to the LWDA and to TAK of his  
2 intent to pursue civil penalties for Defendants' failure to pay minimum wages pursuant to the  
3 PAGA. Over 65 days have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff has  
4 not received a response from the LWDA or TAK. Accordingly, pursuant to Labor Code §  
5 2699.3(2)(a), Plaintiff has satisfied the administrative pre-requisites to commence a PAGA action.

6           92.     Defendants are liable to Plaintiff, the State of California, and aggrieved employees  
7 for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to  
8 an award of attorneys' fees and costs as set forth below.

9           93.     Wherefore, Plaintiff prays for relief as set forth below.

10                               **FOURTH CAUSE OF ACTION**  
11       **Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code §§ 510,**  
12                               **and 1194**  
13                               **(Failure to Pay Overtime Wages)**  
14                               **(Against All Defendants)**

15           94.     Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth  
16 herein.

17           95.     Defendants do not properly compensate aggrieved employees with appropriate  
18 overtime premiums, including time and a half premiums based on their regular rate of pay, as  
19 required by California law.

20           96.     Labor Code § 510(a) provides as follows:

21                       Eight hours of labor constitutes a day's work. Any work in excess of eight  
22 hours in one workday and any work in excess of 40 hours in any one  
23 workweek and the first eight hours worked on the seventh day of work in  
24 any one workweek shall be compensated at the rate of no less than one and  
25 one-half times the regular rate of pay for an employee. Any work in excess  
26 of 12 hours in one day shall be compensated at the rate of no less than twice  
27 the regular rate of pay for an employee.

28           97.     IWC Wage Order 4-2001(3)(A)(1), & (3) states that employees:

    ...shall not be employed more than eight (8) hours in any workday or more  
than 40 hours in any workweek unless the employee receives one and one-  
half (1 ½) times such employee's regular rate of pay for all hours worked  
over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's  
work. Employment beyond eight (8) hours in any workday or more than six

(6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than ... [o]ne and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7<sup>th</sup>) consecutive day of work in a workweek....

98. Labor Code § 1194(a) provides as follows:

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

99. Labor Code § 200 defines wages as "all amounts of labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or other method of calculation." All such wages are subject to California's overtime requirements, including those set forth above.

100. Defendants' policies and practices of requiring aggrieved employees to perform work off-the-clock are unlawful and results in overtime violations. As a result of these unlawful policies and practices, aggrieved employees have worked overtime hours for Defendants without being paid overtime premiums in violation of the Labor Code, the applicable IWC Wage Orders, and other applicable law.

101. TAK's policy and practice of requiring Plaintiff and aggrieved employees to perform work off-the-clock is unlawful. Even absent this off-the-clock work, many of TAK's hourly, non-exempt Technicians, including Plaintiff and aggrieved employees, work over eight hours in a day and/or over forty hours in a week. Accordingly, as a result of TAK's unlawful policy alleged herein of requiring Plaintiff and aggrieved employees to perform off-the-clock work, Plaintiff and aggrieved employees work overtime hours for TAK without being paid overtime premiums in violation of the California Labor Code, applicable IWC Wage Orders, and other applicable law.

102. As alleged above, TAK requires non-exempt, hourly Technicians to perform off-the-clock work, including unpaid overtime work, knowing full well that such work is being performed

1 outside of their paid shifts. TAK has, therefore, knowingly and willfully refused to perform their  
2 obligations to compensate aggrieved employees for all premium wages for overtime work.

3 103. Labor Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for  
4 each aggrieved employee per pay period for the initial violation of a Labor Code provision that  
5 does not provide a civil penalty if, at the time of the violation, the employer employs one or more  
6 employees. Labor Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for  
7 each aggrieved employee per pay period for each subsequent violation of a Labor Code provision  
8 that does not provide a civil penalty if, at the time of the violation, the employer employs one or  
9 more employees.

10 104. Plaintiff seeks to recover civil penalties from Defendants for their failure to pay  
11 overtime wages in violation of Labor Code §§ 510, and 1194 throughout California on behalf of  
12 himself, the State of California, and other aggrieved employees pursuant to Labor Code § 2699(f).

13 105. On March 30, 2020, Plaintiff gave written notice to the LWDA and to TAK of his  
14 intent to pursue civil penalties for Defendants' failure to pay overtime wages pursuant to the  
15 PAGA. Over 65 days have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff has  
16 not received a response from the LWDA or TAK. Accordingly, pursuant to Labor Code §  
17 2699.3(2)(a), Plaintiff has satisfied the administrative pre-requisites to commence a PAGA action.

18 106. Defendants are liable to Plaintiff, the State of California, and aggrieved employees  
19 for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to  
20 an award of attorneys' fees and costs as set forth below.

21 107. Wherefore, Plaintiff requests relief as hereinafter provided.

22 **FIFTH CAUSE OF ACTION**  
23 **Penalties Pursuant to Labor Code § 2699(a) for Violations of California Labor Code § 226**  
24 **(Accurate, Itemized Wage Statements)**  
25 **(Against All Defendants)**

26 108. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth  
27 herein.

28 109. Defendants do not provide Plaintiff and the aggrieved employees with accurate  
itemized wage statements as required by California law, as a result of the meal and rest break, off-

1 the-clock work, and overtime violations set forth above, and Defendants' failure to provide  
2 premium pay for the missed breaks.

3 110. Labor Code § 226(a) provides:

4  
5 An employer, semimonthly or at the time of each payment of wages, shall  
6 furnish to his or her employee, either as a detachable part of the check, draft,  
7 or voucher paying the employee's wages, or separately if wages are paid by  
8 personal check or cash, an accurate itemized statement in writing showing  
9 (1) gross wages earned, (2) total hours worked by the employee, except as  
10 provided in subdivision (i), (3) the number of piece-rate units earned and  
11 any applicable piece rate if the employee is paid on a piece-rate basis, (4)  
12 all deductions, provided that all deductions made on written orders of the  
13 employee may be aggregated and shown as one item, (5) net wages earned,  
14 (6) the inclusive dates of the period for which the employee is paid, (7) the  
15 name of the employee and only the last four digits of his or her social  
16 security number or an employee identification number other than a social  
17 security number, (8) the name and address of the legal entity that is the  
18 employer ... and (9) all applicable hourly rates in effect during the pay  
19 period and the corresponding number of hours worked at each hourly rate  
20 by the employee ... The deductions made from payment of wages shall be  
21 recorded in ink or other indelible form, properly dated, showing the month,  
22 day, and year, and a copy of the statement and the record of the deductions  
23 shall be kept on file by the employer for at least three years at the place of  
24 employment or at a central location within the State of California.

15 111. The IWC Wage Orders also establishes this requirement. (See IWC Wage Order 4-  
16 2001(7))

17 112. Labor Code § 226(e)(1) provides:

18  
19 An employee suffering injury as a result of a knowing and intentional failure  
20 by an employer to comply with subdivision (a) is entitled to recover the greater  
21 of all actual damages or fifty dollars (\$50) for the initial pay period in which  
22 a violation occurs and one hundred dollars (\$100) per employee for each  
23 violation in a subsequent pay period, not to exceed an aggregate penalty of  
24 four thousand dollars (\$4,000), and is entitled to an award of costs and  
25 reasonable attorney's fees.

26 113. TAK fails to provide timely, accurate, itemized wage statements to Plaintiff and  
27 aggrieved employees in accordance with Labor Code § 226(a) and the IWC Wage Orders. In  
28 particular, the wage statements TAK provides employees, including to Plaintiff and aggrieved  
employees, do not accurately reflect the actual hours worked, actual gross wages earned, or actual  
net wages earned. This is because, in part, TAK does not count as "hours worked" the off-the-

1 clock time its hourly, non-exempt Technicians spend performing work activities outside of their  
2 scheduled paid shifts and other work-related activities.

3 114. TAK's failure to comply with Labor Code § 226(a) was and continues to be knowing  
4 and intentional. Although, as alleged herein, TAK is aware that Plaintiff and aggrieved employees  
5 perform off-the-clock work, TAK systematically fails to include this time worked in Plaintiff and  
6 the aggrieved employees' wage statements.

7 115. Plaintiff and aggrieved employees suffered injury as a result of TAK's knowing and  
8 intentional failure to provide timely, accurate itemized wage statements to Plaintiff and the  
9 aggrieved employees in accordance with Labor Code § 226(a). In particular, the injury stemming  
10 from TAK's violations is evidenced by this live and active dispute regarding unpaid wages,  
11 including, overtime pay, between the Parties. As a result of TAK's violations, Plaintiff and the  
12 aggrieved employees are required to undertake the difficult and costly task of attempting to  
13 reconstruct TAK's incomplete and inaccurate time and pay records to ensure that they are paid for  
14 all hours worked as required by California law.

15 116. On information and belief, Defendants' conduct has been substantially the same at  
16 all relevant times throughout the state of California.

17 117. Labor Code § 2699(a) permits an aggrieved employee to recover any civil penalty to  
18 be assessed and collected by the LWDA for a violation of the Labor Code on behalf of himself or  
19 herself and other current or former employees pursuant to the procedures set forth in Labor Code §  
20 2699.3.

21 118. Plaintiff seeks to recover civil penalties from Defendants' for their violations of  
22 Labor Code § 226 throughout California on behalf of himself, the State of California, and other  
23 aggrieved employees pursuant to Labor Code § 2699(a).

24 119. On March 30, 2020, Plaintiff gave written notice to the LWDA and to TAK of his  
25 intent to pursue civil penalties for Defendants' failure to provide accurate, itemized wage  
26 statements in violation of Labor Code § 226 pursuant to the PAGA. Over 65 days have passed  
27 since Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a response from the  
28 LWDA or TAK. Accordingly, pursuant to Labor Code § 2699.3(2)(a), Plaintiff has satisfied the

1 administrative pre-requisites to commence a PAGA action.

2 120. Defendants are liable to Plaintiff, the State of California, and aggrieved employees  
3 for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to  
4 an award of attorneys' fees and costs as set forth below.

5 121. Wherefore, Plaintiff requests relief as hereinafter provided.

6 **SIXTH CAUSE OF ACTION**  
7 **Penalties Pursuant to Labor Code § 2699(a) for Violations of California Labor Code §§ 201-**  
8 **203 (Waiting Time Penalties)**  
9 **(Against All Defendants)**

10 122. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth  
11 herein.

12 123. Defendants do not provide Plaintiff and the aggrieved employees with their wages  
13 when due under California law after their employment with Defendants ends, as a result of the  
14 meal and rest break, off-the-clock work, and overtime violations set forth above and Defendants'  
15 failure to provide premium pay for the missed breaks.

16 124. Labor Code § 201 provides:

17 If an employer discharges an employee, the wages earned and unpaid at the  
18 time of discharge are due and payable immediately.

19 125. Labor Code § 202 provides:

20 If an employee not having a written contract for a definite period quits his  
21 or her employment, his or her wages shall become due and payable not later  
22 than 72 hours thereafter, unless the employee has given 72 hours previous  
23 notice of his or her intention to quit, in which case the employee is entitled  
24 to his or her wages at the time of quitting.

25 126. Labor Code § 203 provides, in relevant part:

26 If an employer willfully fails to pay, without abatement or reduction, in  
27 accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages  
28 of an employee who is discharged or who quits, the wages of the employee  
shall continue as a penalty from the due date thereof at the same rate until paid  
or until an action therefor is commenced; but the wages shall not continue for  
more than 30 days.

127. Plaintiff and some of the aggrieved employees have left their employment with TAK  
during the statutory period, at which time TAK owed them unpaid wages. These earned, but  
unpaid, wages derive from time spent working through their meal and rest breaks, from time spent

1 outside of their scheduled and paid shifts performing other work-related activities, and overtime  
2 compensation that was not accounted for in the performance of off-the-clock work.

3 128. TAK willfully refused, and continues to refuse, to provide Plaintiff and aggrieved  
4 employees with meal and rest period premium pay and with payment for off-the-clock work  
5 performed. In particular, as alleged above, TAK is aware Plaintiff and aggrieved employees  
6 regularly miss or have interrupted their meal and rest breaks as a result of TAK's unlawful policies  
7 and practices, but TAK, nevertheless, refuses to authorize premium pay for missed or interrupted  
8 meal and rest periods. Likewise, as alleged above, although TAK knew, and continues to know,  
9 full well that Plaintiff and aggrieved employees performed required off-the-clock work, TAK still  
10 refuses to pay Plaintiff and aggrieved employees for the off-the-clock work performed.

11 129. Accordingly, TAK willfully refused and continues to refuse to pay those members of  
12 aggrieved employees that left their employment with TAK all the wages that were due and owing  
13 them upon the end of their employment. As a result of Defendants' actions, Plaintiff and the  
14 aggrieved employees have suffered and continue to suffer substantial losses, including lost earnings,  
15 and interest.

16 130. Defendants' willful failure to pay Plaintiff and the aggrieved employees the wages  
17 due and owing them constitutes a violation of Labor Code §§ 201-203. In addition, § 203 provides  
18 that an employee's wages will continue as a penalty up to thirty days from the time the wages were  
19 due. Plaintiff seeks to recover PAGA penalties, costs, and attorneys' fees pursuant to this section.

20 131. On information and belief, Defendants' conduct has been substantially the same at  
21 all relevant times throughout the state of California.

22 132. Labor Code § 2699(a) permits an aggrieved employee to recover any civil penalty to  
23 be assessed and collected by the LWDA for a violation of the Labor Code on behalf of himself or  
24 herself and other current or former employees pursuant to the procedures set forth in Labor Code §  
25 2699.3.

26 133. Plaintiff seeks to recover civil penalties from Defendants' for their violations of  
27 Labor Code §§ 201-203 throughout California on behalf of himself, the State of California, and  
28 other aggrieved employees pursuant to Labor Code § 2699(a).

1           134. On March 30, 2020, Plaintiff gave written notice to the LWDA and to TAK of his  
2 intent to pursue civil penalties for Defendants' failure to pay wages when due after the end  
3 employment with Defendants in violation of Labor Code §§ 201-203 pursuant to the PAGA. Over  
4 65 days have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff has not received  
5 a response from the LWDA or TAK. Accordingly, pursuant to Labor Code § 2699.3(2)(a), Plaintiff  
6 has satisfied the administrative pre-requisites to commence a PAGA action.

7           135. Defendants are liable to Plaintiff, the State of California, and aggrieved employees  
8 for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to  
9 an award of attorneys' fees and costs as set forth below.

10          136. Wherefore, Plaintiff requests relief as hereinafter provided.

11                                   **SEVENTH CAUSE OF ACTION**  
12                   **Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code § 2802**  
13                                   **(Necessary Business Expenditures)**  
                                         **(Against All Defendants)**

14          137. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set  
15 forth herein.

16          138. California Labor Code § 221 provides that it shall be unlawful for any employer to  
17 collect or receive any part of wages theretofore paid by said employer to said employee.

18          139. California Labor Code § 2802 provides that an employer must reimburse an employee  
19 for necessary expenditures and losses incurred by an employee in the direct consequence of the  
20 discharge of his or her duties.

21          140. TAK requires Plaintiff and aggrieved employees to incur numerous work-related  
22 expenses, including but not limited to tools and supplies to perform their work duties. However,  
23 TAK does not compensate Plaintiff and aggrieved employees for the expenses required to perform  
24 their work-related tasks.

25          141. Because of TAK's failure to comply with the provisions of the applicable Wage  
26 Order and California Labor Code §§ 221 and 2802, Plaintiff and aggrieved employees suffered  
27 damages. Plaintiff and aggrieved employees seek reimbursement for the necessary expenditures  
28 they incurred in direct consequence of the discharge of their duties in an amount according to proof

1 at time of trial, with interest thereon, costs, applicable civil penalties and attorneys' fees pursuant  
2 to California Labor Code § 2802 and the applicable Wage Order.

3 142. On information and belief, Defendants' conduct has been substantially the same at  
4 all relevant times throughout the state of California.

5 143. Labor Code § 2699(a) permits an aggrieved employee to recover any civil penalty to  
6 be assessed and collected by the LWDA for a violation of the Labor Code on behalf of himself or  
7 herself and other current or former employees pursuant to the procedures set forth in Labor Code §  
8 2699.3.

9 144. Plaintiff seeks to recover civil penalties from Defendants' for their violations of  
10 Labor Code § 2802 throughout California on behalf of himself, the State of California, and other  
11 aggrieved employees pursuant to Labor Code § 2699(a).

12 145. On March 30, 2020, Plaintiff gave written notice to the LWDA and to TAK of his  
13 intent to pursue civil penalties for Defendants' failure to pay wages when due after the end  
14 employment with Defendants in violation of Labor Code § 2802 pursuant to the PAGA. Over 65  
15 days have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a  
16 response from the LWDA or TAK. Accordingly, pursuant to Labor Code § 2699.3(2)(a), Plaintiff  
17 has satisfied the administrative pre-requisites to commence a PAGA action.

18 146. Defendants are liable to Plaintiff, the State of California, and aggrieved employees  
19 for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to  
20 an award of attorneys' fees and costs as set forth below.

21 147. Wherefore, Plaintiff requests relief as hereinafter provided.

22 **EIGHTH CAUSE OF ACTION**  
23 **Penalties Pursuant to Labor Code § 2699(a) for Violations of California Labor Code §§ 221,**  
24 **224 (Unlawful Deductions)**  
**(Against All Defendants)**

25 148. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth  
26 herein.

27 149. California Labor Code § 221 provides that it shall be unlawful for any employer to  
28 collect or receive any part of wages theretofore paid by said employer to said employee

1           150. California Labor Code § 224 provides that deductions may only be withheld from an  
2 employee's wages if required or empowered to do so by state or federal law; if expressly  
3 authorized in writing to cover insurance premiums, benefit plan contributions or other deductions  
4 not amounting to a rebate on the employee's wages; and if to cover health, welfare, or pension  
5 contributions is expressly authorized by a wage or collective bargaining agreement.

6           151. California Labor Code § 221 and related statutes, along with California's  
7 fundamental public policy protecting wages, prohibit employers from subjecting employees to  
8 unanticipated or unpredicted reductions in their wages; or taking other unpredictable deductions  
9 that may impose a special hardship on employees.

10          152. California Labor Code § 225.5 provides that:

11                   In addition to, and entirely independent and apart from, any other penalty  
12                   provided in this article, every person who unlawfully withholds wages due  
13                   any employee in violation of Section 212, 216, 221, 222, or 223 shall be  
                    subject to a civil penalty as follows:

14                   (a) For any initial violation, one hundred dollars (\$100) for each failure to  
15                   pay each employee.

16                   (b) For each subsequent violation, or any willful or intentional violation,  
17                   two hundred dollars (\$200) for each failure to pay each employee, plus 25  
                    percent of the amount unlawfully withheld.

18          153. TAK violated Cal. Labor Code §§ 221 and 224 by unlawfully taking deductions from  
19 Plaintiff and aggrieved employees' compensation for promised health insurance coverage, yet  
20 failing to provide to Plaintiff and aggrieved employees the promised health insurance.

21          154. Because TAK took unlawful deductions from Technician's compensation they are  
22 liable to Plaintiff and aggrieved employees for the compensation that should have been paid but for  
23 the unlawful deductions along with penalties pursuant to Cal. Labor Code § 225.5.

24          155. On information and belief, Defendants' conduct has been substantially the same at  
25 all relevant times throughout the State of California.

26          156. Labor Code § 2699(a) permits an aggrieved employee to recover any civil penalty to  
27 be assessed and collected by the LWDA for a violation of the Labor Code on behalf of himself or  
28 herself and other current or former employees pursuant to the procedures set forth in Labor Code §

1 2699.3.

2 157. Plaintiff seeks to recover civil penalties from Defendants' for their violations of  
3 Labor Code §§ 221 and 224 throughout California on behalf of himself, the State of California, and  
4 other aggrieved employees pursuant to Labor Code § 2699(a).

5 158. On March 30, 2020, Plaintiff gave written notice to the LWDA and to TAK of his  
6 intent to pursue civil penalties for Defendants' failure to pay wages when due after the end  
7 employment with Defendants in violation of Labor Code §§ 221 and 224 pursuant to the PAGA.  
8 Over 65 days have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff has not  
9 received a response from the LWDA or TAK. Accordingly, pursuant to Labor Code §  
10 2699.3(2)(a), Plaintiff has satisfied the administrative pre-requisites to commence a PAGA action.

11 159. Defendants are liable to Plaintiff, the State of California, and aggrieved employees  
12 for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to  
13 an award of attorneys' fees and costs as set forth below.

14 160. Wherefore, Plaintiff requests relief as hereinafter provided.

15 **NINTH CAUSE OF ACTION**  
16 **Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code § 226.2**  
17 **(Failure to Properly Compensate Piece Rate Workers for Rest and Recovery Periods, and**  
18 **Other Nonproductive Time; Failure to Provide Compliant Itemized Wage Statements for Rest**  
19 **and Recovery Periods and Other Nonproductive Time)**  
20 **(Against All Defendants)**

21 161. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set  
22 forth herein.

23 162. California Labor Code § 226.2 provides:

24 This section shall apply for employees who are compensated on a piece-rate  
25 basis for any work performed during a pay period. This section shall not be  
26 construed to limit or alter minimum wage or overtime compensation  
27 requirements, or the obligation to compensate employees for all hours  
28 worked under any other statute or local ordinance. For the purposes of this  
section, "applicable minimum wage" means the highest of the federal, state,  
or local minimum wage that is applicable to the employment, and "other  
nonproductive time" means time under the employer's control, exclusive of  
rest and recovery periods, that is not directly related to the activity being  
compensated on a piece-rate basis.

1 163. California Labor Code § 226.2(a)(1)-(2) provides:

2 For employees compensated on a piece-rate basis during a pay period, the  
3 following shall apply for that pay period: (1) Employees shall be  
4 compensated for rest and recovery periods and other nonproductive time  
5 separate from any piece-rate compensation; (2) The itemized statement  
6 required by subdivision (a) of Section 226 shall, in addition to the other  
7 items specified in that subdivision, separately state the following, to which  
8 the provisions of Section 226 shall also be applicable: (A) The total hours  
9 of compensable rest and recovery periods, the rate of compensation, and the  
10 gross wages paid for those periods during the pay period; (B) Except for  
11 employers paying compensation for other nonproductive time in accordance  
12 with paragraph (7), the total hours of other nonproductive time, as  
13 determined under paragraph (5), the rate of compensation, and the gross  
14 wages paid for that time during the pay period.

15 164. Labor Code § 226.2(a)(3)(A), (B) provides:

16 (3)(A) Employees shall be compensated for rest and recovery periods at a  
17 regular hourly rate that is no less than the higher of: (i) An average hourly  
18 rate determined by dividing the total compensation for the workweek,  
19 exclusive of compensation for rest and recovery periods and any premium  
20 compensation for overtime, by the total hours worked during the workweek,  
21 exclusive of rest and recovery periods. (ii) The applicable minimum wage.

22 (B) For employers who pay on a semimonthly basis, employees shall be  
23 compensated at least at the applicable minimum wage rate for the rest and  
24 recovery periods together with other wages for the payroll period during  
25 which the rest and recovery periods occurred. Any additional compensation  
26 required for those employees pursuant to clause (i) of subparagraph (A) is  
27 payable no later than the payday for the next regular payroll period.

28 165. California Labor Code § 226.2(a)(4)-(5), (7) provides:

(4) Employees shall be compensated for other nonproductive time at an  
hourly rate that is no less than the applicable minimum wage.

(5) The amount of other nonproductive time may be determined either  
through actual records or the employer's reasonable estimates, whether for  
a group of employees or for a particular employee, of other nonproductive  
time worked during the pay period.

(7) An employer who, in addition to paying any piece-rate compensation,  
pays an hourly rate of at least the applicable minimum wage for all hours  
worked, shall be deemed in compliance with paragraph (4).

166. TAK fails to provide timely, accurate, itemized wage statements to Plaintiff and  
aggrieved employees in accordance with Labor Code § 226.2(a)(1)-(2) and the IWC Wage Orders.  
In particular, the wage statements TAK provides its employees, including to Plaintiff and aggrieved  
employees, do not reflect the total hours, rate of compensation, or gross wages for either rest and  
recovery periods, or other nonproductive time. This is because TAK both alters Technicians' time

1 records and requires that Technicians alter their time records to reduce the amount of nonproductive  
2 time reported. In addition, TAK does not count as “hours worked” the off-the-clock time its hourly,  
3 non-exempt Technicians spend performing work activities outside of their scheduled paid shifts and  
4 other work-related activities.

5 167. Further, TAK fails to properly compensate Plaintiff and aggrieved employees in  
6 accordance with Labor Code Section 226.2(a) (1), (3)-(5), (7). In particular, TAK fails to  
7 compensate Plaintiff’s and aggrieved employees’ rest and recovery periods at the higher of either  
8 “(i) [a]n average hourly rate determined by dividing the total compensation for the workweek,  
9 exclusive of compensation for rest and recovery periods and any premium compensation for  
10 overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods[;]  
11 or (ii) [t]he applicable minimum wage.” Cal. Labor Code § 226.2(a) (3)(A). Defendants further fail  
12 to compensate Plaintiff’s and aggrieved employees’ other nonproductive time at an hourly rate that  
13 is no less than the applicable minimum wage. Cal. Labor Code § 226.2(a)(4).

14 168. TAK’s failure to comply with Labor Code § 226.2 was and continues to be knowing  
15 and intentional. Although, as alleged herein, TAK is aware that Plaintiff and aggrieved employees  
16 perform off-the-clock work, allegedly took rest breaks, and perform other nonproductive time, TAK  
17 systematically fails to include this time worked in Plaintiff’s and aggrieved employees’ wage  
18 statements and fails to properly compensate Plaintiff and aggrieved employees for all rest and  
19 recovery periods and other nonproductive time under Labor Code § 226.2.

20 169. Plaintiff and aggrieved employees suffered injury as a result of TAK’s knowing and  
21 intentional failure to provide timely, accurate itemized wage statements to Plaintiff and aggrieved  
22 employees in accordance with Labor Code § 226.2. Plaintiff and aggrieved employees have also  
23 suffered injury as a result of TAK’s knowing and intentional failure to provide proper compensation  
24 for rest and recovery periods and other nonproductive time in accordance with Labor Code § 226.2.  
25 In particular, the injury stemming from TAK’s violations is evidenced by this live and active dispute  
26 regarding unpaid wages, including, overtime pay, between the Parties. As a result of TAK’s  
27 violations, Plaintiff and aggrieved employees are required to undertake the difficult and costly task  
28

1 of attempting to reconstruct TAK's incomplete and inaccurate time and pay records to ensure that  
2 they are paid for all hours worked as required by California law.

3 170. On information and belief, Defendants' conduct has been substantially the same at  
4 all relevant times throughout the State of California.

5 171. Labor Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for  
6 each aggrieved employee per pay period for the initial violation of a Labor Code provision that  
7 does not provide a civil penalty if, at the time of the violation, the employer employs one or more  
8 employees. Labor Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for  
9 each aggrieved employee per pay period for each subsequent violation of a Labor Code provision  
10 that does not provide a civil penalty if, at the time of the violation, the employer employs one or  
11 more employees.

12 172. Plaintiff seeks to recover civil penalties from Defendants' for their violations of  
13 Labor Code § 226.2 throughout California on behalf of himself, the State of California, and other  
14 aggrieved employees pursuant to Labor Code § 2699(f).

15 173. On March 30, 2020, Plaintiff gave written notice to the LWDA and to TAK of his  
16 intent to pursue civil penalties for Defendants' failure to pay wages when due after the end  
17 employment with Defendants in violation of Labor Code § 226.2 pursuant to the PAGA. Over 65  
18 days have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a  
19 response from the LWDA or TAK. Accordingly, pursuant to Labor Code § 2699.3(2)(a), Plaintiff  
20 has satisfied the administrative pre-requisites to commence a PAGA action.

21 174. Defendants are liable to Plaintiff, the State of California, and aggrieved employees  
22 for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to  
23 an award of attorneys' fees and costs as set forth below.

24 175. Wherefore, Plaintiff requests relief as hereinafter provided.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff prays for relief as follows:

27 1. For an order awarding civil penalties to the full extent provided for by the PAGA:  
28

2. For an award of reasonable attorneys' fees as provided by the California Labor Code, including Labor Code § 2699(g)(1); California Code of Civil Procedure § 1021.5; and/or any other applicable law;
3. For all costs of suit;
4. For interest on any penalties awarded, as provided by applicable law; and
5. For such other and further relief as this Court deems just and proper.

Date: June 12, 2020

Respectfully submitted,

Carlyle Atwell

Carolyn H. Cottrell  
Ori Edelstein  
Michelle S. Lim  
SCHNEIDER WALLACE  
COTTRELL KONECKY LLP

Sarah R. Schalman-Bergen (*pro hac vice* to be submitted)  
 Stacy Savett (*pro hac vice* to be submitted)  
 Shoshana Savett (*pro hac vice* to be submitted)  
 Krysten Cannon (to be admitted *pro hac vice*)  
 BERGER MONTAGUE PC

Attorneys for Plaintiff, on behalf of the State of  
California and all aggrieved employees

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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to a jury.

Date: June 12, 2020

Respectfully submitted,



Carolyn H. Cottrell  
Ori Edelstein  
Michelle S. Lim  
SCHNEIDER WALLACE  
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Sarah R. Schalman-Bergen (*pro hac vice* to be submitted)  
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