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ENDORSED
 FILED
 ALAMEDA COUNTY
 MAY 13 2020

CLERK OF THE SUPERIOR COURT
 By Alex R. Kosenko Jr, Deputy

Attorneys for Plaintiff OVIDIO G. GRAMAJO RODAS
 on behalf of himself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF ALAMEDA**

OVIDIO G. GRAMAJO RODAS, an
 individual, on behalf of himself and others
 similarly situated,

Plaintiff,

vs.

ANDREW CHEKENE ENTERPRISES,
 INC., a California corporation; and DOES 1
 through 50, inclusive,

Defendants.

Case No.: RG20057424

CLASS ACTION

Assigned for All Purposes To:
 Hon. Brad Seligman
 Dept.: 23

**FIRST AMENDED CLASS ACTION
 COMPLAINT FOR:**

1. Failure to Pay Minimum Wages and for All Hours Worked;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code § 226(a)
6. Violation of Labor Code § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203;
9. Failure to Reimburse Necessary Business Expenses under Labor Code § 2802;
10. Violation of Business & Professions Code § 17200 *et seq.*; and
11. Penalties under PAGA, Labor Code § 2698

DEMAND FOR JURY TRIAL

Original Complaint Filed: March 5, 2020
 Trial Date: None set.

BY FAX

1 Plaintiff OVIDIO G. GRAMAJO RODAS (hereinafter “Plaintiff”), on behalf of himself
2 and all other similarly situated non-exempt, hourly construction workers employed by Defendants
3 in California (collectively, “Employees”; individually, “Employee”) complains of Defendants, and
4 each of them, as follows:

5 **INTRODUCTION**

6 1. Plaintiff brings this action on behalf of himself and all current and former
7 Employees within the State of California who, at any time four (4) years prior to the filing of this
8 lawsuit, are or were employed as non-exempt, hourly construction workers by Defendants
9 ANDREW CHEKENE ENTERPRISES, INC., a California corporation, and DOES 1 through 50
10 (all defendants being collectively referred to herein as “Defendants”). Plaintiff alleges that
11 Defendants, and each of them, violated various provisions of the California Labor Code, relevant
12 orders of the Industrial Welfare Commission (IWC), and California Business & Professions Code,
13 and seeks redress for these violations.

14 2. Plaintiff and the Class members worked as hourly, non-exempt construction
15 employees for Defendants. Plaintiff, and upon information and belief other similarly situated
16 Employees, were required to perform various construction related work tasks for various
17 contracted job sites of Defendants’ customers. Plaintiff has resided in Contra Costa County,
18 California and was generally employed by Defendants throughout his employment based out of
19 Defendants’ offices and facilities in Hayward, California, and was generally asked to perform
20 construction tasks specific to painting and flooring and other related construction tasks at
21 Defendants’ various job sites. He consistently worked at Defendants’ behest without being paid all
22 wages due and provided all required breaks. More specifically, Plaintiff and the other similarly
23 situated Class members were employed by Defendants and worked at Defendants’ job sites
24 performing construction related job duties. Upon information and belief, Plaintiff was employed
25 by Defendants and (1) shared similar job duties and responsibilities (2) was subjected to the same
26 policies and practices (3) and endured similar violations at the hands of Defendants as the other
27 Employee Class members who served in similar and related positions.

1 3. Defendants required Plaintiff and the Employees in the Class to work off the clock
2 and failed to record accurate time worked by these Employees, failed to pay them at the
3 appropriate rates for all hours worked, failed to pay all wages due and owing at termination or
4 resignation, and provided Plaintiff and the Class members with inaccurate wage statements that
5 prevented them from learning of these unlawful pay practices. Defendants also failed to provide
6 Plaintiff and the Class with lawful meal and rest periods, as Employees were required to remain
7 under Defendants' control and were not provided with the opportunity to take full uninterrupted
8 and duty-free rest periods and meal breaks, as required by the Labor Code and the applicable
9 paragraphs of the IWC Wage Orders.

10 4. Defendant ANDREW CHEKENE ENTERPRISES, INC. is a California
11 Corporation with its offices and headquarters located in Hayward, California in Alameda County.
12 Upon information and belief, it also does business as "A.C. Enterprises," which was the name of
13 the employer listed on the wage statements Defendants issued to Plaintiff. Defendant ANDREW
14 CHEKENE ENTERPRISES, INC. doing business as A.C. Enterprises explains in its web-site that
15 it is a general contracting firm based in the San Francisco Bay Area that specializes in
16 reconstruction and repair work for condominiums, apartments, townhouses and single-family
17 homes serving the Northern California region and Hawaii.

18 5. This Court has jurisdiction over this Action pursuant to California Code of Civil
19 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
20 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
21 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
22 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
23 obligations and liabilities giving rise to this lawsuit occurred, at least in part in Alameda County
24 where Defendant AC Enterprises is headquartered and maintains offices, and Defendants operate
25 at facilities and construction work-sites located throughout Northern California where Plaintiff and
26 the other Class members were employed.

27 6. The true names and capacities, whether individual, corporate, associate, or
28 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently

1 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
2 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
3 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
4 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
5 this Complaint to reflect the true names and capacities of the Defendants designated herein as
6 Does 1 through 50 when their identities become known.

7 7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
8 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
9 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
10 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
11 all respects as the employers or joint employers of Employees. Defendants, and each of them,
12 exercised control over the wages, hours or working conditions of Employees, created and
13 implemented the policies and practices that governed the employment of Plaintiff and the Class
14 members and dictated their job duties and responsibilities, or otherwise suffered or permitted
15 Plaintiff and the other Employee Class members to work, or engaged, thereby creating a common
16 law employment relationship, with the Employee Class members. Therefore, Defendants, and each
17 of them, employed or jointly employed the Employee Class members.

18 **FACTUAL BACKGROUND**

19 8. The Employees who comprise the Class, including Plaintiff, are non-exempt
20 employees of Defendants pursuant to the applicable Wage Order of the Industrial Welfare
21 Commission (“IWC”). Upon information and belief, their employment has not been governed
22 under any collective bargaining agreements. During the period of four years prior to the filing of
23 this action through its resolution, Plaintiff and the Class members were either not paid by
24 Defendants for all hours worked or were not paid at the appropriate minimum, regular and
25 overtime rates. Plaintiff also contends that Defendants failed to pay Plaintiff and the Class
26 members all wages due and owing, including by requiring off the clock work, failed to provide
27 meal and rest breaks, and failed to furnish accurate wage statements and timely pay all wages
28 owed, all in violation of various provisions of the California Labor Code and applicable

1 paragraphs of the IWC Wage Orders.

2 9. During the course of Plaintiff and the Class members' employment with
3 Defendants, they were not paid all wages they were owed, including for all work performed
4 (resulting in "off the clock" work) and for all their overtime hours worked. This has resulted in
5 systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders.
6 Upon information and belief, Defendants employ other non-exempt, hourly employees as
7 construction workers at their job sites in California.

8 10. Plaintiff was generally scheduled to work at least eight hour shifts, for five days a
9 week and more as required, but Employees worked significantly longer than their scheduled
10 shifts and for which they were actually paid. Shifts were generally scheduled to start at 8:00 a.m.
11 and continue for eight hours of on the clock work, excluding a 30 minute meal period Defendants
12 presumed was provided. However, Plaintiff and the Class members were required to arrive by
13 7:30 a.m. at their work site or at Defendants' facilities or other locations they were instructed to
14 report to and were considered late for their shifts if they did not report by 7:30 a.m. to begin
15 performing job duties necessary for the day's work. Foremen and supervisors, rather than
16 Plaintiff and the Class members themselves, were in charge of recording and counting hours
17 worked by the Employees, and would record shifts according to their scheduled times rather than
18 the actual hours worked. Supervisors/foremen would record times worked by employees during
19 each shift at a job site on a master listing, as the workers did not enter them into a system or have
20 separate time sheets or any sort of electronic timekeeping entries. Supervisors were also the ones
21 who recorded when and if meal periods were allegedly provided. Even when Plaintiff was able to
22 review the time entries, it did not matter because Defendants' supervisors would not change
23 entries to reflect actual hours worked and would automatically deduct 30 minutes for lunch,
24 whether it was taken or not. For example, when Plaintiff was provided only ten minutes for a
25 meal period, Defendants would automatically deduct 30 minutes from his hours worked for pay
26 purposes.

1 11. Under Defendants' uniformly applied policies and procedures, supervisors and
2 foreman would only record eight hours for each work shift even though in most cases, more than
3 eight hours were worked. Despite scheduling employees to work for more than eight hours on
4 their shifts, including expecting them to arrive a 30 minutes before their scheduled shift times and
5 failing to authorize and permit lawful, off-duty meal periods for at least 30 minutes, Defendants
6 failed to pay for all hours worked by Plaintiff and the Class members and failed to pay any
7 overtime hours worked at applicable premium rates.

8 12. Defendants also failed to compensate Plaintiff and other Employees for time spent
9 traveling to work sites and for travel between work sites and for purchasing supplies. Plaintiff and
10 the Class members were expected to report to their job sites 30 minutes before their scheduled
11 shift times and were considered late if they were not 30 minutes early. They were instructed by
12 supervisors to use this time to prepare their tools and equipment for the work day, to go to the
13 bathroom, or to perform other required job duties. In other words, if they were not a half hour
14 early for their work shifts, and working off the clock, they were late and faced discipline from
15 supervisors and threats that they would be fired.

16 13. At the end of scheduled work shifts, Plaintiff was expected to continue working
17 until his supervisor gave him permission to stop, and provided that he completed his various
18 construction tasks and used up all the material and supplies he had been provided for the day's
19 work. As with timekeeping at the beginning of shifts, managers and supervisors were responsible
20 for recording when employees completed their work shifts, and these timekeeping records were
21 always completed to reflect that Plaintiff worked his scheduled eight hours for a given shift,
22 rather than to reflect the realities of the actual hours that he worked. Upon information and belief,
23 Defendants committed similar violations and followed similar unlawful procedures in connection
24 with the other Class members.

25 14. Defendants also relied heavily on calling Plaintiff and the Class members
26 regarding daily scheduling issues and other work related matters. Calls from Defendants'
27 supervisors to Employees who were off duty or on breaks thus resulted in further off the clock
28 work where Plaintiff and the Class members were under Defendants' control without being

1 compensated. This compensable time was not compensated as hours worked by Defendants, and
2 Defendants failed to reimburse Plaintiff and the Class members for a substantial portion of their
3 personal phone expenses and data plans for work-related purposes.

4 15. Defendants' unlawful timekeeping practices consistently applied to all employees,
5 as managers and supervisors maintained timekeeping records for them reflecting they worked
6 from their scheduled shift start time to the scheduled shift end time, and also automatically
7 reflecting that a 30 minute unpaid meal period had been timely provided to them without
8 incident. In reality, meal periods were either not provided or were provided for substantially less
9 than 30 minutes or required performance of work related tasks while on breaks that were
10 supposed to be duty free or were provided after five hours of work in a shift.

11 16. By requiring both pervasive and systematic off the clock work, and by uniformly
12 and automatically deducting 30 minutes for alleged compliant meal periods, Defendants
13 essentially required Plaintiff and the Class members to work nine hours or more on a work shift,
14 while only being paid as if they worked eight. Plaintiff made complaints to supervisors and other
15 management personnel for Defendants about not being paid for all hours worked, being required
16 to work off the clock, and for not being paid any overtime wages. He was told that he needed to
17 complain to OSHA or the police, and not to Defendants, that he should be glad to have his job,
18 and others would do it if he did not want to.

19 17. Plaintiff was therefore not paid for all his hours worked at the required minimum,
20 overtime and double time wage rates due to Defendants' policy and practice of requiring him to
21 work off the clock and without pay, and failed to pay Plaintiff at the required overtime rates for
22 all hours over eight in a shift, or over forty in a work week. With work shifts generally being
23 scheduled for eight hours or more, this unpaid off the clock work resulted in Plaintiff and the
24 Class members working past eight hours on a shift, which required that they be paid at the correct
25 overtime rate of 1.5 times their regular rate.

26 18. Defendants thus systematically underpaid Plaintiff and the Class members by
27 failing to pay them at the required overtime rates for all hours over eight in a work shift or over
28 forty in a work week, and all hours over twelve in a day at the required double time rate. Upon

1 information and belief, the Class members were bound by similar scheduling and work policies
2 which Defendants required them to follow, and endured similar violations at Defendants' hands
3 as Plaintiff.

4 19. Defendants have either failed to maintain timekeeping records for Plaintiff that
5 would permit Plaintiff to discover the nature and extent of the off the clock work Defendants'
6 required and the actual hours Plaintiff worked, or have otherwise declined to produce them to
7 Plaintiff in response to a timely and lawful records request. By failing to pay for all hours
8 worked, and by deducting time for meal periods that were not lawfully provided, Defendants
9 have committed knowing and intentional ongoing violations of the record keeping requirements
10 under the Labor Code, including section 1174.

11 20. The failure to pay for all hours worked and underpayment of wages to Plaintiff
12 and the Class members is and has been a direct consequence of Defendants' unlawful
13 compensation policies and practices, which applied uniformly to the Class members working at
14 Defendants' facilities and work sites throughout California. As a result of the above described
15 unlawful requirements to work off the clock, the failure to accurately record all hours worked and
16 pay wages at the correct rates, and the other wage violations they endured at Defendants' hands,
17 Plaintiff and the Class members were not properly paid all wages earned and all wages owed to
18 them by Defendants, including when working more than eight hours in any given day and/or
19 more than forty hours in any given week. As a result of Defendants' unlawful policies and
20 practices, Plaintiff and Class members incurred overtime hours worked for which they were not
21 adequately and completely compensated, in addition to the hours they were required to work off
22 the clock at their regular rates.

23 21. Therefore, from at least four years prior to the filing of this lawsuit and continuing
24 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
25 hours worked, and failing to pay minimum wages for all time worked, as required by California
26 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
27 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation
28 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a

1 week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of
2 Labor Code § 510 and the corresponding sections of IWC Wage Orders.

3 22. Defendants also failed to provide Plaintiff and the Class members with their
4 required first and second meal periods, and their first, second, and third required rest breaks. The
5 above described off the clock work contributed to Defendants' common policy of failing to
6 provide lawful meal periods to Plaintiff and the Class members, as required under the Labor Code
7 and Paragraph 11 of the IWC Wage Order(s). Defendants similarly systematically failed to
8 authorize and permit Plaintiff and the employee Class Members to take all required 10-minute
9 rest breaks, as required under the Labor Code and Paragraph 12 of the IWC Wage Order(s).

10 23. Plaintiff and the Class members generally worked shifts that entitled them to
11 receive at least one meal period and two rest breaks. However, Defendants failed to provide all
12 required meal periods and rest breaks to them. Defendants' uniformly applied policies and
13 practices systematically failed to provide required duty-free meal periods to Plaintiff and the
14 Class members. If and when Plaintiff received a meal break, it was only when his foreman or
15 supervisor gave him permission to and told him he could take a break. All Employees were only
16 entitled to go to a break when a supervisor or foreman allowed them to. Defendants thus failed to
17 provide meal periods, provided them untimely, or else provided impermissibly shortened meal
18 periods where employees remained on-call to perform duties when needed and were hurried back
19 to work. The other employees Plaintiff was working with would generally go together when they
20 were all given permission to do so by their supervisors. As any provided meal periods were
21 generally shortened, this in turn compelled Plaintiff to remain on the job site location and not
22 leave during any breaks, as he was expected to do. However, he was also instructed by
23 supervisors to remain on the work site to watch the equipment and materials there. If work
24 materials were delivered during a meal period, immediate response took precedence over
25 completing any breaks. Also, while Plaintiff and the Class members generally did not work over
26 ten hours on a shift, on the occasions when they did, Defendants failed to provide them with a
27 second uninterrupted and duty-free thirty minute meal period.

1 24. Even if and when Plaintiff was able to review the time records for a work shift,
2 any attempted changes were not accepted, and he was told Defendants would automatically
3 deduct 30 minutes for meal periods, whether they were taken or not. When Plaintiff was provided
4 with meal periods substantially less than 30 minutes, Defendants would automatically deduct 30
5 minutes from his pay. Defendants' unlawful timekeeping practices consistently applied to all
6 employees, as managers and supervisors maintained timekeeping records for them reflecting they
7 worked from their scheduled shift start time to the scheduled shift end time, and also
8 automatically reflecting that a 30 minute unpaid meal period had been timely provided to them
9 without incident. In reality, meal periods were either not provided or were provided for
10 substantially less than 30 minutes or required performance of work related tasks while on breaks
11 that were supposed to be duty free or were provided after five hours of work in a shift.

12 25. After he complained repeatedly about Defendants' uniformly applied policy of not
13 providing compliant meal periods but automatically deducting 30 minutes for meals for each
14 shift, Plaintiff's supervisor immediately assigned him to a job four hours away from his home
15 when the supervisor knew Plaintiff had no personal vehicle at the time. Plaintiff's supervisor then
16 yelled at Plaintiff and terminated him for no other expressed reason than there were others who
17 could do his job better and did not complain about such things.

18 26. Defendants thus followed uniformly applied policies of not providing all required
19 meal periods and rest breaks to their Employees. Meal periods were often not provided at all
20 during a work shift, as work and production demands and management pressure required
21 Employees to work through breaks. However, even when Plaintiff and the Class members were
22 able to take a meal period, it was provided for less than the required 30 minutes or was otherwise
23 interrupted by work duties.

24 27. Defendants also followed a policy of denying all required timely and duty-free
25 meal periods for 30 minutes in duration by automatically deducting for meal periods which were
26 presumed to have been properly provided while also systematically shortening breaks by
27 requiring Employees to remain under Defendants' control. Defendants thus failed to provide all
28 the legally required unpaid, off-duty meal periods and all the legally required paid, off-duty rest

1 periods to Plaintiff and the other Class members, as required by the applicable Wage Order and
2 Labor Code. Defendants did not have a policy or practice which provided or recorded all the
3 legally required unpaid, off-duty meal periods and all the legally required paid, off-duty rest
4 periods to Employees. Plaintiff and other Class members were required to perform work as
5 ordered by Defendants or otherwise remain under Defendants' control for more than five hours
6 during a shift, or ten hours in a shift, but were often required to do so without receiving a lawful,
7 timely, and duty-free 30-minute meal breaks. Additionally, as addressed above, Defendants
8 followed a practice of requiring off the clock work, in a manner that would impact when
9 Employees were to receive meal periods and rest breaks, thus leading to further violations.

10 28. As a result, Defendants' failure to provide Plaintiff and the Class members with all
11 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
12 periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants have
13 either failed to maintain required records of when meal periods were actually provided or failed to
14 produce them in response to Plaintiff's timely and lawful requests, or else maintained inaccurate
15 and incomplete records. Defendants also failed to pay Employees "premium pay," i.e. one hour of
16 wages at each Employee's effective hourly rate of pay, for each meal period or rest break that
17 Defendants failed to provide or deficiently provided.

18 29. Therefore, for at least four years prior to the filing of this action and through to the
19 present, Plaintiff and the Class members were unable to take off-duty breaks or were otherwise not
20 provided with the opportunity to take required meal breaks due to Defendants' policies and
21 practices. On the occasions when Plaintiff and the Class members were provided with a meal
22 period, it was often untimely or interrupted, or was impermissibly shortened, and Employees were
23 not provided with one hour's wages in lieu thereof. Meal period violations thus occurred in one or
24 more of the following manners:

- 25 (a) Class members were not provided full thirty-minute duty free meal periods
26 for work days in excess of five (5) hours and were not compensated one (1)
27 hour's wages in lieu thereof, all in violation of, among others, Labor Code
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§§ 226.7, 512, and the applicable Industrial Welfare Commission Wage Order(s);

- (b) Class members were not provided second full thirty-minute duty free meal periods for work days in excess of ten (10) hours;
- (c) Class members were required to work through at least part of their daily meal period(s);
- (d) Meal periods were provided after five (5) hours of continuous work during a shift; and
- (e) Class members were restricted in their ability to take a full thirty-minute meal period or were otherwise required to remain under Defendants' control during meal periods.

30. Defendants also failed to authorize and permit Plaintiff and the Class members to take duty-free, net ten minute rest breaks for ever four hours of shift work, or major fraction thereof. There were similar issues with the required net-ten minute rest breaks that Plaintiff and the Class members were unable to take as with meal periods. Defendants also failed to authorize and permit Plaintiff and the Class members to take their required duty-free, net ten minute rest periods. Rest breaks were not scheduled, as Defendants' policy was not to provide them, and management did not emphasize the requirement to provide at least one ten minute duty-free rest period for each four hour duty period, or major fraction thereof.

31. If and when Plaintiff was permitted to take a rest break, it was categorized by supervisors as a bathroom break, with the expectation that the employee quickly use the restroom and return to working. If and when Plaintiff and the Class members were provided with a rest break on a shift, they were often not provided with the required second or third rest period or else they were interrupted or shortened by work demands and were not off-duty.

32. Defendants did not schedule any required ten minute rest breaks, and Plaintiff and the Class members were compelled by work requirements and scheduling demands to continue working throughout their shifts without receiving their required first, second, and third rest breaks. Even the rest breaks they were authorized and permitted to take were often interrupted

1 regarding work matters. Therefore, the job requirements and duties required of Plaintiff and the
2 Class members, and the demands from supervisors, manifested a failure to authorize and permit
3 Class members to take all their required rest breaks. Plaintiff and the other similarly situated
4 Class members were either not authorized permitted the opportunity to take a rest break, or were
5 required to remain under Defendants' control and respond to instructions. Defendants also failed
6 to authorize and permit Employees to leave the work sites during rest breaks, or else prevented
7 them from doing so, thus further evidencing Defendants' policy and practice of requiring Plaintiff
8 and the Class members to remain under their control during required off-duty rest breaks.

9 33. Defendants' policies and practices thus systematically deny and denied Plaintiff
10 and the Class members full, duty-free ten-minute rest periods and thirty-minute, duty-free meal
11 periods. The California Supreme Court has instructed that the rest period requirement obligates
12 employers to permit-and authorizes employees to take-off-duty rest periods. That is, during rest
13 periods employers must relieve employees of all duties and relinquish control over how
14 employees spend their time. Plaintiff and the Class members were and are under Defendants'
15 control when they are working through rest breaks, and Defendants failed to schedule or account
16 for required first, second, and third rest breaks during the shifts Plaintiff and the Class members
17 generally worked.

18 34. Plaintiff and the Defendants' Employees in the Class were also not authorized and
19 permitted to take lawful rest periods, were systematically required by Defendants to work through
20 or during breaks, and were not provided with one hour's wages in lieu thereof. They were
21 required to remain on-duty during breaks or portions of their breaks, thus making them either
22 untimely or shortened and on-duty, and they were also prevented from leaving the premises
23 during rest breaks under Defendants' policies and practices. Rest period violations therefore arose
24 in one or more of the following manners:

- 25 (a) Class members were required to work without being provided a minimum
26 ten (10) minute rest period for every four (4) hours or major fraction
27 thereof worked and were not compensated one (1) hour of pay at their
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regular rate of compensation for each workday that a rest period was not provided;

(b) Class members were not authorized and permitted to take timely rest periods for every four hours worked, or major fraction thereof; and

(c) Class members were required to remain on-duty and under Defendants' control during rest periods or otherwise had their rest periods interrupted by work demands.

35. From at least four (4) years prior to the filing of this lawsuit and continuing to the present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or deducting the Employees' earned wages, including by the above described off the clock before and after work shifts and automatically deducting 30 minutes of work for unpaid meal periods Defendants failed to provide. By not compensating Employees for all hours worked, and the automatic deductions for unprovided meal periods and failure to pay for hours spent under Defendants' control, Defendants unlawfully deducted wages earned by and owed to Plaintiff and the Class members, in violation of Labor Code § 221.

36. As a result of the above described illegal policies and practices, Defendants engaged in and enforced the following additional unlawful practices and policies against Plaintiff and the Class members he seeks to represent:

- a. failing to pay all wages owed to Class members who either were discharged, laid off, or resigned in accordance with the requirements of Labor Code §§ 201, 202, 203;
- b. failing to pay all wages owed to the Class members twice monthly in accordance with the requirements of Labor Code § 204;
- c. failing to pay Class members all wages owed, including all meal and rest period premium wages;
- d. failing to maintain accurate records of Class members' earned wages and meal periods in violation of Labor Code §§ 226 and 1174(d) and section 7 of the applicable IWC Wage Orders; and

1 e. failing to produce timekeeping records in response to Plaintiff's timely and lawful
2 request to receive them under these authorities.

3 37. From at least four years prior to the filing of this lawsuit, and continuing to the
4 present, Defendants have also consistently failed to provide Employees with timely, accurate, and
5 itemized wage statements, in writing, as required by California wage-and-hour laws, including by
6 the above-described requirement of off the clock work, failure to pay all overtime, and failure to
7 pay premium wages for unprovided or otherwise unlawful meal and rest breaks. Defendants have
8 also made it difficult to account with precision for the unlawfully withheld wages and meal and
9 rest period compensation owed to Plaintiff and the Class, during the liability period, because they
10 did not implement and preserve a record-keeping method as required for non-exempt employees
11 by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable California Wage
12 Orders. Upon information and belief, time clock punches were not maintained or were not
13 accurately maintained for work shifts and meal periods, which were automatically presumed by
14 Defendants to have been lawfully provided when they were not. Defendants also failed to
15 accurately record and pay for all regular and overtime hours worked by Plaintiff and the Class
16 members. In addition to not paying for all hours worked off the clock and for all meal and rest
17 period premiums owed during a pay period, Plaintiff's supervisor would sometimes neglect to
18 send his time cards to the office and Plaintiff would not get paid until a week or so later, thus
19 making the payments untimely under Labor Code § 204.

20 38. Defendants also provided Plaintiff and the Class members with wage statements
21 that failed to accurately report all hours worked and applicable hourly rates for all hours worked.
22 As explained above, complaining about inaccurate wage statements that failed to reflect all hours
23 worked was futile, as wage statements issued by Defendants consistently listed that Plaintiff
24 worked 40 hours per week and 80 hours for two work weeks on timekeeping records and then on
25 wage statements issued, with no overtime, even though both Plaintiff and Defendants were aware
26 that Plaintiff and the Class members worked more total hours than were reflected, including
27 overtime hours. Plaintiff and the Employees in the Class were unable to discern from their wage
28 statements alone the actual hours they worked in total during a pay period.

1 39. Plaintiff was paid every two weeks, every other Friday. Defendants required
2 Plaintiff to go to various locations to pick up his checks and wage statements. He was not given
3 the opportunity to correct the hours worked and recorded to reflect those he actually worked, and
4 even when given the chance to review them, it was to confirm days worked and not the actual
5 hours worked each day. Defendants have thus also failed to comply with Labor Code § 226(a) by
6 issuing wage statements that inaccurately reported total hours worked and total wages earned by
7 Plaintiff and the Class members, along with the appropriate applicable rates, among others
8 requirements. Plaintiff and Class members are therefore entitled to penalties not to exceed
9 \$4,000.00 for each employee pursuant to Labor Code § 226(b). Defendants have also failed to
10 comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain
11 time records showing when the employee begins and ends each work period, meal periods, wages
12 earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage
13 statements all deductions from payment of wages and accurately reporting total hours worked by
14 the Class members.

15 40. Defendants required Plaintiff and the Class members to work hours off the clock
16 for which they were not compensated, including during interrupted or otherwise on-duty meal and
17 rest periods. Defendants also failed to pay all overtime premium wages owed for work conducted
18 on a work shift and a workday, as addressed above. Therefore, from at least four years prior to
19 filing this lawsuit and continuing to the present, Defendants have also followed a uniform and
20 consistent policy of failing to pay all wages owed to Plaintiff and other similarly situated
21 Employees at the time of their termination or within seventy-two hours of their resignation, as
22 required by California wage-and-hour laws. Defendants also failed to pay all wages owed to
23 Plaintiff and the Class members at the time they were terminated or otherwise separated from
24 employment.

25 41. Additionally, from at least four years prior to the filing of this lawsuit and
26 continuing to the present, Defendants have regularly required Plaintiff and the Class members to
27 incur necessary business expenses in the course of performing their required job duties without
28 reimbursement. Defendants required Plaintiff and the Class members to use their cellular phones

1 to conduct work related business and to receive scheduling and location assignments. Plaintiff was
2 required to use his own personal cellular phone during his work shifts and when he was off duty
3 for company related calls and messages and work requirements. He was contacted with calls from
4 supervisors and Defendants' representatives regarding scheduling and work requirements, both
5 before, during and after his work shifts, and also received text message that were work related.
6 Plaintiff paid approximately \$70 per month for his cellular phone bill, and estimates
7 approximately 50% of his calls and usage were dedicated to work related duties and responding to
8 work related inquiries. However, Defendants failed to reimburse Plaintiff and the Class members
9 for any of their expenses related to their personal cellular phones and data usage.

10 42. Defendants also failed to reimburse Plaintiff and the Class members for all mileage
11 and personal vehicle related expenses they were required to receive when traveling to the various
12 work sites they were assigned to. Plaintiff often drove his own vehicle to work sites, and on other
13 occasions, would be required to ride in a company truck with a supervisor, but without being paid
14 for travel time and only if Plaintiff paid \$15 in gas for the day. Plaintiff was also regularly and
15 frequently required to utilize his own personal vehicle for work related job duties, including going
16 to stores to pick up supplies and equipment and to travel between site locations and transport
17 materials and supplies between work sites. He was told that the company would not reimburse him
18 because it was his job to do so and if he kept asking about reimbursement, he would get fired. If
19 Plaintiff refused, he understood it would be held against him and supervisors would simply require
20 another employee to perform the required duties.

21 43. Thus, Plaintiff frequently was required to use his own truck for performing work
22 related job duties and was never reimbursed for gas and mileage, or for paying tolls, which could
23 be as much as \$30 per week. Plaintiff's vehicle was ruined by all the materials he was required to
24 haul in it, and even when he broke down and needed a towing, Defendants would not reimburse
25 him the requested \$500. When Plaintiff requested reimbursement for work related driving and the
26 costs he incurred from it, Defendants' supervisors told him he was not entitled to receive
27 reimbursement because he was not a supervisor. Plaintiff estimates he drove hundreds of miles
28 each week and incurred hundreds of dollars in fuel cost while performing job requirements for

Defendants without any reimbursement. Upon information and belief, Defendants followed the same unlawful expense reimbursement policies in connection with the other Employee Class members. Plaintiff and the Class members must be reimbursed for these necessary business expenses under Labor Code § 2802 and Defendants systematically failed to do so.

44. In light of the foregoing, Plaintiff and the Employees in the Class bring this action pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.7, 510, 511, 512, 558, 1174, 1185, 1194, 1194.2, 1197, 1198, 1199, 2802, and 2698 *et seq.*, and California Code of Regulations, Title 8, section 11000 *et seq.*

45. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff and the Class members seek injunctive relief, restitution, and disgorgement of all benefits Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or fraudulent practices alleged in this Complaint.

CLASS ALLEGATIONS

46. Plaintiff brings this class action on behalf of himself and all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the Class” or “Class members”) defined as follows: “All individuals employed by Defendants at any time during the period of four (4) years prior to the filing of this lawsuit and ending on a date as determined by the Court (“the Class Period”), and who have been employed as non-exempt, hourly construction workers and in related positions at Defendants’ facilities and work sites within the State of California.” Further, Plaintiff seeks to represent the Subclasses composed of and defined as follows:

a. Subclass 1. Minimum Wages Subclass. All Class members who were not compensated for all hours worked for Defendants at the applicable minimum wage.

b. Subclass 2. Wages and Overtime Subclass. All Class members who were not compensated for all hours worked for Defendants at the required rates of pay, including for all hours worked in excess of eight in a day and/or forty in a week.

c. Subclass 3. Meal Period Subclass. All Class members who were subject to Defendants’ policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-

1 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

2 d. Subclass 4. Rest Break Subclass. All Class members who were subject to
3 Defendants' policy and/or practice of failing to authorize and permit Employees to take
4 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
5 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

6 e. Subclass 5. Wage Statement Subclass. All Class members who, within the
7 applicable limitations period, were not provided with accurate itemized wage statements.

8 f. Subclass 6. Unauthorized Deductions from Wages Subclass. All Class members
9 who were subject to Defendants' policy and/or practice of deducting wages earned from their pay,
10 including by requiring off the clock work.

11 g. Subclass 7. Failure to Timely Pay Wages Twice Monthly Subclass. All Class
12 members who were subject to Defendants' policy and practice of not timely paying all wages
13 earned when they were due and payable at least twice monthly.

14 h. Subclass 8. Termination Pay Subclass. All Class members who, within the
15 applicable limitations period, either voluntarily or involuntarily separated from their employment
16 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
17 termination.

18 i. Subclass 9. Expense Reimbursement Subclass. All Class members who incurred
19 necessary and reasonable expenses in connection with performing their job duties for Defendants
20 and who were subject to a policy and/or practice under which such expenses were not reimbursed.

21 j. Subclass 10. UCL Subclass. All Class members who are owed restitution as a
22 result of Defendants' business acts and practices, to the extent such acts and practices are found to
23 be unlawful, deceptive, and/or unfair.

24 47. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
25 modify the class description with greater particularity or to provide further division into subclasses
26 or limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class
27 against Defendants, the Class Period should be adjusted accordingly.

28

1 48. Defendants, as a matter of company policy, practice and procedure, and in violation
2 of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements,
3 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged
4 in a practice whereby Defendants failed to correctly calculate and pay compensation for the time
5 worked by Plaintiff and the other members of the Class, even though Defendants enjoyed the
6 benefit of this work, required Employees to perform this work and permitted or suffered to permit
7 this work. Defendants have uniformly denied these Class members wages to which these
8 employees are entitled, and failed to provide meal periods or authorize and permit rest periods, in
9 order to unfairly cheat the competition and unlawfully profit.

10 49. This action has been brought and may properly be maintained as a class action
11 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
12 of interest in this litigation and the proposed Class is easily ascertainable from the employment
13 records for Plaintiff and the Class members that Defendants are required to maintain under
14 California law.

15 **A. Numerosity**

16 50. The potential members of the Class as defined are so numerous that joinder of all
17 the Class members is impracticable. While the precise number of Class member has not been
18 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
19 time period relevant to this lawsuit employed, at least 100 Employees who satisfy the Class
20 definition within the State of California. Plaintiff alleges that Defendants’ employment records
21 will provide information as to the number and location of all Class members.

22 **B. Commonality**

23 51. There are questions of law and fact common to the Class that predominate over any
24 questions affecting only individual Class members. The common questions are numerous and
25 substantial and flow from Defendants’ uniform policies and/or practices of violating the California
26 Labor Code addressed above. As such, these common questions predominate over individual
27 questions concerning each individual Class Member’s showing as to his or her eligibility for
28 recovery or as to the amount of damages. These common questions of law and fact include:

- a. Whether Defendants failed to pay Employees minimum wages;
- b. Whether Defendants failed to pay Employees wages for all hours worked;
- c. Whether Defendants failed to pay Employees overtime as required under Labor Code § 510;
- d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Employees with requisite meal periods or premium pay in lieu thereof;
- e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders, by failing to authorize and permit Employees to take requisite rest breaks or provide premium pay in lieu thereof;
- f. Whether Defendants violated Labor Code § 226(a) by providing Employees with inaccurate wage statements;
- g. Whether Defendants violated Labor Code § 221;
- h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- i. Whether Defendants' conduct was willful;
- j. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage Orders by failing to maintain accurate records of Class members' earned wages and work periods;
- k. Whether Defendants violated Labor Code § 1194 by failing to compensate all Employees during the relevant time period for all hours worked, whether regular or overtime;
- l. Whether Defendants violated Labor Code § 204 by failing to pay Employees all wages earned at least twice monthly;
- m. Whether Defendants violated Labor Code § 2802 by failing reimburse necessary business expenses incurred by Employees;
- n. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and

o. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

C. Typicality

52. The claims of the named Plaintiff are typical of those of the other Employees. The Employee Class members all sustained injuries and damages arising out of and caused by Defendants' common course of conduct and uniformly applied policies in violation of statutes, as well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for the off the clock work and meal and rest violations they were required to endure are typical of those of the other Class members.

D. Adequacy of Representation

53. Plaintiff will fairly and adequately represent and protect the interest of the Employee Class members. Counsel who represents Plaintiff and the Employees in the Class are experienced and competent in litigating employment class actions.

E. Superiority of Class Action

54. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Employees is not practicable, and questions of law and fact common to all Employees predominate over any questions affecting only individual Employees. Each Employee in the Class has been damaged and is entitled to recovery by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

55. As to the issues raised in this case, a class action is superior to all other methods for the fair and efficient adjudication of this controversy, as joinder of all Class members is impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class members. Further, as the economic or other loss suffered by vast numbers of Class members may be relatively small, the expense and burden of individual actions makes it difficult for the Class members to individually redress the wrongs they have suffered. Moreover, in the event disgorgement is ordered, a class action is the only mechanism that will permit the employment of a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in managing this case as a class action, and proceeding on a class-wide basis will permit Employees

1 to vindicate their rights for violations they endured which they would otherwise be foreclosed
2 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

3 56. Class action treatment will allow those persons similarly situated to litigate their
4 claims in the manner that is most efficient and economical for the parties and the judicial system.
5 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
6 Plaintiff contemplates the eventual issuance of notice to the proposed Class members that would
7 set forth the subject and nature of the instant action. The Defendants' own business records can be
8 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent
9 that any further notice is required additional media and/or mailings can be used.

10 57. Defendants, as prospective and actual employers of the Employees in the Class,
11 had a special fiduciary duty to disclose to prospective Class members the true facts surrounding
12 Defendants' pay practices, policies and working conditions imposed upon the similarly situated
13 Employees as well as the effect of any alleged arbitration agreements that may have been forced
14 upon them. In addition, Defendants knew they possessed special knowledge about pay practices
15 and policies, most notably intentionally refusing to pay for all hours actually worked which should
16 have been recorded in Defendants' pay records and the consequence of the alleged arbitration
17 agreements and policies and practices on the Employees and Class as a whole.

18 58. Plaintiff and the Employees in the Class did not discover the fact that they were
19 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there
20 any discussion about Plaintiff's and the Class' wavier of their Constitutional rights of trial by jury,
21 to collectively organize and oppose unlawful pay practices under California law as well as obtain
22 injunctive relief preventing such practices from continuing. As a result, the applicable statutes of
23 limitation tolled until such time as Plaintiff and the Class members discovered their claims.

24 **FIRST CAUSE OF ACTION**

25 **FAILURE TO PAY MINIMUM WAGES**

26 **(Against All Defendants)**

27 59. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
28 full herein.

1 60. Defendants failed to pay Employees minimum wages they were owed, including
2 by their consistent policy of failing to pay Employees for all hours worked. Employees would
3 work hours and not receive wages, including as alleged above in connection with off the clock
4 work, including all the time required to remain on duty and under Defendants' control and during
5 breaks and due to the work demands placed upon them by Defendants' management. Defendants
6 also imposed difficult to attain job and shift scheduling requirements on Plaintiff and the Class
7 members, which resulted in off the clock work and underpayment of all wages owed to
8 Employees over a period of time, while benefiting Defendants. During the relevant Class Period,
9 Defendants thus regularly failed to pay minimum wages to Plaintiff and the Class members,
10 including by requiring systematic off the clock work. Defendants' uniform pattern of unlawful
11 wage and hour practices manifested, without limitation, applicable to the Class as a whole, as a
12 result of implementing a uniform policy and practice that denied accurate compensation to
13 Plaintiff and the other members of the Class as to minimum wage pay.

14 61. In California, employees must be paid at least the then applicable state minimum
15 wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014,
16 and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H)
17 of the applicable IWC Wage Orders defines "Hours Worked" as "the time during which an
18 employee is subject to the control of an employer, and includes all the time the employee is
19 suffered or permitted to work, whether or not required to do so." Additionally, pursuant to Labor
20 Code § 204, other applicable laws and regulations, and public policy, an employer must timely
21 pay its employees for all hours worked. Defendants failed to do so.

22 62. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
23 states: "The minimum wage for employees fixed by the commission is the minimum wage to be
24 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

25 63. The applicable minimum wage rate fixed by the commission for work during the
26 relevant period is found in the Wage Orders.

27 64. The minimum wage provisions of California Labor Code are enforceable by private
28 civil action pursuant to Labor Code § 1194(a) which states: "Notwithstanding any agreement to

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

5 65. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
6 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
7 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
8 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
9 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
10 the absence of a contractually agreed upon one. The underpayment of wages to Plaintiff and the
11 Class members is and has been a direct consequence of Defendants' unlawful compensation
12 policies and practices, which applied uniformly to the Class members working at locations and
13 work sites throughout California.

14 66. In committing the above described violations of the California Labor Code,
15 Defendants inaccurately recorded, or required Plaintiff and the Class members to input times that
16 did not reflect their actual hours worked, or calculated the correct time worked and consequently
17 underpaid the actual time worked by Plaintiff and other members of the Class, including by
18 requiring off the clock work and refusing to pay overtime, as addressed in detail above.
19 Defendants acted in an illegal attempt to avoid the payment of all earned wages, and other benefits
20 in violation of the California Labor Code, the Industrial Welfare Commission requirements and
21 other applicable laws and regulations. As a result of these violations, Defendants also failed to
22 timely pay all wages earned in accordance with California Labor Code § 1194.

23 67. California Labor Code § 1194.2 also provides for the following remedies: "In any
24 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
25 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
26 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

27 68. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
28 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial

1 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
2 pay each employee minimum wages.

3 69. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are
4 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
5 interest thereon.

6 70. Defendants have the ability to pay minimum wages for all time worked and have
7 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
8 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

9 71. Wherefore, Plaintiff and the Employee Class members are entitled to recover the
10 unpaid minimum wages (including double minimum wages), liquidated damages in an amount
11 equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees
12 and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other members of
13 the Class further request recovery of all unpaid wages, according to proof, interest, statutory costs,
14 as well as the assessment of any statutory and/or civil penalties against Defendants, in a sum as
15 provided by the California Labor Code, including § 558, and/or other applicable statutes. To the
16 extent minimum wage compensation is determined to be owed to the Class members who have
17 terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202,
18 and therefore these individuals are also be entitled to waiting time penalties under California
19 Labor Code § 203, which penalties are sought herein on behalf of these Class members.
20 Defendants' failure to timely pay all wages owed also violated Labor Code § 204 for failure to pay
21 all wages owed twice monthly, and resulted in violations of Labor Code § 226 because they
22 resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was
23 willful, intentional and not in good faith. Further, Plaintiff and other Class members are entitled to
24 seek and recover statutory costs.

25 ///

26 ///

27 ///

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

3 **(Against All Defendants)**

4 72. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
5 full herein.

6 73. California Labor Code § 1194 provides that “any employee receiving less than the
7 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
8 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
9 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” The action
10 may be maintained directly against the employer in an employee’s name without first filing a
11 claim with the Division of Labor Standards and Enforcement.

12 74. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
13 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the
14 Industrial Welfare Commission) by failing to pay Employees for all their hours worked, including:
15 (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a
16 workday or in excess of forty hours in any workweek or for the first eight hours worked on the
17 seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked
18 in excess of twelve hours in any one day or for hours worked in excess of eight hours on any
19 seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees
20 wages for all hours worked, including by requiring off the clock work as addressed above and by
21 under-reporting actual hours worked. With work shifts generally being scheduled for eight hours
22 or more, this unpaid off the clock work resulted in Plaintiff and the Class members working past
23 eight hours on a shift, which required that they be paid at the correct overtime rate of 1.5 times
24 their regular rate.

25 75. Defendants thus had a consistent policy of not paying Employees wages for all
26 hours worked, including hours at their required regular, overtime, and double-time rates.
27 Defendants required Plaintiff and the Class members to work off the clock to avoid paying all
28 their earned and owed straight time and overtime wages and other benefits, in violation of the

1 California Labor Code, the California Code of Regulations and the IWC Wage Orders and
2 guidelines set forth by the Division of Labor Standards and Enforcement. Defendants have also
3 violated these provisions by requiring Plaintiff and other similarly situated non-exempt employees
4 to work through meal periods when they were required to be clocked out or to otherwise work off
5 the clock to complete their daily job duties or to attend and participate in company required
6 activities or remain under Defendants' control. Therefore, Employees were not properly
7 compensated, nor were they paid overtime rates for hours worked in excess of eight hours in a
8 given day, and/or forty hours in a given week. Based on information and belief, Defendants did
9 not make available to Employees a reasonable protocol for correcting time records when
10 Employees worked overtime hours or to fix incorrect time entries or those that Defendants
11 unlawfully under-recorded to the Employee's detriment. Defendants also under-paid Plaintiff and
12 the putative Class members all wages by systematically miscalculating and underpaying overtime
13 wages they earned, as detailed above.

14 76. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of
15 regular wages owed and overtime compensation for all hours worked, as required by California
16 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable
17 IWC Wage Order, and is therefore unlawful.

18 77. Additionally, Labor Code § 558(a) provides "any employer or other person acting
19 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
20 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
21 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
22 pay period for which the employee was underpaid in addition to an amount sufficient to recover
23 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
24 underpaid employee for each pay period for which the employee was underpaid in addition to an
25 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
26 be paid to the affected employee." Labor Code § 558(c) states, "the civil penalties provided for in
27 this section are in addition to any other civil or criminal penalty provided by law." Defendants
28 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC

1 Wage Orders. Accordingly, Plaintiff and the Class members seek the remedies set forth in Labor
2 Code § 558.

3 78. Defendants' failure to pay compensation in a timely fashion also constituted a
4 violation of California Labor Code § 204, which requires that all wages shall be paid
5 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
6 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
7 and overtime compensation earned by Employees. Each such failure to make a timely payment of
8 compensation to Employees constitutes a separate violation of California Labor Code § 204.

9 79. Employees have been damaged by these violations of California Labor Code §§
10 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
11 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less
12 than \$100 for causing Employees "to work for longer hours than those fixed, or under conditions
13 of labor prohibited by an order of the commission" or if the employer pays "a wage less than the
14 minimum fixed by an order of the commission" or "violates...any provision of this chapter or
15 any order or ruling of the commission."

16 80. Consequently, pursuant to the California Labor Code, including Labor Code §§
17 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders,
18 including paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full
19 amount of all their unpaid wages and overtime compensation for all their hours worked, with
20 interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory
21 penalties against Defendants, and each of them, and any additional sums as provided by the
22 Labor Code and/or other statutes.

23 **THIRD CAUSE OF ACTION**

24 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

25 **(Against All Defendants)**

26 81. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
27 full herein.
28

1 82. Employees regularly worked shifts greater than five hours and in some instances,
2 greater than ten hours. Pursuant to Labor Code § 512, and paragraph 11 of the applicable IWC
3 Wage Order, an employer may not employ someone for a shift of more than five hours without
4 providing him or her with a meal period of not less than thirty minutes or for a shift of more than
5 ten hours without providing him or her with a second meal period of not less than thirty minutes.

6 83. Defendants failed to provide Employees with meal periods as required under the
7 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required
8 to work or to otherwise remain under Defendants' control during meal periods, or Defendants
9 provided them after Employees worked beyond the fifth hour of their shifts or Employees
10 otherwise had them shortened and interrupted by work demands and requirements to remain under
11 Defendants' control during off the clock time. Furthermore, upon information and belief, on the
12 occasions when Employees worked more than ten hours in a given shift, they did so without
13 receiving a second uninterrupted thirty minute meal period as required by law.

14 84. Defendants thus failed to provide Plaintiff and the Class members with meal
15 periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,
16 including by not providing them with the opportunity to take meal breaks, by providing them late
17 or for less than thirty minutes, or by requiring them to perform work during breaks.

18 85. Moreover, Defendants failed to compensate Employees for each meal period not
19 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
20 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
21 employee a meal period in accordance with this section, the employer shall pay the employee one
22 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
23 period is not provided. Defendants failed to compensate the Employees in the Class for each meal
24 period not provided or inadequately provided, as required under Labor Code § 226.7 and
25 paragraphs 11 and 20 of the applicable IWC Wage Order.

26 86. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the
27 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal
28 to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or

deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and other statutes and applicable IWC Wage Order paragraphs.

FOURTH CAUSE OF ACTION

REST-BREAK LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

87. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in full herein.

88. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders provide that employers must authorize and permit all employees to take rest periods at the rate of ten minutes net rest time per four work hours.

89. Employees consistently worked consecutive four hour shifts and were generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for each consecutive four hour shift, and Defendants failed to provide Employees with timely rest breaks of not less than ten minutes for each consecutive four hour shift. Employees were often required to work or to otherwise remain under Defendants' control during rest periods, and had breaks provided untimely as a result of the above described off the clock work. Plaintiff and the Class members were also not permitted to leave their work premises during rest breaks.

90. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Orders provide that if an employer fails to provide an employee rest period in accordance with this section, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

91. Defendants, and each of them, have therefore intentionally and improperly denied rest periods to Plaintiff and the Class members in violation of Labor Code §§ 226.7 and 512 and paragraph 12 of the applicable IWC Wage Orders.

92. Defendants failed to authorize and permit Plaintiff and the Class members to take rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Orders.

93. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one hour of wages at their effective hourly rates of pay for each day worked without the required rest breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

FIFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(Against All Defendants)

94. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in full herein.

95. California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized statement in writing showing the gross and net earnings, total hours worked, and the corresponding number of hours worked at each hourly rate; these statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid.

96. Defendants failed to provide Plaintiff and the similarly situated Employee Class members with accurate itemized wage statements in writing, as required by the Labor Code and paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements given to Employees by Defendants failed to accurately account for wages, overtime, and premium pay, including by failing to pay for all hours worked, failure to pay for all overtime hours worked and for providing deficient meal periods and rest breaks, all of which Defendants knew or reasonably

1 should have known were owed to the Employees, as alleged above.

2 97. Defendants also provided Plaintiff and the Class members with wage statements
3 that failed to accurately report all hours worked and applicable hourly rates for all hours worked.
4 They instead listed forty hours per week including automatically deducted meal periods of 30
5 minutes, without paying any overtime, despite requiring systematic off the clock work, as
6 addressed above. Plaintiff and the Employees in the Class were unable to discern from their wage
7 statements along the actual hours they worked in total during a pay period.

8 98. Throughout the liability period, Defendants intentionally failed to furnish to
9 Plaintiff and the Class members, upon each payment of wages, itemized statements accurately
10 showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-
11 rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net
12 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
13 the employee and only the last four digits of his or her social security number or an employee
14 identification number other than a social security number, (8) the name and address of the legal
15 entity that is the employer and (9) all applicable hourly rates in effect during the pay period and
16 the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor
17 Code § 226 and paragraph 7 of the applicable IWC Wage Orders, amongst other statutory
18 requirements. Defendants knowingly and intentionally failed to provide Plaintiff and the Class
19 members with such timely and accurate wage and hour statements.

20 99. Plaintiff and the Class members suffered injury as a result of Defendants' knowing
21 and intentional failure to provide them with the wage and hour statements as required by law and
22 are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the
23 Defendants have failed to provide an accurate wage statement, failed to provide accurate and
24 complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9),
25 inclusive, and the Plaintiff and Class members cannot promptly and easily determine from the
26 wage statement alone one or more of the following: (i) The amount of the gross wages or net
27 wages paid to the employee during the pay period or any of the other information required to be
28 provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of

1 subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net
2 wages paid to the employee during the pay period, (iii) The name and address of the employer
3 and, (iv) The name of the employee and only the last four digits of his or her social security
4 number or an employee identification number other than a social security number. For purposes
5 of Labor Code § 226(e) “promptly and easily determine” means a reasonable person [i.e. an
6 objective standard] would be able to readily ascertain the information without reference to other
7 documents or information.

8 100. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
9 are required “to pay each employee, on the established payday for the period involved, not less
10 than the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor
11 Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order
12 or under conditions of labor prohibited by the order is unlawful.” Plaintiff and the Class members
13 may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph
14 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
15 IWC Wage Orders.

16 101. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
17 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
18 Class suffered injuries, including among other things confusion over whether they received all
19 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
20 them to make mathematical computations to analyze whether the wages paid in fact compensated
21 them correctly for all hours worked.

22 102. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable
23 IWC Wage Order, Plaintiff and the Employee Class members are entitled to recover the greater of
24 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
25 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
26 aggregate penalty of four thousand dollars (\$4,000) under Section 226(e), and are entitled to
27 recover further penalties pursuant to paragraphs 4(B) and 20 of the applicable IWC Wage Orders.
28 They are also entitled to an award of costs and reasonable attorneys’ fees.

SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 221
(Against All Defendants)

103. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in full herein.

104. Labor Code § 221 provides, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

105. Defendants unlawfully received and/or collected wages from the Employees in the Class by implementing a policy understating the hours worked by Employees by requiring off the clock work and by automatically deducting time for meal periods when they were not lawfully provided, as alleged above.

106. As a direct and proximate cause of the unauthorized deductions, Employees have been damaged, in an amount to be determined at trial.

SEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 204
(Against All Defendants)

107. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in full herein.

108. Labor Code § 204 instructs that: “All wages, ...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.” Additionally, the requirements of this section shall be deemed satisfied by the payment

1 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
2 calendar days following the close of the payroll period.” As detailed above, Defendants
3 maintained a consistently applied policy and practice of not paying all wages earned between the
4 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
5 between the 16th and the last day of the month between the 1st and 10th day of the following month.
6 This included failing to pay all wages due and owing to Plaintiff and the Class members for all
7 hours they worked and failing to pay all wages earned by not more than seven calendar days
8 following the close of the payroll period, including on the occasions when supervisors did not turn
9 in Employee time records timely for a pay period.

10 109. All wages due and owing to Plaintiff and the Class members, including as required
11 under Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages
12 required by Labor Code § 1194 and other sections became due and payable to each employee in
13 each pay period that he or she was not provided with a meal period or rest period or paid straight
14 or overtime wages to which he or she was entitled.

15 110. Defendants violated Labor Code § 204 by systematically refusing to timely pay
16 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the
17 applicable IWC Wage Orders, employers are required “to pay each employee, on the established
18 payday for the period involved, not less than the applicable minimum wage for all hours worked in
19 the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer
20 hours than those fixed by the order or under conditions of labor prohibited by the order is
21 unlawful.” Plaintiff and the Class members may therefore pursue damages and penalties for
22 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
23 penalties under paragraph 20 of the applicable IWC Wage Orders.

24 111. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
25 represent have been deprived of wages in amounts to be determined at trial, and they are entitled
26 to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs,
27 pursuant to Labor Code § 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
28 applicable IWC Wage Orders.

EIGHTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 203
(Against All Defendants)

112. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in full herein.

113. Plaintiff and numerous Class members are no longer employed by Defendants; they either quit Defendants' employ or were fired therefrom.

114. Defendants failed to pay these Employees all wages due and certain at the time of termination or within seventy-two (72) hours of resignation, as addressed in detail above.

115. The wages withheld from these Employees by Defendants remained due and owing for more than thirty (30) days from the date of separation from employment.

116. Defendants failed to pay Plaintiff and the Class members without abatement, all wages as defined by applicable California law. Among other things, these Employees were not paid all regular and overtime wages, including by Defendants failing to pay for all hours worked or requiring off the clock work or by unlawfully under-recording time entries to the detriment of Employees, and Defendants failed to pay premium wages owed for unprovided meal periods and rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the required time was willful within the meaning of Labor Code § 203.

117. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers are required "to pay each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Plaintiff and the Class members may therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC Wage Orders. Also, under Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less than \$100 for causing Employees "to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission" or if the

1 employer pays “a wage less than the minimum fixed by an order of the commission” or
2 “violates...any provision of this chapter or any order or ruling of the commission.”

3 118. Defendants’ failure to pay wages, as alleged, entitles Plaintiff and these former
4 Employee Class members to penalties under Labor Code § 203 and the applicable paragraphs of
5 the IWC Wage Orders as addressed above, including the requirement that an employee’s wages
6 shall continue until paid for up to thirty (30) days from the date they were due.

7 **NINTH CAUSE OF ACTION**
8 **FOR FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**
9 **UNDER LABOR CODE § 2802**
10 **(Against All Defendants)**

11 119. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
12 full herein.

13 120. Plaintiff and the Class are informed and believe and based thereon allege that
14 throughout the period applicable, Defendants required Plaintiff and the Class members to pay for
15 necessary work related expenses they incurred. Defendants required Plaintiff and the Class
16 members to use their cellular phones to conduct work related business and to receive scheduling
17 and location assignments. Defendants also failed to reimburse Plaintiff and the Class members for
18 all mileage they were required to receive when traveling to the various work sites they were
19 assigned to, or to otherwise reimburse them for gas or tolls and other necessary personal vehicle
20 related expenses they incurred, as detailed above.

21 121. Defendants thus followed a uniform policy and practice of failing to reimburse
22 Employees for these necessary work related expenses or losses incurred in direct discharge of their
23 job duties during employment with Defendants and at the direction of the Defendants pursuant to
24 Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

25 122. Defendants’ knowing and willful failure to reimburse lawful necessary work related
26 expenses and losses to Plaintiff and the Class members resulted in damages because, among other
27 things, Defendants did not inform employees of their right to be reimbursed for those work related
28 expenses. As Defendants failed to inform and misled Plaintiff and the Class members with regard

1 to their rights, Plaintiff and the Class members were led to believe that incurring those lawful and
2 necessary expenses was an expected and essential function of their employment with Defendants
3 and that failure to incur those expenses would have adverse consequences on their employment.

4 123. Therefore, Plaintiff and the Class members are entitled to reimbursement for any
5 and all necessary work related expenses, as provided for in Labor Code § 2802(b) and paragraph 9
6 of the applicable IWC Wage Orders, incurred during the direct discharge of their duties while
7 employed by Defendants, as well as accrued interest on those expenses that were not reimbursed
8 from the date Plaintiff and the Class members incurred those expenses. Further, Plaintiff and the
9 Class members are entitled to costs and attorney's fees pursuant to Labor Code § 2802(c).

10 **TENTH CAUSE OF ACTION**

11 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

12 **(Against All Defendants)**

13 124. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
14 full herein.

15 125. Plaintiff, on behalf of himself, the Employees in the Class, and the general public,
16 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of
17 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
18 harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting
19 the public interest within the meaning of Code of Civil Procedure § 1021.5.

20 126. Plaintiff is a "person" within the meaning of Business & Professions Code
21 § 17204, have suffered injury, and therefore has standing to bring this cause of action for
22 injunctive relief, restitution, and other appropriate equitable relief.

23 127. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
24 business practices. By the conduct alleged herein, Defendants' practices were deceptive and
25 fraudulent in that Defendants' policy and practice failed to provide the required amount of
26 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and
27 Class members for all hours worked, due to systematic business practices as alleged herein that
28 cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare

1 Commission requirements in violation of California Business and Professions Code §§ 17200, *et*
2 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California
3 Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

4 128. Wage-and-hour laws express fundamental public policies. Paying employees their
5 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental
6 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State
7 vigorously to enforce minimum labor standards, to ensure that employees are not required or
8 permitted to work under substandard and unlawful conditions, and to protect law-abiding
9 employers and their employees from competitors who lower costs to themselves by failing to
10 comply with minimum labor standards.

11 129. Defendants have violated statutes and public policies. Through the conduct alleged
12 in this Complaint, Defendants have acted contrary to these public policies, have violated specific
13 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
14 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,
15 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
16 guaranteed to all employees under the law.

17 130. Defendants' conduct, as alleged above, constitutes unfair competition in violation
18 of the Business & Professions Code § 17200 *et seq.*

19 131. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
20 overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of
21 reasonable care should have known that their conduct was unlawful; therefore their conduct
22 violates the Business & Professions Code § 17200 *et seq.*

23 132. By the conduct alleged herein, Defendants have engaged and continue to engage in
24 a business practice which violates California and federal law, including but not limited to, the
25 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
26 Code including Sections 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 for which this Court
27 should issue declaratory and other equitable relief pursuant to California Business & Professions
28 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair

1 competition, including restitution of wages wrongfully withheld.

2 133. As a proximate result of the above-mentioned acts of Defendants, Employees have
3 been damaged, in a sum to be proven at trial.

4 134. Unless restrained by this Court, Defendants will continue to engage in the unlawful
5 conduct as alleged above. Pursuant to the Business & Professions Code, this Court should make
6 such orders or judgments, including the appointment of a receiver, as may be necessary to prevent
7 the use by Defendants or their agents or employees of any unlawful or deceptive practice
8 prohibited by the Business & Professions Code, including but not limited to the disgorgement of
9 such profits as may be necessary to restore Employees to the money Defendants have unlawfully
10 failed to pay.

11 **ELEVENTH CAUSE OF ACTION**
12 **PENALTIES PURSUANT TO LABOR CODE § 2698, ET SEQ.**
13 **(Against All Defendants)**

14 135. Plaintiff realleges and incorporate all preceding paragraphs, as though set forth in
15 full herein.

16 136. Plaintiff and the Employees in the Class are also aggrieved employees as defined
17 under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and
18 either were or are employed by the alleged violators, Defendants.

19 137. In failing to pay Aggrieved Employees minimum wages and overtime, not
20 providing proper meal and rest periods, failing to provide accurate itemized wage statements, and
21 failing to pay Employees wages upon termination or timely upon resignation, all discussed above,
22 Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required
23 under Labor Code § 204. Defendants also failed to maintain records showing accurate hours
24 worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and
25 paragraph 7 of the applicable IWC Wage Orders.

26 138. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699
27 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5,
28 including the penalty provisions, without limitation, based, inter alia, on the following California

1 Labor Code sections: 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 558, 1174, 1174.5, 1185,
2 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802, and 2698 *et seq.*

3 139. More specifically, after complying with the notice procedures of Labor Code §
4 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
5 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed
6 underlying claims and seeking penalties as specified by the applicable corresponding provisions,
7 including as follows:

8 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
9 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
10 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
11 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
12 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
13 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant
14 to Labor Code § 2699(g)(1);

15 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
16 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
17 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
18 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC
19 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under
20 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,
21 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs
22 pursuant to Labor Code § 2699(g)(1);

23 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
24 Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to
25 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,
26 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking
27 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),
28 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,

1 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by
2 providing inaccurate wage statements and failing to maintain records as required under Labor
3 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor
4 Code §226.3, which in addition to other penalties provided by law, subjects Defendants to "a
5 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
6 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
7 citation, ...";

8 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
9 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
10 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
11 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
12 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code
13 § 2699(g)(1);

14 (e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For
15 Defendants' unlawful deductions from wages and for Defendants' failure to reimburse the
16 necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and
17 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties
18 available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and
19 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs
20 pursuant to Labor Code § 2699(g)(1); and

21 (f) All Alleged Violations of the IWC Wage Orders and Other Labor Code Sections:
22 For any above addressed violation of the applicable provisions of the IWC Wage Orders, each of
23 which constitute separate violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking
24 penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the
25 applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code §
26 2699(g)(1).

27 140. The penalties shall be allocated under Labor Code § 2699(i) as follows: 75% to the
28 Labor and Workforce Development Agency (LWDA) and 25% to the affected employees.

141. As also addressed above, Plaintiff, on behalf of the Aggrieved Employees, also seek the penalties and remedies set forth in Labor Code § 558, which states:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.

(b) If upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of any provision of this chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a violation of this chapter shall be the same as those set out in Section 1197.1.

(c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

142. Plaintiff has exhausted his administrative remedies by sending a certified letter to the LWDA and Defendants postmarked on **March 6, 2020** addressing in detail the specific provisions of the Labor Code Defendants have violated and addressing the facts and legal theories to support the alleged violations and requested penalties. The LWDA has not provided notice of its intent to investigate the alleged violations within 65 calendar days of the postmark date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations addressed herein and in the PAGA Notice letter and the original Complaint.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Employees and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;

1 4. For compensatory damages in the amount of all unpaid wages, including overtime
2 and double-time pay, as may be proven;

3 5. For compensatory damages in the amount of the hourly wage made by Employees
4 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
5 years prior to the filing of this action, as may be proven;

6 6. For compensatory damages in the amount of the hourly wage made by Employees
7 for each day requisite rest breaks were not provided or were deficiently provided where no
8 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
9 be proven;

10 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

11 8. For restitution and/or damages and penalties for Defendants' failure to pay all
12 wages due twice monthly under Labor Code § 204, as may be proven;

13 9. For restitution and/or damages for all amounts unlawfully withheld from the wages
14 for all class members in violation of Labor Code § 221, as may be proven;

15 10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
16 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

17 11. For damages and restitution for failure to reimburse all reasonable and necessary
18 business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;

19 12. For liquidated damages pursuant to California Labor Code 1194.2(a) for failure to
20 pay minimum wage;

21 13. For restitution for unfair competition pursuant to Business & Professions Code
22 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

23 14. For an order enjoining Defendants and their agents, servants, and employees, and
24 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
25 duties adumbrated in this Complaint;

26 15. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;

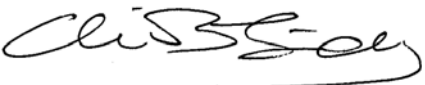
27 16. For wages and penalties under Labor Code § 558, as may be proven;

28 17. For other wages and penalties under the Labor Code, as may be proven;

- 1 18. For all general, special, and incidental damages, as may be proven;
2 19. For an award of pre-judgment and post-judgment interest;
3 20. For an award providing for the payment of the costs of this suit;
4 21. For an award of attorneys' fees; and
5 22. For such other and further relief as this Court may deem proper and just.

6
7 DATED: May 13, 2020

DAVID YEREMIAN & ASSOCIATES, INC.

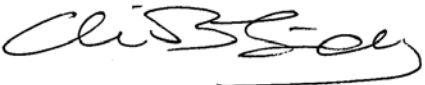
8
9 By 
10 David Yeremian
11 Alvin B. Lindsay
12 Attorneys for Plaintiff OVIDIO G.
13 GRAMAJO RODAS, on behalf of himself
14 and all others similarly situated
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

DATED: May 13, 2020

DAVID YEREMIAN & ASSOCIATES, INC.

By 

David Yeremian
Alvin B. Lindsay
Attorneys for Plaintiff OVIDIO G.
GRAMAJO RODAS, on behalf of himself
and all others similarly situated

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 535 N. Brand, Blvd. Suite 705, Glendale CA 91203.

Andrew Chekene Enterprises, Inc.
David Stephen Zalob, Agent for Service of Process
505 Sansome Street, Suite 1550
San Francisco, CA 94111

[] (COURTESY COPY BY ELECTRONIC TRANSMISSION) by use of email by scanning the documents and any and all documents and emailing them to email addresses above.

[] (BY OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the address above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

Executed on May 13, 2020, at Glendale, California.

Natalia Bermudes
Natalia Bermudes