

SHORTLEGAL, APC
350 10TH AVE., SUITE 1000
SAN DIEGO, CA 92101

Brian R. Short (SBN 236140)
Email: Brian@ShortLegal.com
Dorota A. James (SBN 309933)
Email: Dorota@ShortLegal.com
SHORTLEGAL, APC
350 10th Ave., Suite 1000
San Diego, California 92101
Telephone: 619.272.0720
Facsimile: 619.839.3129

Attorneys for Plaintiff HECTOR MARTIN

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
07/09/2020 at 07:39:00 PM
Clerk of the Superior Court
By Gen Dieu, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

HECTOR MARTIN, Individually and on
behalf of all similarly-situated employees of
Defendants in the State of California,

Plaintiffs,

v.

HERC RENTALS, INC and DOES 1 through
50, inclusive,

Defendants.

Case No.: 37-2020-00016112-CU-OE-CTL

Unlimited Civil - Amount Demanded
Exceeds \$25,000.00

FIRST AMENDED COMPLAINT

CLASS ACTION [CCP § 382]

1. Failure to Pay Minimum and Regular Wages
2. Failure to Pay Overtime Wages
3. Failure to Authorize and Permit Rest Periods
4. Failure to Provide Meal Periods
5. Failure to Indemnify/Reimburse Expenses
6. Failure to Provide and Maintain Accurate Itemized Wage Statements
7. Failure to Timely Pay Wages Due Upon Separation of Employment
8. Unfair Business Practices (Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*)
9. PAGA Claims for Civil Penalties

Date Complaint Filed: March 16, 2020
Judge: Ronald F. Frazier
Dept.: C-65

Plaintiff HECTOR MARTIN on behalf of himself and all other current and former similarly-situated and aggrieved employees alleges as follows:

I.

NATURE OF ACTION AND INTRODUCTORY STATEMENT

1. Plaintiff HECTOR MARTIN (hereinafter “MARTIN”) brings this individual and class action suit against Defendant HERC RENTALS, INC. (“HERC”) and DOES 1 through 50, inclusive (collectively referred to herein as “Defendants”), on behalf of himself and all other current and former similarly-situated and aggrieved employees for engaging in a systemic pattern of wage and hour violations under California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders.

2. HERC RENTALS, INC. is a full-service equipment rental firm with approximately 270 company-operated locations primarily in the United States and Canada, including San Diego County, California.

3. MARTIN, at times relevant, was employed by Defendants as sales and operations coordinator in San Diego, California.

4. Plaintiff is informed and believes, and thereon alleges, that Defendants decreased their employment-related costs in order to increase their level of productivity and profits by systematically violating both state wage and hour laws and the applicable IWC Wage Order, including, but not limited to:

- a. Failing to pay for minimum, regular and overtime wages for all hours worked;
- b. Failing to provide compliant meal and rest breaks;
- c. Failing to indemnify Plaintiff and all other current and former similarly-situated and aggrieved employees for their necessary expenses and losses in discharging their duties;
- d. Failing to provide and maintain accurate records and itemized wage statements; and
- e. Failing to timely pay wages due during and upon termination of employment.

5. Plaintiff brings this lawsuit seeking injunctive, restitution and monetary relief against Defendants, and each of them, on behalf of Plaintiff individually and on behalf of all other current and former similarly-situated and aggrieved employees to recover, among other things, unpaid wages and benefits, interest, penalties, liquidated damages, attorney's fees and costs pursuant to California Labor Code §§ 201, 202, 203, 204, 210, 218, 218.5, 218.6, 223, 226, 226.7, 247, 248.5, 510, 511, 512, 558, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, 2810.5, Labor Code § 2699, and California Code of Civil Procedure 1021.5, and provisions of the applicable IWC Wage Order. Plaintiff reserves the right to name additional representatives throughout the State of California.

II.

PARTIES, JURISDICTION AND VENUE

6. Plaintiff MARTIN is and at all relevant times was a resident of the State of California and was employed by Defendants in their San Diego office, California.

7. Defendant HERC RENTALS, INC. ("HERC"), is a full-service equipment rental firm with approximately 270 company-operated locations primarily in the United States and Canada, including business offices in San Diego, California.

8. Plaintiff is informed and believes, and thereon alleges, that at times relevant HERC RENTALS, INC. and Does 1 through 50 are the alter egos of each other and directly or indirectly, or through agents or other persons, employed Plaintiff and all other current and former similarly-situated and aggrieved employees, and exercised control over their wages, hours, and/or working conditions. Plaintiff is informed and believes, and thereon alleges, that each Defendants directly or indirectly, or through agents or other persons, acted and/or ratified in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

9. Plaintiff was employed by Defendants in San Diego, California as sales and operations coordinator and was subject to the employment policies, procedures and practices implemented by Defendants which applied to all of their employees throughout the State of California, including in San Diego County.

10. Defendants, at all relevant times, conducted business in the State of California and were employers who violated, or caused to be violated, a section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code § 558 and or 558.1.

11. The true names and capacities of the Defendants named as DOES 1 through 50, inclusive, are presently unknown to Plaintiff. Plaintiff will amend this Complaint setting forth the true names and capacities of these fictitious Defendants when they are ascertained. Plaintiff is informed and believes, and on that basis, alleges that each of the fictitious Defendants have participated in the acts alleged in this Complaint.

12. Jurisdiction and venue are proper for San Diego County Superior Court because Defendants maintain offices, transact business, and/or have an agent in San Diego County and some of the acts and events complained of herein occurred in the judicial district of San Diego County and the State of California.

III.

GENERAL ALLEGATIONS

13. Plaintiff MARTIN was employed by Defendants as sales and operations coordinator since April 7, 2017 to February 28, 2020 when he was terminated for an alleged violation of the company policy regarding use of company's vehicle. During his employment with HERC, Mr. Martin was classified as a non-exempt employee and denied the protections afforded to him pursuant to the California Labor Code. He worked at HERC's store located in San Diego, California.

14. Defendant HERC RENTALS, INC. is an employer doing business in the State of California and, according to its website HERC is a full-service equipment rental firm operating its business primarily in the United States and Canada.

15. At all relevant times, Plaintiff, and on information and belief, all other current and former similarly-situated and aggrieved employees worked under numerous illegal policies, practices, and procedures of Defendants relating to its payment of wages, meal and rest periods, wage statements,

1 recordkeeping, and reimbursement policies. Defendants failed to pay all regular, minimum and overtime
2 wages to Plaintiff and on information and belief, all other current and former similarly-situated and
3 aggrieved employees as a result of Defendants' unlawful policies and practices.

4 16. During his tenure with Defendants, Plaintiff and all other current and former similarly-
5 situated and aggrieved employees were often employed through various illegal policies designed by
6 Defendants to systematically reduce their costs of doing business at the expense of its employees.

7 17. At all relevant times, Plaintiff and all other current and former similarly-situated and
8 aggrieved employees were non-exempt hourly employees and eligible to earn non-discretionary bonuses
9 and commissions based on sales and performance.

10 18. At all relevant time, Plaintiff and all other current and former similarly-situated and
11 aggrieved employees regularly worked more than 8 hours in workday and/or more than forty (40) hours
12 in a workweek. Plaintiff and all other current and former similarly-situated and aggrieved employees also
13 routinely earned non-discretionary bonuses and commissions during the same pay periods in which they
14 worked overtime. Plaintiff alleges that Defendants failed to properly incorporate his non-discretionary
15 bonuses into his regular hourly rate of pay for the purpose of calculating his overtime rate, as required by
16 California law. As a result, the overtime rate that Defendants paid Plaintiff was miscalculated and incorrect
17 and Plaintiff and other employees were routinely underpaid.

18 19. At all relevant times, Defendants did not maintain compliant off-duty meal period policies
19 for Plaintiff as required by the California Labor Code, nor did they provide meal periods compliant under
20 California law, to Plaintiff and other employees. Defendants failed to adequately inform Plaintiff and all
21 other current and former similarly-situated and aggrieved employees of their rights to take compliant off-
22 duty meal periods.

23 20. Defendants failed to pay Plaintiff and all other current and former similarly-situated and
24 aggrieved employees meal period premium wages for each day in which they did not provide Plaintiff and
25 other current and former similarly-situated and aggrieved employees an opportunity to take a compliant
26 meal period.

21. At all times relevant, Defendants did not maintain compliant off-duty rest period policies for Plaintiff and all other current and former similarly-situated and aggrieved employees as required by the California Labor Code, nor did they provide rest periods compliant under California law, to Plaintiff and other employees. During Plaintiff's employment, Defendants had a common pattern and practice of failing to properly authorize and permit compliant off-duty rest periods to Plaintiff and other all other current and former similarly-situated and aggrieved employees when they worked greater than 3.5 hours in a workday.

22. Defendants failed to pay Plaintiff and other all other current and former similarly-situated and aggrieved employees rest period premium wages for each day in which they did not authorize or permit them to take compliant rest periods.

23. At all times relevant, Defendants failed to provide Plaintiff and all other current and former similarly-situated and aggrieved employees with wage statements that truly and accurately reflected the wages due to them, specifically including but not limited to the proper number of overtime hours worked during the period in which a non-discretionary bonus was earned. As a result, the proper amount of wages was not properly calculated and accounted for as required by Labor Code § 226(a) and Section 7 of the applicable Wage Order.

24. As a result of these deficiencies and inaccuracies, Plaintiff and other all other current and former similarly-situated and aggrieved employees were not able to promptly and easily determine from this wage statements alone their total overtime and/or all wages earned.

25. Defendants further had a policy and practice of failing to indemnify Plaintiff and all other current and former similarly-situated and aggrieved employees for all necessary expenditures or losses incurred in direct consequence of their duties. As a condition of his employment and part of his job duties, Plaintiff was required to maintain and utilize his own cellphone to access Herc's timekeeping system and communicate with customers and supervisors regarding work-related issues. Plaintiff and on information and belief, all other current and former similarly-situated and aggrieved employees were not reimbursed for these necessary expenses incurred for the benefit of Defendants.

26. Defendants failed to pay Plaintiff and all other current and former similarly-situated and aggrieved employees for all wages due and owing and by the times required by law in the time periods set forth by Labor Code § 204 and Section 4 of the applicable Wage Order in that Defendants failed to properly compensate said employees for all hours worked.

27. On information and belief, Defendants failed to pay Plaintiff and all other current and former similarly-situated and aggrieved employees all wages due and owing at the time of termination of employment, including, but not limited to, minimum wages, regular wages, and overtime wages, as required by Labor Code §§ 201(a) and 202(a).

28. Defendants have engaged in unfair business practices in California and willingly and knowingly have practiced, employed, and utilized the employment patterns and practices alleged in this complaint in violation of Business & Professions Code §§ 17200, *et seq.*

IV.

CLASS ACTION DESIGNATION

29. Plaintiff brings this class action pursuant to Code of Civil Procedure § 382 on behalf of all current and former similarly-situated employees. The Class that Plaintiff seeks to represent is defined as follows:

All current and former non-exempt employees who were employed by Defendants in the State of California as “sales and operations coordinators” or jobs with similar titles at any time commencing four (4) years prior to the filing of this Action.

30. As to Causes of Action One through Eight, Plaintiff seeks to recover on behalf of the Class all remedies available to the extent permitted by law including, but not limited to, wages, damages, penalties, liquidated damages, interest, attorney’s fees, costs, other monies due and owing and injunctive relief.

31. Causes of Action One through Eight are appropriately suited for a class action under Code of Civil Procedure § 382 because:

a. Numerosity: The potential Class as defined is significant in size because Plaintiff is informed and believes and thereon alleges that at all relevant times, Defendants employed over 100 similarly-situated current and former employees who were affected by the unlawful employment

practices alleged herein. Based on the potential class size, joinder of all employees individually would be impractical. Plaintiff also believes that there are more than 100 people that are members of the Class.

b. Commonality: This action involves common questions of law and fact particular to the putative Class because the action focuses on Defendants' systematic course of illegal conduct with respect to violating the Labor Codes and IWC Wage Orders and implementing company-wide policies uniformly applied to all members of the putative Class. These common questions of law and fact include, without limitation:

- i. Whether Defendants failed to pay wages and/or overtime compensation as required by the Labor Code and Wage Orders under Labor Code §§ 510, 1194, 1198 and 1199;
- ii. Whether Defendants violated Labor Code §§ 226.7 and IWC Wage Order 4-2001 or other applicable IWC Wage Orders, by failing to inform Plaintiff and the Putative Class of their right to take compliant off-duty rest periods and failing to provide required rest periods throughout the term of employment and failing to compensate said employees one (1) hours wages in lieu of rest periods;
- iii. Whether Defendants violated Labor Code §§ 226.7 and 512, and IWC Wage Order 4-2001 or other applicable IWC Wage Orders, by failing to authorize and permit Plaintiff and the Putative Class to take complaint, off-duty meal periods throughout the term of their employment and failing to compensate said employees one (1) hours wages in lieu of meal periods;
- iv. Whether Defendants violated Labor Code § 226(a) and Wage Order 4-2001 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11160 by failing to provide an accurate itemized wage statements that identifies all hours worked and all wages earned by Plaintiff and the Putative Class;
- v. Whether Defendants violated §§ 201-203 of the Labor Code by failing to pay compensation due and owing at the time that any putative Class Member's employment with Defendants terminated;

vi. Whether Defendants maintained accurate records of the hours worked by Plaintiff and the Putative Class members as required under the relevant provisions of the Labor Code; and

vii. Whether Defendants violated § 17200 et seq. of the Business & Professions Code by engaging in the acts previously alleged.

c. Typicality: Plaintiff's claims as alleged herein are typical of the claims of each of the putative Class because Plaintiff was subjected to the same violations of his rights under California law and seeks the same types of damages, restitution, and other relief on the same theories and legal grounds as those of the members of the putative Class he seeks to represent.

d. Adequacy of Representation: Plaintiff is able to fairly and adequately protect the interests of all members of the putative Class because it is in his best interest to prosecute the claims alleged herein to obtain full compensation due to his for all pay, benefits and other relief afforded under the Labor Code and IWC Wage Orders. Plaintiff's interest is not in conflict with those of the putative class members. Plaintiff's counsel are competent and experienced in litigating large employment class actions including wage and hour cases such as this case.

e. Superiority of Class Action: Class certification is appropriate because a class action is superior to other available means for the fair and efficient adjudication of these claims. Each putative class member has been damaged and is entitled to recovery by reason of Defendants' illegal policies, and/or practices as alleged herein. Class action treatment will allow those similarly-situated persons to litigate his/her claims in the manner that is most efficient and economical for the parties and the judicial system.

V.

PRIVATE ATTORNEYS GENERAL ACT OF 2004 DESIGNATION

32. The Causes of Action alleged herein are appropriately suited for a Labor Code Private Attorneys General Act of 2004 (hereinafter referred to as "PAGA") representative action because:

a) This action involves allegations of violations of provisions of the California Labor Code that either do not provide for a civil penalty or provide for a civil penalty to be assessed and

collected by the Labor and Workforce Development Agency (hereinafter referred to as "LWDA") or any departments, divisions, commissions, boards, agencies or employees;

- b) Plaintiff MARTIN is an "aggrieved employee" because he is employed by the alleged violators and had one or more of the alleged violations committed against him and, therefore, is properly suited to represent the interests of all other current and former employees of Defendants;
- c) Plaintiff MARTIN seeks to recover all applicable penalties under PAGA on behalf of himself and all other aggrieved employees including, but not limited to, an amount sufficient to recover underpaid wages including all unpaid and/or underpaid wages pursuant to Labor Code § 558.
- d) Pursuant to Labor Code § 2698, et seq., Plaintiff MARTIN has complied with his notice requirements by serving via certified mail, return receipt requested, the LWDA and HERC RENTALS, INC., a notice with his claims for wage and hour violations and penalties. The PAGA claims have been tolled during the pendency of the notice period to the LWDA. The statutory period expired, and the LWDA did not serve Plaintiff MARTIN with a notice of intent to assume jurisdiction over the applicable penalty claims. Therefore, Plaintiff MARTIN has satisfied and exhausted the procedural notice requirement to pursue penalties against Defendants pursuant to Labor Code § 2698, et seq.

VI.
CAUSES OF ACTION

FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM AND REGULAR WAGES
(Violation of Labor Code §§ 1194, 1197, 1198 and the Applicable Wage Order)
(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

33. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth herein.

34. Plaintiff and members of the Putative Class are/were "non-exempt" employees of Defendants in the State of California within the meaning of the Labor Code and the applicable Wage Order.

35. Labor Code § 1197 states “The minimum wage for employees fixed by the commission or by any state or local law, is the minimum wage to be paid to employees, and the payment of a less wage than minimum wage so fixed is unlawful.”

36. Labor Code § 1198 states “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

37. Section 4 of the applicable IWC Wage Order provides that an employer may not pay employees less than the applicable minimum wage for all hours worked.

38. Labor Code § 1194 states “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 his minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees and costs of suit.”

39. As set forth above, Plaintiff and the members of the Putative Class were not paid all minimum and regular wages for all hours worked, including but not limited to the time they worked through their meal periods.

40. At all material times, Defendants were and/or are Plaintiff’s and/or all other current and former similarly-situated and aggrieved employees’ employers and/or persons acting on behalf of Defendants within the meaning of Labor Code § 558/558.1, who violated or caused to be violated, a section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code § 558/558.1 including the payment of the underpaid wages to affected employees.

41. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and individually as employers of Plaintiff and/or all other current and former similarly-situated and aggrieved employees, and/or a person acting on behalf of Plaintiff and/or all other current and former similarly-situated and aggrieved employees employer, who violated, or caused to be violated, any provision

1 regulating minimum wages or hours and days of work in the applicable order of the Industrial Welfare
2 Commission, as well as the California Labor Code Sections 203, 226, 226.7, 1193.6, 1194, 1198 and 2802,
3 and as such, are liable as an employer of Plaintiff and/or all other current and former similarly-situated
4 and aggrieved employees for such violations pursuant to California Labor Code § 558.1.

5 42. As a direct result of Defendants' violations alleged herein, Plaintiff and the members of
6 the putative Class have suffered and continue to suffer, substantial losses related to the use and enjoyment
7 of such wages, including lost interest on such monies and expenses and attorney's fees in seeking to
8 compel Defendants to fully perform their obligation under state law, all to their respective damage in
9 amounts according to proof at trial and within the jurisdictional limitations of this Court.

10 43. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the
11 unpaid wages resulting from Defendants' minimum wage violations including interest thereon, reasonable
12 attorney's fees and costs of suit, penalties, and liquidated damages to the fullest extent permissible
13 including those permitted pursuant to Labor Code §§ 558, 1194 and 1194.2 and Code of Civil Procedure
14 § 1021.5.

15 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO PAY OVERTIME WAGES**

18 (Violation of Labor Code §§ 510, 1198 and the Applicable Wage Order)
(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

19 44. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set
20 forth herein.

21 45. Plaintiff and members of the putative Class are/were "non-exempt" employees of
22 Defendants in the State of California within the meaning of the Labor Code and the applicable Wage
23 Order.

24 46. Labor Code § 510 provides in pertinent part: "Eight hours of labor constitutes a day's work.
25 Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek
26 and the first eight hours worked on the seventh day of work in any one workweek shall be compensated
27 at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in
28

1 excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay
2 for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall
3 be compensated at the rate of no less than twice the regular rate of pay of an employee.”

4 47. Labor Code § 1198 states “The maximum hours of work and the standard conditions of
5 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor
6 for employees. The employment of any employee for longer hours than those fixed by the order or under
7 conditions of labor prohibited by the order is unlawful.”

8 48. Section 3 of the applicable IWC Wage Order provides that an employer may not pay non-
9 exempt employees less than the applicable overtime rate for all overtime hours worked.

10 49. Through Defendants’ conduct during the applicable statutory period including, but not
11 limited to, the conduct alleged herein, including that alleged on information and belief, Defendants failed
12 to pay all Plaintiff and the members of the Putative Class all overtime wages for all overtime worked and
13 recorded, all in violation of Labor Code §§ 510, 1198 and the applicable Wage Order.

14 50. At all material times, Defendants were and/or are Plaintiff’s and/or all other current and
15 former similarly-situated and aggrieved employees’ ’ employers and/or persons acting on behalf of
16 Defendants within the meaning of Labor Code § 558/558.1, who violated or caused to be violated, a
17 section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of
18 work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each
19 underpaid employee as set forth in Labor Code § 558/558.1 including the payment of the underpaid wages
20 to affected employees.

21 51. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
22 individually as employers of Plaintiff and/or all other current and former similarly-situated and aggrieved
23 employees, and/or a person acting on behalf of Plaintiff and/or all other current and former similarly-
24 situated and aggrieved employees employer, who violated, or caused to be violated, any provision
25 regulating minimum wages or hours and days of work in the applicable order of the Industrial Welfare
26 Commission, as well as the California Labor Code Sections 203, 226, 226.7, 510, 1193.6, 1194, 1198 and
27
28

1 2802, and as such, are liable as an employer of Plaintiff for such violations pursuant to California Labor
2 Code § 558.1.

3 52. As a direct result of Defendants' violations alleged herein, Plaintiff and the members of
4 the putative Class have suffered and continue to suffer substantial losses related to the use and enjoyment
5 of such wages, including lost interest on such monies and expenses and attorney's fees in seeking to
6 compel Defendants to fully perform their obligation under state law, all to their respective damage in
7 amounts according to proof at trial and within the jurisdictional limitations of this Court.

8 53. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the
9 unpaid wages resulting from Defendants' overtime wage violations including interest thereon, reasonable
10 attorney's fees and costs of suit, and penalties, to the fullest extent permissible including those permitted
11 pursuant to Labor Code §§ 510, 558, 1194 and 1194.2 and Code of Civil Procedure §1021.5.

12 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

13 **THIRD CAUSE OF ACTION**
14 **FAILURE TO PROVIDE MEAL PERIODS**

15 (Violation of Labor Code §§ 226.7(b), 512(a), 1198
16 and the "Meal Period" Section of the Applicable Wage Order)
17 (Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

18 54. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set
19 forth herein.

20 55. At all times relevant, Plaintiff and the members of the putative Class are and/or were "non-
21 exempt" employee of Defendants in the State of California within the meaning of the Labor Code and the
22 applicable Wage Order.

23 56. Labor Code § 226.7(b) provides: "No employer shall require any employee to work during
24 any meal or rest or recovery period mandated by an applicable order of the Industrial Welfare
25 Commission."

26 57. Labor Code § 512(a) provides: "An employer may not employ an employee for a work
27 period of more than five hours per day without providing the employee with a meal period of not less than
28 30 minutes, except that if the total work period per day of the employee is no more than six hours, the
meal period may be waived by mutual consent of both the employer and employee. An employer may not

1 employ an employee for a work period of more than 10 hours per day without providing the employee
2 with a second meal period of not less than 30 minutes.”

3 58. Labor Code § 1198 states “The maximum hours of work and the standard conditions of
4 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor
5 for employees. The employment of any employee for longer hours than those fixed by the order or under
6 conditions of labor prohibited by the order is unlawful.”

7 59. Section 11 of the applicable IWC Wage Order provides, in part, that no employer shall
8 employ any person for a work period of more than five (5) hours without a meal period of not less than
9 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work
10 the meal period may be waived by mutual consent of the employer and the employee. An employer may
11 not employ an employee for a work period of more than ten (10) hours per day without providing the
12 employee with a second meal period of not less than 30 minutes, except that if the total hours worked is
13 no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the
14 employee only if the first meal period was not waived. Subsection D of the applicable IWC Wage Order
15 § 11 provides that if an employer fails to provide an employee a meal period in accordance with the
16 applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
17 employee’s regular rate of compensation for each workday that the meal period is not provided.

18 60. Through Defendants’ conduct during the applicable statutory period including, but not
19 limited to, the conduct alleged herein, including that alleged on information and belief, Defendants
20 violated Labor Code §§ 226.7(b), 512(a), 1198, and the applicable Wage Order when they failed to provide
21 a 30-minute uninterrupted, duty-free meal period no later than the start of the sixth hour of work during
22 work periods in excess of five consecutive hours and, when applicable, when it failed to provide a second
23 30-minute uninterrupted, duty-free meal period no later than the start of the eleventh hour of work.

24 61. Labor Code § 226.7(c) and the applicable IWC Wage Order § 11(D) provide that the
25 employer shall pay an employee one hour of pay at the employee’s regular rate of compensation for each
26 workday that the meal period is not provided. Defendants have not paid the appropriate meal premium
27
28

1 wages to Plaintiff and, and on information and belief, all other current and former similarly-situated and
2 aggrieved employees.

3 62. At all material times, Defendants were and/or are Plaintiff's and/or all other current and
4 former similarly-situated and aggrieved employees' employers and/or persons acting on behalf of
5 Defendants within the meaning of Labor Code § 558/558.1, who violated or caused to be violated, a
6 section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of
7 work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each
8 underpaid employee as set forth in Labor Code § 558/558.1 including the payment of the underpaid wages
9 to affected employees.

10 63. Pursuant to California Labor Code § 558.1, Defendants a person acting on behalf of
11 Plaintiff and/or all other current and former similarly-situated and aggrieved employees employer, who
12 violated, or caused to be violated, any provision regulating minimum wages or hours and days of work in
13 the applicable order of the Industrial Welfare Commission, as well as the California Labor Code Sections
14 203, 226, 226.7, 512, 1193.6, 1194 and 2802, and as such, are liable as an employer of Plaintiff for such
15 violations pursuant to California Labor Code § 558.1.

16 64. As a direct result of Defendants' violations alleged herein, Plaintiff and all other current
17 and former similarly-situated and aggrieved employees have suffered and continue to suffer substantial
18 losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses
19 and attorney's fees in seeking to compel Defendants to fully perform their obligation under state law, all
20 to the respective damage in amounts according to proof at trial and within the jurisdictional limitations of
21 this Court.

22 65. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the
23 unpaid wages resulting from Defendants' meal period violations including interest thereon, reasonable
24 attorney's fees and costs of suit, and penalties to the fullest extent permissible including those permitted
25 pursuant to Labor Code §§ 226.7, 512, 558, 558.1, and Code of Civil Procedure § 1021.5.

26 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

27 ///

FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS

(Violation of Labor Code §§ 226.7(b), 1198,
and the “Rest Period” Section of the Applicable Wage Order)
(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

66. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth herein.

67. At all times relevant, Plaintiff and the members of the Putative Class are and/or were “non-exempt” employee of Defendants in California within the meaning of the Labor Code and the applicable Wage Order.

68. Labor Code § 1198 makes the employment of any employee under conditions of labor prohibited by a Wage Order unlawful.

69. By Order of the Industrial Welfare Commission, 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. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes rest time per four (4) hours or major fraction thereof. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages as provided in the applicable IWC Wage Order.

70. Pursuant to Labor Code § 226.7(c) and the applicable IWC Wage Order, Defendants shall pay Plaintiff one additional hour of pay at the employees’ regular rate of compensation for each day that the rest period is not authorized and permitted.

71. Through Defendants’ conduct during the applicable statutory period including the conduct alleged herein, Defendants violated Labor Code §§ 226.7 and 1198 and the IWC Wage Order when they failed to authorize and permit full 10-minute, uninterrupted, duty-free rest periods for every four hours worked (or major fraction thereof) to Plaintiff and, on information and belief, all other current and former similarly-situated and aggrieved employees during the time period each employee worked for Defendants.

72. Defendants further have failed to pay to Plaintiff and, on information and belief, all other current and former similarly-situated and aggrieved employees the rest period wage premiums pursuant to Section 226.7. Defendants’ omissions in failing to pay the applicable wages set forth in Section 226.7

1 are not in good faith, and further, Defendants had no reasonable grounds for believing the omissions are
2 not in violation of the Labor Code relating to an order of the commission.

3 73. At all material times, Defendants were and/or are Plaintiff and all other current and former
4 similarly-situated and aggrieved employees' employers or persons acting on behalf of their employer,
5 within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of
6 Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any
7 Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid
8 employee as set for in Labor Code § 558 including the payment of the underpaid wages to affected
9 employees.

10 74. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
11 individually as employers of Plaintiff, and/or a person acting on behalf of Plaintiff and all other current
12 and former similarly-situated and aggrieved employees' employer, who violated, or caused to be violated,
13 any provision regulating minimum wages or hours and days of work in the applicable order of the
14 Industrial Welfare Commission, as well as the California Labor Code Sections 203, 226, 226.7, 1193.6,
15 1194, 1198 and 2802, and as such, are liable as an employer of Plaintiff and all other current and former
16 similarly-situated and aggrieved employees for such violations pursuant to California Labor Code § 558.1.

17 75. As a direct result, Plaintiff and all other current and former similarly-situated and aggrieved
18 employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of
19 such wages, including lost interest on such monies and expenses and attorney's fees in seeking to compel
20 Defendants to fully perform their obligation under state law, all to the respective damage in amounts
21 according to proof at trial and within the jurisdictional limitations of this Court.

22 76. Pursuant to the Labor Code, Plaintiff seeks to recover in a civil action the unpaid balance
23 of the full amount of the unpaid wages including interest thereon, reasonable attorney's fees and costs of
24 suit to the fullest extent permissible including those permitted pursuant to Labor Code §§ 226.7, 558,
25 558.1, and Code of Civil Procedure § 1021.5.

26 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

27 ///

FIFTH CAUSE OF ACTION
FAILURE TO INDEMNIFY PLAINTIFF EXPENSES
AND LOSSES IN DISCHARGING HIS DUTIES

(Violation of Labor Code § 2802)
(Alleged by Plaintiff against All Defendants)

77. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth herein.

78. At all times relevant herein, as a condition of his employment, Plaintiff, and on information and belief, all other current and former similarly-situated and aggrieved employees were required to utilize their own supplies, including personal cell phones, to perform their job duties.

79. Labor Code § 2802(a) states “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

80. At all relevant times herein, Defendants failed to reimburse Plaintiff, and on information and belief, all other current and former similarly-situated and aggrieved employees for necessary expenditures and losses incurred in direct consequence to the discharge of their duties in violation of Labor Code § 2802. Consequently, Plaintiff and all other current and former similarly-situated and aggrieved employees are entitled to reimbursement for expenses incurred as a result of being required to purchase, maintain and utilize their personal cell phones which were necessary to perform their job duties. Defendants, and each of them, derived and continue to derive an unjust and inequitable economic benefit by failing to comply with the sections alleged herein.

81. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and individually as employers of Plaintiff and all other current and former similarly-situated and aggrieved employees, and/or a person acting on behalf of Plaintiff and all other current and former similarly-situated and aggrieved employees employer, who violated, or caused to be violated, any provision regulating minimum wages or hours and days of work in the applicable order of the Industrial Welfare Commission, as well as the California Labor Code Sections 203, 226, 226.7, 1193.6, 1194, 1198 and 2802, and as such, are liable as an employer of Plaintiff and all other current and former similarly-

1 situated and aggrieved employees for such violations pursuant to California Labor Code § 558.1.

2 82. As a direct result of violating Labor Code § 2802(a), Plaintiff and all other current and
3 former similarly-situated and aggrieved employees have suffered and continue to suffer, substantial losses
4 related to such earned but unpaid wages, incurred expenses, and the use and enjoyment of earned wages,
5 lost interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully
6 perform his obligations under the law, all in an amount to be proved at time of trial.

7 83. Labor Code § 2802(b) states “All awards made by a Court or by the Division of Labor
8 Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest
9 at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee
10 incurred the necessary expenditure or loss.” The exact amount of interest is in an amount to be proven at
11 time of trial.

12 84. Furthermore, Labor Code §2802(c) states “For the purposes of this section, the term
13 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's
14 fees incurred by the employee in enforcing the rights granted by this section.” Therefore, Plaintiff will
15 seek to recover the amounts unreimbursed, interest, and the costs and attorney's fees he will necessarily
16 incur in pursuing same. The exact amount of reimbursements, interest, costs and attorney's fees will be in
17 an amount to be proved at time of trial.

18 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

19 **SIXTH CAUSE OF ACTION**
20 **FAILURE TO PROVIDE AND MAINTAIN ACCURATE**
21 **ITEMIZED WAGE STATEMENTS**

22 (Violation of Labor Code §§ 226(a), 1198 and the Applicable Wage Order)
23 (Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

24 85. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set
25 forth herein.

26 86. At all times relevant, Plaintiff and members of the putative Class are/were an employee of
27 Defendants within the meaning of the Labor Code and the applicable Wage Order.

28 87. Labor Code § 226(a) states in pertinent part “Every employer shall, semimonthly or at the
time of each payment of wages, furnish each of his or her employees, either as a detachable part of the

1 check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal
2 check or cash, an accurate itemized statement in writing showing:

3 (1) Gross wages earned;

4 (2) Total hours worked by the employee, except for any employee whose compensation is
5 solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section
6 515 or any applicable order of the Industrial Welfare Commission; [...]

7 (4) All deductions, provided that all deductions made on written orders of the employee
8 may be aggregated and shown as one item;

9 (5) Net wages earned;

10 (6) The inclusive dates of the period for which the employee is paid;

11 (7) The name of the employee and only the last four digits of his or her social security
12 number or an employee identification number other than the social security number;

13 (8) The name and address of the legal entity that is the employer...;

14 (9) All applicable hourly rates in effect during the pay period and the corresponding
15 number of hours worked at each hourly rate by the employee.... The deductions made from payment of
16 wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and
17 year, and a copy of the statement and the record of the deductions shall be kept on file by the employer
18 for at least three years at the place of employment or at a central location within the State of California.”

19 88. Labor Code § 1198 states “The maximum hours of work and the standard conditions of
20 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor
21 for employees. The employment of any employee for longer hours than those fixed by the order or under
22 conditions of labor prohibited by the order is unlawful.”

23 89. The relevant IWC Wage Order § 7(A) states in relevant part that the employer shall keep
24 accurate information regarding “(3) Time Records showing when the employee begins and ends each
25 work period... (4) Total wages paid each payroll period, including value of board, lodging, or other
26 compensation actually furnished to the employee. (5) Total hours worked in the payroll period and
27 applicable rates of pay.”

1 90. Through Defendants’ conduct during the applicable statutory period including, but not
2 limited to, the conduct alleged herein, on information and belief, Defendants failed to provide Plaintiff
3 and, on information and belief, all other current and former similarly-situated and aggrieved employees
4 accurate wage statements. For example, in addition to the derivative violations suffered by Plaintiff and
5 all other current and former similarly-situated and aggrieved employees as a result of the other violations
6 detailed above, Defendants also failed to provide a wage statement that properly identified the number of
7 overtime hours worked and numbers of vacation and sick hours accrued.

8 91. Plaintiff and all other current and former similarly-situated and aggrieved employees
9 suffered injuries as a result of Defendants’ intentional and knowing failure to provide and maintain the
10 writings required by Labor Code § 226(a) and the IWC Wage Orders. Defendants’ failure to provide and
11 maintain accurate statements left Plaintiff and all other current and former similarly-situated and aggrieved
12 employees without the ability to know, understand, and question the hours worked and wages earned and
13 due. As a direct result, Plaintiff and all other current and former similarly-situated and aggrieved
14 employees have suffered and continue to suffer substantial injuries, losses and actual damages related to
15 Defendants’ violations, including lost wages, lost interest on such wages, and expense and attorney’s fees
16 in seeking to compel Defendants to fully perform their obligations.

17 92. Labor Code § 226(e)(1) states “An employee suffering injury as a result of a knowing and
18 intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all
19 actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
20 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate
21 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's
22 fees.” Labor Code §226(e)(2)(B) states “An employee is deemed to suffer injury for purposes of this
23 subdivision if the employer fails to provide accurate and complete information as required by any one or
24 more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily
25 determine from the wage statement alone one or more of the following: (i) The amount of gross wages or
26 net wages paid to the employee during the pay period or any other information required to be provided on
27 the itemized wage statement pursuant to items (2) to (4), inclusive, (6) and (9) of subdivision (a)...”
28

1 Because Plaintiff at times did not receive any wage statements, or the wage statements did not include,
2 among other things, an accurate accounting of gross wages earned or total hours worked he is deemed to
3 have suffered injury.

4 93. Labor Code § 226(h) states “An employee may also bring an action for injunctive relief to
5 ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees.”

6 94. At all material times, Defendants were and/or are Plaintiff's and/or all other current and
7 former similarly-situated and aggrieved employees' employers and/or persons acting on behalf of
8 Defendants within the meaning of Labor Code § 558, who violated or caused to be violated, a section of
9 Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of work in any
10 Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid
11 employee as set forth in Labor Code § 558 including the payment of the underpaid wages to affected
12 employees.

13 95. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
14 individually as employers of Plaintiff, and all other current and former similarly-situated and aggrieved
15 employees, and/or a person acting on behalf of Plaintiff and all other current and former similarly-
16 situated and aggrieved employees' employer, who violated, or caused to be violated, any provision
17 regulating minimum wages or hours and days of work in the applicable order of the Industrial Welfare
18 Commission, as well as the California Labor Code Sections 203, 226, 226.7, 1193.6, 1194, 1198 and
19 2802, and as such, are liable as an employer of Plaintiff for such violations pursuant to California Labor
20 Code § 558.1.

21 96. As a direct result of Defendants' violations alleged herein, Plaintiff and all other current
22 and former similarly-situated and aggrieved employees have suffered and continue to suffer injury
23 including substantial losses related to the use and enjoyment of such wages, lost interest on such monies
24 and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligation under
25 state law, all to the respective damage in amounts according to proof at trial and within the jurisdictional
26 limitations of this Court.

27 ///

1 97. Plaintiff seeks to recover in a civil action all remedies including damages, unpaid wages,
2 penalties, attorney's fees and costs, and injunctive relief to the fullest extent permissible including those
3 permitted pursuant to Labor Code §§ 226(e) and (h), 558, 558.1, and Code of Civil Procedure § 1021.5.

4 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

5 **SEVENTH CAUSE OF ACTION**
6 **FAILURE TO TIMELY PAY WAGES DUE**
7 **DURING AND UPON SEPARATION OF EMPLOYMENT**
(Violation of Labor Code §§ 201(a), 202(a), 203, and 204(a))
(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

8 98. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set
9 forth herein.

10 99. Plaintiff and members of the Class are/were "non-exempt" employees of Defendants within
11 the meaning of the Labor Code and the applicable Wage Order.

12 100. Labor Code § 201(a) states "If an employer discharges an employee, the wages earned and
13 unpaid at the time of discharge are due and payable immediately."

14 101. Labor Code § 202(a) states "If an employee not having a written contract for a definite
15 period quits his or her employment, his or her wages shall become due and payable not later than 72 hours
16 thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which
17 case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other
18 provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive
19 payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall
20 constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the
21 notice of quitting."

22 102. Labor Code section 204(a) states in pertinent part, "All wages . . . earned by any person in
23 any employment are due and payable twice during each calendar month, on days designated in advance
24 by the employer as the regular paydays."

25 103. On information and belief, Defendants willfully failed to provide members of the Class
26 with all wages due and owing, including minimum wages, overtime wages, regular wages, by the time
27 specified by Labor Code §§ 201(a), 202(a), and 204 (a) as applicable.
28

1 104. Labor Code § 203(a) states, in relevant part, “If an employer willfully fails to pay, without
2 abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an
3 employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the
4 due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall
5 not continue for more than 30 days.”

6 105. At all material times, Defendants were and/or are Plaintiff’s and/or all other current and
7 former similarly-situated and aggrieved employees’ employers and/or persons acting on behalf of
8 Defendants within the meaning of Labor Code § 558/558.1, who violated or caused to be violated, a
9 section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of
10 work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each
11 underpaid employee as set forth in Labor Code § 558/558.1 including the payment of the underpaid wages
12 to affected employees.

13 106. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
14 individually as employers of Plaintiff and all other current and former similarly-situated and aggrieved
15 employees, and/or a person acting on behalf of Plaintiff and all other current and former similarly-situated
16 and aggrieved employees’ employer, who violated, or caused to be violated, any provision regulating
17 minimum wages or hours and days of work in the applicable order of the Industrial Welfare Commission,
18 as well as the California Labor Code Sections 203, 226, 226.7, 1193.6, 1194, 1198 and 2802, and as such,
19 are liable as an employer of Plaintiff and all other current and former similarly-situated and aggrieved
20 employees for such violations pursuant to California Labor Code § 558.1.

21 107. As a direct result of Defendants’ violations alleged herein, Plaintiff and members of the
22 putative Class have suffered and continue to suffer substantial losses related to the use and enjoyment of
23 such wages, including lost interest on such monies and expenses and attorney’s fees in seeking to compel
24 Defendants to fully perform their obligation under state law, all to their respective damage in amounts
25 according to proof at trial and within the jurisdictional limitations of this Court.

26 108. Plaintiff seeks to recover in a civil action all remedies to the fullest extent permissible
27 including those permitted pursuant to Labor Code § 203.
28

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

EIGHTH CAUSE OF ACTION

VIOLATION OF BUSINESS & PROFESSIONS CODE §§ 17200, ET SEQ.

(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

109. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth herein.

110. Business & Professions Code § 17200 states “As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.”

111. Through Defendants’ conduct during the applicable statutory period including, but not limited to, the conduct alleged herein, including that alleged on information and belief, Defendants have engaged in business practices in California by practicing, employing, and utilizing, the employment practices outlined in the preceding paragraphs all in violation of California law and the Industrial Welfare Commission Wage Orders. Defendants’ use of such practices constitutes an unfair business practice, unfair competition, and provides an unfair advantage over Defendants’ competitors doing business in the State of California that comply with their obligations to properly provide employment conditions in compliance with the law and pay employees for all earned wages and compensation as required by law.

112. Defendants’ violations of the Labor Code and the Industrial Welfare Commission Wage Orders and their scheme to lower payroll costs as alleged herein constitute unlawful business practices because these actions were done in a systematic manner over a period of time to the detriment of Plaintiff and the Class. The acts complained of herein occurred within the last four (4) years preceding the filing of this complaint and include, but are not limited to, failure to (i) pay proper minimum, overtime, and regular wages; (ii) pay timely wages during and upon separation of employment; (iii) maintain accurate records and provide and maintain accurate itemized wage statements; (iv) provide compliant meal and rest breaks; and (v) provide proper hiring and commission/bonuses documents to employees during their employment.

1 113. Plaintiff is informed and believes and on that basis alleges that, at all times herein
2 mentioned, Defendants have engaged in the above-mentioned acts of unlawful, deceptive, and unfair
3 business practices prohibited by California Business and Professions Code §§ 17200, *et seq.*, including
4 those set forth in the preceding paragraph, thereby depriving Plaintiff and the Class the minimum working
5 condition standards and conditions due, including those under California Labor Code and Wage Order of
6 the Industrial Welfare Commission.

7 114. As a result of Defendants' unfair competition as alleged herein, Plaintiff has suffered injury
8 in fact and lost money or property. Plaintiff has been deprived of the rights to wages and benefits due as
9 alleged herein.

10 115. Pursuant to California Business & Professions Code § 17203, Plaintiff is entitled to seek
11 restitution of all wages and other monies owed on behalf of himself and the represented employees
12 belonging to them, including interest thereon, which Defendants wrongfully withheld from them and
13 retained for themselves by means of its unlawful and unfair business practices.

14 116. Plaintiff is entitled to an injunction and other declaratory and equitable relief against such
15 practices to prevent future damage for which there is no adequate remedy at law, and to avoid a multiplicity
16 of lawsuits.

17 117. Plaintiff is informed and believes, and on that basis, alleges, that the illegal conduct alleged
18 herein is continuing and there is no indication that Defendants will not continue such activity into the
19 future. Plaintiff alleges that if Defendants are not enjoined from the conduct set forth in this Complaint,
20 they will continue to fail to pay the wage and compensation required to be paid and will fail to comply
21 with other requirements of the California Labor Code and Wage Order of the Industrial Welfare
22 Commission.

23 118. As a direct and proximate result of Defendants' conduct, Defendants have received and
24 will continue to receive monies that rightfully belong to members of the general public who have been
25 adversely affected by Defendants' conduct, as well as to Plaintiff by virtue of unpaid wages and other
26 monies.

119. Plaintiff is entitled and seeks any and all available remedies including restitution and recovery of reasonable attorney's fees pursuant to California Code of Civil Procedure §1021.5, Business and Professions Code § 17200, *et seq.*, the substantial benefit doctrine, and/or the common fund doctrine.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

NINTH CAUSE OF ACTION
PRIVATE ATTORNEY GENERAL ACT (PAGA)

(Violation of Labor Code § 2699, *et seq.*)
(Alleged by Plaintiff Individually and On Behalf of all current and former Aggrieved Employees
Against All Defendants)

120. Plaintiff MARTIN realleges and incorporates by reference the foregoing allegations, as though set forth herein.

121. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or himself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

122. Plaintiff MARTIN is an "aggrieved employee" because he was employed by the alleged violator and had one or more of the alleged violations committed against him and therefore is properly suited to represent the interests of other current and former aggrieved employees of Defendant.

123. On or about March 5, 2020 pursuant to Labor Code § 2698, *et seq.*, Plaintiff MARTIN served via certified mail, return receipt requested DEFENDANT, Herc Rentals, Inc., and, on March 4, 2020, via on-line services the LWDA with his claims for wage and hour violations and penalties. The statutory period expired, and the LWDA did not serve Plaintiff with a notice of intent to assume jurisdiction over the applicable penalty claims. Therefore, Plaintiff has satisfied and exhausted the procedural notice requirement to pursue penalties against Defendant pursuant to Labor Code §2698, *et seq.*

124. Labor Code § 1198 states "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under

1 conditions of labor prohibited by the order is unlawful.”

2 125. Defendants violated Labor Code §§ 226.7, 512, and 1198 by failing to provide Plaintiff and
3 current and former aggrieved employees lawfully complaint meal periods and by failing to pay them
4 wages for each day a meal period was not provided. Under Labor Code § 2699 (f)(2) Defendants are
5 subject to a civil penalty of \$100 for each aggrieved employee per pay period for an initial violation and
6 \$200 for each aggrieved employee per pay period for each subsequent violation.

7 126. Defendants violated Labor Code §§ 226.7 and 1198 by failing to provide Plaintiff and
8 current and former aggrieved employees duty-free rest periods and by failing to pay them premium wages
9 for each day a rest period was not provided. Under Labor Code § 2699(f)(2) Defendants are subject to a
10 civil penalty of \$100 for each aggrieved employee per pay period for an initial violation and \$200 for each
11 aggrieved employee per pay period for each subsequent violation.

12 127. Defendants violated Labor Code §§ 1194, 1197, and 1198 by failing to pay Plaintiff and
13 current and former aggrieved employees at least minimum and regular wages for the time permitted to
14 work, engaged in work, and/or under Defendants’ control as alleged herein. Under Labor Code § 2699
15 (f)(2) Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for an
16 initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

17 128. Defendants violated Labor Code §§ 510 and 1198 by failing to pay Plaintiff and current and
18 former aggrieved employees overtime wages for the time permitted to work, engaged in work, and/or
19 under Defendants’ control as alleged herein. On information and belief, at all relevant times, Plaintiff and
20 other current and former aggrieved employees were not paid overtime wages when they worked in excess
21 of eight (8) hours a day or forty (40) hours within a workweek. Therefore, under Labor Code § 2699 (f)(2)
22 Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for an initial
23 violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

24 129. Labor Code §§ 226(a), 1174(d), and 1198 and Section 6 of the applicable IWC Wage Order
25 by failing to maintain records detailing the start and end times of work shifts and meal periods, and
26 knowingly and intentionally failing to maintain and provide Plaintiff and other current and former
27 aggrieved employees of Defendants with accurate wage statements itemizing all information required by
28

1 Labor Code § 226(a), as alleged herein, including the correct total hours worked, all regular hours worked,
2 overtime hours worked, the correct applicable hourly rate per hour worked, the and the correct total wages
3 earned. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each
4 aggrieved employee per pay period for the initial violation of Labor Code §§ 226(a) and 1198, and \$200
5 for each aggrieved employee per pay period for each subsequent violation.

6 130. Alternatively, Labor Code § 226.3 provides for a civil penalty in the amount of \$250 per
7 violation in an initial citation and \$1,000 for each violation in a subsequent citation for failure to provide
8 accurate itemized wage statements.

9 131. Under Labor Code § 1174.5 an employer who willfully fails to maintain the records by
10 Labor Code § 1174 is a subject to a civil penalty of \$500.

11 132. Defendants violated Labor Code §§ 201, 202, 203, and 1198 by failing to pay Plaintiff and
12 other current and former aggrieved employees all minimum, regular, and overtime wages owed, and all
13 meal and rest premiums wages owed by the time set forth by law upon their separation of employment as
14 alleged herein. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for
15 each aggrieved employee per pay period for the initial violation of Labor Code §§ 201, 202, 203, and
16 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

17 133. Defendants violated Labor Code §§ 204 and 1198 by failing to pay Plaintiff and other
18 current and former aggrieved employees all minimum, regular, and overtime wages owed, and all meal
19 and rest premiums wages owed by the time set forth by law upon during their employment as alleged
20 herein. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each
21 aggrieved employee per pay period for the initial violation of Labor Code §§ 204 and 1198, and \$200 for
22 each aggrieved employee per pay period for each subsequent violation.

23 134. As set forth herein, Defendant violated Labor Code sections 201, 202, 203, 204, 223, 226,
24 226.7, 510, 512, 1174, 1197, 1198, 2810.5 and Labor Code § 2699, *et seq.*, imposes upon Defendants, and
25 each of them, penalties for violating the Labor Code, including those penalties set forth in 210, 226.3, 256,
26 558, 1174.5, 1197.1, 1194.2 and 2698, *et seq.*

27 ///

136. For bringing this action, Plaintiff MARTIN is entitled to attorney's fees and costs incurred herein.

WHEREFORE, Plaintiff MARTIN prays for relief as hereinafter requested.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for damages for judgment against Defendants, jointly and severally, as applicable, as follows:

- a. For injunctive relief as provided by the Labor Code and to the extent permitted by law including, but not limited to, pursuant to § 226(h) and Business and Professions Code §17200, *et seq.* and including injunctive relief to compel Defendants to produce all records as required by § 226(h) and the “Records” section of the applicable IWC wage order;
- b. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
- c. For an order requiring Defendants to restore and disgorge all funds to each affected person acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et seq.*;
- d. For penalties to the extent permitted pursuant to the Labor Code, Orders of the Industrial Welfare Commission including, but not limited to, waiting time penalties under Labor Code § 203, penalties under Labor Code §§ 226(e), 226.3, 210, 226.8, 558, and 1174.5, and PAGA penalties pursuant to Labor Code §2698 *et seq.*;
- e. For an award of unpaid wages, including regular wages, minimum and overtime wages, to the extent permissible by law to each affected person;

- 1 f. For penalties to the extent permitted pursuant to the Labor Code, Orders of the Industrial
2 Welfare Commission including, but not limited to, waiting time penalties under Labor
3 Code § 203, penalties under Labor Code §§ 226(e), and 558.1 penalties;
4 g. For an award of actual damages to the extent permissible by the Labor Code including
5 Labor Code § 226(e);
6 h. For an award of liquidated damages to the extent permissible by Labor Code §1194.2;
7 i. For pre- and post-judgment interest to the extent permitted by law including, but not
8 limited to, Labor Code §§ 218.6 and 1194;
9 j. For reasonable attorney's fees and cost of suit and, to the extent permitted by law,
10 including pursuant to Labor Code §§ 218.5, 226, 1194, 2698 et seq. and Code of Civil
11 Procedure § 1021.5; and
12 k. An award of such other and further relief as this Court deems proper and just.

13
14 Dated: July 9, 2020

ShortLegal, APC

15
16 By: Dorota James

BRIAN R. SHORT
DOROTA A. JAMES
Attorneys for Plaintiff HECTOR MARTIN

17
18
19 **DEMAND FOR JURY TRIAL**

20 Plaintiff hereby demands trial by jury to the extent authorized by law.
21

22 Dated: July 9, 2020

ShortLegal, APC

23
24 By: Dorota James

BRIAN R. SHORT
DOROTA A. JAMES
Attorneys for Plaintiff HECTOR MARTIN